

The applicant's claim is premised on the claim that he is the registered proprietor of the suit land which he purchased from the former owner Muhammed Mitha and sons in 2006. The
5 Custodian Board who are Respondents in Misc. Cause 21/2014 without consent or justifications purported to allocate the Applicants land to the 1st - 5th Respondents on temporary basis.

When he raised this with the Custodian Board, the 1st - 5th
10 Respondents cancelled the earlier allocations. The Respondents then filed an application for Judicial Review challenging it for cancellation of the temporary allocation but did not join the Applicant/Respondent.

15 The Applicant claims he cannot take over the property due to the existing status quo.

The affidavit in support greatly reiterates the above position/grounds. The Respondents filed an affidavit in reply.

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Therein it is averred that the application is incurably defective, incompetent, profligate and bad in law. That the proceedings against Custodian Board are for Judicial Review and cannot be brought against an individual and that the Applicants cannot be
25 forced to sue a person against whom he has no remedy.

The rest of the affidavit proceeds to lay out the Respondents' claim to the property (Paragraph 7 - 11). The Respondents in effect deny that they have no obligation whatsoever towards the applicants.

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I observe that the main application was served on the Respondents **(Nswali & others Vrs. DAPCB)** and the said Respondents never filed a reply for reasons that are not clear. Both parties have made verbal submissions.

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The applicant's Counsel basically reiterates what is in the application and affidavit in support. They further argue that if they are not made party they will be denied the right to be heard. They further submit that the Judicature (Judicial Review) Rules 2009, provide that anybody who seeks to be heard may apply to court and will be heard.

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The Respondents on the other hand cited various authorities to the effect that Judicial Review is about the court supervising public officers in the exercise of their powers and cannot be brought against private individuals. Ref: **United Reflexologists of Uganda Vrs. Hon. Stephen Malinga & Attorney General.**

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In effect they are arguing that the Applicants have no locus standi in this matter. Ref: **Kalemera Vrs. Unilever Ltd - HCCS**

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1181/1987, where it was held that a party cannot be forced to sue anybody.

The facts of this matter in my view are different from those in the authorities cited. In the case of **United Reflexologists of Uganda (supra)** it is to be noted that Hon. Stephen Malinga was not an interested party.

In the instant case the Applicant is an interested party on the basis of the Title they hold. This same title is an item for contest and there is no way the Respondents can hide their heads in the sand as if they do not know about it. If they don't, then the same has been brought to the attention of this Court and cannot be just swept aside.

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The above position should be considered together with the provisions of Rules 6 (2) and 10 (1) of the Judicature (Judicial Review) Rules 2009.

20 Rule 6 (2) provides for service on all persons affected by the application. Rule 10 (1) on the other hand (read together with Rule 6 (2)) gives **anybody** who desires to be heard and appears to be a proper person to be heard, **shall be heard** not withstanding that he or she has not been served with Notice of
25 Motion or Summons. The instant application to me is an application to Court for a right to be heard.

On the basis of claims of proprietary interest, the applicant is a proper person to be heard to enable court to resolve all issues concerning/raised in this Application.

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I accordingly allow this Application with each party to bear their own costs.

Godfrey Namundi

10 **Judge**

28/9/2015

Orders:

15 The applicants to file their affidavit not later than 8/10/2015. Respondents not later than 18/10/2015. Submissions by all parties by 10/11/2015 when this matter will be mentioned and a date for Ruling set down.

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Godfrey Namundi

Judge

28/9/2015

28/9/2015:

Ojambo Robert Mugeni and Benard Mugeni for Applicants

Respondents in Court

Kayemba Aniwa for Respondents

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Court: Ruling delivered.

Godfrey Namundi

10 **Judge**

28/9/2015