THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL REVISION No. 15 OF 2012

IN THE MATTER OF ARTICLES 26, 28, 42 AND 44 OF THE CONSTITUTION, SECTION 36 OF THE JUDICATURE ACT, CAP. 13 AS AMENDED BY THE JUDICATURE (AMENDMENT) ACT NO.3 OF 2002.

AND

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES, 2009

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF CERTIORARI, PROHIBITION, DECLARATION AND INJUNCTION

BY

PHILADELPHIA TRADE & INDUSTRY LIMITED :::::::::::: APPLICANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITY :::::::::::: RESPONDENT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1.1 The applicant through its Lawyers Ligomarc Advocates brought this application for judicial review by way of Notice of motion under Articles 26, 28, 42 and 44 of the Constitution of the Republic of Uganda, Sections 36 and 38 of the Judicature Act, Cap, 13 as amended, Sections 98 of the Civil Procedure Act, Cap. 71 and Rules 6, 7, 8 and 9 of the Judicature (Judicial Review) Rules, 2009 against the respondent for the following orders; that:-

(i) A declaration that, the respondent's decision communicated to the applicant on 26th day of April 2012 purporting to nullify the applicant's 5 years sublease offer commencing 1st May, 2006 and extendable to a term of 49 years, and the sublease subsequently created in favour of the applicant on the property comprised in LRV 2825 Folio 8 plot 1-3 and 2-4 Station

Approach Road, Kampala is null and void and illegal and an abuse of the respondent's discretionary powers.

(ii) A declaration that the respondent's decision communicated to the applicant on 26th day of April 2012 purporting to declare that the applicant has no proprietary interest in LRV 2825 Folio 8 plot 1-3 & 2-4 Station Approach Road, Kampala is illegal, ultra vires, irrational, unreasonable and an abuse of the respondent's discretionary powers;

(iii) A declaration that the respondent's refusal to formalize the applicant's application for a sub-lease extension for a period of 49 years in respect of LRV 2825 Folio 8 plots 1-3 & 2-4 Station Approach Road and a formal sublease in respect of plot 2A Station Approach Road is unreasonable, irrational and illegal.

(iv) A declaration that the respondent's decision to re-enter the applicant's sublease comprised in LRV 2825 Folio 8 plots 1-3 & 2-4 Station Approach Road is illegal, irrational and ultra vires.

(v) A declaration that the investigations and review purportedly carried out by the respondents in respect of the applicant's sublease agreement were unconstitutional and an abuse of the respondent's discretionary powers.

(vi) A declaration that the applicant is the rightful and or equitable owner of the property comprised in LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road.

1.2 The application is based on the following grounds:-

(i) The applicant is the registered proprietor of a sublease on land comprised in LRV 2825 Folio 8 plot 1-3 & 2-4 Station Road, Kampala vide instrument number 367086 for an initial term of 5 years with effect from 1st May, 2006, extendable to 49 years, having been grated the same by Kampala City Council (KCC) the respondent's successor in title.

(ii) The applicant applied for an extension of the above sublease to a full term and a sub lease in respect of plot 2A Station Approach Road to enable it commence developments of the said land.

(iii) On 14th March, 2012 the respondent made decisions purporting to cancel the applicant's sublease, the initial sublease offer and to re-enter the demised property after purported investigations into the applicant's acquisition of the sublease carried out without offering the applicant an opportunity to be heard.

(iv) The said decisions and /or orders are unconstitutional, illegal, ultra vires the jurisdiction, powers, authority and mandate of the respondent.

(v) The respondent's orders and decisions are unreasonable and irrational as they were made without considering the purpose for which the sublease was granted to the applicant and the investment already committed to the demised property.

(vi) It is in the interest of justice that the prerogative orders prayed for be granted to the applicant.

1.3 This application is supported by the affidavit sworn by Godfrey Kirumira, the applicant's Director together with the exhibits and copies of documents which accompany this notice of motion.

1.4 The respondent is represented by the Directorate of Legal Affairs, Kampala Capital City Authority. The respondent through Mugisha Caleb, the manager Litigation in the Directorate of Legal Affairs of Kampala Capital City Authority filed in opposition to this application an affidavit in reply sworn on 15th October, 2012. In paragraph 13 of the affidavit in reply:-

Mr. Mugisha Caleb swore that:-

> **"The respondent shall raise a preliminary point of law to the effect that the present application was commenced outside the statutory period for suits for judicial review and it has not obtained leave of court to that effect".**

Indeed, in his submissions, counsel for the respondent raised the same preliminary objection and submitted on it at length.

2. Issues framed by Counsel for the applicant

2.1 Issues raised by Counsel for the applicant for determination by the parties and Court are contained in his written submissions. They are; that:

(a) Whether the respondent's decision and action can be challenged in a Court of law by way of judicial review.

(b) Whether or not the respondent acted legally, rationally and properly in refusing or arriving at the decision to re-enter the applicant's lease.

(c) Whether the applicant is entitled to the reliefs sought.

2.2 However, under order 15 rule 2 of the Civil procedure Rules, issues of law and fact are to be determined as and when they are raised by a party. Therefore, it is in accordance with the law that the respondent's preliminary objection raised in the affidavit in reply be determined before the above framed issued are considered and determined by court.

3. Whether this application is time barred

3.1 Counsel for the respondent submitted that this application was filed in Court out of time. He submitted that firstly, the applicant brought this application seeking reliefs under the judicature Act which does not provide for revision. Revision is instead governed under Section 83 of the Civil Procedure Act, cap. 71. The grounds under the aforesaid Section are entirely different from those envisaged in the present application. In reply to these submissions, Counsel for the applicant does not agree.

On perusal of this application it is clear that the application is for judicial review. In the application the applicant stated in the 1st paragraph of this application that:-

> **"……. Counsel for the applicant can be heard on the applicant's behalf for orders of judicial relief/review by way of……"**

Further in the heading of this application the applicant stated therein that:-

> **"And in the matter of an application for judicial review by way of certiorari, prohibition, declaration and injunction"**

The pleadings in the entire application are on judicial review. Wherefore, I do not know where counsel for the respondent got the impression that the application was for revision.

Furthermore it is the complaint by Counsel for the respondent that the application presently before the Court is incompetent for non-compliance with Section 36 (7) of the Judicature Act, Cap. 13 as amended. Section 36 (7) thereof provides:

> **"36 (7) An application for judicial review shall be made promptly and in any case within three months the date when the ground of the application arose, unless the court has good reason for extending the period within which the application shall be made".**

That this application is time barred.

The affidavit in support of the application sworn by Godfrey Kirumira deponed on the 9th July, 2012 alludes to a letter dated 14th March, 2012 written to the applicant company informing it that the respondent had investigated and reviewed the process leading to the applicant's sublease agreement and concluded that it was unlawful.

In effect the letter of the respondent's Director of Legal Affairs brought to the attention of the respondent the disposal flaws in the allocation of the lease to the applicant and notified it of the respondent's re-entry.
Indeed the applicant having learnt of the re-entry immediately filed High Court civil Suit No. 127 of 2012 plus miscellaneous applications Nos. 235 of 2012 and 236 of 2012 seeking interim relief from the High court pending disposal of the main suit. An interim Order was issued by His Worship, the Assistant Registrar on the 23rd March, 2012 in this regard. The same was extended until the applicant herein wrote to the Court withdrawing the main suit.

Counsel for the respondent argued that the application for judicial review was commenced on the 9th July, 2012, almost four months after the letter complained of was written and its contents brought to the attention of the applicant. That, therefore, the application presently before Court offends the provisions of Section 36 (7) mentioned above since no court has granted the application an extension of time within which to challenge the respondent's decision. That in the absence of such an application, the application for interim order is based on two other applications that have no foundation in law and should therefore be dismissed with costs.

The case of **Joseph Luzige vs UNRA; Misc. Application NO. 327 of 2012** cited by counsel for the applicant on the existence of " a bonafide substantive application pending…." And the pendency of a "competent" application supports the respondent's case that there is a no substantive application which is competent before the Court for the simple reason that the application is incompetent for non-compliance with the Judicature Act, Section 36 (7) already referred to above regarding the bringing of an application for judicial review within 90 days from the date of the decision complained of.

I agree with the arguments by Counsel for the applicant that, the inherent power of the Courts to ensure that the ends of justice are met should be exercised judiciously meaning that all circumstances surrounding a matter should be taken into account vis-à-vis the law. And where there are express provisions in a statute demanding that an act must be done within a particular period of time failing which Court may enlarge the time for the doing of such a thing, when an aggrieved party does not do the thing contemplated and further does not move Court to extend and /or enlarge the time for doing such a thing, he cannot hide behind the inherent powers of the Court to remedy his dilatory conduct. The question whether the applicant is guilty of dilatory conduct in bringing this application in Court shall be dealt with in this ruling hereinafter.

Again, in paragraph 9 of the affidavit in reply, Mr. Mugisha Caleb deponed that:-

> **" That on 14th March, 2012, the respondent wrote to the applicant notifying it of the disposal flaws in the process leading to the grant of the sublease and the respondent's intention to re-enter the property".**

The respondent did not attach any documents to show that the said letter was served on the applicant on 14th March, 2012. Yes; the letter was written on 14th March, 2012, but is the evidence of the applicant that it came to learn of it much later.

In their submissions both counsel for the parties addressed this point of law. In my considered opinion, this is also a point of law which should be sorted out at this stage before indulging in resolving the above framed issues.

In his submissions counsel for a respondent argued that paragraph 9 of the respondent's affidavit in reply indicated the disposal flaws in the applicant's obtaining of the sub-lease and the respondent being a public entity cannot be expected to simply honour obligations whose foundations are not grounded in the law. That in effect the non-compliance with the disposal laws of Uganda and the failure to obtain clearance of the Attorney General and the public procurement and Disposal of Public Assets Authority in itself is enough for this Court to find that there is no basis for the present application.

This position was clearly elaborated in the now famous case of **Nsimbe Holdings ltd vs AG & IGG: constitutional Petition No. 02 of 2006** where the Constitutional Court ruled

that failure to obtain clearance of the Attorney General under Article 119 (5) of the constitution of the Republic of Uganda makes the act or thing done null and void and of no legal effect.

That since the non-compliance with the disposal laws relating to the suit property go to the root of the matter, the Honorable Court cannot ratify such an illegality. In **Makula International vs His Eminence Cardinal Nsubuga & anor [1980] HCB 11**, it was held that an illegality once brought to the attention of Court overrides all questions of pleadings including any admissions made therein. Counsel for the applicant argued in his submission that this application is within the law. He prayed that the respondent's objections be dismissed.

I have considered the affidavits evidence by both parties; and the submissions by both counsel on the two preliminary objections raised. Counsel for the applicant submitted that the issue raised by the respondent in paragraph 13 of the affidavit in reply to the effect that this application is time barred. They further went ahead that the appellant's application was filed within the stipulated time of three months. Whereas the decision was purportedly made on 14th March, 2012, the same was served on to the applicant on 10th April, 2012. This means that time began to run from the time when the applicant got to know of the stipulated decision. The applicant filed this application on 9th July, 2012, which is still within the stipulated time of the 3 months.

Consequent to the above, and my further examination of the application being time barred; whereas rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides for an application for judicial review to be made within three months from the date when the grounds of the application first arose, such a provision has been interpreted by this court to be directory and not mandatory. In the case of **Kuluo Joseph Andrew & 2 others vs The Attorney General & 6 others Misc. Cause No. 106 of 2001, Justice Yorokamu Bamwine**, (as he then was) held that;

1. **" From my reading of the Judicial Review Rules in question, I get the impression that time limits therein are more intended to ensure expeditious determination of the applications for judicial review than to oust the jurisdiction of Courts to hear the parties after the prescribed period. I am saying so because the rules <u>do not state the legal consequences of failure of a party to comply</u>**

with it. **Like I said in Wakiso Transporters Tours & travel Ltd & others vs IGG & others HCMC No. 0053 of 2010 (unreported), if the law makers intended it to be so strictly construed, it would have stated so in express terms. The issues in that case was the 56 days rule in Rule 7 thereof regarding filing of reply to the notice of motion."** Underlining is mine of emphasis

2. **"Even if Court were to accept the suggested strict interpretation of Rule 5 (1) in connection with this matter, I would still find, as I did in Nampogo Robert & anor vs Attorney General HCMC No.0120 of 2008, that there is allowance under the said rule for court to exercise a discretion in favour of an applicant, where Court considers that there is a good reason for extending the period within which the application shall be made. In the event of upholding the objection, the application would be struck out and the applicants would still be entitled to file yet another application for extension of time under Rule 5 (1) in the sense that the alleged illegality would still subsist and the state of affairs would still have to be remedied".** Underlining is mine of emphasis

In that regard, I agree that the three months period under Section 36(7) Judicature Act as amended by Act of 2002 and Rule 5 (1) of the Judicature (judicial review) Rules 2009, has been interpreted by this Court to be directory and not mandatory. I support and still support this legal position with the case of **Kuluo Joseph Andrew & 2 others vs the Attorney General & 6 others Misc. Cause No. 106 of 2011**.

In **Amiran Enterprises Ltd vs Uganda Revenue Authority HCMA – 0 of 2010 my brother Judge, Justice Kiryabwire** held that it must always be borne in mind that a prerogative orders are discretionary in nature and the court must act judicially and according to well settled principles. Such principles may include common sense and justice; whether the application is meritorious; whether there is reasonableness; vigilance and not any waiver of rights by the applicant.

The decision in **Nsimbe Holdings vs AG & IGG** is cited out of context by the respondent and therefore not applicable to this matter. In the first place, that decision is a constitutional interpretation matter, seeking completely different reliefs from the present on which seeks prerogative orders. Secondly, the illegalities complained of involved the formation of a

public company – premier developments ltd a subsidiary of NSSF (whose shareholders were NSSF and Mr. Onegi Obel –NSSF's then Chairman). The company entered into a joint venture with Mugoya Estates ltd to form a company known as Nsimbe Holdings Ltd (NHL). The same transaction (Nsimbe Holdings Ltd) was declared unconstitutional, null and void mainly on account of not involving the Attorney General because the public was risking losing their savings (with NSSF) out of the deal. The reasoning of the Constitutional Court is NSSF is a public body and could not form a joint venture without the involvement of Attorney General. Furthermore the formation of the Company itself was in breach of the Companies Act.

The fact and circumstances of this case are fundamentally different. The applicant is a private company and is not forming any joint venture with the respondent. The applicant simply is seeking to challenge the respondent's decisions, acts and omissions which it feels are prejudicial to its interests.

In the premises, and for the reasons given hereinabove in this ruling the two (2) preliminary objections raised by the respondent are dismissed.

3.0 Resolution of the issues in this application by Court

3.1: Before considering the hereinabove raised issues it is important to note that the respondent's counsel in his submissions never addressed himself on the said issues raised and argued by Counsel for the applicant. May be, counsel for the respondent hoped that this application could be solved at the stage of his preliminary objections. In essence, therefore, I take it that the respondent was not opposed to the submission by counsel for the applicant in support of the framed issues for the determination by this Court.

It is also important to note that the respondent in its affidavit in reply did not at all oppose the evidence that was adduced by the applicant through it's director, one Godfrey Kirumira. Allow me for emphasis, therefore, to reproduce the pertinent paragraphs of Godfrey Kirumira's affidavit in support of this application and that Mugisha Caleb, the affidavit in reply:-

(i) "Affidavit in support of the Notice of Motion

I, Godfrey Kirumira…….
……..…

1. ……

2. That sometime in or around 2001, the company conceived the idea of establishing a parking complex in the city centre. Consequently, we approached several offices including Uganda Investment Authority Ministry of Finance and Economic Development to identify land for us to purchase within the city centre for purpose of our proposed business.

3. That we were referred to the then Kampala City council where we held several meetings with different Department heads, including the then Mayor of Kampala City Council, His Lordship John Ssebana Kizito and presented our proposals.

4. That sometime in 2003, Kampala City council identified land situate in plots 1-3 and 2-4 Station road and plot 2A Station Road approach which could be suitable for our project. Upon advise by Kampala City council, we submitted a formal application for a sub-lease in respect of the above land on 18th December, 2003.

5. That Kampala City Council then granted our applicant on 20th July 2004, as can be shown by annexture "A". however, before a formal sublease agreement could be signed and granted, the applicant still had to go through time consuming and expensive processes that involved:

(a) A thorough review of the applicant's project and a site visit by public Health Officials. A copy of their report and their formal submission letter dated 19th August 2004 is attached hereto and marked "B".

(b) Following up with the rezoning grant to change the user from open recreation grounds to multi storey parking complex use. The rezoning grant was finally given on 15th July 2005 as can be shown by a copy of the letter from the then Minster of Water, Lands and Environment, attached and marked "C".

(c) Conducting an environment impact study and preparing an Environment Impact Assessment Report for National Environment Management Authority (NEMA)'s review before its issuance of a Certificate of Approval for the Applicant's project. Copies of NEMA 's letter dated 16th September, 2005 and proof of payment of fee is attached hereto and marked "D1 and D2".

(d) Holding meetings with NEMA officials to discuss concerns raised by its Impact Assessment Review as well as seeking professional opinions to advise on appropriate corrective actions and provisioning to address the NEMA concerns. A letter from NEMA containing its concerns is attached as annexture "E". The certificate of approval was granted on 13th April, 2006 after the applicant had fully addressed NEMA's concerns. A copy of the certificate is attached hereto and marked "F".

(e) Valuation of the land for purposes of creating the sublease upon the request of Kampala City Council as can be shown by the former town Clerk's letter dated 27th July 2005 attached hereto and marked "G". When the City Valuer failed to conduct the valuation exercise. Kampala City Council then referred the exercise to the Chief Government Valuer as can be shown by letters dated 17th October 2005 and 2nd November, 2005,attached hereto and marked "H" and "I" respectively.

6. That the land was subsequently valued by the Chief Government Valuer and the applicant assessed to pay a total of Ushs 157,500,000/= (Uganda Shillings One hundred fifty seven willing five hundred thousand only) on account of premium and ground rent for the properties comprised in plot 1-3 and 2-4 Station Road and Plot 2A Station Approach Road as can be shown by annexture "J". The applicant paid the said monies in full as can be shown by Banker's cheques attached hereto as annextures "KI" and receipts attached hereto and marked "K2".

7. Thereafter, a formal` sublease agreement was finally executed between the applicant and Kampala City Council a sublease created over LRV 2825 Folio 1-3 & 2-4 Station Road, Kampala for an initial term of 5 years with effect from 1st May 2006 extendable for a term of 49years. The sublease was registered vide instrument number 367086 of 1st June, 2006.

8. That in a bid to fulfil the development covenant in the sublease the applicant took possession of the land and its shareholders raised part of the capital costs necessary for the project and sought to finance the deficit of US$ 15,000,000 (United States Dollars Fifteen million only) from project lenders upon which the project's implementation could begin.

9. That however, all the lenders we approached required that the applicant obtains a full term of 49 years before funding of such magnitude could be extended to it. Furthermore, the lenders also required the applicant to have a formal sublease over plot 2A Station Approach which is sandwiched between plots 1-3 & 2-4 Station Road Road and in respect of which execution of a formal sublease agreement had not been concluded although premium and ground rent had been paid. The applicant informed the Kampala City Council accordingly which then advised the applicant to formally apply for dispensation of the initial 5 years term of the sublease to the Council.

10. That consequently, on 8th July 2010 the applicant submitted to the Town Clerk of Kampala City Council a formal application seeking an extension of the sublease for the full term in light of the circumstances and another application for a sublease in respect of plot 2A Station Approach.

11. That as I followed up with the application I came to learn that the City Council sat and considered our application on 29th July 2010 and recommended that the sublease on plots 1-3 and 2-4 Station Road be

extended for 49 years and further that a sublease on plot 2A which the applicant had earlier on applied and paid for should also be granted.

12. **That however, subsequently, it became difficult for us to follow up with our application because of the changes that were beginning to take effect following the establishment of the respondent Authority as a successor to Kampala City Council. Consequently, the applicant engaged the services of Ms Ligomarc Advocates to follow up with our application.**

13. **That I am informed by Ms Joshua Ogwal, one of the advocates working with Ms Ligomarc Advocates whose information I verily believe to be true, that on 5th July 2011 the firm wrote to the Respondent's Executive Director requesting for a formalization of the applicant's sub lease extension to a full term of 49 years and a grant of a sublease over plot 2A Station Approach as recommended by the Kampala City Council.**

14. **That I am also informed by the said Joshua Ogwal that the firm wrote another letter dated 26th August 2011 to the Executive Director following upon on the matter. A copy of the said letter is attached hereto and marked "O". I am further informed by Mr. Joshua Ogwal, that the respondent did not respond to any of the firm's letters.**

15. **That sometime in August, 2011, as I followed up the matter with a records officer working with the respondent, I got to learn that the contracts committee of the City Council convened a meeting on 28th April, 2011 where it discussed our application further but only agreed to extend the applicant's sublease on plots 1-3 and 2-4 Station Road for 5 years from 1st May, 2011 to 30th April 2006 subject to the applicant paying outstanding ground rent arrears. The committee further recommended that the applicant pursue a sublease of plot 2A with the Kampala District Land Board and other relevant officers with the respondent which by then had been established and commenced operation.**

16. **That as the recommendations of the contracts committee were inaccurate as the applicant had paid all its ground rent in full, I made a personal effort to meet with officials in the respondent Authority but to no avail since the authority itself had not been fully established and no one was willing to speak with us on record.**

17. **That my personal attempts to meet with Ms. Jeniffer Musisi, the Executive Director, to explain our situation were unsuccessful as she was often reported to be in meetings and in the field. When I was finally able to call and talk to her on phone, she informed me that she had instituted an investigation team to look into the matter and advise her on the appropriate way forward. She also assured me that she would call us for a meeting to discuss the matter as soon as the investigations were complete.**

18. **That however, in view of the uncertainties arising from the respondent's transition at the time and for the sake of safe guarding its interest in the land, the applicant decided to obtain an assessment for the ground rent**

from the respondent and consequently, paid a sum of shs 36,020,090/= (thirty six million twenty thousand ninety shillings only).

19. **That sometime in March 2012, I received reports from various people informing me that the respondent intended to re-enter the subleased land and repossess the land from the applicant.**
20. **That to protect its interests, the applicant commenced HCCS No. 127 of 2012 against the respondent and obtained an interim order in Misc. Application no. 236 of 2012 and subsequently a temporary injunction in Misc. Application No. 235 of 2012 restraining the respondent from evicting the applicant from the land.**
21. **That on 10th April, 2012, before the hearing of Misc. Application No. 236 of 2012, the applicant's lawyers were served with an affidavit in reply deponed by a one Ms Josephine Karugonjo, a senior Principal State Attorney, in the respondent's Directorate of Legal Affairs to which was attached a copy of a letter dated 14th March, 2012 allegedly written by the respondent's Director of Legal affairs purporting to advise the company that the respondent had investigated and reviewed the process leading to the applicant's sublease agreement and come to the decision that the sublease was unlawful and of no legal effect.**
22. **That the letter further stated that the sublease extension granted by Kampala City Council was similarly null and void and further directed the Respondent's Directorate of Physical Planning to take all necessary steps and immediately re-enter the said land. The respondent relied on the same letter during the hearing of the application for a temporary.**
23. **That the applicant only came to learn of this letter on 10th April, 2012 and has never been formally served with the same to date.**
24. **That I believe that the procedure adopted by the respondent in arriving at the above decisions and directions is manifestly illegal and unconstitutional as it did not afford the applicant an opportunity to be heard.**
25. **That I believe that the respondent made the above decisions without considering the time, money and the good will that the applicant has so far invested and the inconvenience suffered in its pursuit of the proposed project on the suit property, making such a decision and or directions irrational and unreasonable.**
26. **That I also believe that the respondent's decision and or directions are in contravention o the principles of natural justice, illegal and are unconstitutional.**
27. **That I depone this affidavit in support of applicant's application for a judicial review by way of certiorari, declarations, prohibition, mandamus, injunction, damages and costs of the application.**
28. **That it is in the interest of justice that the application is granted as I have been informed by Mr. Joshua Ogwal , the applicant's lawyer that there is no other appropriate legal remedy available to the applicant following the withdrawal of our suit for want of service of a statutory demand.**

29. …….

(ii) Affidavit in reply

I, Mugisha Caleb ……

…….

1. …….

2. That I hve read the affidavit of Godfrey Kirumira Kalule and I have understood the contents therein to which I hereby respond.

3. That the respondent is a successor to the Kampala City Council having been established by the Kampala Capital City Act, 2010 and is the registered proprietor of plot 1-3 and 2-4 Station Approach, Kampala.

4. That the applicant herein applied to the respondent to sub-lease land comprised in LRV 2825 Folio 8 Plot 1-3 and 2-4 Station Approach measuring approximately 0.525 hectares for five (5) years from the 1st May, 2006.

5. That the applicant was granted the sublease of the said plot of land for the purpose of constructing a multi-storey car parking complex.

6. That the Kampala City Council under Minute WWR 13/53/2010 considered the applicant's application for extension of the sublease for 49 years, a sublease of plot 2A Station Approach and the amalgamation of the said plots and made the recommendations stated in paragraph 9 of the Applicant's affidavit in support of the application.

7. That the Kampala City Council contracts Committee recommended that the sub-lease be extended for five (5) years up to 16th April 2016.

8. That the Kampala City Council contracts Committee recommended that the other issues relating to Plot 2A be followed up with the relevant KCC Departments and that the applicant pays ground rent, if any.

9. That on the 14th March, 2012, the respondent wrote to the applicant notifying it of the disposal flaws in the process leading to the grant of the sublease and the respondent's intention to re-enter the property.

10. That the applicant subsequently instituted HCCS No. 127 of 2012 on the 23rd March, 2012 plus an application for a temporary injunction and the respondent contested the validity of the main suit for want of issuance of a statutory notice against it.

11. That the applicant subsequently wrote to the Registrar High Court Land Division withdrawing the suit.

12. That the applicant further filed Civil Application No. 15 of 2012 presently before Court on the 9th July 2012.

13. ……..

14. ……..

15. …….."

Upon evaluating the above affidavits evidence of both parties, it is clear to me that the facts adduced by the applicant in the affidavit in support of this application were not challenged

by the respondent at all. Save that in paragraph 9 of the affidavit in reply, the respondent relies on the alleged flaws in the process leading to the gravity the sublease to the applicant.

In fact the respondent in paragraphs 4, 5, 6, 7, 8 and 9 of the affidavit in reply conceded to the evidence adduced by the applicant in its affidavit in support of this application. In that respect, therefore, do not see any reasons why the respondent insisted on opposing this application. On this observation alone this application would be allowed in the terms and orders being sought therein.

From the evidence on record, from 2003 up to 14th March, 2012 Kampala City Council had no complaint against the applicant. The applicant confided in KCC as the controlling Authority of the suit land and entered into lease agreements in respect of the suit properties/lands and subsequently paid all the ground rents and did whatever was required of by KCC so that it starts its project. At this point in time, the respondent which came into legal existence much later cannot on flimsy grounds allegedly that KCC committed disposal flaws in the process of granting the sublease to the applicant. If faults were committed by KCC, which faults if any would be binding on the respondent, should not be visited against the applicant dispossess the applicant of the suit land. My analysis is supported by Section 114 of the Evidence Act, Cap. 6 Laws of Uganda which reads:

> **" Estoppel**
> **When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing."**

In addition to the above, the respondent never annexed to its affidavit in reply the alleged investigations report into the disposal process in the granting of the sublease of the suit lands to the applicant. Therefore, whether there was any investigations done by the respondent or not has not been proved by the respondent. The letter written by the respondent on 14th March, 2012 is not enough.

On the other hand, and the above analysis notwithstanding, in order for respondent not cause great financial loss to the applicant, if the respondent's predecessor (KCC) did not

follow the PPDA Act of 2003 procedures in granting the sublease to the applicant, the respondent is legal bound to validate the process. However, the respondent did adduce evidence to show that there were any flaws in the process of granting the sublease to the applicant, other than stating so in the letter it wrote on 14th March, 2012.

In my considered view, this is such an application that would have been settled by parties outside Court. A party should not go for a full trial of case for the sake of it.

3.2 I now turn to resolve the issues as framed hereinabove.

3.2.1 Issue no 1: Whether the respondent's decision and action can be challenged in a Court of law by way of judicial review.

Counsel for the applicant submitted that the respondent's decision and action can be challenged in a Court of law by way of judicial review. Counsel for the respondent, it appear to me he conceded to those submissions. He never addressed himself on this issue in his submissions in reply. In that respect, I agree with the submissions by Counsel for the applicant.

Under Article 42 of the Constitution, the respondent being a Public Body is enjoined to individuals and institutions that deal with it fairly and justly failing which, an injured party may take out an action by way of judicial review under Section 36 (1) of the Judicature Act (Cap. 13).

The essence of the remedy of judicial review was well articulated by **Kasule J.** (as he then was) in the case of **John Jet Tumwebaze vs Makerere University Council and 3 others Civil Application No. 353 of 2005** where he pointed out that; **"prerogative orders are remedies for the control of the exercise of power by those in public offices, and that in Uganda, prerogative orders are now an essential remedy in the judicial system under the collective process of judicial review."**

In the case of **Nazarali Punjwani vs Kampala District Land Board & Anor; HCCS No. 07 of 2005 Justice Kasule** (as he then was), observed that: "**judicial review is a legal process of subjecting to judicial control, the exercise of powers affecting people's rights and obligations enforceable at law by those in public office. Further that judicial review controls administrative action under three heads; illegality, irrationality and procedural impropriety."**

In the case of **Amiran Enterprises Ltd vs Uganda Revenue Authority HCMA – 06 of 2010 Justice Kiryabwire** observed that: **"it must always be borne in mind that a prerogative orders are discretionary in nature and the Court must act judicially and according to well settled principles. Such principles may include common sense and justice; whether the application is meritorious; whether there is reasonableness; vigilance and not any waiver of rights by the applicant. It must be remembered that prerogative orders look to the control of the exercise and abuse of power by those in public offices, rather than at providing final determination of private rights which is done in normal civil suits."**

Further, the tests to be met and considered by Court are well articulated by Hillary Delany in his book "Judicial review of Administration Action " 2001 sweet and Maxwell at pages 5 and 6. Where he writes:

> "**Judicial review is concerned not with the decision, but the decision making process. Essentially judicial review involves an assessment of the manner in which a decision is made, it is not an appeal and the jurisdiction is exercised in a supervisory manner……. not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality….."**Underlining is mine of emphasis

From the facts of this case, it is not in disputed that the respondent is a public body established under the Act of Parliament –Kampala Capital Authority Act, to manage the affairs of Kampala Capital City. It is also not in dispute that the respondent is a successor in title of the former Kampala City Council (KCC). As such, the respondent's actions taken and the decision made affecting the applicant in respect to the suit property are subject to judicial review by this Court.

3.2.2 Issue no. 2 Whether or not the respondent acted legally, rationally and properly in refusing arriving at the decision to re-enter the applicant's lease.

Counsel for the respondent never directly addressed himself on this issue in his written submission. Counsel for the applicant submitted that the respondent did not act legally, rationally and properly in arriving at the decision to re-enter the applicant's leased plots. In his written submissions counsel for the respondent argued that the respondent took such decision to re-enter the suit plots based on the disposal flaws in the process leading to the grant of the sublease. The respondent did not adduce evidence by attaching the investigation report they relied on in arriving at the disputed decision.

The letter containing the decision being complained of by the applicant is reproduced herebelow:

> **"On a headed paper as Kampala Capital City Authority, Directorate of Legal Affairs.**
>
> **Date: March 14, 2012**
>
> **M/s Philadelphia Trade & industry Ltd,**
> **P.O Box 6390,**
> **Kampala.**
>
> **Re: NOTICE OF RE-ENTRY ON PLOTS 1-3 & 2-4 STATION APPROACH, ALONG JINJA ROAD, KAMPALA**
>
> **The above refers.**
>
> **We have reviewed the processes leading to the sub-lease agreement entered into on 19.05.2006 between the Kampala City Council (as "sub-lessor") and Philadelphia Trade & Industry Ltd (as "sub-lessee") for the purposes of ascertaining whether or not all due and lawful steps were taken and complied with to vest the said property in yourselves.**
>
> **The divestiture of any assets or rights of then Kampala City Council (KCC) by means including sale, rental, lease, franchise or auction was a "disposal" within the meaning of the Public procurement & Disposal of Public Assets (PPDA) Act, 2003. Accordingly, the disposal process leading to the award of the sublease by then KCC**

could only be lawful and therefore result into a valid and effective sublease agreement if it followed the successive stages in the PPDA Act including solicitation of bids, examination and evaluation of offers, and award of contract (lease). There is a further requirement of prior approval by the Attorney General before execution of the agreement where the statutory monetary threshold is exceeded.

The investigations and review conducted by KCCA revealed that the requirements under the PPDA act were not complied with at all; and accordingly , the sublease was unlawful and of no legal force or effect. It also follows that the purported extension thereof was /is similarly null and void.

This notice therefore that M/s Philadelphia Trade & Industry Ltd has no proprietory rights and or interest whatsoever –whether as sub lesee or otherwise –in the land owned by KCCA and known/described as LRV 2825 Folio 8 plot 1-3 & 2-4 Station Approach, Kampala.

By copy hereof, the Directorate of Physical Planning is requested to take all necessary steps (if any) and immediately re-enter the subject land and secure the same for and on behalf of KCCA.
Sgd
Mike Okua
Director Legal Affairs.

cc:…….. **”**

The decision made by this respondent in this letter has the effect of affecting the applicant's rights in the suit land.

Having made a finding hereinabove in this ruling that the respondent's decision is subject to this Court's judicial review jurisdiction, it is pertinent to establish whether there are grounds for judicial review. My considered opinion in this regard is that there are grounds in this application upon which the Court can base on to exercise its judicial review jurisdiction and discretion. In the case of **Nazarali Punjwani vs Kampala District Land Board & Anor; HCCS No. 07 of 2005 Justice Kasule, observed at page 18** that judicial review controls administrative action under three heads; illegality, irrationality and procedural impropriety.

I now proceed to examine the respondent's conduct when it made the disputed decision under the above three heads:

(i) Illegality

According to the case of **Nazarali Punjwanivs Kampala District Land Board (supra) page 18, Justice Kasule**, held that illegality is when a decision, subject to review, is made contrary to the law empowering the decision maker. The test is whether the decision maker has acted or not acted within the law.

The decision to declare the any interest in the land as illegal is illegal itself because the respondent does not have powers to make such declarations. It is not in dispute that the applicant held a sub lease registered over land comprised in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach. The land was subleased to the applicant by KCC which was the registered proprietor upon which a certificate of title was properly created and issued to the applicant after due and proper payments of all dues and charged and properly assessed by the respondent's predecessor. The applicant enjoyed its rights over the suit land from the time of the sublease upto 14th March, 2012 undisturbed by the lessor.

For the respondent to proclaim and declare at this point in time that the applicant's title as legally ineffective and proceed to purport to re-enter the land with affording the applicant a hearing would be unconstitutional. A declaration of this nature effectively deprives applicant of its property rights in its land without any form of independent investigations or court hearing. It is my considered opinion that it is only the Court of law or a competent tribunal that would have made such a declaration after a hearing and fully satisfying itself of the facts before it. The respondent before it made its decision never head the applicant side of the story in respect of the suit land.

Secondly, the declaration that was made by the respondent completely ignores the investment that the applicant has made in this suit land with the consent of KCC. Not only did it pay KCC fully for premium and ground rent, it also paid (actually over paid) to KCCA itself for ground rent arrears assessed against it. By accepting to receive this payment, the respondent cannot be seen to turn around and make such a wanton declaration. The respondent's said action put it into a contractual relationship with the applicant. There is no evidence that was adduced by the respondent to show that the

applicant was ever involved in any fraud or the aid flawed process. The respondent in its decision was trying to take unjustified advantage over the applicant.

The respondent cannot simply choose to ignore the commitments that its presuccessor made to the applicant and upon which the applicant relied upon to invest its money. If there were any impropriety in the procurement of the suit land, it is not shown how the applicant was involved. If the procurements were breached, they certainty not breached by the applicant. The culprits, if any, may be are within KCC and KCCA and it is upon the respondent to follow up with them. Otherwise the respondent is bound by the agreements or/and contracts that were entered into by KCC, its predecessor.

Thirdly, it is trite law that a sitting tenant has to be given the first opportunity to have his or her lease renewed. In other words, the sitting tenant's right of renewal of a lease (sub-lease) is automatic. In this case the respondent acted illegally when it refused to renew the applicant's sublease to a full term of 49 years in respect to the suit land, even **when its predecessor had recommended that the same be granted**. Again, its decision to re-enter the suit land is also illegal.

Fourthly, the respondent made the above impugned orders and decisions without offering the applicant an opportunity to be heard. This is a violation of article 28 (1) of the Constitution and violating the principles of natural justice. In the affidavit in reply, the respondent is not saying that it offered the applicant an opportunity to be heard on the allegations relied on in making its disputed decision.

Owing to the foregoing, I make a finding that the said decision and/ or orders are unconstitutional, illegal, ultra vires the jurisdiction, powers and mandate of the respondent. They are null and void and of no legal consequence and should not be left to stand as against the innocent applicant.

(ii) Irrationality.

Again in the case of **Nazarali Punjwani vs Kampala District land Board (supra)** the court observed at page 18, that irrationality is when the decision made is so outrageous in its defiance of logic or acceptable moral standards that no person, could have arrived at that decision. Underlining is mine of emphasis.

Counsel for the applicant submitted that the decision reached by the respondent nullifying the applicant sub-lease in respect to the land comprised in LRV 2825 folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala and not to formalize its extension to a full term of 49 years, and to re-enter the suit land, and refusal to grant the sublease in respect to plot 2A, is irrational.

It is not in dispute that the applicant applied to KCC for land, like many other people have probably done in the past. KCC through its internal organs which the applicant was not party to, duly considered its application and granted it a sub-lease which was paid for and proper title created. The applicant is not responsible for the procurement process in KCC. They cannot be faulted for applying for the suit land and their application being considered successful. If there are any wrongs that were committed, then the persons in KCC (now KCCA) responsible should be held accountable.

Secondly, it is inconceivable that in arriving at its decision, the respondent could allegedly conduct an investigation without giving the applicant a chance to be heard. At the very least the applicant should have been given an opportunity to meet the investigations committee and state its case. For the respondent to sit somewhere behind closed doors and make such decision is unacceptable under the principles of natural justice. There was need for transparency.

Thirdly, these orders and decisions are unreasonable and irrational because they were made without due regard and considerations for the purpose for which the respondent's predecessor in title granted the said sublease to the applicant. The applicant's project was tediously appraised and evaluated by different government organs including the Ministry of Health, NEMA and Ministry of Lands. All these organs gave their input and required the applicant to make different amendments to their proposals in order to safe guard public safety concerns.

NEMA for example required several assurances to the public and the environment that required significant changes to the proposed project designs. The approval from the Minister of lands required a re-zoning of the land from a public green to suit the applicant's

project. For this to be achieved it needed a study and recommendations of the Town and Country Planning Board, the physical Planning and Inspection Committee.

All these required a lot of time and resources, it goes without saying that the applicant had to engage consultants like structural engineers, architects, environmental, health and finance specialists who it had to call upon to meet the different requirements of the different Government bodies. In all the processes aforestated the Government departments and agencies were involved. In that process, the Government of Uganda gave the applicant's acquisition of the suit land and the proposed project on the suit land a blessing. I do not see any rightful reasons that I would use fault the applicant in respect of this land.

Fourthly, the project itself was meant to serve a public need. Therefore the respondent's abrupt decision to deny the applicants title and alienate the project is in the circumstances irrational and unreasonable.

(iii) Procedural impropriety

In **Nazarali Punjwani vs Kampala District land Board (supra**), the Court observed at page 19, that procedural impropriety is when rules and principles of natural justice, and / or failure to act with procedural fairness, are not observed by the decisions maker to the prejudice of the one affected by the decision. According to me, it covers non-observance of procedural rules in the empowering legislation. Its test is whether the duty to act fairly and the right to be heard have been observed.

The right to a fair hearing is constitutional and enshrined in Article 28 (1) of the Constitution. The right to fair and just treatment by the administrative body is also enshrined under Article 42 of the Constitution. The rules of natural justice enjoin a body that intends to make a decision that affects another, to ensure that that other, ought not be condemned unheard.

In the case of **Nazarali Punjwani vs Kampala District land Board (supra**), where the facts are similar in material particular with this instant application. The applicant was a holder of an expired lease and his application for renewal was refused. The lease was instead granted to the 2nd respondent. The applicant was not given an opportunity to be heard before refusing his application for renewal. The Court observed on page 21 that in

considering application for a lease over it's land, the first respondent was required to act judicially by complying with the rules of natural justice in order to act fairly. That the rules of natural justice and the duty to act fairly necessitated that the applicant in that case can be heard about his citizenship and on obligations that he failed to maintain the demised premises to acceptable standards before being condemned. The Court concluded that the applicant was condemned unheard and no fairness was shown and thus the 1st respondent was found to have acted with procedural impropriety.

In the instant case, the respondent in its affidavit in reply is not disputing the fact that the applicant was not afforded an opportunity to be heard by the respondent before the decisions to cancel its extended lease (refusal to formalize the full term) and before making the decision to re-enter the suit land.

3.2.3 Issue no. 3 whether applicant is entitled to the reliefs sought

Counsel for the applicant submitted that the applicant is entitled to the reliefs sought in this application. In reply, Counsel for the respondent submitted that this application has no merit and that it should be dismissed with costs. In essence, Counsel for the respondent is saying that the application is not entitled to the reliefs as claimed by the applicant.

Under Section 36(1) of the Judicature Act (Cap 13), the High court may, upon application for judicial review, grant any one or more of the following reliefs in a civil or criminal matter.

1. An order of mandamus, requiring any act to be done;
2. An order of prohibition, prohibiting any proceedings or matter.
3. An order of certiorari, removing any proceedings or mater into the High Court;
4. An injunction to restrain a person from acting in any office or matter.
5. A declaration or injunction not being an injunction referred to in paragraph (d) of this sub-section.
6. Damages

As I have already noted hereinabove in this ruling the orders for declaration, mandamus, certiorari or prohibitions are discretionary in nature. In exercising its discretion with respect to prerogative orders, the Court must act judicially and according to settled principles

already discussed above. See the case of **John Jet Tumwebaze vs Makerere University Council and 3 others Civil Application No. 353 of 2005**(unreported).

(i) Certiorari:

The applicant is seeking an order of certiorari to move to this Court to quash the decision and orders of respondent contained in a letter to the applicant availed to it on 26th day of April 2012 to the effect that,

(a) The sublease of 5 years of 1st May, 2006 extendable to 49 years on the property comprised in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala granted to the applicant by the Kampala City Council – the respondent's predecessor, was unlawful and of no legal force and effect;

(b) The applicant has no proprietary rights and or interest whatsoever whether as a sub-lease or otherwise in the land described as LRV 2825 Folio 8 Plot 1-3 and 2-4 Station Approach Road, Kampala.

Again the applicant seeks an order of certiorari to quash the decision of the respondent to cancel the recommendations of the former Kampala City Council to:

(a) Extend the applicant's sub-lease on in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala for a term of 5 years up to 2016.

(b) Formalize the grant of the sublease for plot 2A Station Road to the applicant by the respondent

(c) Amalgamate in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala to ensure meaningful development.

In the case of **John Jet Tumwebaze vs Makerere University Council and 3 others Civil Application No. 353 of 2005,** the Court stated that on order of certiorari issues to quash a decision which is ultra vires or ciliated by an error on the face of the record.

In the case of **Nazarali Punjwani vs Kampala District land Board (supra**) the Court on finding that the respondent's decision not to renew the lease was tainted with illegality and procedural impropriety, observed on page 31 that:-

"the applicant, the Court is satisfied, has made out a case to be granted the order of certiorari quashing the decision of the first respondent of 11th March, 2006, granting a lease over the property to the 2nd respondent, and denying the applicant a renewal of

the lease over the property on the grounds that the said decision was taken with procedural impropriety and irrationality."

As given hereinabove in this ruling, the facts and circumstances of this matter is similar in material particulars with Nazarali case. I have already made findings that in this case, the impugned decision and orders were made by the respondent in total disregard of the rules of natural justice, were illegal, irrational and procedurally improper. As such this Court has the power and discretion to quash the same decision.

(ii) Prohibition and injunction

The applicant seeks an order of prohibition prohibiting, restraining, preventing and stopping the respondent, any of its servants or agents however appointed from executing, implementing or in any way giving effect to the decisions, orders or directions of the respondent contained in the impugned letter.

The applicant also seeks an injunction restraining, preventing and stopping the respondent, any of its servant or agent howsoever appointed from re-entering the property comprised in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala.

In the case of **John Jet Tumwebaze vs Makerere University Council and 3 others Civil Application No. 353 of 2005,** the Court observed on page 10 that the order of prohibition goes out to forbid some act or decision which would be ultra vires. The Court added that while certiorari looks at the past, prohibition looks at the future. His Lordship in that case also observed that an injunction issues to prevent and forbid the commission of some unlawful or illegal act. From the above legal position, it is clear that both prohibition and injunction have the same legal effect.

Hereinabove, I have already made a finding that the disputed decision and orders are illegal, irrational and procedurally improper. The same orders and decisions have not been implemented by the respondent but there are apparent threats to implement them to the prejudice of the applicant. Therefore this a proper case for the grant of the orders of prohibition and injunction, against the respondent.

(iii) Mandamus;

The applicant is also seeking an order of mandamus compelling the respondent to implement the recommendations of the Kampala City Council to formalize the sublease on LRV 2825 Folio 8 plot 2A Station Approach and the sub-lease extension on plots 1-3 and 2-4 station Road.

In the case of **John Jet Tumwebaze vs Makerere University Council and 3 others Civil Application No. 353 of 2005,(supra),** His Lordship observed at page 10 that a mandamus order is issued to order to compel performance of a statutory duty. It is used to compel public officers having responsibilities in public offices and public duties imposed upon them by the Act of Parliament.

It is the applicant's case that the respondent's predecessor had recommended and granted sublease on LRV 2825 Folio 8 plot 2A Station Approach to the applicant sublease on LRV 2825 Folio 8 plot 2A Station Approach and a lease extension for the property comprised in plots 1-3 and 2-4 Station Road. However, the respondent refused to formalize both the grant and the extension.

It is my considered view that the respondent as the successor in title of former Kampala City Council has the statutory mandate to formalize the said grant and extension of the sublease to the applicant. The respondent has reneged on its Statutory obligation and must be compelled to perform its legal duties by the issuance of the writ of mandamus.

(iv) Declaration

The applicant seeks declarations; that:-

(a) The respondent's impugned decision communicated to the applicant on 26th day of April 2012 purporting to nullify the applicant's sublease offer on the property comprised in on LRV 2825 Folio 8 plot 2A Station Approach Road, Kampala is null and void and illegal, and an abuse of the respondent's discretionary powers.

(b) The said decision is illegal, ultra vires, irrational, unreasonable and an abuse of the respondent's discretionary powers;

(c) The respondent's refusal to formalize the applicant's application for a sublease extension for a period of 49 years in respect of said land and a formal sublease in respect of plot 2A Station Approach is unreasonable, irrational and illegal.

(d) The respondent's decision to re-enter the applicant's sublease comprised in LRV 2825 Folio 8 plots 1-3 & 2-4 Station road is illegal, irrational and ultra vires.

(e) The investigations and review purportedly carried out by the respondents in respect of the applicant's sublease agreement were unconstitutional and an abuse of the respondent's discretionary powers.

(f) That the applicant is the rightful and or equitable owner of the property comprised in LRV 2825 Folio 8 plot 103 & 2-4 and plot 2A Station Approach.

In **Amiran Enterprises Ltd vs Uganda Revenue Authority Case No. HCT -00-CC-MC- 06-2010, Justice Geoffrey Kiryabwire** observed that a declaration is defined as a pronouncement by Court, after considering the evidence and applying the law to that evidence, of an existing legal situation. A declaration enables a party to discover what his/her legal position is, about the matter of the declaration; and thus open a way to the party concerned to resort to other remedies for giving effect to the declared legal situation.

(v) Award of damages and costs.

(a) Damages

The applicant seeks herein the award of general damages for the inconvenience suffered injury to business prospect and the good will of the project for which the lease application was made and granted and costs of the application.

Under rule 8 of the Judicature (Judicial review) Rules, 2009, the Court is empowered to grant the award of damages to compensate the applicant in deserving applications.

From the applicant's affidavit in support sworn by its Director, it is evident that the applicant has been inconvenienced by the respondent's aforementioned illegalities. Certainly, therefore, the applicant would be entitled to damages. In my view, the damages referred to should be special damages. In this instant case the applicant according to its pleadings and affidavit evidence has suffered general damages. And in my view the

applicant in this application for judicial review cannot be awarded general damages. The applicant can recover general damages from the respondent by filing in Court a suit by way of a plaint.

The conduct of the respondent was condemned in a similar complaint by the Constitutional Court of Uganda.

In the **Constitutional application no. 29 of 2011, Nasser Kiingi and Kalyesubula Winnie vs Attorney General; Kampala Capital City Authority and Kampala District Land Board, Hon. Justice S. B.K Kavuma J.A**, sitting as a single Justice, at pages 19, 20 and 21 of his ruling held that:

> **" My appreciation of the applicants grievances with regard to their rights under Articles 28 (1) and 42 of the constitution, which I derive from the evidence on record, is the complaint that when a decision was taken to deny them extension of their 5 year initial lease term to a full term of 49 years, they had had no opportunity to be heard over the matter and that this compromised their constitutionally protected property rights and offended important principles of natural justice. This, in my view brings them within the ambit of the principle enunciated by this Court is Hon. Jim Muhwezi's case (supra).**
>
> **I am satisfied, therefore, that even on this ground alone, the principle of their having suffered injury or damage that cannot be adequately compensate in monetary terms has been satisfied.**
>
> **Further, I consider it appropriate to emphasize that the 1st and 2nd respondents bear the responsibility of resolving the serious imperse, conceded by all the parties to this suit as existing over the important question of who should be in charge and control of the administration of land within the territorial jurisdiction of KCCA. The 1st and the 2nd respondents alone can determine the time frame within which that imperse can be resolved. In the meantime, the prevailing chaotic situation, which actually is, in my view, a grave crisis in the management of this vital asset within the capital city of this Country, continues to adversely affect the applicants as citizens in whom land in this country is vested. Their property is commercial property over which the prevailing chaos and uncertainty poses dire consequences, not to mention a host of other stakeholders who, for no fault of their own, find themselves trapped**

into the tricky situation they attribute to the 1st and 2nd respondents." Underlining is mine for emphasis

In that same ruling, I am interested in the serious warming that was sent to the 2nd respondent (who is the respondent in this case). The same warning is very relevant in this instant case. The said warning is at pages 21 and 22 of the said ruling, whereby **Hon. Justice S.B.K kavuma, J.A**. had this to say:-

> **" the attitude taken by the 2nd respondent that after all, should there be damage occasioned to the applicants and the countless other stake holders, Government has the capacity to pay and would pay the colossal sums of money that may be payable in damages is, to say the least, extremely unpersuasive. It is important to realize that such payments, if they become due, shall inevitably be effected using the heard earned tax payers money. Those entrusted with the custody and management of public funds should always be, in my view, guided by frugality and sound principles of financial management to prevent avoidable waste of those funds. In the instant case, the sheer magnitude of the injury and damage that may occur to the numerous stakeholders interested in the proper management of land in this country's capital city which would inevitably result into extremely heavy payments in damages and severe damage to this country's economy as a direct consequence of the current vacuum and crisis in the administration and control of land within the KCCA jurisdiction, even in the interim, in my view, calls for immediate rectification of the situation, by mandatory interim injunction orders."** Underlining is mine for emphasis.

(b) Costs

With regard to costs, section 27 of Civil Procedure Act, Cap 71 Laws of Uganda, gives this Court the discretion to award costs. It is trite law that costs follow the event in that the successful party should be awarded costs, unless there is good cause to the contrary. It is because of the respondent's disputed decision that the applicant resorted to filing this application and had it properly prosecuted. Obviously, the applicant who is represented by lawyers incurred costs in the litigation process of this case.

4 Conclusion

In the result and for the reasons given hereinabove in this ruling, this application has merit. Accordingly, this application is allowed in the following orders; that:-

1. It is declared that:

(i) The respondent's decision communicated to the applicant on 26th day of April 2012 purporting to nullify the applicant's 5 years sublease offer commencing 1st May, 2006 and extendable to a term of 49 years, and the sublease subsequently created in favour of the applicant on the property comprised in LRV 2825 Folio 8 plot 1-3 and 2-4 Station Approach Road, Kampala is null and void and illegal and an abuse of the respondent's discretionary powers.

(ii) The respondent's decision communicated to the applicant on 26th day of April 2012 purporting to declare that the applicant has no proprietary interest in LRV 2825 Folio 8 plot 1-3 & 2-4 Station Road, Kampala is illegal, ultra vires, irrational, unreasonable and an abuse of the respondent's discretionary powers;

(iii) The respondent's refusal to formalize the applicant's application for a sub-lease extension for a period of 49 years in respect of LRV 2825 Folio 8 plots 1-3 & 2-4 Station road and a formal sublease in respect of plot 2A Station Approach is unreasonable, irrational and illegal.

(iv) The respondent's decision to re-enter the applicant's sublease comprised in LRV 2825 Folio 8 plots 1-3 & 2-4 Station road is illegal, irrational and ultra vires.

(v) The investigations and review purportedly carried out by the respondent in respect of the applicant's sublease agreement were unconstitutional and an abuse of the respondent's discretionary powers.

(vi) The applicant is the rightful and or equitable owner of the suit property comprised in LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach.

2. An order of certiorari to move this Court to set aside and quash the decision of the respondent contained in its letter availed to the applicant on 26th day of April 2012 to the effect that;

(i) The 5 years sublease granted to the applicant commencing 1st may 2006 and extendable to a full term of 49 years in respect of the property comprised in LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala was unlawful and of no legal effect;

(ii) The applicant has no proprietary rights and or interest whatsoever –whether as a sub-lease or otherwise in the land described as LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala; and

(iii) The respondent intended to re-enter that demised land, such decision or /and orders by the respondent are set aside and quashed accordingly.

3. An order of certiorari to move this court to set aside and quash the decision of the respondent to cancel the recommendations of the former Kampala City Council to:
   (a) Extend the applicant's sublease on LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala, for a term of 5 years up to 2016;
   (b) Formalize the grant of the sublease for Plot 2A Station Approach to the applicant by the respondent; and,
   (c) Amalgamate plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala to ensure meaningful development, such decision is set aside and quashed. The respondent shall comply with the said recommendations of the then Kampala City Council and do the needful in favour of the applicant within ten (10) days from the date of this ruling.

4. An order of prohibition to prohibit, restrain, prevent and stop the respondent, any of its servant or agent howsoever appointed from executing, implementing or in any way giving effect to the decisions, orders or direction of the respondent contained in the impugned letter is granted.

5. An injunction restraining, preventing and stopping the respondent, any of its servants or agents howsoever appointed from evicting the applicant and re-entering the property comprised in LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala is granted.

6. A writ of mandamus to direct the respondent to extend the applicant's sublease in respect of LRV 2825 Folio 8 plot 1-3 & 2-4 Station Road, formalize the grant of a sub lease in respect of plot 2A Station Approach and amalgamate LRV 2825 Folio 8 plot 1-3 & 2-4 and plot 2A Station Approach Road, Kampala to ensure meaningful development is granted.

This order shall be complied with by the respondent as quickly as is practicable, but not later than 10 (ten) days from the date of this ruling

7. The respondent shall pay the costs to the applicant.

Dated at Kampala this 25th day of February, 2013.

sgd
MURANGIRA JOSEPH
JUDGE