

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.128 OF 2018
IN THE MATTER OF JUDICIAL REVIEW

- 1. JOSEPH NABIMANYA SHILLINGI**
- 2. MOSES RUHWEZZA SHILLINGI**
- 3. MAUREEN SHILLING TUMWINE**
- 4. EDITH BAINO MUGISHA SHILLINGI----- APPLICANTS**

VERSUS

COMMISSIONER SURVEYS AND MAPPINGS----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36,37,38 of the Judicature Act as amended, Rules 3,5,6,7 and 10 of the Judicature (Judicial Review) Rules, 2009 seeking orders that;

- a) Court issues an order of Mandamus against the Respondent compelling him to implement the resolution of the meeting convened by him on 02/06/2016 inter alia between the appellants as administrators of the estate of the late Odomaro Shilling and the respondent where it was resolved that the respondent secures/reinstates the survey deed plan of the land comprised in LRV 1184 Folio 8 Plot 45 Rwampara Block 1 Land at Kushebuyege, Kagaga, Rugando measuring approximately 85.2 Hectares which was illegally/wrongfully resurveyed by the respondent in 2010 without the consent of the family members of the late Odomaro Shillingi

and wrongfully/illegally included within the boundaries of the land comprised in plot 252 Rwampara Block 1 measuring approximately 86.889 in favour of a third party.

The applicants as well prayed for costs of this application. The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- I) The applicants are administrators of the estate of the late Odomaro Shilling which inter alia land comprised in LRV 1184 Folio 8 Plot 45 Rwampara Block 1 Land at Kushebuyege, Kagaga, Rugando measuring approximately 85.2 Hectares;
- II) Sometime in 2015 the applicants discovered that the said land had been irregular and illegally re-surveyed by the respondent at the request of the late Mugisha Shilingi, a brother to the Applicants and wrongly subsumed in the boundaries of a newly created Plot 252 Rwampara Block 1 measuring approximately 86.889 Hectares.
- III) In a meeting which was convened by the respondent and held on 02/06/2016 which was inter alia attended by the Applicants and the respondent and Resident Staff Surveyor Mbarara District it was resolved that the original Plot 45 be secured/reinstated;
- IV) The respondent who has a statutory/public duty to carry out and or supervise the survey of the land in Uganda has since the said date in spite of various demands by the appellants refused and or neglected to implement the said resolution. To date the deed plan for the Plot 45 Rwampara block Land at Kashubuyege remains unrestored and the applicants have thereby suffered loss and damage;
- V) As a result of the respondent's refusal to implement the resolution the applicants have since 2016 failed to conclude a wayleave agreement

with Uganda Electricity Transmission Company limited for a Government project on part of LRV 1184 Folio 8 Plot No. 45 Block 1.

- VI) The applicants are aggrieved by the Respondent's refusal to Implement the said decision.
- VII) The respondent is unlikely to implement the said decision unless ordered by the court to do so.
- VIII) It is just and equitable that an Order of Mandamus be issued compelling the respondent to reinstate the deed plan for plot 45 Rwampara Block 1.

The respondent never opposed this application and he did not file any affidavit in reply.

At the hearing of this application the court ordered the application to proceed ex parte since the respondent did not appear in court and had not filed any affidavit in reply. Three issues were proposed for court's resolution;

- 1. Whether the applicants are entitled to the reinstatement/restoration of the deed plan for LRV 1184 Folio 8 Plot No. 45 Rwampara Block 1 Land at Kushebuyege?***
- 2. Whether the respondent has a duty to reinstate/restore the said deed plan?***
- 3. Whether there is any alternative to the respondent restoring the said deed plan?***
- 4. Whether the applicant is entitled to the remedies sought?***

The applicants were represented by Mr John Fisher Kanyemibwa whereas the respondent was not represented and never appeared in court.

ISSUE ONE

1. Whether the applicants are entitled to the reinstatement/restoration of the deed plan for LRV 1184 Folio 8 Plot No. 45 Rwampara Block 1 Land at Kushebuyege?

Counsel for the applicants submitted that the applicant's as administrators of the estate the late Odomaro Shillingi and the land comprised in the said land is comprised in a certificate of title measuring at 85.2 hectares and the said land was issued on 17th June 1982 for a term of 49 years. The applicants as administrators re entitled to own the said land until until the expiry of the said lease in 2031.

The respondent in 2010 re-surveyed the said land in favour of Mugisha Shillingi without the applicants knowledge or consent as he members of the family of the late Odomaro Shillingi thereby rendering the applicant's land described in Plot 45 worthless. The applicant's land comprised in Plot 45 Rwampara was wrongly resurveyed by the respondent and included within the boundaries of a newly created Plot 252 Rwampara Block 1 in favour of the late Odomaro Shillingi's brother-Mugisha Shillingi.

The legal effect of the wrongful re-survey and inclusion of the land comprised in Plot 45 Rwampara Block 1 within the boundaries of Rwampara Block 1 Plot 252 meant that the applicant's Plot 45 Rwampara ceased to exist in the official records of land office, but the applicants' title or lease is yet to expire in 2031.

The applicants upon discovery of the said wrongful survey complained to the respondent who then convened a meeting with the family members of the Late Odomaro Shillingi and widow of Mugisha Shillingi, civil leaders of Katukuru, Rwampara were the said land is located.

It was agreed by all present and the list of attendance is attached and also included Dr. Yafesi Okia, the then Ag Commissioner Surveys and Mappings that the **Original Plot 45 be secured/reinstated**. The applicants became entitled to the restoration of the land to its original status prior to the wrongful survey in 2010.

In spite of the said resolution, the respondent has to date refused to restore/reinstate the said land. The applicants have not been able to conclude a wayleave transaction on their land with Uganda Electricity transmission Company Ltd since 4th April, 2016.

This court is satisfied that the applicants' were deprived of their land through the wrongful re-survey of the land. They were entitled to have their land returned and the wrongful resurvey quashed. The meeting that was concerned with the wrongful actions of the respondent agreed that the original plot/title be restored and I find that the resolutions made in presence of the respondent ought to be enforced and implemented.

Therefore issue number one is accordingly answered in the affirmative.

ISSUES TWO & THREE

Whether the respondent has a duty to reinstate/restore the said deed plan?

Whether there is any alternative to the respondent restoring the said deed plan?

Under the law, it is only the respondent or a person authorised by him that has a statutory mandate under section 150 of the registration of titles Act to prepare deed plans for issuance of certificates of titles by Registrar of titles.

It is the duty of the Commissioner Surveys and Mapping who has a duty to carry out or authorise survey of land in Uganda. In the same vein, the responsibility to implement decisions made in the meeting of the estate of the late Odamaro shilling and the widow of Mugisha Shillingi civic leaders to restore the applicant's land in the public records lies with the respondent.

Public officers can be compelled to perform a statutory duty as obligated by any law. See ***John Jet Tumwebaze vs Makerere University & 2 others HC Civil Application No. 78 of 2005.***

It is only the respondent who is mandated under Section 150 of the Registration of Titles Act to reverse the wrongful re-survey of the applicant's land and it provides;

On and after a date to be specified by the Minister by statutory instrument all surveys required by the registrar under this Act shall be made in accordance with the requirements of the commissioner of lands and surveys, and no plans shall be accepted by the registrar unless they have been authenticated by the signature of the commissioner of lands and surveys or someone authorised by him or her in writing.

ISSUE FOUR

Whether the applicant is entitled to the remedies sought?

The applicants are before court seeking an order of Mandamus. Under Rule 3(1)(a) and 6(1) of the Judicature (Judicial Review) Rules 2009 this court is mandated to issue an order of Mandamus.

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d) Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See ***Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016***

The applicants have satisfied the above requirements and the respondent has not defended this application which is an indication that he admitted the truthfulness of the averments in the affidavit in support. See ***David Kato Luguza & Another vs Evelyn Nakafeero & Another HCCA No. 37 of 2011***

An Order of Mandamus does issue compelling the respondent to restore the applicants Plot 45 Rwampara Block 1 at Kushebuyege, Kagaga, Rugando measuring approximately 85.2 Hectares by issuing deed plans for the said land to restore its integrity to the applicants so that they are in position to conclude the wayleave transaction with Uganda Electricity Transmission Company Limited.

The respondent is directed to effect the necessary changes within 30 days from the date of delivery of this ruling.

The applicants should meet their costs.

I so order

SSEKAANA MUSA

JUDGE

16th /08/2018