THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.111 OF 2022

NAMUGANZA PERSIS PRINCESS:: APPLICANT

VERSUS

ATTORNEY GENERAL::: RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under rules 3, 4 and 6 of the Judicature (Judicial Review)(Judicature Review)(Amendment) Rules, 2009 for the orders that;

a) *An Order of Certiorari doth issue quashing the report of the Parliamentary Ad-hoc Committee on the Naguru-Nakawa Land allocations for being illegal, ultra-vires, unreasonable and comprising procedural irregularities and biased in respect of the applicant.*

b) *A declaration that the proceedings of the Parliamentary Ad-hoc Committee on the Naguru- Nakawa Land allocations were biased, and the proceedings leading to the adoption of the report by Parliament were illegal, irregular, unfair and an abuse of the Applicant's right to a fair hearing.*

c) *A declaration that the recommendations made against the Applicant by the Parliamentary Ad-hoc Committee on the Naguru-Nakawa Land allocations were biased, unjust, and ultra vires to the specified terms of reference in reference to the Applicant.*

d) *A declaration that the Ad-hoc Committee failed to properly evaluate the evidence presented by the Applicant and entire report hence arriving at wrong conclusions that the Applicant is accountable for abuse of office.*

e) *A declaration that the findings of the Parliamentary Ad-hoc Committee on the Naguru-Nakawa Land allocations in its report that the Applicant is liable for abuse of office was unlawful, irrational, unreasonable and un just and reached in total disregard of the right to a fair hearing.*

f) *A permanent injunction be issued stopping any authority to rely on the report to implicate or implement any decision based on the recommendation and findings made against the Applicant by the Committee.*

g) *General damages and Costs of the Application.*

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant Honourable Namuganza Persis Princess but generally and briefly state that;

1. That on the 1st day of March 2022, the Parliament of Uganda while exercising the Authority vested in it by Article 90 of the Constitution of the Republic of Uganda and the Rules of Procedure of Parliament No. 30 of 2021 constituted an Ad-hoc Committee to investigate the Naguru-Nakawa land allocations.

2. That the Applicant was invited for a meeting with Ad-hoc Committee to investigate the Naguru-Nakawa land allocations and clearly guided the Committee on her involvement.

3. That on May 18th, 2022 a report of the Ad-hoc Committee on the Nakawa Land Allocations was presented before Parliament without the minutes of proceedings of the said Parliamentary Ad-hoc Committee.

4. That the applicant questioned the authenticity of the report but her attempts were futile as the Parliament proceeded to debate and adopt the report.

5. That Hon. Speaker of Parliament proceeded to have a debate on the impugned report contrary to law despite the applicant's opposition to the same for want of authenticity.

6. That she was condemned unheard and declared to have committed the offence of abuse of office yet the report is short of proper assessment and inconsistent with findings and conclusions therein hence biased and unreasonable.

7. That the report of the Ad-hoc Committee on the Naguru-Nakawa Land Allocations tabled in Parliament of Uganda for consideration did not bear the purported letter and minutes that the applicant directed Uganda Land Commission to allocate land which would have guided members of Parliament in their debate as to either adopt or disregard it.

8. That when the applicant appeared before the Committee, she presented a letter which she had written to the Chairperson Uganda Land Commission requesting for consideration of entities, the same was not a directive and it was not attached to the report.

9. That the applicant's request to Uganda Land Commission concerned three parties to wit: Princeton Medical Centre, Seven Hills and Amir Damani and the Committee recommended that the titles of Seven Hills and Amir Damani were regularly granted and should be upheld.

10. That the Committee never made any reference anywhere in the report the fate and status of Princeton Children Hospital now was Princeton Children Hospital mentioned anywhere in the investigations save for the letter written to the Uganda Land Commission.

11. That the applicant was before the Committee or even thereafter, issues relating to abuse of office were never put to me to defend myself or respond to them and not at any time thereafter.

12. That in a bid to justify their biased and unreasonable report, some members of Parliamentary Ad-hoc Committee on the Naguru-Nakawa Land Allocations debated the report on the floor of Parliament contrary to the rules of procedure and natural justice.

13. That as a result of the unjust and unfair investigations, the applicant has suffered mental anguish and her name tainted reasons for which she seeks an award of general damages.

The Respondent filed an affidavit in reply through Adolf Mwesigye Kasaija, the Clerk to Parliament, filed an affidavit in reply and stated as follows;

1. I know that on March 1, 2022 the parliament of Uganda while exercising its authority under the law constituted an Ad-Hoc Committee to investigate the Naguru-Nakawa Land Allocations following a member raising the matter on the floor and several media reports on the same.

2. A report of the Ad-Hoc Committee on the Naguru-Nakawa land allocations was presented on the floor of Parliament and the recommendations were approved on the **18th May, 2022** in accordance with the Law.

3. I know that the Applicant appeared before the Parliamentary Ad-Hoc Committee on the Naguru-Nakawa land allocations and she was given an opportunity to respond to all the allegations as raised.

4. I know that during the debate of the report by Ad-Hoc Committee on the Naguru-Nakawa land allocations; the Rt. Hon. Speaker gave Members of Parliament a chance to freely debate the report prior to its adoption by the House.

5. I know that the Applicant requested for the minutes of the proceedings of the Parliamentary Ad-Hoc Committee on the Naguru-Nakawa land allocations on the **26th April, 2022** and the same were supplied to her and have since been annexed to her affidavit in support of this application as Annexture "**D**".

6. I know that the Parliamentary Ad-Hoc Committee on the Naguru-Nakawa land allocations in arriving at its deductions interviewed all the interested parties, evaluated all the evidence that was presented to it before arriving at its recommendations.

7. In response to paragraphs 12-27 of the Affidavit in support of this application; the Ad-Hoc committee on the Naguru-Nakawa land allocations conducted the inquiry and arrived at the recommendations strictly in accordance with the Laws and the procedure of conduct of Parliamentary business.

8. The recommendations in the report of the Ad-Hoc committee on the Naguru-Nakawa land allocations regarding the applicant are to be subjected to consideration by the Executive in order to assess the propriety of their implementation.

9. The recommendations of the report by the ad-Hoc Committee on the Naguru-Nakawa land allocations are currently awaiting consideration by the Executive.

10. This application is therefore prematurely before this Honorable court as the recommendations have not received approval by the Executive.

11. The recommendations of the Parliamentary Ad-Hoc Committee report on the Naguru-Nakawa land allocations were arrived at in a procedurally proper and rational manner in accordance with the Laws of Uganda.

The applicant was represented by the following Counsel *Pande Norman, Norman Mwanja and Kayiwa Wilber* and the respondent was represented by *George Kallemera (Commissioner)*
The Parties in the presence of court agreed on the following issues for resolution;

1. ***Whether the application is amenable for Judicial review?***

2. ***Whether the application raises any grounds of judicial review?***

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

The parties filed written submissions that were considered by this court.

Whether the application is amenable for Judicial review?

Counsel for the applicant submitted that the right to apply for judicial review is a Constitutional right provided under **Article 42 of the Constitution of the Republic of Uganda 1995** which provides for the right of any person appearing before any administrative official or body to be treated justly and fairly and also to apply to a Court of law in respect of any administrative decision taken against him or her.

It is in no doubt that the Ad-hoc Committee was constituted as an administrative body, under **Article 90 of the Constitution of the Republic of Uganda 1995** with quasi-judicial functions including investigation as provided under **Rule 191 of the Parliamentary** Rules of Procedure of the 11th Parliament.

He further argued that according to Rule 7A of the Judicature (Judicial Review Rules) 2009 as amended by statutory instrument No. 32 of 2019; While carrying out its investigative function, the Ad-hoc Committee is mandated to observe the rules of natural justice and thus failure to do so will leave the procedure liable to being brought to judicial scrutiny/judgment under judicial review.

The Applicant avers in paragraph 5 of the Affidavit in support of the Application and paragraph 10 of the Affidavit in rejoinder that the proceedings of the Ad-hoc Committee as well as the proceeding of Parliament in violation of a right to a fair hearing can be subjected to Judicial review.

The respondent submitted the Committee recommended that the Applicant be held accountable for abuse of office for misleading Uganda Land Commission into allocation of land to individuals and entities following Presidential Directives which were non-existent.

It is the Respondent's submission that Parliament in approving the findings of the Ad-hoc Committee on the Naguru-Nakawa Land allocations were alive to the facts and law that they only have powers to make recommendations to the Executive which may or may not be implemented.

The Respondent is fortified in the above submission by Rule 220 of the Rules of Procedure of Parliament of Uganda which states that;

> *"A minister shall submit to Parliament an action taken report detailing what actions have been taken by the relevant ministry following the resolutions or recommendations of Parliament."*

It is the Respondent submission that the Applicant cannot challenge a recommendation of Parliament that is pending debate and consideration by the Executive in order to assess whether to implement the same or not.

The Respondent therefore invited this Court to find that the matter before it is not amenable to Judicial Review since the Applicant still has available remedies under the law.

Analysis

Judicial review 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 and legislature for consistency with the Constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

Judicial review as an arm of Administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

The effectiveness of a system of judicial review under Administrative law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has

suffered at the hands of the administration but generally for the maintenance of regime of rule of law in the country.

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 within 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 an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

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 applicant as a Minister of State for Lands, Housing and Urban Development is aggrieved by the findings of the Ad-hoc committee which investigated the Naguru Nakawa Land Allocations. These are acts of a public nature which fall in the purview of judicial review and this court is empowered to interrogate.

Article 42 of the constitution permits any person to apply to a court of law for judicial review against public bodies and/or agencies. The article provides that;
"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decisions taken against him/her."

Further, under ***Rule 7A (1) (c) of the Judicature (Judicial Review) (Amendment) Rules 2019***, among the factors to consider in whether an application is amenable to judicial review, the court must satisfy itself that the matter involves an administrative public body or official.

Rule 3A of the Judicature (Judicial Review) (Amendment) Rules (supra) is instructive on who can institute an application for judicial review;
"Any person who has a direct or sufficient interest in a matter may apply for judicial review."

The Applicant states that the committee recommended that she be relieved of her duties as a Minister of Lands, Housing and Urban Development due to the alleged abuse of office. This recommendation makes the Applicant to have direct and sufficient interest in the matter and thus she can apply for judicial review.

The Respondent contended that this application is prematurely brought before this Honourable Court. I have read the submissions of both Parties and I wish to state that the Respondent in its submission did not categorically set out the internal mechanism the Applicant had to undertake before filing this application. As already discussed, the Applicant has sufficient interest in the matter and thus,

she can file for judicial review since some actions of Parliament can ably be challenged by way of judicial review.

However, the applicant had available remedies which she would have used before rushing to court under Rule 222 of *The Rules of Procedure of the Parliament of Uganda No. 57 of 2022* which provides;
(2) Notwithstanding sub-rule (1), the House may reconsider its decision upon a substantive Motion for the reconsideration, moved under notice of not less than fourteen days.

Therefore, this application is amenable to judicial review although the applicant should have exhausted the available means provided under the Rules of Parliament.

Whether the application raises any grounds of judicial review?

In determining whether the grounds of this application warrant the grant of judicial review, this court is guided by the position of the law as variously upheld in different court decisions and precedents. Therefore, Judicial review can be granted on three grounds, namely;

Illegality; irrationality and procedural impropriety – Council of Civil Service Unions vs Minister for the Civil Service [1985] 1 A.C 374

An applicant who wishes to succeed in an application for judicial review must therefore as a matter of law, plead and prove that the decision complained of was arrived at either illegally, irrationally or there was procedural impropriety implying, flouting of well-known procedure in that regard.

In ***R (A) vs Secretary of State for the Home Department [2021]UKSC 37*** and
R (BF) (Eriteria) vs Secretary of State for the Home Department [2021] UKSC38,
The UK Supreme court observed that while applying for Judicial review, it is important for courts to have in mind the Constitutional principle of separation of powers. In this regard, Parliament enacts laws, wherefore the executive or public

bodies set out to apply the said laws and courts intervention is only warranted where any of the other two arms transgresses the well-established laws or legal principles.

From the outset therefore, I wish to state that the Judicial Review function by courts of law, has evolved over the years with the now overriding principle being that courts shall always exercise the same in a limited way.

In ***Gillick vs West Norfolk and Wisbech Area Health Authority [1986] AC 112***, the Supreme Court observed that courts would intervene only if the Minister or Public authority (in this case Parliament), ***"has by issuing a policy, positively authorized or approved unlawful conduct by others"*** i.e. if it misdirects officials as to their legal obligations or directs them to do something that conflicts with their legal duties. The court's intervention is justified in those circumstances because there is a general duty on public authorities (including Parliament) not to induce violations of the law by others and thereby undermine the rule of law.

NB: The applicant's counsel have consistently misapplied the case of ***MAKULA INTERNATIONAL LTD vs HIS EMINENCE CARDINAL NSUBUGA & ANOR [1982] HCB 15*** on the principle of illegality in judicial review. That decision has no application in judicial review matters and it was a decision on different aspects of illegality.

1ST ILLEGALITY;

The Applicant's counsel submitted that at page 5 of the minutes of proceedings of **26th April 2022** and indeed the proceedings of that day clearly show that the applicant interfaced with the committee. My lord it is pertinent to note that the members of the committee that interfaced and interrogated, interviewed, and deliberated on the involvement of the applicant in the allocations of Nakawa-Naguru land were two (2) that is Hon. Dan Kimosho and Hon. Kateshumbwa Dickson, my lord this contravenes Rule 197 of the Rules of Procedure of Parliament of Uganda, S.I No. 30 of 2021.

Rule 197(1) of the Rules of Procedure of the Parliament of Uganda 2011 provides that ''**Unless the house otherwise directs or these Rules otherwise**

provide, the quorum of a committee of the House shall be one third of the members ………."

It was their contention that the committee lacked the requisite quorum at the material time they sat and made inquiries, investigations and decisions concerning the involvement of the applicant in the allocations of land, the proceedings were thus irregular and the decisions illegal for lack of quorum and any recommendations reached are a nullity for arising out of an illegality.
The Respondent submitted that there was no illegality during the proceedings of the Ad-hoc Committee on the Nakawa-Naguru Land allocations on 26th April 2022 when the Applicant appeared before them.

Rule 197(1) of the Rules of Procedure of the Parliament of Uganda provides that;

Unless the House otherwise directs or these rules otherwise provide, the quorum of a Committee of the House shall be one third of its Members and shall only be required for the purpose of voting. (Emphasis ours).

Counsel for the Applicant conveniently misstated Rule 197 (1) of the Rules of Procedure of the Parliament of Uganda in a feeble attempt to misguide this Honourable Court on the requirement of quorum during the deliberations of the Committee.

It is the Respondent's submission that the quorum of the Committee of the House is only required to be one third of its Members at the point of voting on the findings to be presented to the House.

The signature sheet at the end of Annexture B to the affidavit of the Applicant which is the report of the Ad-hoc Committee on the Naguru-Nakawa allocations clearly illustrates that the Committee was comprised of 9 Members of which 5 Members appended their signatures to the Report. According to Rule 197 of the Rules of Procedure of the Parliament of Uganda, a minimum number of 3 Members is required to sign the report.

Analysis

Whether any of the decisions complained of is bad for illegality. A public authority will be found to have acted unlawfully if it has made a decision or done

something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of reasonableness); or without observing the rules of natural justice (unlawful on the grounds of procedural impropriety or fairness)*. See* ***Dr. Kitara David Lagoro vs Gulu University Misc. cause No. 10 of 2017***

In the **Gillick vs West Norfolk** case cited above, court held that ***"A policy is unlawful if it sanctions, positively approves or encourages unlawful conduct by those to whom it is directed. In such cases the public authority will have acted unlawfully by undermining the rule of law in a direct and unjustified way. The test requires the comparison of what the relevant law requires and what a policy says regarding what a person should do"***

The Applicant's first leg in this regard is that Ad-hoc committee did not have quorum. The Applicant submits that proceedings conducted by two (2) members out of the nine (9) members cannot therefore be lawful for lack of quorum.

I wish to state that evidence in such applications is led by way of affidavits wherein the Parties set out their case supported by the relevant documents.

This court has carefully read the Notice of Motion and the Affidavit in support of this application deponed by the Applicant from paragraphs 1 to 32 but I have not found any paragraph alluding to the issues of quorum. In the absence of such an averment, any new issue raised in submissions amounts to evidence given at the bar which is not admissible. The applicant cannot present or argue a case which was never pleaded and no evidence was led. This ground is therefore an afterthought which is being smuggled in through submissions.

Furthermore, the Evidence Act is instructive on the burden of proof of any fact that a party seeks to rely on in order to have judgment entered in their favor. ***See sections 101 and 103 the Evidence Act.***

The issue of quorum was not pleaded by the Applicant in her pleadings and no evidence by way of affidavit was adduced by the Applicant proving that on the

26th day of April 2022 the Ad-hoc committee proceeded with only two (2) members instead of the nine (9) members.

It is trite law that parties are bound by their pleadings and cannot depart from them. See Order 6 r 7 of the Civil Procedure Rules. This position was reaffirmed in the case of ***Kitaka and 12 Ors vs Mohamood Thobani Civil Appeal No 20 of 2021*** which cited with approval the case of ***Jani Properties Limited vs Dar es Salaam City Council [1966] EA 281*** wherein Court rightly observed that;

> "*the parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record moreover, the Court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleading*".

The issue of quorum is a question of fact which ought to be left to Parliament to determine in accordance with rules of procedure. The court should not be burdened with determining what the required quorum was unless it is glaringly an issue that is provided for under the Constitution. The evidence on record notwithstanding shows that there was quorum at the meeting. This limb of the challenge on illegality fails.

2nd ILLEGALITY

Secondly the applicant also challenged the ad-hoc report for making the following observation; **"the committee observed that the minister brought to the attention of ULC presidential directives which were not documented, traced or even availed to the committee……"**

Counsel submitted that the Speaker asked the Learned Attorney General Mr. Kiryowa Kiwanuka about the mode of Presidential directives and his answer was that there is no standard for receiving a presidential directive and that there is nothing that stops the President from calling and instructing someone.

Accordingly it was counsel's submission that for the committee to conclude that the presidential directives were non-existent simply because they were not documented was an error of law and there is no legal basis for that conclusion,

the committee did not even show whether it took initiatives to interact with the President to verify the authenticity of the information of the Minister maybe this could have aided it in proper decision making.

The applicant also challenged the report of the Ad-hoc committee for illegality because according to her it was presented before Parliament without minutes of the proceedings. It is a requirement of the rules of procedure of Parliament that a report shall be tabled with minutes and this was omitted.

The respondent's counsel submitted that a copy of the Parliamentary debates (Hansard) of Wednesday 18th May 2022 at 3870 para 3.39 the Hon. Dan Kimonsho informed the Hon. Speaker and colleagues that before he starts reading the report of the Ad-hoc Committee on the Naguru-Nakawa Land allocations, he laid on the table a copy of the report and the minutes of all the meetings that were conducted by the Committee.

The Respondent submits that the Ad-hoc Committee on the Naguru-Nakawa Land allocations complied with Rule 219 of the Rules of Procedure of Parliament of Uganda which provide that;

The minutes of the proceedings of the Committee shall together with the report of the Committee be laid on table by the Chairperson, Deputy Chairperson or a Member of the Committee nominated by the Committee, when reporting to the House.

It is therefore the Respondent's submission that the Applicant has not demonstrated any error of law and the evidence is clear on record that the minutes of ad-hoc committee were before parliament.

Analysis

In carrying out the function of the office, the President in a presidential system such as Uganda may issue orders to agents and agencies of the executive branch. These orders may set out government policies, issue directives or command action relating to functions of the executive arm.

Because executive orders are generally self-enforcing, once the government official acts then the order is carried out. Executive orders start and end with the President, but as in all principal-agent relationships, executives rely on subordinates to carry out their directives.

The observation of the committee ***"the committee observed that the minister brought to the attention of ULC presidential directives which were not documented, traced or even availed to the committee……"*** was arrived at after looking at all the facts and circumstances surrounding their investigations. This was informed by evidence presented to the committee.

It is true that President can issue oral directives but this should not be used or abused to extremes by the delegate. The delegate must act cautiously and should not use the presidential directive to break the law and the same must be applied with greater circumspection. The oral or verbal presidential directive must be strictly applied without any additions and any additions will be unlawful. Otherwise, the power or mandate may be misinterpreted and applied when it is not applicable in some respects.

The principle of separation of powers has the effect that the legislative organ cannot take away from the President or confer on others functions of a strictly executive nature. ***AGF v Abubakar [2007] 10 NWLR (Pt 1041) p. 1 at 85 para. D***

The Ad-hoc committee cannot be faulted and it is in their wisdom to make such observation if the applicant failed to convenience them about the Presidential Directive which she alleged to have used to influence the allocation of land. They were exercising their powers based on evidence. However, the same report has to be placed before the President and the issue would best be resolved under the system of checks and balances.

The applicant further contended that report was discussed with the minutes of the meetings. The same averment is totally denied by the respondent and reference is made to the Hansard. The court is satisfied as to existence of minutes upon examination of the facts and evidence on record and confirms for itself that the condition of presenting minutes of the meeting with the report was met.

It is convenient at this point to consider to what extent this court as a review court would go further in reviewing the fact-finding process. A finding of fact by a decision-maker like (ad-hoc committee) must be based on some material that tends logically to show the existence of facts consistent with the finding and the reasoning supportive of the finding.

This court has clearly, understood the facts upon which the decision was based since the Hansard clearly show the minutes were presented before the debate. There may be a disagreement as to whose version of the facts is true upon which the decision is based and that there was no material error of fact on the minutes of the meeting since the hansard is presumed to capture the true reflection of what transpired in the House on that day.

The supervision of court of the fact-finding process is usually limited to presumption of bare minimum in favour reviewing errors of fact. Therefore, the reviewing court can only intervene if there is a mistake of fact. But in order to establish that a mistake has occurred, it will often be necessary to introduce fresh evidence.

3RD ILLEGALITY

The applicant's counsel submitted that, on page 3902 of the Hansard, it is clear that the full House of Parliament resolved to cancel all transactions that had been undertaken by the Uganda Land Commission in regard to the Naguru-Nakawa land allocations. In the first instance, this in effect over ruled the findings and resolutions of the Ad hoc committee and secondly, parliament in doing so, effectively attempts to impeach the titles of the beneficiaries of the Naguru-Nakawa land allocations contrary to the well-established statutory positions. This clear violation of the law tantamount to an illegality and warrants the quashing of the entire resolutions of Parliament in that regard.

Section 59 of the Registration of Titles Act Cap 230 provides that registration of title shall be conclusive evidence of title regardless of any informalities and irregularities preceding the registration on the title. **Section 176 of the Registration of Titles Act Cap 230** provides that a registered proprietor can only be ejected or cancelled as such for fraud. The foregoing express provision of law implies that a registered proprietor's title can only be impeached upon an express allegation of fraud leveled against them and the same thereafter proved to the

very well-known standards at law after the adducing of evidence before a competent tribunal.

In the present case, following the land allocations many of the beneficiaries satisfied the statutory requirements of executing the relevant documents, payment of the relevant dues being, stamp duty and registration fees and thereafter acquired land titles. With utmost respect, Parliament could not thereafter, vest upon itself authority to cancel in their entirety the transactions without following the law on fraud and proof thereof. This tantamount to an illegality by reason whereof counsel prayed that the resolutions of Parliament be quashed.

The Respondent submits that the Applicant has departed from its pleadings. A perusal of the Application and Affidavits illustrates that the Applicant did not set out to challenge the alleged resolution of Parliament to cancel all transactions that had been undertaken by the ULC in regard to the Naguru- Nakawa Land allocations. It is trite law that parties are bound by their pleadings and cannot depart from them. See Order 6 r 7 of the Civil Procedure Rules.

ANALYSIS

The Applicant further submits as a second leg of her argument on illegality, that the full House of Parliament resolved to cancel all transactions that had been undertaken by the Uganda Land Commission in regard to the Nakawa- Naguru land allocations which in effect over ruled the findings and resolutions of the Ad-hoc committee and that in doing so, parliament effectively attempted to impeach the titles of the beneficiaries of the Nakawa-Naguru land allocations contrary to the well-established statutory positions.

From the facts on record, it is evidently clear that various stakeholders were summoned to interact with the ad hoc committee of Parliament investigating the Nakawa - Naguru land allocations.

Be that as it may, whereas the committee made recommendations to uphold some transactions, it made a decision to cancel others. Noteworthy is that many of the land allocatees already had land titles.

While deliberating on the ad-hoc committee report, no evidence was ever availed of the review of the evidence presented to the committee by Parliament, nor were the parties to the allocations ever summoned again before a contrary decision, overruling the earlier one of the ad hoc committee was made.

It is imperative to comment that the land in issue is titled land wherefore parties to whom the same was allocated went ahead and acquired land titles thereby becoming registered proprietors. See ***David Sejjaaka Nalima vs. Rebecca Musoke; Court of Appeal Civil Appeal No. 12/1985*** .

All registered land in Uganda, the Naguru - Nakawa land being no exception, is land therefore under the operation of the Registration of Titles Act. The Registration of Titles Act applies to the said land and the express provisions thereunder take effect in dealing with it. See section 59 of the Registration of Titles Act.

The foregoing statutory provision makes it clear that once any person is registered as proprietor of land on a certificate of title, the same is conclusive evidence of ownership.

No fraud was either pleaded or proved against the allocatees of the land to defeat their registered titles and neither were they heard by the full house of Parliament to warrant the recommendation for cancellation of their titles.

The courts have unfettered powers to ensure that the legislature stays within the ambit or statutory limit of functional operation. Where, however, it exceeds such powers, the act would amount to an illegality and which the courts, acting as the guardian of the Constitution, ought to ensure the maintenance of an equilibrium in the distribution of functions of government, and thus has the power to pronounce its illegality. ***See Eze v Gov. Abia State (2010) 15 NWLR (pt 1216) p 324.***

This court finds that the decision to cancel the allocatees' land titles or recommend the cancellation of the entire transaction without following the express provisions of the Registration of Titles Act or Land Act was illegal. This court notes that this ground of challenge was not specifically pleaded but it is derived from the evidence on record of the hansards which are specifically attached to the affidavit in support.

IRRATIONALITY

The applicant's counsel submitted that the Parliament's adoption of the report with an amendment that <u>the entire transaction be cancelled</u> is undoubtedly unreasonable and out of place. The Parliament in arriving at such a decision ignored all reason which had been fronted by the Ad-hoc committee in the report as having informed their decision.

The Chairperson further during the tabling of the Committee report argued authoritatively after a debate on the cancellation of the entire transaction stating thus: *"We examined these companies, we sent for files and found that some companies were genuine- they had all the financials and what it takes. We lifted the veil and asked for the names of the owners of these companies. It came out clearly that some were genuine renowned businessmen. If the Speaker allows, we can tender that document with the names. We also found especially with those that we recommend for cancelling, that these were clear speculators who had never been in business. The committee weighed that if we cancel, we are only creating another bonanza for technocrats to steal again, from another category of people. That is how we recommended. "*For the Parliament to have ignored such sound reason from the Committee which scrutinized the evidence was extremely unreasonable.

It was the applicant's contention that where an Ad hoc committee has summoned witnesses, reviewed evidence and cross examined on the same, it is only reasonable that the same Committee makes a full and final finding in that regard. To allow the full house of parliament that has not had an opportunity to engage and interact with the witness and evidence in issue to make a decision contrary to that of the committee would be unreasonable and defeat the *Wednesbury's* principle, the Parliamentarians acted in excitement.

The Respondent's counsel submitted that the recommendation of the Ad-hoc Committee of the Naguru-Nakawa Land allocations that the Applicant be held accountable for abuse of office for misleading ULC into allocation of land to individuals and entities following Presidential directives which were non-existent was the reasonable deduction given the facts and evidence before it, and was in line with logic and acceptable moral standards. The decision was therefore reasonable and rational.

The Respondent submits that Parliament delegates its power to committees for efficient discharge of its functions and upon conclusion of the assignment, the committee reports back to Parliament, whereupon the report is debated and the recommendations are wholly adopted, adopted with amendments or rejected by Parliament. Parliament is not bound to adopt the recommendations of the Ad-hoc Committee as it is executing this assignment for and on behalf of the House.

The evidence on record shows that Parliament debated the recommendation by the Ad-hoc Committee of the Naguru-Nakawa Land allocations on the manner in which land was allocated to different developers by the ULC. The House in its wisdom was of the opinion that *since the allocations were marred in irregularities and illegalities, the appropriate thing to do was to cancel all the titles and the land reverts back to ULC as public land which was adopted by the House.*

It is therefore the submission of the Respondent that recommendation of the House to the Executive falls within a range of possible, acceptable outcomes which are defeasible in respect of the facts and law and therefore invite this Honourable Court to find that the recommendation was not irrational, unreasonable and out of place as alleged by the Applicant.

ANALYSIS

The courts in some situations have exhibited a willingness to intervene on substantive grounds only if the decision in question crosses an especially high threshold of unreasonableness. The court should be able and willing to evaluate the reasonableness of the decisions more rigorously than usual in order to uphold the rule of law. However, in exercising the powers of review, judges ought not to imagine themselves as being in the position of the competent authority when the decision was taken and then test the reasonableness of the decision against the

decision they would have taken. To do that would involve the courts in a review of the merits of the decision, as if they were themselves recipients of the power.

In the case of ***Council of Civil Service Union vs. Minister for Civil Service [1985] AC 374 ALL ER 935. Diplock J stated thus;***

"***By 'irrationality', I mean what can now be succinctly referred to as 'Wednesbury's unreasonableness'...It applies to a decision which is so outrageous in defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. Whether the decision falls within this category is a question judges by their training and experience should be well equipped to answer, or else there would be something wrong with our judicial system.***"

To determine this ground, it is therefore important to assess and analyze whether in arriving at the decision, the body acted in a way so outrageous that it defeated any logic. Wednesbury unreasonableness is associated with extreme behavior.

In ***THUGITHO FESTO VS NEBBI MUNICIPAL COUNCIL Misc Application No. 15 of 2017,*** Justice Stephen Mubiru at page 21 of his ruling held;

> *"In judicial Review reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defeasible in respect of the facts and law. Decision makers remain free to take whatever decision they deemed right in their conscience and understanding of the facts and the law, and not be compelled to adopt the view expressed by other members of the administrative tribunal. "Reasonable" means here that the reasons do in fact or in principle support the conclusion reached".*

The decision of the committee to hold the applicant accountable for abuse of office for misleading ULC into allocation of land to individuals and entities following Presidential directives which were non-existent was the reasonable deduction given the facts and evidence before it, and was in line with logic and acceptable moral standards. The decision was therefore reasonable and rational.

From the facts before this Honorable court, it is clear that the final report arose from an initial finding and report by the ad-hoc committee of Parliament that had been appointed and mandated to investigate into and make recommendations in regard to the Nakawa - Naguru land allocations. Imperative to note is that indeed as submitted by counsel for the Applicant, it is this ad-hoc committee that summoned and interacted with stake holders and witnesses and also reviewed documents that they deemed relevant.

However, when making their final report, the full house of Parliament, made it without interacting with the parties involved to assess the evidence and give them an option to explain their side of the story before taking a decision affecting them. The Ad-hoc committee had made recommendations guided by the evidence received and had heard some of the parties concerned.

The final decision made by Parliament involved a material defect since it ignored the considerations which the ad-hoc committee had based its decision and it was irrational or apparently illogical or arbitrary. The decision to cancel the entire transaction was made by inadequate evidence or incomprehensible reasons and was made on the basis of material mistake or material disregard of fact.

I therefore find that the decision to overrule the decision of the ad-hoc committee was irrational and this part of the report and amended recommendation by Parliament-that ***the entire transaction be cancelled*** should be declared to be of no consequence to the ad-hoc report of the committee. The applicant should have produced a resolution of parliament containing this recommendation to this court for quashing. But the applicant rushed to this court without the same and this court has nothing tangible to quash.

***PROCEDURAL IMPROPRIETY*:**

Counsel for the applicant submitted that It is a fundamental requirement of natural justice that when a person's interests are affected by a judicial or administrative decision, he or she should have an opportunity both to know and understand any considerations made against him or her and make representations to the decision maker to counter the considerations.

Article 28 (1) of the Constitution of Uganda 1995 as amended provides that; *"…….a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."*

Also Article 44 (c) still of the Constitution of Uganda 1995 as amended provides that*; "Notwithstanding anything in this constitution, there shall be no derogation from the enjoyment of the following rights and freedoms - a right to fair hearing"*

The applicant further contended that whereas the committee was established in accordance with the law, while exercising its mandate it did not exercise impartiality which is a fundamental ingredient of a fair hearing.

The Applicant was not allowed to ably explain her involvement as then the then Minister of State for Lands, hence making her interactions with the committee a mere event to which she was invited.

Counsel submitted that the minutes of the Ad-hoc committee of Parliament do not depict an ideal fair hearing. The minutes do not indicate that the Applicant was permitted to indeed present her case before the Committee.

The Respondent submitted that that the Applicant while appearing before the Committee was given an opportunity to respond to all the allegations as raised.
The Minutes of the Ad-hoc Committee of the Naguru-Nakawa Land allocations and specifically the proceedings of 26th of April 2022, shows that the Applicant was briefed by the Chairperson on the mandate of the Committee, she was given opportunity to submit documentary evidence, all the allegations were brought to her attention and responded to the same in detail.

The Respondent submits that there is no evidence before the Court indicating that the Applicant requested for more time to allow her to answer any of the allegations that were raised against her and the same was denied. Further the Respondent submits that the attendance of the Applicant before the Ad-hoc Committee is proof she had prior notice and context of the terms of reference of the Ad-hoc Committee of the Naguru-Nakawa Land allocations.

The Respondent therefore denies having denied the Applicant a fair hearing within the meaning of the Article 28 of the 1995 Constitution and invite this Court to find that the Applicant was accorded a fair hearing.

The Applicant further contends that at page 31 of the report of the Ad-hoc Committee of the Naguru-Nakawa Land allocations and throughout the report, the Committee reported interference by Ministers, however that only the Applicant was singled out which according to her is a clear sign of bias by the Committee against the Applicant.

The Respondent contends that it is interesting to note at page 32 of the report that the Ad-hoc Committee of the Naguru-Nakawa Land allocations goes on to find that Hon. Mwesigwa Rukutana then Deputy Attorney General, Hon. Betty Amongi then Minister of Lands, Housing and Urban Development and Hon. Baguma Isoke then Chairperson of ULC were found to have cause Government financial loss and were found culpable for the same. This clearly demonstrates that there was no bias against the Applicant as alleged.

ANALYSIS

Procedural impropriety was defined in **IGNATIUS LOYOLA MALUNGU vs INSPECTOR GENERAL OF GOVERNMENT HCMC NO.059 OF 2016** citing the case of **COUNCIL OF CIVIL UNIONS vs MINISTER FOR THE CIVIL SERVICE [1985] AC 2** as;

It is when there is a failure to act fairly on the part of the decision – making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute by which such authority exercises jurisdiction to make a decision

This concept is founded upon the principle of natural justice. The "twin pillars" of procedural impropriety have been described as "the rule against bias" and "the right to be heard". The right to be given reasons for a decision is also an integral element of procedural fairness.

Procedural impropriety therefore, generally refers to failure by the decision making body to observe the rules of natural Justice or failure to adhere to well

established procedural fairness. In Uganda, these rules are generally found in Articles 28, and 44 of the Constitution, 1995.

Article 28 (1) of the Constitution of Uganda 1995 as amended provides that;

" ....a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."

Also Article 44 (c) still of the Constitution of Uganda 1995 as amended provides that;

"Notwithstanding anything in this constitution, there shall be no derogation from the enjoyment of the following rights and freedoms - a right to fair hearing"

The foregoing Constitutional provisions set out the crux of what is tantamount to a fair hearing which also informs as to whether or not there was procedural impropriety especially in respect of a court or tribunal.

The other principle of procedural fairness is embedded in Article 42 of the Constitution which provides that;

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against her.

The duty of fairness requires all public bodies to perform their duties fairly and any person who appears before them to treated fairly especially where such decision will adversely affect the person's rights or interests or when a person has a legitimate expectation of being fairly treated. What fairness requires will vary according to the circumstances of every case or public body.

The Applicant's evidence clearly states that she was invited and the purpose of her invitation was made known to her, but she was not given enough time to explain herself. Article 28 (3) of the constitution, is instructive on what a tribunal should fulfill under the right of fair hearing. It is my well-considered view that Ad

hoc committee complied with Article 28, not to be given enough time is subjective, the Applicant did not take an extra step to explain what she meant by enough time. Enough time may mean one (1) minute or one (1) day depending on the circumstances.

Essentially, procedural fairness involves elementary principles that ensure that, before a right or privilege is taken away from a person, or any sanction is otherwise applied to him or her, the process takes place in an open and transparent manner. It is also called 'fair play' in action and embraces the means by which a public authority, in dealing with members of the public, should ensure that procedural rules are put in place so that the persons affected will not be disadvantaged and are treated justly and fairly.

Article 42 of the Constitution provides;
Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

The applicant seems to confuse the right to just and fair treatment in administrative decisions under Article 42 with the right to a fair hearing under Article 28 of the Constitution. The two rights are quite different and distinct since the latter is only applicable before an independent and impartial court or tribunal established by law. Therefore, Parliamentary proceedings or investigations cannot be treated as court proceedings in order to require fair hearing as envisaged under Article 28 of the Constitution.

In working out what amounts to 'justly and fairly' treatment, the courts are wary of over-judicialising administrative process. They recognise that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures of like a court or tribunal. The nature of the ad-hoc committee proceedings of Parliament was inquisitorial /investigatory in order to obtain as much evidence as possible. The applicant was indeed surprised that he was never asked a lot of questions during his interface with the committee members. The manner in which the proceedings were conducted was procedurally sufficient to constitute an opportunity to be heard or a hearing of the applicant fairly and justly in the circumstances of the present case.

In the case of ***Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009***. The Court of Appeal delivered itself as follows;

> "*There is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed*".

The court should look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to a question of whether a decision properly taken would have been any different or would have benefited the applicant. The applicant as an afterthought believes she should have been given more than what she received as a fair hearing or just and fair treatment while she appeared at Parliament. The respondent should accord the applicant a due process in order to arrive at a decision which is fair and just as provided under Article 42 of the Constitution. In the case of ***R v Chelsea College of Art and Design, ex p Nash [2000] ELR 686***, the court held that *"would a reasonable person, viewing the matter objectively and knowing all the facts which are known to the court, consider that there was a risk that the procedure adopted by the tribunal in question resulted in an injustice or unfairness"*

The applicant did not set out any evidence to prove that she was not given a fair hearing apart from merely alleging every limb of what amounts to a fair hearing and contending in submissions that they were not observed. This ground has not been proved by the Applicant. The Applicant has failed to prove this ground.

Whether there are any remedies for the applicant?

The applicant has sought general damages. In submission she has sought to be awarded 1,000,000,000/= as general damages. I do not know how she arrived at such a huge figure. What would be the basis for such a claim for an 'obscene' amount as general damages? Such claims are intended to scandalize the court and paint a picture that litigation is a mode of making free money in Ugandan courts. This should be seriously loathed and discouraged.

Damages are only awardable in judicial review when the tort of misfeasance in public office (tort of abuse of office) is proved;

When an official acts maliciously in the performance of his duty and with the intent of inflicting or injury on a person; or where an official knowingly acts without lawful authority and causes damage to some person. ***See Ochengel Ismael & Another v AG HCMC No. 274 of 2019***

This tort comes into being when there is conscious abuse of power on the part of a public authority, either by malice or knowledge of invalidity on the part of the concerned official. It includes malicious abuse of power, deliberate maladministration and other unlawful acts committed by a person holding a public office. The compensation is intended to address the loss and not for the protection of basic rights.

This court has not found any abuse of authority or power by Parliament, the applicant is not entitled to any damages.

This application fails on all the orders sought and the same stands dismissed.

Each party shall bear their costs.

I so Order

NB: *"The judiciary must exercise self-restraint and not to encroach into the executive or legislative domain. Judges must maintain judicial self-restraint while exercising the powers of judicial review of administrative or legislative decisions. Excessive interference by the judiciary in the functions of the executive is not proper. The machinery of the government would not work if it were not allowed some free play in the joints"*

SSEKAANA MUSA
JUDGE
15th August 2022