**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**MISCELLANEOUS APPLICATION NO.229 OF 2018**

**PROLINE SOCCER ACADEMY---------- APPLICANT**

**VERSUS**

**COMMISSIONER LAND REGISTRATION---------- RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant brought this application under Article 26, 28, 40(2) 42, of the Constitution and Sections 33 & 36 of the Judicature Act as amended, Rules 3(1)(a), 5, 6 & 7 of the Judicature (Judicial Review) Rules, 2009 SI 11/2009, Order 52 rules 1& 3 for the following orders;

i. A declaration issues that the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicants certificate of title Lease Hold Register Volume 4182 Folio 3 Plot M.135 land at Entebbe.

ii. A prerogative order of Certiorari issues against the respondent, quashing/setting aside the decision of the Respondent canceling the Applicants title of land comprised in Lease Hold Register Volume 4182 Folio 3 Plot M.135 Land at Entebbe.

iii. An order of mandamus doth issue compelling the respondent and any other person acting on authority there from to reinstate the Applicants title and effect registration of the applicants lease extension from the initial period of 5 years to 49 years.

iv. An injunction doth issue against the respondent restraining it from issuing a title of the above land to any other person

v. Costs of this Application be provided for

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of Mr Kasule Mujib a Director of the applicant company and briefly state that;

1. That applicant on orders of the Head of State-His Excellency Yoweri Kaguta Museveni was allocated 30 acres of land in Entebbe on Plots M121A and M121B on which it was to construct an ultra-modern football academy facility in line with International Standards.

2. A lease was granted to the applicant by the Uganda Land Commission on the basis of the Head of State's directive. Accordingly a lease offer and agreement were granted to the applicant on 4th June 2008 vide ULC Min. 40/2008(a)(3).

3. The Ministry of Lands, Housing and Urban Development on the same basis issued a leasehold Certificate of title vide Leasehold Register Volume 4182 Folio 3 Plot M.135 land at Entebbe.

4. That the applicant duly informed the Permanent Secretary Ministry of Agriculture, Animal Industries and Fisheries that it was to fence off the land and start construction.

5. That the applicant applied for extension of the lease from 5 years to 49 years which was granted by Uganda Land Commission vide ULC Min. 40/2014(a)(54) of 6th November 2014

6. That there is an existing lease extension to the applicant from Uganda Land Commission to the Land Registry to effect registration but the Lands registrar declined to effect the registration.

7. That the applicant learnt later that the land title; Volume 4182 Folio 3 was cancelled under instrument No. 481042 of 11.3.2013

8. The respondent erroneously cancelled the applicant's certificate of title of land comprised in Leasehold Register Volume 4182 Folio 3 Plot M135 land at Entebbe.

9. That the respondent has declined to register the applicant's lease extension.

10. The applicant was never informed of the cancellation of its title and it was never accorded a hearing. According to the lessor, the applicant's lease still stands and has never been recalled or cancelled.

11. That the applicant has learnt that the respondent is likely and is about to issue a certificate of title for the above land to another person contrary to its legal interests therein.

The respondent opposed this application and filed an affidavit in reply through a Senior Registrar of Titles Kibande Joseph.

The respondent contended that the applicant's title was erroneously issued vide Leasehold Register Volume 4182 Folio 3 as it was created over an existing title which had been issued vide Leasehold register Volume 3189 Folio 8.

That the implication of the erroneous creation of the Applicants title is that two titles had been created over the same land that is LRV 4182 Folio 3 had been created over 3189 Folio 8 which was already subsisting.

The respondent alleged to have received a complaint from Civil Aviation Authority to the effect that a title registered in LRV 4182 Folio 3 had been erroneously created over its subsisting title registered under LRV 3289 Folio 8.

That upon receipt of the complaint, the respondent's office issued the applicant herein with a notice of intention to amend the register by which it was invited for the public hearing to be heard on any objections if any.

That the applicant never appeared for the public hearing to object to the intended cancellation and there is no way it could be said to have been denied or accorded the right to be heard.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The parties never raised any issues for determination but this court will frame only one issue for determination;

1. **Whether the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicants certificate of title Lease Hold Register Volume 4182 Folio 3 Plot M.135 land at Entebbe.**

2. ***What remedies are available to the applicant?***

In the interest of time the respective counsel were directed to file written submissions and i have considered the respective submissions. The applicant was represented by *Mr Kalikumutima Deo, Mr Kimara Arnold Norgan and Mr Ahaabwe Joshua* whereas the respondent was represented *Mr Ssekitto Moses*- Senior Registrar of Titles.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the

granting of Prerogative orders as the case my fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.***

For one to succeed under Judicial Review it trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public. In the case of ***Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)*** ,Court noted that;

"Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected."

***ISSUE ONE***

**Whether the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicants certificate of title Lease Hold Register Volume 4182 Folio 3 Plot M.135 land at Entebbe.**

It is the applicant's submission that the Respondent acted with procedural irregularity and impropriety in cancellation of the Applicants certificate of title Lease Hold Register Volume 4182 Folio 3 Plot M.135 land at Entebbe

The applicants challenge the respondent's decision on one ground that they were not treated fairly and justly or accorded a right to be heard and that the decision was therefore illegal since it was against the provisions of the Land Act.

**Section 91(8)** of the **Land Act Cap 227** clearly spells out the procedure to be followed in exercise of the registrar's powers while cancelling a certificate of title

The registrar is required to;

**(a) give not less than twenty one (21) days' notice in the prescribed form to any party likely to be affected by any decision made under this section**

**(b) provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given**

**(c) conduct any such hearing in accordance with the rules of natural justice**

(d) **give reasons for any decision that he or she may make**

The respondent's affidavit in reply alleges that the respondent's office issued the applicant with a notice of intention to amend the register by which it was also invited for a public hearing to be heard on any objections

Mr.Mujib Kasule in his affidavit in rejoinder clearly states that the applicant has never and **was never invited for any public hearing** by the respondent and only learnt of the cancellation of its title much later as indicated in his affidavit in support of the application

Further to add, Mr.Kibande Joseph does not attach any annexure to his affidavit of the purported notice of intention to amend the register, it is hence evident that the applicant was never invited for any public hearing. The respondent did not discharge the burden provided in **Section 102** of the **Evidence Act Cap.6** which states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side

The respondent in cancellation of the applicant's title threw overboard all procedural requirements, sidestepped all known rules of fairness and fair play

(often referred to as natural justice). To cancel the applicant's title through improper and illegal procedures was to perpetuate an illegality.

***Determination.***

The applicant is challenging decision of the respondent on the grounds that it was never accorded a hearing before the respondent took a decision that had the effect of depriving it of its land by way of cancellation of title.

This position of the law was restated in ***Council of Civil Service Union v. Minister for the Civil Service 1985 AC 374*** where court held that it's a fundamental principle of natural justice that a decision which affects the interests of any individual should not be taken until that individual has been given an opportunity to state his or her case and to rebut any allegations made against him or her.

In the present case, the applicant was denied the right to be heard since they learnt of the decision much later after the decision had been made or taken. ***In case of Bwowe Ivan & Ors vs Makerere University Miscellaneous Cause No 252 and 265 of 2013*** wherein *Hon. Justice Benjamin Kabiito* labored to explain the universal principles of a fair hearing, he cited that the right to a fair hearing imposes on decision making bodies the duty to disclose all evidence and materials that are to be used against the affected party and the obligation to give the party an adequate opportunity to the affected party to rebut such evidence and materials which may be done through cross examination to test the truth and expose falsehoods of accusations levelled against him or her.

In the case of ***Twinomuhangi vs Kabale District and others [2006] HCB130*** Court held that;

> "*Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural fairness towards one affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision*."

The respondent in response to the claim in this matter, did not make any specific reply to the allegations made and the answers given were merely evasive and or general denials.

The respondent alleges that they received a letter of complaint by Civil Aviation Authority to the effect that a title registered in LRV 4182 Folio 3 had been erroneously created over its subsisting title under LRV 3289 Folio 8. No copy of such complaint was ever attached to the affidavit to support this allegation.

This court wonders whether indeed there was any such complaint or it was merely a ploy to grab and deprive the applicant of their land donated by the Fountain of Honour.

The respondent has also alleged that they issued a Notice of Intention to Amend the Register. The same notice has not been attached to the affidavit in support as evidence of existence of such notice.

This court is denied an opportunity to investigate and properly interrogate the issue at hand due to failure to attach such important evidence. I'm left with one conclusion that this notice never existed and it was only raised as an afterthought to hoodwink court that they had followed the procedures set out under the Land Act whereas not.

Similarly, the respondent alleges that the said notice was issued to the applicant. There is no proof of service of the said notice either by way of postage or alternative means of service of notice-personal service or substituted service.

This also buttresses the earlier point that indeed the respondent never issued any such notice and that is why they never or could not serve the same since it never existed.

This court is satisfied that the applicants were not accorded a hearing and this violated their rights enshrined in the Constitution specifically Article 28 & 42 and also Section **91(8)** of the **Land Act Cap 227** which clearly provides for the procedure to be followed in exercise of the registrar's powers while cancelling a certificate of title

The registrar is required to;

**(a) give not less than twenty one (21) day's notice in the prescribed form to any party likely to be affected by any decision made under this section**

**(b) provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given**

**(c) conduct any such hearing in accordance with the rules of natural justice**

(d) **give reasons for any decision that he or she may make**

The failure to issue a notice to amend and also to properly and effectively serve the applicants with the Notice of Intention to effect changes in the register violated the applicant's right to be heard and they were denied a hearing.
It would appear the decision was purposely arrived at with the sole intention to grab the applicant's land as an inside job within the land registry.

The lessor, Uganda Land Commission has never been notified of any such error apart from the respondent making wild and baseless allegations to justify the intended aim of depriving the applicant of its land.

This issue is resolved in the affirmative.

***ISSUE TWO***

***What remedies are available to the applicant?***

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The

court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

**Whether a prerogative order of Certiorari can be issued against the respondent, quashing/setting aside the decision of the Respondent canceling the Applicants title of land comprised in Lease Hold Register Volume 4182 Folio 3 Plot M.135 Land at Entebbe.**

The primary purpose of certiorari is to quash an ultra-vires decision. By quashing the decision certiorari confirms that the decision is a nullity and is to be deprived of all effect. See ***Cocks vs Thanet District council [1983] 2 AC 286***

In in simple terms, *certiorari* is the means of controlling unlawful exercises of power by setting aside decisions reached in excess or abuse of power. See ***John Jet Tumwebaze vs Makerere University Council and Another HCMC No. 353 of 2005***

The effect of certiorari is to make it clear that the statutory or other public law powers have been exercised unlawfully, and consequently, to deprive the public body's act of any legal basis.

The further effect of granting an order of certiorari is to establish that a decision is ultra vires, and set the decision aside. The decision is retrospectively invalidated and deprived of legal effect since its inception.

The applicant has prayed for the quashing to the decision of the respondent since it was illegal and unlawful and reached in breach of rules of fairness.

The applicants have satisfied the court that the decision of the respondent was made without according the applicants a hearing.

This Honourable Court issues a prerogative order of Certiorari against the respondent, quashing/setting aside the decision of the Respondent cancelling the

Applicants title of land comprised in Lease Hold Register Volume 4182 Folio 3 Plot M.135 Land at Entebbe.

**Whether an order of mandamus can be issued compelling the respondent and any other person acting on authority there from to reinstate the Applicants title and effect registration of the applicants lease extension from the initial period of 5 years to 49 years.**

**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.

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"

In the case of **Goodman Agencies Ltd & 3 others versus Attorney General & Anor Misc.Cause No.108 of 2012** cited in Janet **Kobusigye versus Uganda Land Commission Misc.Cause No.28 of 2013** 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"

This Honourable Court issues an order of mandamus compelling the respondent and any other person acting on authority there from to reinstate the Applicants title and effect registration of the applicants lease extension from the initial period of 5 years to 49 years based on the lease extension from Uganda Land Commission.

**Whether an injunction can be issued against the respondent restraining it from issuing a title of the above land to any other person.**

The applicant further prayed for a permanent injunction against the respondent restraining it from issuing title of the above land to any other person. The background to this application is very clear and was made in honour of the President's pledge to the applicant. The same land was given upon assurances to the Fountain of Honour to fulfil the pledge. It would be a national scandal to reflect the Head of State as a liar or person who does not fulfil his pledges.

The same technocrats should not be seen changing their positions by issuing titles over the same land granted in honour of the President's pledge, that would great dishonesty to defeat the obligation.

This Honourable Court restrains the respondent from issuing title in relation to the suit land to any other person.

The applicant did not seek any damages to be award both in their affidavit in support. But rather the said loss is alluded to in an affidavit in rejoinder paragraph 8 without any specifics of the loss and this was reinforced in the submissions and he sought 1,000,000,000/=.

The damages sought therefore lack any basis and they appear to have been made as an afterthought.

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it.* See ***Bendicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

The applicant is awarded costs of this application.

I so Order.

**SSEKAANA MUSA**
**JUDGE**
**15th/02/2019**