THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.132 OF 2020

1. **MUMTAZ KASSAM**
2. **MUSTAFA TURBALI BHARMAL**
   (Executors of the Late Surgarabai Amarbhai Bharmal)
3. **HATIMAL ABBAS VALIJI BHARMAL ========== APPLICANTS**

VERSUS

THE DEPARTED ASIAN PROPERTY CUSTODIAN BOARD==========RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this application under Sections 33, 36, 38, 41, AND 42 of the Judicature Act as amended and Section 98 of the Civil Procedure Act, Rules 3(1)(a), 4 & 6 of the Judicature (Judicial Review) Rules, 2009 and Order 52 rules 1&3 of the Civil Procedure Rules for the following orders;

1. An order of Certiorari doth issue to quash the decision of the Respondent dated 2nd May 2016 allocating the 1st and 2nd applicants' half(1/2) share of property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala to Emmanuel Bunanukye.

2. An Order of Certiorari doth issue to quash the decision of the Respondent dated 2nd May 2016 allocating the other half (1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala in respect of which the 3rd applicant is the beneficiary, to Justice Acungwire.

3. An Order of Prohibition doth issue to prohibit the Respondent or anyone acting under their authority from acting upon, enforcing and/or implementing the Respondent's decision dated 2nd May, 2016 allocating the 1st and 2nd applicant's half(1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala to Emmanuel Bunanukye.

4. An Order of Prohibition doth issue to prohibit the Respondent or any one acting under their authority from acting upon, enforcing and/or implementing the respondent's decision dated 2nd May, 2016 allocating the other half (1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala in respect of which the 3rd applicant is the beneficiary, to Justice Acungwire.

5. The Costs of this application.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of ***Aggrey Muhwezi-***a holder of powers of Attorney granted by the applicants but generally and briefly state that;

1) The 1st and 2nd & 3rd applicants have at all material time been the lawful owners and beneficiaries of land and developments thereon comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala.

2) That on 17th March 2020, the 1st and 2nd applicants conducted a search at the land registry through Messrs Mumtaz Kassam & Company Advocates in respect of property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala.

3) That the said search revealed that a one Emmanuel Bunanukye lodged a caveat on the said property on 8th October, 2019 claiming interest as a beneficiary of the said property.

4. That in support of the said caveat, the said Emmanuel Bunanukye attached the respondent's allocation decision dated 2nd May, 2016 allocating the 1st and 2nd applicant's half(1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala to Emmanuel Bunanukye and the other half (1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala in respect of which the 3rd applicant is the beneficiary, to Justice Acungwire.
5. The respondent's decision allocating the 1st and 2nd applicant's half(1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala to Emmanuel Bunanukye and the other half (1/2) share of the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala in respect of which the 3rd applicant is the beneficiary, to Justice Acungwire is ultra vires, procedurally improper, irrational and illegal.

6. The respondent has never communicated the said decision to the applicants and did not give the applicants an opportunity to be heard prior to the said impugned decision allocating the applicants' interests in the property comprised in LRV 206 Folio 22 Plot 7, De Winton Road, Land at Kampala to Emmanuel Bunanukye and Justice Acungwire.
7. That the said property had already been repossessed by the applicants predecessors-in title and the minister of Finance had duly issued a Certificate Authorizing Repossession to; as 1/2 to ABBAS ALI VALIJI and as to ½ to SUGARABAI D/O MOHAMEDALI BODALIBHAI on 10th January 1993.
8. That the unilateral decision made by the respondent is ultra vires, illegal, irrational unreasonable and clouded with abuse of power and the applicants will suffer irreversible and or irreparable injury

The respondent opposed this application and filed an affidavit in reply through Mr Bizibu George William-Executive Secretary of respondent;

1. The respondent contended that the applicants have since 26/04/2019 been aware of the allocation and have been appearing in court over the same subject matter-plot 7 De winton Road.

2. That the alleged applicants in their counter-claim are seeking the same reliefs for cancellation of temporary allocation and it is an abuse of court process to file an application for judicial review to seek the same remedies.

3. That the respondent acted diligently and irrational or ultra vires which does not call for judicial review and the said certificate of repossession being relied on is being challenged in high Court.

The applicant only raised one issue for determination and the resultant issue of remedies.

1. ***Whether this matter is a proper case for judicial review?***

2. ***Whether the respondent's decision on 2nd May, 2016 allocating the applicants property comprised in LRV 206 Folio 22 Plot 7 De Winton Road, Kampala is illegal, irrational and tainted with procedural impropriety?***

3. ***What remedies are available to the applicants?***

The applicants were represented by *Mr Nerima Nelson, Mr. Tom Magezi and Ms Aretha Uwera* whereas the respondent was represented by *Mr.Arinaitwe Peter* holding brief for *Guma Davis*.

Preliminary Objections

The respondent's counsel submitted that the power of attorney and statutory declaration did not comply with section 15(1) Stamp Duty Act 2014. It was his submission that such documents are inadmissible in evidence since the documents are improper.

Secondly, the respondent contended that Aggrey Muhwezi had no locus standi to commence these proceedings.

Thirdly, the respondent argued that this cause is barred by limitation since it was not made within 3 months.

The applicants counsel in answer submitted that the powers of Attorney are admissible in evidence by virtue of section 33 of the stamp duty Act. Further that the issue of whether or not a document is inadmissible for want of stamping must be decided when the document is sought to be put in evidence so as to give the party introducing it an opportunity of paying the requisite duty and thus make it admissible.

That the said Aggrey Muhwezi had *locus standi* since the power of attorney was admissible by virtue of section 33 of the Stamps Duty Act.

The applicant submitted that the court has inherent power to enlarge the time of filing an application for judicial review. But, it was their contention that the applicants first learnt of the said allocation decision dated 2nd May 2016 on 25th March, 2020 when they got a search from the land registry.

Analysis

The power of Attorney given by the applicants to the said Aggrey Muhwezi was not a necessary document to be used in court as evidence, but rather it was merely a document between the principal and agent on their instructions to institute the suit. This implies that the suit cannot be defeated on this ground since the power of attorney which was like a letter of instructions had not been registered with URSB or did not pay stamp duty. The same is applicable to the statutory declaration which was executed in UK and brought in Uganda it was unnecessary evidence to the case before court.

Secondly, section 43 of the Stamps Act provides that;

Where an instrument has been admitted in evidence, the admission shall not, except as provided in section 68, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

In the case of ***Sunderji Nanji Limited v Mohamedali Kassam Bhaloo [1958] EA 762***; Court held that, *the issue as to whether a document is inadmissible for want of stamping must be decided when the document is sought to be put in evidence or at some stage before final judgment, so as to give the party producing it an opportunity of paying the requisite duty and penalty and thus making it admissible.*

Purposive interpretation of the above provision should given in order to address the mischief that was intended to be addressed by the stamps Act. The law is intended to ensure payment of stamp duty on every document to be tendered in court as evidence. It is for collection of taxes and not to defeat suits for failure to pay stamp duty.

Law is a social engineering to remove the existing imbalance and further the progress, serving the needs of the Socialist Democratic set up under the rule of law. The prevailing social conditions and activities of life are to be taken into account to adjudge whether the impugned legislation would sub-serve the purpose of society. See ***Delhi Transport Corporation v D.T.C, Mazdoor Congress [1991] AIR (SC) 101***

As a general rule of interpretation, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the Court to do so. According to Lord Mersey in *Thompson(Pauper) v Goold and Co. [1910] A.C 409*; It is a strong thing to read into an Act or Parliament words, which are not there, and in absence of clear necessity, it is wrong to do.

The courts in interpretation of the stamp Act and Stamp Duty Act have a duty to give effect to the purpose of the legislation, which is to ensure that documents used in evidence have paid the duty. This obligation will remain even if the document is tendered in evidence, the court would order in those circumstances that the documents should pay the duty and the

proceedings commenced on such documents are not defeated or rendered null and void. See Section 43 of the Stamps Act.

Secondly, on the issue of lack of *locus standi* by Aggrey Muhwezi; I find no merit in this objection since the suit was duly filed in the names of the persons who are direct beneficiaries and in whose names the Certificate of repossession was issued.

Thirdly, the contention that the suit is caught by limitation of 3 months; the applicants have stated that they learnt of the said allocation of their land when they carried out a search at Land office. The respondent has not made any meaningful response to this statement, except for the contention that it was within the knowledge of the applicants when they filed their defence and counterclaim in June 2019.

The applicants contend that the decision which was within their knowledge was the one dated 7th January 2016 and not the one dated 2nd May 2016. The respondent does not seem address the key question of whether the applicants where duly informed of the said decision when it was taken.

The law provides for a cause of action under judicial review to be commenced when it first arose. In this case, a decision that was never communicated to the person affected cannot be deemed to have arisen on the date when it was given. But rather it is deemed to have arisen when the applicant became aware of such a decision that was prejudicial to their interests in the property.

The respondent cannot be allowed to take benefit from their own wrongdoing of taking unilateral decisions against the applicants without informing them of such decisions and later raise this type of objection on limitation. Every litigant who approaches the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective.

This court takes it that the cause of action first arose when the applicants learnt of the said decision on 25th March 2020, when the Commissioner, Land Registration availed to the applicants the respondent's Allocation decision dated 2nd May, 2016.

The preliminary objections are all overruled.

Whether this matter is a proper case for judicial review?

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

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.

In Uganda, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration with the confines of the law. It has been

felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

In the present case, the applicants are challenging the decision of the respondent of allocating their land comprised in LRV 206 Folio 22 Plot 7 De Winton Road-Kampala and yet the said property was already dealt with when the Minister of Finance issued a Certificate of Repossession to the applicant's predecessor.

The nature of the complaints made by the applicant fall squarely within the ambit of judicial review and it is the duty of this court to interrogate the actions of the decision makers (respondent) and give appropriate orders.

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 or illegality. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to and in accordance with the law. ***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*."

This is a proper case for judicial review since it is questioning the exercise of power by the respondent against the existing law- Expropriated Properties Act. The applicants have been unfairly and unjustly treated by the respondent and Article 42 of the Constitution allows them to file a case for judicial review challenging the respondent's illegal and unfair actions.

ISSUE TWO

Whether the respondent's decision on 2nd May, 2016 allocating the applicants property comprised in LRV 206 Folio 22 Plot 7 De Winton Road, Kampala is illegal, irrational and tainted with procedural impropriety?

The applicants' counsel submitted that once the Minister granted a certificate Authorising Repossession to Abbas Ali Valiji and Surgarabhai daughter of Mohamedali Bodalibbhai on 10th January 1993, the suit property divested from Government of Uganda and reverted to former owners as stipulated under Section 6 of the Expropriated Properties Act, cap 87.

Therefore the issuance of the said certificate of repossession to former owners by the Minister, the respondent ceased to have the legal mandate (after 10th January 1993) of managing and dealing with the said property.

Under section 2(4) of the Expropriated Properties Act cap 87, the respondent's mandate was restricted to only managing properties under the said Act which had not been dealt with by the Minister of Finance. See *Mohan Musisi Kiwanuka v Asha Chand SCCA No. 14 of 2002.*

It was therefore illegal, irrational and ultra vires for the respondent to take a decision dated 2nd May 2016 allocating the applicants land to Emmanuel Bananukye and Justice Acungwire after the Minister of Finance had issued a repossession certificate. See *Firdoshali Madatali Keshwani & Anor v DAPCB & 2 Others HCMisc Cause No. 11 of 2019.*

In addition, the applicants contend that the respondent did not accord the applicant's any opportunity to be heard and never informed the applicants of the process leading to the said decision of 2nd May 2016 well knowingly that the property had been repossessed in 1993.

The applicants' counsel submitted that the decision to allocate the land to the Emmanuel Bananukye and Justice Acungwire was irrational and without logic since the land had reverted to former owners with a repossession certificate. It further irrational since it the certificate of title is still vested in the names of the applicants and the same has never been cancelled and it is conclusive evidence of ownership.

The respondent's counsel submitted that the respondent acted within their mandate pursuant to Section 4 of the Assets of Departed Asians Property Custodian Board cap 83 in allocating the suit property. According to counsel, the applicants have not quoted any regulation or section of the Act which the respondent contravened in exercise of her duty and as such the application for judicial review bears no merit and ought to be dismissed.

Analysis

The applicants contended that the decision to allocate property comprised in LRV 206 Folio 22Plot 7 De winton Road, land at Kampala was illegal since the said property had been repossessed by original owners and had been issued with a Certificate Authorising Repossession.

Illegality as a ground of review looks at the law and the four corners of the legislation i.e its powers and jurisdiction. When power is not vested in the decision maker then any acts made by such a decision maker are ultra vires.

In the case of ***R v Lord President of the Privy Council, ex parte Page [1993] AC 682*** *Lord Browne-Wilkinson* noted;

> *" The fundamental principle(of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making bodies are exercised lawfully. In all cases…this intervention….is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a*

Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful."

In addition, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion.

The respondent has not set out any justification or basis of allocate land that was already repossessed except for a statement in their submissions that they acted within their mandate pursuant to Section 4 of the Assets of Departed Asians Property Custodian Board.

The mandate of the respondent is only available in so far the property has not been already repossessed and such power cannot be invoked on property which has already been repossessed. Any attempt to exercise such power on the property is an illegality and ought to be checked with restraining orders. In the case of ***Mohan Musisi Kiwanuka v Asha Chand SCCA No. 14 of 2002*** the Supreme Court held that;

"Once the Minister issues a repossession Certificate, he or she or any other Government official cannot reverse, review or otherwise modify the decision. The only course of action available to any aggrieved party is to seek redress from courts of law"

The actions of the respondent are clearly illegal and abuse of authority and power for which this court can bring into question any decision taken in order to uphold the rule of law.

In the area of administrative exercise of power, the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

The law requires that statutory power is exercised reasonably, in good faith and on correct legal grounds. The courts assume that Parliament cannot have intended to authorise unreasonable action, which is therefore ultra-vires and void. Illegal government action is incompatible with a democratic society and this preposition lies at the heart of law. When an executive action of government is challenged, the court must tread with caution and not overstep its limits and that the interference of courts is warranted only when there are oblique motives or miscarriage of justice. See ***Pradeep Kumar Rai v Dinesh Kumar Pandey [2015] 11 SCC 493: [2015]AIR SC 2342***

The actions of the respondent are tainted with oblique motives since no justification is made for the irregular conduct of allocating the land/property already repossessed to Bananukye Emmanuel and Justice Acungwire.

The action of the respondent to allocate land repossessed by the applicant is *mala fide* since it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates action without knowing more. An action is bad even without proof of motive on dishonesty, if the authority is found to have acted contrary to reason.

Lord Diplock noted that unreasonableness entails a decision so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have

arrived at it. ***Council of Civil Service Union v Minister of State of Civil Service [1985] AC 374***

The respondent is vested with powers under the Expropriated Properties Act and the same where extinguished upon repossession. The respondent was irrational in trying to use the same powers to reallocate the land to new persons in disregard of law and without first cancelling the certificate of repossession. Irrational decisions are usually tending towards to illegality and abuse of power or authority.

The respondent took a decision in May 2016 of allocating land to Bananukye and Acungwire. In exercising this power even though illegally, but never accorded the applicants who are possession any hearing and thus condemned them unheard. Article 42 of the Constitution enjoins administrative bodies to treat persons justly and fairly before taking any decision affecting them.

The fundamental requisite of due process of law is the opportunity to be heard. Hearing must be "at a meaningful time and in a meaningful manner" See ***Goldberg v Kelly, 397 US 254 (1970)***

It is undisputed that the applicants where never heard before the decision to allocate the land to other persons. It is a requirement of natural justice that an adjudicatory body or decision maker cannot make a decision adverse to the individual without giving him an effective opportunity of meeting any allegations against him and presenting his own case.

The applicants had some rights that accrued upon grant of a certificate of repossession; the same could not be withdrawn, recalled or modified without following rules of fairness or natural justice. The action of the respondent was arbitrary and an abuse of power conferred by Parliament and it was applied for a purpose not intended.

If there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such power and that the rule of natural justice operates in areas not covered by any law validly made. Where there is nothing in the statute to actually prohibit the giving of opportunity of being heard, the nature of the statutory duty imposed on the decision-maker itself implies an obligation to hear before deciding.

Whenever an action of public results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person.

Therefore it was illegal for the respondent to try and reopen the repossession exercise concluded 27 years ago under the guise of the same having not been concluded. The actions of the respondent were so unreasonable and irrational and clouded in abuse of power.

The applicants were never accorded a hearing before the respondent unilaterally decided to allocate the land registered in their names. The right to a fair hearing and natural justice is one of the cornerstone of our Constitution.

This position was restated in ***Council of Civil Service Union v. Minister for the Civil Service 1985 AC 374*** 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 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."

In the present case, the respondent took a decision to allocate the land in question well knowing that the same was in registered in the names of the applicants and was duly repossessed. The respondent deliberately refused to inform them about their intended illegal actions or decisions that were to be taken and yet they affected their rights as the registered proprietors.

This Court finds that *the respondent's decision of 2nd May, 2016 allocating the applicants property comprised in LRV 206 Folio 22 Plot 7 De Winton Road, Kampala is illegal, irrational and tainted with procedural impropriety*

ISSUE TWO

What remedies are available to the applicants?

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***

Certiorari

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 of 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 1st respondent was illegal, irrational and procedurally improper. The said decision of respondent dated 2nd May 2016 to allocate *property comprised in LRV 206 Folio 22 Plot 7 De Winton Road, Kampala* to Emmanuel Bananukye and Justice Acungwire is hereby quashed.

Costs

The applicants are awarded costs of this application.

I so Order.

SSEKAANA MUSA
JUDGE
20th January2021