

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

MISCELLANEOUS CAUSE NO. 41 OF 2023

- 1. MIRIAM SUNDAY NANDYOSE KAVUMA**
- 2. PROFESSOR GEORGE BALUNABA KIRYA ::::::::::::::::::::::::::::::::::: APPLICANTS**
- 3. DAVID FREDERICK KISITU MPANGA**
(As Executors of the Will of the Late Godfrey Kaaya Kavuma)

VERSUS

- 1. THE COMMISSIONER LAND REGISTRATION**
- 2. CHRISTOPHER MUBIRU**
- 3. GRACE KITAKA**
- 4. IRENE NABAWANUKA :::::::::::::::::::::::::::::::::::RESPONDENTS**
- 5. IRENE KITAKA**
- 6. KIWANUKA JOSEPH**
(As Administrators of the Estate of the late Stanley Kitaka Kisingiri)

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application was brought under Article 42 of the Constitution of Uganda, 1995, Sections 33 and 36 of the Judicature Act, Cap 13 and rules 3,4,5,6,7 and 8 of the Judicature (Judicial Review) Rules S.I 13-1 as amended by S.I No. 32 of 2019 for the following Judicial Review orders;

- a) A declaration be issued that the decision of the 1st Respondent contained in letter dated 5th January 2023 signed by Baker Mugaino, Acting Commissioner for Land Registration, purporting to cancel or cancelling the registration of the Applicants as the registered proprietors on/in Certificates of Title for the land comprised in **MAILO REGISTER KYADONDO BLOCK 255 PLOT Nos. 660, 663, 664, 665, 666 AND 667 AT MUNYONYO**, on grounds of forgery of a signature by the Late Godfrey Kaaya Kavuma, thereby inferring/imputing fraud, and*

made without according the Applicants an opportunity to be heard is arbitrary, irrational, illegal, unfair, procedurally improper, null and void;

- b) An order of Certiorari be and is hereby issued removing in to the High Court and quashing the decision of the 1st Respondent purporting to cancel or cancelling the registration of the Applicants as registered proprietors in the Certificates of Title for the said land.*
- c) An order of Certiorari be issued quashing the decision of the 1st Respondent purporting to amend the Register of Titles by registering the names of Stanley Kitaka Kisingiri, now deceased and/or the 2nd to 6th Respondents and/or any of them on the Register Book as Registered proprietors of the said land.*
- d) An order of mandamus compelling the 1st Respondent to amend the Register of Titles of the subject land by reinstating the names of Godfrey Kaaya Kavuma and the Applicants herein as registered proprietors of the said land.*
- e) An order of Prohibition be issued barring and/or prohibiting the Respondents, their respective officers, servants or agents or anyone acting on their behalf from any further dealing with the subject land pending determination of HCCS NO. 399 OF 2022; CHRISTOPHER MUBIRU, GRACE KITAKA, IRENE NABAWANUKA, IRENE KITAKA & KIWANUKA JOSEPH (Administrators of the Estate of the Late Stanley Kitaka Kisingiri) VERSUS MIRIAM SUNDAY NANDYOSE KAVUMA, PROF. CHRISTOPHER MAGALA NDUGWA, PROF. GEORGE BALUNABA KIRYA & DAVID F.K. MPANDA (Executors of the will of the Late Godfrey Kaaya Kavuma).*
- f) An order be issued that the Respondents, jointly and severally pay general damages to the Applicants.*
- g) An order that the Respondents, jointly and/or severally, pay the costs of this Application.*

The grounds upon which the application was filed are laid out briefly in the Notice of Motion, and expounded upon in the affidavit of David Fredrick Kisitu Mpanga,

the 3rd Applicant on behalf of the Applicants. The grounds are many but the following are important for the determination of this Application.

- a) That the Applicants are the Executors of the Estate of the Late Godfrey Kaaya Kavuma who demised on 27th July 2019 and was buried at Sagala, Buwaya in Wakiso District.
- b) That the land comprised in Mailo Register Kyadondo Block 255 Plot No. 81 at Munyonyo became property of the late Godfrey Kaaya Kavuma on or about the 6th June 1986 having acquired it from Stanley Kisingiri Kitaka.
- c) That on or about 28th August 2000, the land comprised in **Mailo Register Kyadondo Block 255 Plot No. 81 at Munyonyo** was subdivided by the proprietor, Godfrey Kaaya Kavuma to create parcels of land described as **Mailo Register Kyadondo Block 255 Plot Nos. 659, 660, 661, 662, 663, 664, 665, 666 and 667 at Munyonyo.**
- d) That at the time of his demise in July 2019, the Deceased, Godfrey Kaaya Kavuma had enjoyed quiet possession and ownership of the parcels.
- e) That the Applicants lodged the Grant of Probate with the 1st Respondent's office and were registered on the Land as proprietors of the parcels on the 24th April 2021.
- f) That by forwarding the Grant of Probate and Duplicate Certificates of title for the parcels to the 1st Respondent and using first letters of M/s AF Mpanga Advocates, the 1st Respondent became aware of the Address of the Applicants, to wit, AF Mpanga Advocates, 4th Floor DFCU Tower, 26 Kyadondo Road, Nakasero, P.O BOX 1520, Kampala, for purpose of dealing or dealings with the parcels.
- g) That on 18th May 2022, the Applicants were served with Summons and a Complaint in respect to HCCS No. 399 of 2022. These were served on at the Address of the Applicants' Legal Representatives, to wit, AF Mpanga Advocates, P.O BOX 1520, Kampala along Kyadondo road.

- h) The subject matter of the suit is land comprised in Mailo Register Kyadondo Block 255 Plot Nos. 660, 663, 664, 665, 666 and 667 at Munyonyo. The 2nd to 5th Respondent's claim in the suit was among others, a declaration that the late Godfrey Kaaya Kavuma procured registration of the ownership of land comprised in Plot No. 81 through fraud or fraudulently, and that the Registration of the Applicants as registered proprietors of the land comprised in the parcels be cancelled on grounds of fraud and illegality and an order to restore registration of the ownership of the parcels of land in the names of the 2nd to 6th Respondent as Administrators of the Estate of the Late Stanley Kitaka Kisingiri.
- i) That the Applicant's Legal Representatives, AF Mpanga Advocates, filed a Written Statement of Defence to the allegations in the Suit at the instance of the Applicants.
- j) That on the 25th August 2022, and for the very first time, the 3rd Applicant saw an advert in the New Vision Newspaper of 25th August 2022 page 40 requiring the Applicants to appear before the 1st Respondent at the 1st Respondent's offices on 9th September 2022 at 10.00 am in respect to matters regarding the Parcels.
- k) That in the said advert, the 1st Respondent didn't make any reference to any complaint or any particular reasons justifying the attendance of the Applicants to the office of the 1st Respondent.
- l) THAT the Applicants' Legal Representatives, AF Mpanga by letter dated 5th September 2022 informed the 1st Respondent about the existence of a suit relating to the subject land filed by the 2nd to 5th Respondents. The matters in the letter related to acquisition and ownership of the land comprised in Plot No. 81 and parcels by the deceased. The letter also indicated that proceeding with any hearing would be contrary to the law and contravenes the doctrine of subjudice.
- m) The same letter was received at the office of the 1st Respondent on 6th September 2022, 3 days before the scheduled hearing.

- n) The Applicants' Legal Representative tasked a one Mr. Emmanuel Odoi to attend to the 1st Respondent's office to establish whether any hearing would take place.
- o) That the said Emmanuel Odoi attended the Office of the 1st Respondent on 9th September 2022 by 9.50 am and left after 11.22am. He found out that the relevant matters referred to in the Summons had been allocated to Mr. Edward Bamwite, Registrar of Titles who informed him that there was no hearing.
- p) That the Applicants' Legal Representatives were served with a notice of Discontinuation of the Suit on 19th January 2023 however to-date the 2nd to 6th Respondent have never filed an application seeking this Court's leave to formally withdraw HCCS No. 399 of 2022 which is still pending.
- q) That the changes regarding ownership of the parcels of land were effected by the 1st Respondent on the 6th January 2023.
- r) That the Applicant's Legal Representatives conducted a further inspection on the Land Register on the 20th January 2023 and came across documents including a notice of cancellation of Registration dated 5th January 2023, amendment order dated 5th January 2023 and a letter of the 6th Respondent dated 13th July 2022.
- s) That the 3rd Applicant read and understood the 1st Respondent's documents and noted that-
 - (i) There was no complaint authored by the 2nd to 6th Respondent that was served on the Applicants to find out the purpose of removal of their names from the Certificate of title.
 - (ii) There was no complaint by the 2nd to 6th Respondent regarding ownership of parcels of land and the alleged forgery of signature of the Late Stanley Kitaka by the Deceased that led to change of names from Stanley Kitaka to Godfrey Kaaya Kavuma.
 - (iii) That the 1st Respondent didn't serve the Applicants with any notice to file submissions or adduce evidence regarding the manner in which

the deceased Kaaya Kavuma acquired ownership of Plot 81 and the parcels.

- (iv) That the 1st Respondent conducted exparte proceedings and allowed the 2nd to 6th Respondent to adduce and rely on evidence of a Handwriting expert but without ensuring that the Applicants or their Representatives were served with the same.
- (v) That the 1st Respondent didn't afford the Applicant or Applicants' Legal Representatives an opportunity to interface with the Hand writing expert or even cross examine him.
- (vi) The complaint, notice of hearing and 1st Respondent's documents were not served on the Applicants at their known address which is the Applicants' Legal Representatives
- (vii) That the 1st Respondent opted to use the second letter as written submissions of the Applicants in the knowledge that the said letter couldn't be or constitute such written submissions to justify its unlawful and illegal enterprise.
- (viii) The Applicants were never served with the Notice for the public hearing for the date subsequent to 9th September 2022 which was the date set for the first hearing but which never took place, even though all the Respondents were at all times aware of the physical and postal address of the Applicants through their Legal Representatives.
- (ix) The changes made to the Land Register particularly in respect to the parcels of land comprised in MAILO REGISTER KYADONDO BLOCK 255 PLOT NOS. 660, 663, 665 AND 666 AT MUNYONYO were made in total disregard of the caveats thereon and without affording the caveators or their Legal Representatives an opportunity to be heard.

The 3rd Applicant claims that the actions by the 1st Respondent compromised and undermined the Applicants' right to a fair hearing and is therefore illegal for being against laws of natural justice. The said acts also were contrary to the principles of natural justice which is unfair and illegal.

The Applicants under paragraph 33 of their Affidavit in support state that the decision of the 1st Respondent was based on an alleged finding that the signature of Stanley Kitaka Kisingiri on the transfer deed was forged by the deceased which is finding premised in fraud and which is beyond or not within the powers of the 1st

Respondent envisaged and provided for under section 91 of the Land Act. The 1st Respondent therefore exercised powers under the law beyond what is provided for and permitted by the law thus rendering the decision illegal.

The Applicants therefore under paragraph 36 of the Affidavit in reply allege that the 1st Respondent in concert with the 2nd to 6th Respondent acted illegally and arbitrary when they purported to have the Applicants' registration on the land comprised in the parcels amended and/or cancelled yet there were no reasons or grounds at all for doing so.

The Applicants also allege under paragraph 39 of the Affidavit in support that the 2nd to 6th Respondent have entered on to the land comprised in parcels and have forcefully removed the caretakers/agents of the 1st Applicant and thereby disrupted her business conducted thereon causing her embarrassment as a cheat hence she is now at danger of being sued for breach of contract for failing to avail the said land for bookings.

The Applicants also allege under paragraph 41 of the Affidavit in support of the application that they were never served with notice of cancellation of the Certificates of Title and that they are still in possession of the same. They also allege that the land comprised in parcels is at risk or threat of being illegally alienated and/or disposed of by Respondents to third parties.

The Applicants allege under paragraph 44 of the affidavit in support that the instant application is the most appropriate and viable remedy available to the Applicants as there is already a pending suit in the Land Division of the High Court Civil Suit No. 399 of 2022 wherein matters concerning the rightful ownership of the land comprised in the parcels is under consideration by the Court hence another suit in the same Court will only cause a multiplicity of suits and/or offend the *lis pendens* doctrine.

The 2nd to 6th Respondents filed an affidavit in reply through Kiwanuka Joseph of Magna Advocates and Taslaf Advocates and contended that;

- a) The application is incompetent and the remedies sought are not tenable on account of an incompetent procedure. They allege that the application for judicial review is incompetently brought against them since the 2nd to 5th Respondent didn't render the decision, the subject of challenge in the

application. This is contained in paragraph 3 (i) and (ii) of the Affidavit in Reply.

- b) The prayers sought by the Applicants are legally and factually unsupported by the and that the application shall be contested on grounds that;
 - (i) The Applicants were duly notified of the public hearing and accorded an opportunity to be heard.
 - (ii) The decision rendered by the 1st Respondent was premised on illegality.
 - (iii) The Applicant's registration on the title to the suit land had been cancelled and the land reverted in to the names of the late Stanley Kitaka Kisingiri.
 - (iv) The prayer for an order that the 1st Respondent amends the Register to reinstate the names of Godfrey Kaaya Kavuma would amount to Court sanctioning and condoning an obvious illegality.
 - (v) The remedies sought by the Applicants are not tenable in a judicial review application.

The above grounds are provided under paragraph 4 of the Affidavit in reply.

c) That the late Godfrey Kaaya Kavuma did not acquire the suit land whether by purchase or otherwise from the late Stanley Kitaka Kisingiri.

d) The claim of purchase and payment of consideration was unsupported in the Written Statement of Defence to HCCS 399/2022.

e) That the purported acquisition of then plot 81 by the late Godfrey Kaaya Kavuma allegedly by way of a gift from the late Stanley Kitaka Kisingiri has no legal nor factual basis and is not evidentially supported by any document.

f) That in the transfer instrument itself, the late Godfrey Kaaya Kavuma indicated therein that he had acquired the suit land for valuable consideration in the sum of 750,000/= hence no mention of a gift in the instrument.

g) That there was no legal or factual basis upon which the suit land was transferred from Stanley Kitaka Kisingiri to the Late Godfrey Kaaya Kavuma.

h) That there was an illegality or error on the face of the instruments used to effect a transfer of the said Plot 81 in to the names of Kaya Kavuma.

i) The Respondents in reply to paragraphs 9-16 of the affidavit in support of the application state that;

(i) Summons to appear before the Commissioner Land Registration is a public document, that was lawfully advertised in a newspaper of a wide circulation to afford notice to all persons who may have been affected by the intended action of the 1st Respondent.

(ii) The Applicants had stated that in their Written Statement of Defence to HCCS 399 OF 2022, that their address of service M/S AF. Mpanga Advocates Bowmans was only for purposes of that suit.

(iii) The Commissioner Land Registration was not a party to HCCS No. 399 of 2022 and unaware of the Applicant's address in respect of the suit property was justified to advertise the summons in the newspaper calling upon the Applicants to attend the office of the 1st Respondent for a preliminary examination concerning the disputed land on 9th September 2022 at 10:00 am.

(iv) The Applicants attached no proof that they had notified the 1st Respondent that AF Mpanga Advocates had instructions specifically to represent the applicants for purposes of the intended preliminary examination on a complaint lodged before him in respect of the suit property.

J) The Respondents also state that under paragraph 11 of the Affidavit in reply that;

(i) The Applicants by their own admission got notice of the scheduled preliminary examination atleast 3 days before the hearing date of 9th September 2022.

(ii) The Applicants in response to the notice wrote a letter to the 1st Respondent dated 5th September 2022, and further appeared at the scheduled examination of 9th September 2022.

(iii) The 2nd to 6th Respondents presented their complaint with supporting documents justifying the rectification of the register.

k) That the existence of a suit in Court had no bearing on the proceedings before the 1st Respondent and was no bar to exercising his statutory mandate.

L) That at the conclusion of the preliminary examination, the 1st Respondent scheduled a public hearing to afford the parties an opportunity to be heard on the

reasons upon which he intended to rectify the register and informed the parties in the presence of the Applicant's Legal Counsel Mr. Katumba that the hearing date would be October 2022 and that summons would be advertised as had been done before.

M) That the 1st Respondent subsequently advertised a Notice of Public hearing on the 15th September 2022 informing concerned parties and other interested parties of the scheduled public hearing slated to take place on 15th October 2022.

N) That at the scheduled public hearing, the Applicants and their legal Counsel didn't attend and no explanation was offered for their absence.

O) That the 2nd to 6th Respondent received a notification of the decision of the 1st Respondent and communication that the 1st Respondent had taken a decision and had upheld their complaint and rectified the register.

P) That the applicants themselves in their previous pleadings to wit the written statement of defence vide HCCS No. 399 of 2022 acknowledge that the late Godfrey Kaaya Kavuma never legally acquired the suit land from Stanley Kitaka Kisingiri.

Q) That the complaint, the basis of which the applicants' names were removed as proprietors of the suit parcels of land was duly lodged with the 1st Respondent initially against the late Godfrey Kaaya Kavuma.

The 1st Respondent, Sekabira Moses filed an affidavit in reply on behalf of the Commissioner Land Registration and stated as follows;

- a) The office of the 1st Respondent is clothed with statutory authority to initiate a process of rectification of the register and take and implement decisions including cancellation of entries on the register and cancellation of certificates of title on among other grounds illegality and erroneous transfer.
- b) That the office of the 1st Respondent received a complaint from the 2nd to 6th Respondents being administrators of the Estate of the late Stanley Kitaka Kisingiri.
- c) The grounds were inter-alia that Godfrey Kaaya Kavuma obtained registration in error or through illegality as at all material times, the demised land had been registered in the names of Stanley Kitaka Kisingiri under Mailo Register Volume 245 Folio 8

- d) The contention was that the transfer of Plot 81 in to the names of Godfrey Kaaya Kavuma was not supported whether by proof of purchase or gift.
- e) It was also claimed that the transfer had been illegally or erroneously effected in favour of Godfrey Kaaya Kavuma, and the office of the 1st Respondent was being requested to invoke its statutory powers under Section 91 of the Land Act as amended to rectify the register.
- f) That he caused the documents and all available instruments touching the disputed land to be retrieved and availed for consideration.
- g) That he directed that a Notice be issued and advertised in a newspaper of wide circulation notifying any party with an interest in the land including the applicants of a scheduled appearance for 9th September 2022 for purposes of a preliminary examination regarding the complaint.
- h) The notice was advertised in the New Vision newspaper of Thursday, August 25, 2022 at page 40 thereof.
- i) The Notice was advertised in the newspapers because on want of knowledge of the respective physical addresses of all persons who might be affected by any intended action by the office of the 1st Respondent including the Applicants.
- j) That the Applicants through AF Mpanga Advocates responded to the notice on the 5th September 2022.
- k) That on 9th September 2022, the Applicants through their legal Counsel Katumba Apollo attended the preliminary examination session and re-iterated the contents of their letter.
- l) That he caused another notice to be advertised in the newspaper on 15th September 2022 for the public hearing scheduled for 5th October 2022.

- m) That on 5th October 2022, the 2nd-6th Respondents appeared at the 1st Respondent for a public hearing and neither the applicants nor their legal counsel appeared.
- n) That the public hearing was conducted wherein, evidence and submissions were received from the 2nd-6th Respondents.
- o) That the 1st Respondent's office considered its records touching the suit land, the evidence adduced before it by the Respondents/ Complaints and their submissions and came to a conclusion that the entry of Godfrey Kavuma Kaaya on the register was illegal and same ought to be cancelled and the register rectified.
- p) That the 1st Respondent's decision was premised on illegality through which the said Godfrey Kaaya Kavuma became the registered proprietor of the land comprised in Kyadondo Block 245 Plot 81 at Munyonyo.
- q) That the 1st Respondent is vested with powers to rectify the register where, a certificate of title or instrument is issued in error, or illegally or contains a wrong description of land or boundaries, contains an entry or endorsement made in error or contains illegal endorsements among others.
- r) That the 1st Respondent's decision followed the legal and procedural process envisaged under the law and the Applicants were duly afforded an opportunity to be heard.

The Applicants filed a supplementary affidavit in reply through David Frederick Mpanga of AF Mpanga Advocates and state as follows;

- a) That the alleged complaint attached to the 1st Respondents' affidavit does not contain any allegation and/or particulars of the illegalities and/or errors which could have formed the basis of the action of the 1st Respondent which are subject of the Application.
- b) That the alleged complaint does not contain any contest regarding registration of the Deceased as proprietor of the subject land.

- c) That there's no document requesting the office of the 1st Respondent to invoke its statutory powers under the RTA to rectify the Land Register based on a complaint of acts of illegality and/or errors regarding the transfer of Plot 81 in the name of the deceased.
- d) That there was no session for a preliminary examination as alleged by the 1st Respondent in his affidavit in reply and it's the reason the Office of the 1st Respondent cannot provide the relevant attendance lists to confirm the attendances.
- e) That the Notice comprised in the Affidavit of the 1st Respondent was never served and delivered at the known address of the Applicants and so they could not be enabled to attend the public hearing alleged to have been held on the 5th October 2022.
- f) That the 1st Respondent's decision was not premised on any illegality and none has been referred to. The decision was premised on any alleged forgery of the signature of the registered proprietor which is classic forgery and not an illegality or an error.
- g) That there was no public hearing conducted at all and/or following due process or any legal process as no notice was issued to the Applicants in accordance with the law despite the 1st Respondent being aware of the address of the Applicants and/or the address of the Legal Representatives of the Applicants.

ISSUES FOR DETERMINATION.

The Court admits the following as the relevant issues coming up for determination;

- 1. Whether the 1st Respondent's decision contained in the letter dated 5th January 2023 cancelling the registration of the Applicants as registered proprietors of the subject land was tainted with illegality, irrationality and procedural impropriety?***
- 2. What remedies are available to the parties?***

The Applicants were represented by AF Mpanga Advocates (*Fredrick Mpanga, Apollo Katumba and Emmanuel Wasswa*) while the 1st Respondent was represented by *Victor Kafureeka and Moses Sekabira*. While the 2nd to 6th respondents were represented by Magna Advocates and Taslaf Advocates (*Joseph Kyazze, Patra Nahwera and Frank Lyagoba*).

The parties were directed to file written submissions hence both the Applicants and the 2nd to 6th Respondents filed their written submissions before this Honourable Court. The 1st Respondent didn't file their submissions before this Honorable Court. This Court would proceed to determine the matter based on the evidence on Court's record.

The respondent's raised a preliminary objection which I have ignored since it was never raised as an issue at trial or scheduling.

DETERMINATION OF ISSUES.

Whether the 1st Respondent's decision contained in the letter dated 5th January 2023 cancelling the registration of the Applicants as registered proprietors of the subject land was tainted with illegality, irrationality and procedural impropriety

Illegality

The applicant's counsel submitted that the decision of the 1st respondent was tainted with illegality since the 1st respondent acted beyond his powers to cancel a title premised on fraud allegations crafted as forgery of transfer forms or illegality in order to get within the ambit of section 91 of the Land Act.

The applicant submitted that the court should consider the reason advanced by the 1st respondent in cancelling the applicant's registration and ownership of the land which is set out in the Amendment Order as follows; *"In the case, the entry of Godfrey Kaaya Kavuma was made basing on a transfer allegedly signed by Stanley Kitaka Kisingiri the then registered proprietor"*.

The applicants counsel contended further that forgery of a signature on a transfer form as allegedly found in the laboratory report is a classic case of fraud. Therefore, the 1st respondent had no power to and or jurisdiction under section 91 of the Land Act to entertain a complaint premised in fraud and or cause a cancellation of the

registration of the Late Godfrey Kaaya Kavuma and the applicants' as registered proprietors of the suit land on the basis of such allegations of a forged signature.

The plaintiff's further submitted that the respondent in their case filed in court vide HCCS No. 399 of 2022 the pleaded both illegality and fraud. It was the applicant's case that the 1st respondent's action of labelling forgery of signatures and documents as an illegality did not change the fact that forgery is a fraud and the 1st respondent had no power to entertain it.

The respondent counsel submitted that for an applicant to prove illegality, the applicants must demonstrate that the decision of the 1st respondent was inconsistent with the applicable law to the subject matter.

Analysis

The 1st Respondent's decision to cancel the Late Godfrey Kaaya Kavuma and the Applicant's proprietorship of the subject land was purportedly made pursuant to **section 91 of the Land Act**, which provides;

"91. Special powers of Registrar

- (1) Subject to the Registration of Titles Act, the Commissioner shall, without referring the matter to a Court or a district land tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of Certificate of Title, the issue of fresh Certificates of Titles or otherwise.
- (2) The Registrar shall, where a certificate of title or instrument;
 - (a) Is issued in error;
 - (b) Contains a wrong description of land or boundaries;
 - (c) Contains an entry or endorsement in error;
 - (d) Contains an illegal endorsement
 - (e) Is illegally or wrongfully obtained; or
 - (f) Illegally or wrongfully retained,

The Applicants in their affidavit in support of the application under paragraph 33, they claim that from reading the Amendment order, the decision of the 1st Respondent was based on an alleged finding that the signature of Stanley Kisingiri on the Transfer deed of the land comprised in Plot 81 was forged by the deceased which is a finding premised in fraud and which is beyond or not within the powers

of the 1st Respondent envisaged under section 91 of the Land Act. Under paragraph 34 of the Affidavit in support, the Applicants further claim that the 1st Respondent is aware that matters of forgery of the signature of the transferee on an instrument of transfer constitute classic fraud and yet the 1st Respondent deliberately clothed the said alleged fraud as an illegality for the purpose of creating a basis for exercising his statutory power therefore he exercised powers under the law what is provided for.

The 2nd to 6th Respondent in their affidavit in reply under paragraph 19, they claim that the actions of the 1st Respondent leading to removal of the Applicants' names as proprietors of the parcels of land hereinabove mentioned are justified in law and fact. Under paragraph 4 (ii) of the same affidavit, the Respondents insist that the decision rendered by the Commissioner Land Registration which is the subject of the challenge in the application was premised on apparent illegality and errors in the registration of the Mr. Godfrey Kaaya Kavuma.

The 1st respondent tried to 'baptize' the alleged forgery of the signature as a mere illegality in order to fall within the ambit of section 91 of the Land Act. The decision of the 1st respondent was premised on analysis of the handwriting expert report and it formed the basis of the decision which puts this case beyond reasonable doubt to be a case of fraud which is not a ground for cancellation of title vested with the Commissioner Land Registration.

The Supreme Court has pronounced itself on powers of Commissioner Land Registration in respect of fraud succinctly and conclusively. By section 91(1) of the Land Act subjecting the 1st respondent's special powers on the Registration of Titles Act, the Land Act reserved fraud as a ground for cancellation of registration or cancellation of certificate of title for the High Court under Section 177 of the Registration of Titles Act Cap 230. ***See Hilda Wilson Namusoke & 3 Others v Owalla's Home Investment Trust (EA) Limited & Commissioner Land Registration, SCCA No. 15 of 2017***

Similarly, this court in the case of ***Francis Louis Kibuuka & Another v Commissioner Land Registration & Another HCMC No. 60 of 2019*** held that;

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

The powers conferred under Section 91 of the Land Act where never intended to be exercised in such a way that would involve the cancellation of land titles whose registration was obtained by fraud as the supreme court has rightly pronounced.

*It is a requirement of the rule of law that exercise of public power by the executive and other functionaries should not be unlawful or arbitrary. Decisions must be rationally justified to the purpose for which the power was given, otherwise they are in effect, arbitrary and inconsistent with this requirement. **See Pharmaceutical Manufacturers Association of SA In Re:Ex Parte Application of President of the RSA 2000 (3) BCLR 241(CC)***

The sum effect of the 1st respondent cancellation of a certificate of title for fraud is an exercise of power without jurisdiction or in excess of authority. It is a fundamental principle of administrative law that anybody vested with adjudicatory function, must keep within the confines of its jurisdiction. Anything done by it in excess of its jurisdiction is void. A decision without jurisdiction is inoperative in the eyes of the law. If a public body entertains a dispute without jurisdiction and erroneously proceeds to determine the rights of the parties, the decision will be of no effect.

It is a vital function of the courts to ensure all public authorities act within the limits of their powers. Such bodies not only have powers expressly conferred on them by the relevant statute but also such incidental and ancillary powers as a necessary to make fully effective the express grant of statutory powers.”

It is clear the 1st respondent was alive to the fact that this was a case of fraud since there is a pending matter in Land division of the High Court vide HCCS No.399 of 2022 between the 2nd-6th respondents and the applicants which was brought to his attention and it is premised on fraud by forgery of signature of the late Kitaka Stanley Kisingiri.

I have looked at the Amendment order which is marked J3 to the affidavit in support of the application. In the said order at page 2 the 1st Respondent indicated that;

In the circumstances, the transfer was allegedly executed by then registered proprietor but the same was found suspect and subjected to forensic examination against a number of samples/exhibits. The forensic document examiner in her observations stated that “ it is likely that the author of the

sample signatures on the exhibits S1-S6 signed the questioned signature on exhibit Q.”. This meant the entry of Godfrey Kaaya Kavuma was an illegal endorsement the fact that the transfer was not executed by registered proprietor as per the laboratory report. (Refer to laboratory report addressed to PNK Advocates dated 25th October 2021).

The Laboratory report is also attached as annexure F2 to the Affidavit in Reply. The contents in the report indicate than an examination of signatures on a transfer form described as “Exhibit Q”.

The laboratory report purports to conclude that;

“I observed fundamental differences between the questioned signature in exhibit Q and sample in exhibits S1-S6.... Based on the observations made above and the nature of documents examined, in my opinion it is unlikely that the author of sample signatures on exhibits S1-S6 signed the questioned signature on exhibit Q.” This conclusion in the report only connotes one thing and that’s forgery of the signature of the late Stanley Kitaka Kisingiri by the late Godfrey Kaaya Kavuma on the Transfer form described as Exhibit Q. Therefore the 1st respondent relied on the finding of forgery of the signature of the late Stanley Kitaka Kisingiri by the Late Godfrey Kaaya Kavuma on the Transfer form to cancel the registration of Godfrey Kaaya Kavuma.”

The foregoing allegations of fraud by the 2nd to 6th Respondent in their own Plaint in HCCS 399/2022 and report indicate that they had taken note of fraud hence can’t turn around and claim that it was just a mere illegality. It was erroneous for the 1st Respondent to ignore the notice of the allegations of fraud in a letter dated 6th September 2022 addressed to him by the Applicants.

It was therefore erroneous for the 1st Respondent to misuse his powers and exercise the powers reserved for the High Court by cancelling the registration of the Applicants on the Certificates of Title. It was also erroneous for him to ignore the existence of a suit already filed in Court (**HCCS 399/2022**) by the Respondents and then move on to deliberate on an issue which was the subject matter of the suit. The decision of the 1st respondent would pre-judge the matter pending in the high court or to an extent render it moot or academic.

The decision of the 1st respondent is tainted with illegality and contrary to the powers conferred under Land Act and the exercise of power is outside the jurisdiction of the office of Commissioner Land Registration.

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

“The fundamental principle (of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making bodies are exercised lawfully. In all cases...this intervention....is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful.”

I would fully agree with the Applicants’ counsel that the decision of the 1st Respondent to cancel the Registration of the Applicants as the registered proprietors of the suit land on grounds of forgery of a signature by the late Godfrey Kaaya Kavuma imputing fraud was illegal and beyond the powers accorded to him under Section 91 of the Land Act.

What remedies are available to the parties?

The Applicants prayed for grant of a declaration and prerogative orders of certiorari, Mandamus, prohibition, an order of damages and costs of the Application.

Section 36(1) of the Judicature Act, Cap 13 and Rule 13 of the Judicial Review rules empower this court in an application for Judicial Review to order mandamus, prohibition, certiorari, an injunction, and/or declaration. Additionally, section 36(2) of the Judicature Act, cap 13 and Rule 8 of the Judicial Review rules empower this Court to award damages.

The grant of Judicial Review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then court should issue those remedies. The Court may not

grant any such remedies even when the applicant may have a strong case on merits, so courts would weigh various factors to determine whether they should lie in any particular case. ***See R v Aston University Senate ex p Roffey [1969] 2 QB 558.***

The primary purpose of certiorari is to quash an ultra vires decision. In simple terms certiorari is the means of controlling unlawful exercise of power by setting aside decisions reached in excess or abuse of power. See ***John Jet Tumwebaze v Makerere University Council and Another HCCM No. 353 of 2005***

The court grants the following remedies and orders;

- a) A declaration is hereby issued that the decision of the 1st Respondent contained in the letter dated 5th January 2023 purporting to cancel the registration of the Applicants as Registered proprietors for the land comprised in MAILO REGISTER KYADONDO BLOCK 255 PLOT NOS. 660.663,664,665,666 AND 667 AT Munyonyo on grounds of forgery of the signature of the late Godfrey Kaaya Kavuma was made illegally.
- b) An order of *Certiorari* is hereby issued quashing the decision of the 1st Respondent contained in the letter dated 5th January 2023 purporting to cancel the registration of the Applicants as registered proprietors on Certificates of title for the land comprised in MAILO REGISTER KYADONDO BLOCK 255 PLOT NOS. 660.663,664,665,666 AND 667 AT Munyonyo.
- c) An order of *Certiorari* is hereby issued quashing the decision of the 1st Respondent purporting to amend the Register of Titles by registering thereon the names of Stanley Kitaka Kisingiri and the 2nd to 6th Respondents and any of them on the Register book as registered proprietors of the land comprised in MAILO REGISTER KYADONDO BLOCK 255 PLOT NOS. 660.663,664,665,666 AND 667 AT Munyonyo.
- d) An order of *Mandamus* is hereby issued directing the 1st Respondent to amend the the Register of titles of land comprised in MAILO REGISTER KYADONDO BLOCK 255 PLOT NOS. 660.663,664,665,666 AND 667 AT Munyonyo by reinstating the names of Godfrey Kaaya Kavuma and the Applicants herein registered as proprietors of the land comprised in MAILO

REGISTER KYADONDO BLOCK 255 PLOT NOS. 660,663,664,665,666 AND 667
AT Munyonyo.

The application is allowed with costs against the Respondents in equal proportion only.

I so order.

Ssekaana Musa

Judge

15th December 2023