

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

**MISCELLANEOUS CAUSE NO. 299 OF 2020**

**TWED PROPERTY DEVELOPMENT LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

- 1. UGANDA INVESTMENT AUTHORITY ::::::::::::::::::::::::::::::::::: 1<sup>ST</sup> RESPONDENT**
- 2. VICTORIA NILE PLASTICS LIMITED ::::::::::::::::::::::::::::::::::: 2<sup>ND</sup> RESPONDENT**
- 3. JERRYFA LIMITED ::::::::::::::::::::::::::::::::::: 3<sup>RD</sup> RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Article 42, 45 & 50 of the Constitution, Section 33,36 and 38 of the Judicature Act as amended, Rules 3(1),2, 4, 6 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following of orders that;

1. A declaration doth issue that the applicant had a legitimate expectation that the 1<sup>st</sup> respondent would issue it with an amended lease with fresh terms as presented in respect of Kyaggwe Block 113 Plot 572.
2. A declaration doth issue that the 1<sup>st</sup> respondent illegally and irregularly reallocated the land in **Kyaggwe Block 113, Plot 572** situate at Namanve, in Mukono District to the 2<sup>nd</sup> the 3<sup>rd</sup> respondents;
3. An order of certiorari be issued quashing the decision of the 1<sup>st</sup> respondent to withdraw the allocation of the said land comprised in **Kyaggwe Block 113, Plot 572** situate at Namanve, in Mukono District to the applicant and re-allocation of the same to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

4. An injunction be issued against the 1<sup>st</sup> respondent prohibiting it from re-allocating the said land to any other investor without compensating the applicant for the significant development invested on the same in preparation for its own developments.
5. A further injunction be issued against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to prevent them from carrying on any developments on the said land.
6. A writ of Mandamus be issued against the 1<sup>st</sup> respondent to compel it to issue a full term lease to the applicant in respect of the said land in view of the significant sum already invested in preparing the land for civil construction works.
7. In the alternative, special damages of UGX 533,698,309.141= in special damages be awarded to the applicant to compensate it for the expenses incurred in preparing the suit land for construction and such damages be paid jointly and severally by the respondents.
8. A further award of the sum of UGX 819,501,900= in special damages be awarded to the applicant to compensate it for the fair value on the suit land by the completed enabling works if the said land can no longer be allocated to the applicant.
9. That the 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 accompanying affidavit of Dr. Dan Twebaze the Managing Director of the applicant company briefly stating that;

1. That on 15<sup>th</sup> March 2011, the applicant company, applied for an allocation of land in the area described as Namanve Industrial Park for purposes of carrying on inter alia residential, office developments and a four star hotel.
2. That on **12<sup>th</sup> September 2011**, the **1<sup>st</sup> Respondent** approved the **Applicant's** proposal and allocated to it **5 acres** of land comprised in **Kyagwe Block 113**

**Plot 572** for the said developments and on **20<sup>th</sup> June 2014**, the Applicant was issued with a lease term of **5 years** that was meant to expire on **20<sup>th</sup> June 2019**.

3. Rather unfortunately, the lease that was intended to the Applicant was instead erroneously granted to a different entity altogether, **“Twed Properties Limited”** and not **“Twed Consulting Company Limited”** the Applicant’s former name before it changed to **“Twed Property Development Limited”**.
4. The Applicant requested the 1<sup>st</sup> Respondent to rectify and correct the lease documents but this was never done to date. The Applicant still proceeded to carry on different pre-development works on the land despite difficulties with access to the land.
5. That at the time the land was allocated to the applicant, part of it was occupied by squatters and the applicant embarked on a process of negotiating and compensating them to vacate the land to pave way for surveying and enabling civil works.
6. That the applicant commenced survey of the said land after spending 15 months settling encroachers on the allocated land and duly informed the 1<sup>st</sup> respondent on 7<sup>th</sup> October 2013 about the completion of the survey and requested for permission to fence the land.
7. It is the Applicant’s case that for a considerable period of time, access to the said plot was cut off by the rainy seasons and the lack of a motorable road which prevented the Applicant from developing the land in the timelines earlier issued and the 1<sup>st</sup> Respondent was at all material times aware of the same situation.

8. Subsequently, the Applicant adopted a more practical stance and created an access to the plot at its own cost after the 1<sup>st</sup> Respondent declined to share the cost of creating the same or indemnifying the Applicant.
9. Further, the Applicant's Managing Director states that the Applicant Company applied for change of user terms on the initial lease on grounds that its proposed initial project had been rendered unsuitable for the environment due to adjacent constructions by Roofings Group Limited.
10. That On 27<sup>th</sup> September 2017, the 1<sup>st</sup> Respondent requested the Applicant to return the original lease documents purportedly to process the new lease in accordance with the changed user that was applied for but this never materialized to date.
11. The Applicant's Managing Director avers that the Applicant incurred costs for construction works done on the land allocated to it, these expenses include but not limited to: excavating, filling, levelling and grading the entire 5 acres of plot, mobilization and hiring bulldozer and roller, consultation with regard to preparation of expression of interest, professional fees for land survey, proposal for the warehouse, hiring drivers for the machinery, payment of squatters of land, fuel for facilitation of all works and professional fees for preparation of valuation report to the tune of **Ugx.533,698,309.141/=** and created a value equivalent to **Ugx. 819,501,900/=** by grading and levelling the land, compensating squatters and backfilling the land.

The 1<sup>st</sup> respondent opposed this application and they filed an affidavit in reply through the Director, Industrial Parks and Development in Uganda Investment Authority.

1. The applicant company was allocated 5 acres land on 12<sup>th</sup> September 2011 and a lease agreement was executed on 20<sup>th</sup> June 2014 for a duration of 5 years.

2. That the 1<sup>st</sup> respondent never approved the change of user of the suit land and the applicant failed to; grade and fence off the land, submit acceptable building and Architectural plans to 1<sup>st</sup> respondent, obtain NEMA approvals to commence project implementation and Erecting any physical development on the land.
3. That in a Board meeting of Uganda Investment Authority dated 4<sup>th</sup> May 2018, they decided to withdraw the lease and land allocation from the applicant on account of their failure to carry out conditions mandated by the lease agreement.
4. That the applicant appealed the decision of the board, and the board decided to reconsider its position and reinstate the Company's lease for 6 months on 3<sup>rd</sup> July 2018. This reinstatement was on condition that the company commences construction within this period and it operation at the date of expiry of the lease.
5. That the applicant's lease expired on 20<sup>th</sup> June 2019 without the applicant commencing construction, or being operational as was agreed by the parties in July 2018.
6. That after the expiry of the lease, the land was vested in Uganda Investment Authority by operation of law and the board decision of 18<sup>th</sup> March 2020 upheld its decision not to renew the lease.
7. That the applicant does not have any intended or pending project on the suit land considering that the applicant's lease was not renewed by Uganda Investment Authority.
8. That there was no reasonable representation made to the applicant by the Uganda Investment Authority that its lease would be renewed considering that the applicant had repeatedly failed to meet the conditions of the lease.

The applicant failed to meet its obligations even after the grace period was given in 2018.

9. That the applicant allocated 3 acres of the suit land in plot 1638 Block 113 Kyaggwe Mukono to the 2<sup>nd</sup> respondent on a 5 year lease starting 20<sup>th</sup> July 2020. The authority allocated 2 acres of land to 3<sup>rd</sup> respondent-Jerryfa Limited.

The 2<sup>nd</sup> respondent filed an affidavit in reply through its Managing Director-Jiyani Alpeshkumar Manubhai contending that by a letter dated 5<sup>th</sup> May 2020, the 1<sup>st</sup> respondent informed the 2<sup>nd</sup> respondent that Uganda Investment Authority Board allocated them land for construction of the factory to manufacture aluminium products.

The 2<sup>nd</sup> respondent was subsequently registered as proprietor of land comprised in Leasehold Register Volume MKO 2148 Folio 16, Plot 1638, Kyaggwe Block 113, Namanve, Mukono District.

The 2<sup>nd</sup> respondent has invested heavily in the land by paying for its survey, premium, ground rent, performance bond. They have also cleared and levelled the land, erected a gate and have commenced with construction of a perimeter wall and guard house.

The 3<sup>rd</sup> respondent never filed any affidavit despite being served with the application and therefore the matter proceeded ex-parte against them.

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.

## **ISSUES FOR DETERMINATION**

- 1. Whether the present application for judicial review was filed out of time as against the 2<sup>nd</sup> Respondent?***

- 2. Whether the 1<sup>st</sup> Respondent's decision to grant leases to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the suit land that was in occupation of the Applicant is amenable to judicial review?**
- 3. Whether the 1<sup>st</sup> Respondent breached principles of natural justice and committed procedural impropriety in granting leases on the suit land occupied by the Applicant to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents**
- 4. Whether the 1<sup>st</sup> Respondent acted in a manner to create a legitimate expectation in the mind of the Applicant's management that it was entitled to an amended lease?**
- 5. What remedies are available to the parties?**

The applicant was represented by *Jude Byamukama* whereas the 1<sup>st</sup> respondent was represented by *Franklin Uwizera* and *Albert Byamugisha* represented the 2<sup>nd</sup> respondent. The 3<sup>rd</sup> respondent was not represented, although much later after proceeding ex parte *AF Mpanga Advocates* had by letter informed court that they received instructions to represent them.

***Whether the 1<sup>st</sup> Respondent's decision to grant leases to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the suit land, that was in occupation of the Applicant, is amenable to judicial review?***

The applicant submitted that the 1<sup>st</sup> Respondent's board decision to re-allocate the suit land comprised in Kyagwe Block 113 Plot 572, which was in possession and occupation of the Applicant, to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is an administrative decision that is not only amenable to judicial review but that the said decision needs to be quashed and appropriate remedies granted to the Applicant.

The courts have consistently used their powers of judicial review to issue prerogative orders to check and control decision making in land allocations or issuance of leases on public land by public authorities. For instance, in ***HCCS No.7 of 2005 Nazarali Punjwani vs Kampala District Land Board & Another, Kasule J***

(as he then was) considered, in a judicial review application, the decision by Kampala district land board to grant a lease to a third party on the suit property that had been under occupation and control of the Applicant.

The contention by the 2<sup>nd</sup> Respondent that this is a matter for recovery of land is equally misconceived as the Applicant's case is, inter alia, that it was treated unfairly and in violation of principles of natural justice by the 1<sup>st</sup> Respondent when its board made the decision to re-allocate the suit land to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The decisions taken by the 1<sup>st</sup> Respondent's board in matters of grant or renewal of leases on the land held by the 1<sup>st</sup> Respondent in industrial parks are clearly administrative in nature. This implies that they are bound to follow the law and principles of natural justice in determining whom to grant a lease to develop land in industrial parks.

In light of that, the 1<sup>st</sup> Respondent's decision to grant leases to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on land earlier granted to the Applicant without notifying the latter or giving it a hearing is clearly amenable to judicial review.

The 1<sup>st</sup> respondent submitted that the decision to grant leases to the 2<sup>nd</sup> and 3<sup>rd</sup> respondent on the suit land is not amenable to judicial review because the subject matter of this application involves matters of private law (a lease) for which the applicant has alternative remedies, including filing a civil suit in the High Court (Land Division) to address grievances, if any. The decision challenged was made under private and not public law.

The 1<sup>st</sup> respondent contended that the legal relationship between the applicant and the 1<sup>st</sup> respondent was primarily borne out of private law (a lease/private) and not public law. The enforcement of anything under the contract should therefore be under the realm of private law.

The 1<sup>st</sup> respondent submitted that the applicant breached provisions of the lease agreement and what they are seeking is to enforce the rights in accordance with the lease agreement about termination of the lease and non-renewal.



## ***Analysis***

**Rule 7A (1) of the Judicature (Judicial Review) Rules provides that** the court shall, in considering an application for judicial review, satisfy itself of the following:-

- a) that the application is amenable for judicial review,
- b) that the aggrieved person has exhausted the existing remedies available with in the public body or under the law, and

The above rule is premised on the principle that, judicial review is a process by which the courts exercise a supervisory jurisdiction over the activities of public authorities in the field of public law. Therefore, judicial review only operates in the field of public law. It bears emphasis that public bodies perform private law acts all the time in respect of which they can sue or be sued in private law proceedings: Breaches of contract and covenants in leases and tenancies and negligence, employment of staff, personal injury etc.

It is therefore always necessary to analyse the nature of the decision or act to decide whether it is properly classified as existing in public or private law, given that judicial review to be the appropriate form of challenge, it is necessary that the decision or act exists in public law. Some statutory duties imposed on public bodies may still create private rights in favour of individuals; enforceable by way of ordinary claim. See ***Cocks v Thanet District Council [1983] 2 AC 286; Arua Park Operators and Market Vendors Cooperative Society Limited v Arua Municipal Council High Court Misc. Cause No. 0003 of 2016***

It ought to be clarified that only because one of the parties to the agreement is a statutory or public body, the contract cannot be characterised as a statutory contract. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies like private parties, have power to contract or deal with property. Such activities may not raise any issues of public law. The enforcement of rights created in the course of such transactions may raise no issue of public law. The only exception would arise if the terms of a contract

entered into by a statutory body are fixed by statute, the contract may be regarded as statutory. Statutes may impose a duty on a public body, but that duty may still create private rights in favour of the individuals enforceable by ordinary claim. See ***Public Law in East Africa by Ssekaana Musa pg39 LawAfrica publishers.***

Where there is a concluded contract pure and simple, the parties are then bound by the contract. The parties can only claim rights conferred on them by the contract and bound by its terms unless some statute steps in and confers some special statutory obligations on the part of the administrative authority in the contractual field. The liability of the statutory body in contractual obligations is practically the same as that of a private person enforceable in ordinary claims and not through judicial review. In **Uganda Taxi Operators & Drivers Association -vs- KCCA & Another H.C. Civil Division C.S. Misc. Applic. No. 137 & 2011** where the Applicant's application was arising out of a **decision relating to a breach of contractual obligations Mwangusya Eldad J** (as he then was) held, ***inter alia***,

*“that the application was incompetently before that Court in as much as what the Respondents were doing infringed on the Applicant's right to run the contract hence the solution did lie in an ordinary suit where the validity of the contract would be tried and finally resolved and not in the prerogative orders of certiorari and prohibition.*

*He further held that the case went well beyond the scope of Judicial Review where jurisdiction is exercised in a supervisory manner and not to vindicate the rights of the party seeking Judicial Review. He further held that the Court would find it difficult granting the orders sought without vindication of the Applicant's rights under the contract. He accordingly dismissed that application with costs.”*

In the present case, the applicant is actually complaining about the 1<sup>st</sup> respondent's refusal to renew the applicant's lease agreement which expired before he could carry out any developments on the suit land. The rights of the applicant are wholly derived from the lease agreement and this involves private law not public law issues which would not ordinarily be the subject of judicial review. The case before this court is most likely to be resolved by asking whether

the actual subject-matter of the challenge involved claims based on ordinary public law principles or whether, on analysis, the applicant-company was claiming that some private law right had been violated. In practice, the courts tend to regard duties imposed on public bodies alone as primarily public law duties, and the only issue is whether the duty additionally creates private law rights super-imposed on the public law duty.

The applicant entered into a lease agreement with the 1<sup>st</sup> respondent on 20<sup>th</sup> June 2014 for a duration of 5 years which was to expire on 20<sup>th</sup> June 2019 setting out terms and conditions to govern the relationship of lessor and lessee. The said lease upon expiry without the applicant carrying out any developments or construction it reverted to the 1<sup>st</sup> respondent. The rights that might have accrued from the expired lease are only enforceable under an ordinary claim for compensation and not judicial review. Contractual obligations should not be enforced by judicial review, unless the question is whether the contracting authority has exceeded its powers. Judicial review should be a remedy of last resort and it is inappropriate where there is another field of law governing the situation.

The applicant seems to premise his challenge of the decision of the 1<sup>st</sup> respondent not to renew his lease agreement on the principle of legitimate expectation. As soon as a contract is concluded, the expectation, if any, comes to an end and, thereafter, the parties are bound only by the terms of the contract. The doctrine of legitimate expectation has no application in relation to a dispute arising out of a contract *qua* contract. In case of a concluded contract has been arrived at, there cannot be any legitimate expectation that he would be allowed to continue with the contract and especially where there are glaring breaches of the contract. See ***Raj Chowdhury v Union of India, [2000] AIR Cal 232***

The applicant is seeking to recover specific damages of **Ugx.533,698,309.141/=** and **Ugx. 819,501,900/=** , this is purely in the realm of contract that must be dealt with by civil suit in an ordinary claim. The applicant took the calculated risk in not going to the civil court and choosing to invoke extraordinary jurisdiction of the High court, which is discretionary in nature.

This application was not a proper case for judicial review based on the facts and circumstances of the case.

This application is dismissed with no order as to costs.

I so Order

**SSEKAANA MUSA**

**JUDGE**

**06<sup>th</sup>/August/2021**