

MISCELLANEOUS CAUSE NO. 0017 OF 2023

VERSUS

1. An order for Certiorari to call for and quash the decision of the 1st Respondent cancelling the applicant's proprietorship over the property comprised in Kyadondo Block 121 Plot 126 land at Nangabo on the basis that;
 - i) The process and acts of the 1st respondent in cancelling the applicant's proprietorship were in contravention of section 91 of the Land Act and sections 176 and 177 of the Registration of Titles Act and amounted to usurping powers of the High Court;

ii) The acts of the 1st respondent were in violation of Article 42 and 139 of the Constitution of Uganda, 1995 as amended.

- b) A consequential order doth issue reinstating the applicant as the registered proprietor of the suit property;
- c) An injunction restraining the 1st respondent from registering any instrument adversely affecting the applicant's proprietorship over the suit property save for, in accordance with the law and further an injunction doth issue restraining the 2nd, 3rd and 4th respondents from evicting or in any way interfering, whether by themselves, or their servants or agents, with the applicant's use and enjoyment of the suit property;
- d) General damages;
- e) Exemplary damages
- f) Costs of this application be provided for.

The grounds supporting this application are contained in the affidavit of Keeya Francis; the applicant attached to the application which briefly state that;

- a) The applicant was until the 2nd December, 2022 the registered proprietors of the property comprised in Kyadondo Block 121 Plot 126 land at Nangabo, having been registered as proprietor of the same on 2nd November, 2017, the same having been transferred to him by the Administrator of the estate of the late Yowana Nadawula, and has since its acquisition been in possession and use thereof to date and hold certificate of title hereto.
- b) The property was first on the 20th June 1966 registered into the names of Yowana Nandawula and transferred to Ddamulira Nasani on the 6th October, 2017 as the Administrator of the estate of the Yowana Nandawula.

Ddamulira Nasani transferred the land to the applicant who got registered as proprietor on 17th November, 2017.

- c) The applicant bought the land in 2017 after carrying out due diligence both at the locus and in Wakiso land office and he found that the land he intended to buy was occupied by and registered in the names of Ddamulira Nasani, the vendor.
- d) The applicant was informed by a colleague who had acquired the gazette and upon seeing the notice in the gazette, the Applicant contacted one of his agents who conducted a search in the land's registry and the search report indicated the 1st respondent had cancelled the applicant's proprietorship of the land and restored the name of the late Yowana Nandawula on the 2nd December, 2022 without a fair hearing.
- e) In the ruling the 1st respondent states that a notice of intention to effect changes in the register was delivered by postal on an address unknown to the applicant and published on the 26th of October, 2022 in the Daily Monitor newspaper on page 36 yet there is no such notice in the newspaper.
- f) Whereas the alleged notice was published on the 26th October, 2022, the meeting occurred on 24th October, 2022 two days before the alleged publishing of the nonexistent notice, which shows that the intention of the respondents not to serve the applicant so that he attends the meeting.
- g) The applicant still holds the certificate of title to the suit property to date which title is conclusive evidence of ownership of land and the applicant is in possession and use of the same. The 1st respondent has to date not notified the applicant of their decision to cancel his proprietorship over the suit property and or the basis for that decision.

- h) The 1st respondent has however issued a notice published in the gazette on the 23rd of December, 2022 stating that the land title of the suit land was lost and will issue a special title in a month's time which is effective 23rd January, 2023 yet the land title is in the applicant's possession.
- i) The 2nd, 3rd and 4th respondents have through her servants and/ or agents attempted to get onto the land the land purportedly to open up boundaries and there is every threat that they intend to dispose it off and/ or evict the applicant therefrom.
- j) That the actions of the 1st respondent of cancelling his land title without a fair hearing were unfair and resulted into unjust treatment of the applicant.
- k) The decision of the 1st respondent to cancel the applicant's land title on ground of fraud is illegal, irrational, ultra vires and unreasonable and should be condemned and sent aside by this Court.

The 1st respondent filed its affidavit in reply deposed by Ndahagire Mark, a registrar of titles with the 1st Respondent opposing this application on grounds that;

- a) The application is improper, incompetent, misconceived, frivolous and an abuse of court process.
- b) The application for judicial review is only available where the statutes do not provide for any other remedy to the aggrieved party.
- c) The applicant has not exhausted the existing remedies available within the public body or under the law before filing this application for judicial review.
- d) The 1st Respondent is charged with statutory duty of keeping the sanctity of the land registrar with special powers to cancel certificates of titles issued illegally, irregularly or erroneously.
- e) The perusal of the register reveals that the office of the 1st respondent received a complaint dated 23rd June, 2022 from the 2nd Respondent

requesting for cancellation of illegal transactions on the certificate of title in respect of the suit land.

- f) Upon receipt of the complaint, as part of the investigations on the 1st July, 2022, the office of the 1st respondent wrote a letter to the deputy registrar of the High Court Family Division to verify the letters of administration vide HCT-00-FD-AC-1809 of 2017 of the estate of the late Yowana Nandawula granted to Ddamulira Nasani.
- g) On the 27th July, 2022, the High Court Family Division responded to our letter stating that according to their records, Administration Cause No. 1809 of 2017 does not exist in the Family Court Administration Cause Register book.
- h) Before the cancellation of the applicant's certificate of title, the office of the 1st respondent on 23rd September, 2022 issued a notice of intention to effect changes in the register to all the interested parties including the applicant herein for a public hearing scheduled on 24th October, 2022 at 10:00AM.
- i) The notice of intention to effect changes was duly served unto the applicant herein as per the law through the registered mail address receipt no. B-GPO-197-1903 and the same was also published in the Daily Monitor publication dated 28th September, 2022 at page 36.
- j) On the 24th October, 2022, the public hearing was accordingly conducted as scheduled by the office of the 1st respondent in the presence of the complainants and absence of the respondents the applicant herein despite being duly served.
- k) On the 22nd of November, 2022, the office of the 1st respondent invoked its powers under section 91 of the Land Act and made a decision to cancel the entries of Ddamulira Nasani and Keeya Francis for having illegally entered in the register and reinstate the late Yowana Nandawula as the registered proprietor of land comprised in Kyadondo Block 121 Plot 126 land at Nangabo.
- l) The letters of administration used to register Ddamulira Nasani on the suit property were not authentic and therefore he had no powers to transfer to the suit property to the property.

The applicant was represented by *Kanyesigye Emmanuel & Tugumisirize Emmanuel* whereas the 1st respondent was represented by *Ms. Arinaitwe Sharon* and the 2nd, 3rd and 4th respondents by *Mr. Madaba Samuel*.

The parties proposed the following issues for determination by this court.

1. Whether the decision to cancel the applicant's certificate of title was tainted with illegality and procedural impropriety.

2. What remedies are available to the parties?

The parties were ordered to file written submissions which was accordingly done. Before I can delve into the determination of the issues raised by the applicant, the respondents raised a preliminary point of law as to whether this application is properly before this court. I will not delve in the determination of this point of law since it was belatedly raised during submissions.

Determination

Whether the decision to cancel the applicant's certificate of title was tainted with illegality and procedural impropriety.

The applicant submitted that the 1st respondent is not vested with the power and or jurisdiction to cancel certificates of title on allegations of fraud as the powers are the preserve of the High Court. At the time the 1st respondent cancelled the applicant's title, Ddamulira Nasani who is accused of fraud was no longer the Registered Proprietor as he had already transferred the same to the applicant who is not accused of any wrong doing.

The applicant contended that the respondents, Ddamulira Nasani (who is a Maternal Uncle of the respondents) allegedly used forged letters of Administration and misrepresented to the 1st respondent as the real administrators and got registered and went on to sell the suit land to the applicant, an innocent party who is a bonafide purchaser for value without notice.

The actions of Ddamulira Nasani amount to alleged fraud and as such the 1st respondent should have left the matter to court to proceed and be determined

basing on those allegations other than to rely on them to cancel the applicant's title without a court order.

The applicant further submitted that the 1st respondent failed to serve the applicant or conducted a hearing without effective service on the applicant. It was the applicant's case that the 1st respondent never served a hearing notice to the applicant and yet the respondents knew his physical and lawyers addresss which according to him amounted to unfair treatment since it denied him an opportunity to be heard.

It was contended that the applicant should have been served directly or through his lawyers like it was with the plaint and summons in Civil Suit No. 387 of 2022 but this was never done by the 1st respondent. The failure to effect service on the applicant amounted to unfair and unjust treatment and the resultant decision for the cancellation of the applicant's title is a nullity.

The 1st respondent submitted that the office of titles acted within the confines of the law in the process that led to the cancellation of the Special Certificate of Title comprised in Kyadondo Block 121 Plot 126 at Nangabo. The applicant's registration was illegally procured using unauthentic letters of Adminsitration for the Estate of Yowana Nandawula the original owner of the disputed land.

The 1st respondent properly followed the procedure as set down under section 91 of the Land Act which provides before the Commissioner Land Registration, can exercise to rectify or cancel a title, she is mandated to issue a notice of atleast 21 days in a prescribed form to any party likely to be affected by such decision.

The 1st respondent submitted that the 1st respondent on 23rd September, 2022 issued a notice of intention to effect changes inviting the applicant for a public hearing on 24th October, 2022 at 10:00am and the same was duly served unto the applicant through his registered mail address P.O.Box 7184 Kampala on the 27th day of September, 2022.

The 2nd-4th respondent counsel submitted that 2nd respondent filed a complaint dated 23rd June 2022 with the 1st respondent requesting for the cancellation of the

illegal transactions on the certificate of title in respect of land comprised in Kyadondo Block 121 Plot 126 land at Nangabo.

On the basis of the complaint/letter which was citing illegalities, the 1st respondent conducted an investigation in respect of the suit land and summoned all the concerned parties as required by law for a public hearing and thereafter made a decision. It was their submission that the applicant's counsel contention that the 1st respondent exceeded his powers and therefore committed an illegality should be treated with the contempt it deserves.

The 2nd-4th respondent's counsel submitted that the Amendment Order stipulates that a notice of intention to effect changes in the Register dated 23rd September 2022 was issued, posted in the Post Office to the Applicant's address and was also published in the Daily Monitor of 28th September 2022.

Analysis

In Uganda, the principles governing Judicial Review are well settled. ***Rule 3 of the Judicature (Judicial Review) Amendment Rules, 2009*** defines judicial review as the process by which the High court exercises jurisdiction over the 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. Judicial review of administrative action was founded on the premise that a public body is entitled to decide wrongly, but is not entitled to exceed the jurisdiction it was given by statute.

The 1st respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public. The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment. ***Rule 1A of the Judicature (Judicial Review) (Amendment) Rules*** provides that the objectives of the Judicial Review Rules are to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality.

The 1st respondent received a complaint from the 2nd respondent contending and alleging that they had registered the a person on their certificate of title with forged letters of Administration and illegally processed a special certificate of title and procuredhis registration as the administrator of the Estate of the Late Nandawula Yowana.

It bears emphasis to note that the said Ddamulira Nasani procured forged Letters of Administration in 2017 vide High Court Family Division No. 1809 of 2017. The 2nd -4th respondents had earlier on 21st day of February in 2012 had duly obtained Letters of Administration from the High Court Family Division vide HCT-00-FD-AC-620 of 2012 of the same Estate of the Late Nandawula Yowana who was the registered proprietor of the above described land comprised in Kyadondo Block 121 Plot 126 at Nangabo.

The said Ddamulira Nasani got registered upon presentation of the said forged letters of administration which never existed at all and it was therefore illegal and baseless in law. The 1st respondent in their investigation confirmed from the court that indeed the said letters were forged and never existed on the court record.

The 1st respondent conducted a hearing and found that the letters of Administration used by a one Ddamulira Nasani as an Administrator of the Estate of Late YowanaNandawula which in turn transferred to Keeya Francis were not authentic and the entry was eneterd in error because of the following;

- 1) According to the letter written by Deputy Registrar, High Court Family Division dated 30th September, 2020 confirms that Administration Cause No. 1809 of 2017 according to the Register of 2017, the last number registered was AC NO 1732 of 2017 under the names of Capt Kyarimpa Nathan (deceased) and Kabahubya Deboah as the applicants this means that Ddamulira Nasani never filed an application for grant of Letters of Administration to the Estate of the Late Yowana Nandawula and there are no such in court Records.

The 1st respondent conclusively stated that the letters of Administration used by a one Ddamulira Nasani to obtain registration was not authentic.

It is clear to this court that the said Ddamulira Nasani illegally and wrongfully obtained registration and the special certificate of title which in my view is established without alluding any fraud which is a preserve of High Court. The applicant tried to impute fraud in the transaction leading to the registration of a one Ddamulira Nasani which I do not agree with.

It is not enough to 'baptize' a transaction as one constituted by fraudulent means without looking and appreciating the facts of every case before court. The 1st respondent in this case failed to do any due diligence when it allowed the fake letters of administration to be used to cause an entry in the register. Where the 1st respondent discovers an error or oversight on their part in making any entry in the register, they should be at liberty to correct such entries made illegally and wrongfully. It is their statutory duty to ensure that common or fraudsters and their accomplices without any authentic documents of title are cleaned from the register.

The applicant claims to be a bonafide purchaser for value without notice and was never part of the fraud. The applicant failed to carry out due diligence on the authenticity of the letters of administration presented by alleged common-law partner Ddamulira Nasani who created and presented a fake document as letters of administration. The applicant is not such an innocent or bonafide purchaser but rather an accomplice who assisted in perpetuating an illegal transaction and forging letters of administration since it would have been established at the earliest point in time before he got registered.

Section 91(e) of the Land Act provides; The Registrar shall where a certificate of title or instrument: is illegally or wrongfully obtained, call for the duplicate certificate of title or instrument for cancellation. The 1st respondent's decision to cancel the applicant's certificate of title is thus presumed lawful unless and until a court of competent jurisdiction declares them unlawful.

The 1st respondent has a duty to the public or all Ugandans to get rid of such persons who have obtained registration illegally and wrongfully. Illegality as a ground of judicial review ensures that the decision-maker understands correctly the law that regulates his decision-making power and must give effect to it. See *Council of Civil Service Unions vs Ministry for the Civil Service [1985] AC 374*

The decision of the 1st respondent was therefore lawful and made within the 'four corners' of the powers vested in the Land Act. The applicant has no basis to challenge the same for illegality.

The applicant also challenged the decision of the 1st respondent for procedural impropriety by contending that he was never served with notice to amend the register or the hearing as envisaged under section 91 of the Land Act.

The evidence on record clearly shows that the applicant was served on the address availed on the certificate of title by registered post mail. In addition the 1st respondent run an advert in Monitor Newspaper as substituted service for the applicant. This court while dealing with a similar issue in the case of *Hezekiah Mukiibi & Anor v Commissioner Land Registration HCMC No. 98 of 2019* noted as follows;

"It is a duty of every person whose interest is registered in any land with the Land Office, to ensure that the address availed is forever active for purposes of receiving communications from the Commissioner Land Registration. This court does not want to create an extra burden on that office except for such persons who have not provided any address for purposes of sending correspondences or whose mails have been returned by post.

The law cited by counsel Section 202 of the Registration of the Titles Act provides for alternatives if the first sent mail is returned. If the registered mail is not returned the service is deemed effective.

Section 35 of the Interpretation Act provides that;

Where any Act authorises or requires any document to be served by post, the service shall be deemed to be effected by properly addressing, prepaying

and posting by registered post a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of the post.

The said decision has since been upheld by the Court of Appeal Civil Appeal No. 113 of 2020 that the postal address as the only recognized way under which the commissioner land registration can serve persons with interests on any piece of land on the register as per section 202 of the Registration of titles Act.

The applicant was properly served on the address availed to the 1st respondent and later by substituted service in Monitor Newspapers and failed or refused to avail themselves for the hearing. The court will not accept the submission of counsel for the applicant that the 2nd-4th respondents were aware of the physical address of applicant's counsel upon which service would have been effected. The 1st respondent was not aware of this address and it was upon the applicant to update the proper address of service for purposes of sending official communication from the land registry.

This court is satisfied that the applicant was duly served with the Notice of Intention to Effect Changes in the Register. The applicant's right to be heard or treated fairly was not violated and there was never any procedural impropriety as contended by the applicant.

Consequently, this application fails and is dismissed with costs.

I so order.

SSEKAANA MUSA

JUDGE

15th December 2023