

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(Land Division)
MISCELLANEOUS CAUSE NO. 28 OF 2013
(Arising from Civil Suit No. 294 of 2009)
APPLICATION FOR JUDICIAL REVIEW
IN THE MATTER OF THE JUDICATURE ACT, CAP. 13
AND
IN THE MATTER OF THE CIVIL PROCEDURE ACT, CAP. 70
AND
IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES,
S.I 11 OF 2009

**JANET
KOBUSINGYE**
APPLICANT

VERSUS

UGANDA LAND COMMISION
RESPONDENT

BEFORE: Hon. Lady Justice Monica K. Mugenyi

RULING

The applicant, vide Civil Suit No. 294 of 2009, instituted legal proceedings against the respondent, as well as the Kampala District Land Board, the Registrar of Titles and the Attorney General arising from the respondent's attempt to re-allocate her land to another developer. The land in question was located in Naguru and measured 2.353 hectares. On 7th July 2011 the parties formalised a consent judgment in respect of that suit by which the respondent undertook to process a lease title in favour of the applicant for alternative land measuring 1.766256 hectares. The land identified for that

purpose was described as FRV 440 Folios 17 and 18 in Nsambya. The respondent subsequently issued the applicant with a 5 year lease effective 1st June 2011 in respect of 1.479 hectares of land comprised in LRV 4350 Folio 20 plot 20 Barracks Drive, Nsambya allegedly in part fulfilment of its decretal obligations. This land neither represented the 1.766256 hectares of land agreed to in the consent judgment nor the land described therein as FRV 440 Folios 17 and 18, Nsambya hence the present application for an order of mandamus.

At the hearing of this application, it was argued for the applicant that although the application was filed outside the 3 month period prescribed by rule 5(1) of the Judicature (Judicial Review) Rules, in matters of execution the courts were not bound by the 3 month limitation period. In that regard, this court was referred to the case of **Canaf Group Inc vs. Attorney General & Another Miscellaneous Cause No. 27 of 2012**. I shall consider this preliminary point of law first.

Rule 5(1) of the Judicature (Judicial Review) Rules reads:

“An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”

Section 38(1)(a) of the Judicature Act as amended prescribes an order of mandamus as one of the remedies available to an applicant for judicial review. To that extent, ordinarily an application for the order of mandamus would be governed by the limitation period prescribed in rule 5(1) above and should be made within 3 months from the date when the grounds thereof arise. Be that as it may, in its strict legal usage, an order of mandamus (also referred to as a mandatory order) has been defined in **Halsbury’s Laws of England, 2001, 4th Ed, Vol. 1(1), para. 119 at p. 268** as follows:

“A command issued by the High Court, directed to any person, corporation or inferior tribunal requiring him or them to do some particular thing specified in the command, and which appertains to his or their office, and is in the form of a public duty. ... The breach of duty may be a failure to exercise a statutory discretion, or a failure to exercise it according to proper legal principles.”

Simply stated, an order of mandamus is 'a prerogative order available on application for judicial review from the High Court, requiring an inferior court, tribunal or other public body to perform a specified public duty relating to its responsibilities.' See **Oxford's Dictionary of Law, Oxford University Press, 2009, 7th Edition, p. 340.** The order is applicable to the enforcement of public duties by public, administrative bodies. In my humble judgment the procedure of judicial review by which the order of mandamus is sought is quite instructive as to the intrinsic nature of that prerogative remedy. As held in **Kasibo Joshua vs. Commissioner of Customs Misc. Appl. 44 of 2004,** 'judicial review is concerned not with the decision, but the decision-making process. Essentially judicial review involves an assessment of the manner in which the 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 principles of legality, fairness and rationality.'

It would appear from the foregoing decision that a court hearing an application for judicial review is typically concerned with an examination of the process leading up to the decision under review with a view to ascertaining whether or not the resultant decision was arrived at in accordance with the principles of legality, rationality and fairness. If the answer to such review is in the negative then the court may grant the requisite order. With regard to an order of mandamus, should the court establish a failure to exercise a statutory discretion in such process; failure to exercise such discretion in accordance with proper legal principles or, indeed, within the tenets of fairness and rationality as embedded in the doctrine of natural justice, such court may grant the order of mandamus. This is not the case in the application before this court. The circumstances of the present application are that an order of mandamus is sought to ensure the delivery of land to the applicant as spelt out in a consent judgment. The application does not seek an examination of the process leading up to the decision in the consent judgment but rather the enforcement or execution of that decision by the respondent. To that extent, therefore, the rules of execution would be as pertinent to this matter as those in respect of applications for judicial review.

Provision for execution is contained in section 38 of the CPA and Order 22 rule 7 of the CPR. Section 35 of the CPA, in turn, prescribes the time within which execution of decrees may ensue. While section 35(1) bars an order of execution in respect of a fresh application filed 12 years after the date of

the decree or the date of the default in respect thereof; section 35 (2)(a) explicitly permits courts to order for execution where an applicant was prevented from lodging his/ her application for execution within 12 years on account of fraud or force. The net effect of these provisions is that an application for execution may be brought within 12 years from the date of the decree sought to be executed or the default in compliance therewith. Conversely, rule 5(3) of the Judicature (Judicial Review) Rules appears to subject or subordinate the limitation period stipulated in rule 5(1) to any statutory provision that provides otherwise with regard to the time within which an application for judicial review may be made. Rule 5(3) reads:

“This rule shall apply, without prejudice, to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.”

Accordingly, in so far as the matter under consideration is an application for judicial review premised on decretal orders or the respondent’s default in respect thereof, the limitation period prescribed in rule 5(1) would be subject to the time prescribed for execution in the CPA. I do, therefore, agree with learned counsel for the applicant that the application before this court has been made within time as by law prescribed. I so hold.

With regard to the merits of this application, the parameters against which a court may determine whether or not to grant an order of mandamus are stipulated in section 37(1) of the Judicature Act as follows:

“The High Court may grant an order of mandamus ... in all cases where it appears to the High Court to be just and convenient to do so.”

In the case before me, the decretal land entailed a 1.766256 hectare piece of land described as FRV 440 Folios 17 and 18 in Nsambya to be leased to the applicant for 10 years. What the respondent did, in fact, offer the applicant was a 5-year lease on an alternative piece of land measuring 1.479 hectares and comprised in LRV 4350 Folio 20 plot 20 Barracks Drive, Nsambya. No averment was made as to the circumstances under which the respondent took that decision so as to enable this court determine whether the said decision was arrived at irrationally, illegally or unfairly. It does appear to me that the decision-making processes that informed the offer of this alternative piece of land was never in issue in this application. What appears to be in issue presently is the omission or refusal by the respondent body to enforce the terms of the consent judgment.

In Gooman Agencies Ltd & 3 Others vs. Attorney General & Another Misc. Cause 108 of 2012 the following text from **Wade, H. W. R, Administrative Law, 5th Ed., p.630** was cited with approval:

“The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him. ... It is a discretionary remedy, and the court has full discretion to withhold it in unsuitable cases.”

I respectfully agree with that position. In the case before me, quite clearly the land that was offered to the applicant contravened the terms of the consent judgment under consideration. Nevertheless, the applicant admittedly took possession of the said land. She then proceeded to institute the present application where she seeks an order of mandamus compelling the respondent to issue her with a lease for the same piece of land in the consent judgment (FRV 440 Folios 17 and 18) that had been apparently substituted for the land that she took up - LRV 4350 Folio 20 plot 20 Barracks Drive, Nsambya. The grant of an offer in respect of LRV 4350 Folio 20 plot 20, which measured 1.479 hectares, fell short of the decretal land stipulated in the consent judgment by 0.287256 hectares. The land described in FRV 440 Folios 17 and 18 was stated to total up to 1.766256 hectares. However, an order for the offer of that land to the applicant, in addition to the leasehold already granted to the applicant, would be well over the agreed acreage of land as stated in the consent judgment. This court finds it neither just nor within the spirit and letter of the consent judgment to make such an order. Therefore, an order of mandamus in those terms would be untenable. I so hold.

Be that as it may, section 37(2) of the Judicature Act does mandate the High Court, considering an application for judicial review, to grant an order of mandamus on such terms and conditions as it deems just. The circumstances of the present case are that the applicant has been the recipient of a 5 year lease in respect of the land comprised in LRV 4350 Folio 20 plot 20 Barracks Drive, Nsambya. There is nothing on the court record to suggest that she has since vacated occupation thereof. That piece of land is situated in the same area - Nsambya - that the decretal land is located in. In my humble judgment, it would be just and convenient to all parties for her to retain that piece of land albeit with the tenure of the lease extended to a 10 year lease period as stipulated in the consent judgment. Further, the applicant is entitled to an additional 0.287256 hectares of land

as was adjudged to her in the same judgment. Such piece of land would also be subject to a 10-year lease.

In the result, I would grant an order of mandamus with the following orders:

1. The respondent is ordered to extend the 5-year lease offered to the applicant in respect of the land described in LRV 4350 Folio 20 plot 20 Barracks Drive, Nsambya to a 10 year lease effective 1st June 2011.
2. The respondent is ordered to allocate to the applicant an additional 0.287256 hectares of land in Nsambya for a 10-year lease period.

I so order.

Monica K. Mugenyi
JUDGE

27th November, 2013