

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

MISCELLANEOUS CAUSE NO. 132 OF 2021

- 1. KIGGALA JOSEPH**
- 2. STEVEN KIKONYOGO SAAVA**
- 3. FREDRICK JJUNJU**
- 4. NAKALLALI ABDULATIFF**
- 5. SIRIMANI SEBIRUMBI**
(Administrators of the estate
of the late prince Yusuf Suuna Kiweewa):.....APPLICANTS

VERSUS

- 1. ATTORNEY GENERAL**
- 2. COMMISSIONER FOR LAND REGISTRATION:.....RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought under Article 50 of the Constitution of the Republic of Uganda, Sections 33 & 37 of the Judicature Act Cap 13 (as amended), Rules 3, 3A, 4, 6, 7 and 8 of the Judicature (Judicial Review) Rules S.I No. 11 of 2009 as amended by SI No. 32 of 2019 seeking for;

1. An order of Mandamus does issue to compel the Respondents to issue certificates of tittle to the Applicants for the land comprised in Kyadondo Block 269 plots 2035 at Nakukuba and Mutungo, Kyadondo Block 269 plot 3034 at Lweza, Lubowa and Nanziba and Kyadondo Block 265 plot 73 at Bunamwaya.
2. In the alternative, an order does issue that the Respondent pay the estate of Yusuf Suuna Kiweewa damages/ compensation equivalent to the market value of the land comprised in Kyadondo Block 269 plots 2035 at Nakukuba and Mutungo, Kyadondo Block 269 plot 3034 at

Lweza, Lubowa and Nanziba and Kyadondo Block 265 plot 73 at Bunamwaya.

3. The costs of this application be provided for.

The grounds upon which this application is based are contained in the affidavit of Mr. Kiggala Joseph one of the applicants and are as follows;

1. That the applicants are the administrators of the estate of the late prince Yusuf Suuna Kiweewa who was the owner of mailo land comprised in provisional certificate No. 6726 and final certificate 18570 situate at Nakukuba and Mutungo, Lweza, Lubowa and Naziba Bunamwaya.
2. The applicant applied to the Ministry of Lands, Housing and Urban Development to issue deed plans for the land which were issued and forwarded to the 2nd Respondent in 2017.
3. The 2nd Respondent has neglected to perform his statutory duty of issuing certificates of title for the said land.
4. The neglect and delay to issue certificates of title is in breach of the Respondent's statutory duties and violates the Applicants legitimate expectation.
5. The Applicants continues to suffer deprivation of property rights, losses and injustice as a result of the Respondents' failure to perform their statutory duties.

The respondents opposed the application and filed one affidavit in reply deposed by Mr. Mugaino Baker of the office of Titles on behalf of the 2nd Respondent. The Respondents in opposition stated that the suit land is subject to a number of other civil suits in the high court of Uganda (Land division) between a number of parties with the National Social Security Fund.

The Respondents further stated that the applicants are not entitled to any compensation as there is no proof whatsoever as they have never been deprived of any land described as Kyadondo Block 269 Plots 2035, Kyadondo Block 269 Plot 3034 and Kyadondo Block 265 Plot 73 and that thus, the applicants are not entitled to the orders sought.

The applicants were represented by *Counsel Nerima Nelson* while *Charity Nabaasa (SA)* appeared for the 1st Respondent whereas *Twagiramungu Joshua* appeared on behalf of the 2nd Respondent.

Issues for determination

- 1. *Whether the matter is amenable to Judicial Review?***
- 2. *Whether there are grounds for Judicial review?***
- 3. *Whether the Applicants are entitled to the remedies sought?***

The court directed the parties to file their written submission which were duly filed and have been considered by this court in the determination of this application.

Determination of Issues

Whether the matter is amenable to Judicial Review.

Counsel for the applicants submitted that this matter is amenable to judicial review **relying on the High Court Civil Division Miscellaneous Cause No, 374 of 2019 Yasin Omari vs Electoral Commission & 3 Ors** Where it was stated that judicial review is a fundamental mechanism for keeping public authorities within the due bounds and for upholding the rule of law and thus judicial review is only available against a body exercising public authorities in the field of public function in a public law matter.

Counsel for the applicants further submitted that a person seeking for judicial review must satisfy 2 requirements, first that the body under challenge must be a public body or a body performing public functions and that the subject matter of the challenge must involve claims based on public law principles not the enforcement of private rights.

Thus, since the 2nd Respondent is a statutory public office under the Registration of Titles Act and Land Act has a statutory duty to maintain the land register and issue certificates of title. The applicants counsel further stated that ever since the applicants forwarded deed plans to the 2nd Respondent in 2017 the same has neglected to perform his statutory duty of issuing certificates of title for the said land.

Counsel for the 1st Respondent averred that this is not a suitable case for judicial review citing the case of **Arua Kubala Park Operators and Market vendors Cooperative Society Limited v Arua Municipal Council MC No. 3 of 2016** where Mubiru J, observed while upholding the decision of court in the case of *Associated Provisional Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223* that;

“Judicial review is premised on allegations that a public body acted without powers (lack of jurisdiction) went beyond its powers (exceeded jurisdiction) failed to comply with applicable rules of natural justice, proceeded on a mistaken view of the law or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law acting reasonably could have reached it”.

He further submitted that the remedy of judicial review is only available where the issue is of breach of public law and not of breach of a private obligation, therefore since the rights sought in this application are private law rights involving property thus the matter is not amenable for judicial review.

Further still the Asst. commissioner land Registration Mugaino Baker stated in his affidavit stated that the suit land the historical micro film records relied on by the Applicant changed and the registers have changed and that the suit land is subject to other civil suits in the High court between a number of parties and National Social Security Fund.

Counsel for the 2nd Respondent went a head and submitted that some of the plots that the applicants are claiming like Kyadondo Block 269 Plot 2035 already had a certificate of Tittle issued in the names of Tumwekwase Berman who is not a party to the instant application implying that this honorable court cannot issue a compelling order to create a certificate of Tittle over an already existing certificate of Tittle without according the registered proprietors the right to be heard as would amount to sanction an illegality of double Titling.

Analysis

In the instant case the applicants submitted that this matter is amenable to judicial review **relying on the High Court Civil Division Miscellaneous Cause No, 374 of 2019 Yasin Omari vs Electoral Commission & 3 Ors** Where it was

stated that “judicial review is a fundamental mechanism for keeping public authorities within the due bounds and for upholding the rule of law and thus judicial review is only available against a body exercising public authorities in the field of public function in a public law matter”.

Whereas the Respondents that this is not a suitable case for judicial review citing the case of ***Arua Kubala Park Operators and Market vendors Cooperative Society Limited v Arua Municipal Council MC No. 3 of 2016*** and further contended that the remedy of judicial review is only available where the issue is of breach of public law and not of breach of a private obligation, therefore since the rights sought in this application are private law rights involving property thus the matter is not amenable for judicial review.

However, its judicial notice that judicial review is mainly concerned with the courts supervisory jurisdiction to check and control the exercise of power by those in public offices or person /bodies exercising quasi-judicial functions by granting of prerogative orders as the case may be, it's with this I conclude that there's no doubt that the 2nd Respondent is a public body responsible for issuing certificates of Title thus failure to do that constitutes to breach of a public duty.

Therefore, this matter is amenable for judicial review, thus issue one is resolved in the affirmative.

Whether there are grounds for Judicial review.

Counsel for the Applicants submitted that the applicants are the administrators of the estate of the late Prince Yusuf Suuna Kiweewa who was the owner of mailo land comprised in provisional Certificate No. 6726 and Final Certificate 18570 situate at Nakukuba and Mutungo, Lweza, Lubowa and Naziba, Bunamwaya.

The applicants applied to the Ministry of Lands, Housing and urban Development to issue deed plans for the land which were issued and forwarded to the 2nd Respondent in 2017 so as to issue them with certificates of Title in regard to the same land however the 2nd Respondent has neglected

to perform his statutory duty yet the 2nd Respondent admitted through his affidavit in reply that Omulangira Yusuf Kiweewa owned four square miles.

Further still counsel for the applicants submitted that they agree that upon closure of the Final Certificates register, the existing claims in as regards the registered proprietor and or any active encumbrances were transferred to the Mailo register volume 273 Folio 15 which is also confirmed in the Microfilm Report and that later the Mailo register volume and folio was also closed in 1960's under Section 32 of RTA but this did not extinguish the interests in the suit land.

Counsel for the Applicants relied on a ***Supreme Court Civil Appeal No. 02 of 2016 Emmanuel Lukwajju v Kyaggwe Coffee Curing Estate Ltd & Anor*** where **Kisakye JSC** stated that

“ I have found the above evidence of the 2nd Respondent problematic because it appears to have been intended to portray a legal regime where some land in Uganda which was a subject of closed registers either ceased to exist or just disappeared into thin air. This evidence misrepresented the legal regime governed land in closed registers, which is provided for under sections 29 to 32 of the RTA”.

Later;

“However, as the above provisions of the Registration of Tittles Act indicating the land which was originally registered under the 1908 Ordinance did not just disappear. The land remained and on application by the registered proprietor, it would simply be brought under the new Act”.

Counsel for the applicants further submitted it is the duty of the 2nd Respondent to register the land under the Block and Plot register and issue a certificate of Title accordingly, thus, since the 2nd Respondent hasn't adduced any evidence to prove that the registered proprietor of the land under the closed Mailo Register Volume and Folio register ever transferred or sold his land and up to date the certificates of title have not been issued.

Therefore, the neglect and delay to issue certificates of Title is in breach of the Respondents statutory duties and violates the Applicants legitimate expectation. Thus, there are grounds for judicial review.

Counsel for 1st Respondent submitted that an order for *mandamus* is a prerogative order available on application for judicial review from the High Court, requiring inferior court, tribunal or other public body to perform a specified public duty relating to its responsibilities and that the order is applicable to the enforcement of public duties by public, administrative bodies and that the procedure of judicial review by which the order of mandamus is sought is quite instructive as the intrinsic nature of that prerogative remedy as held in ***Kasibo Joshua V Commissioner of Customs Misc. Application. 44 of 2004***, Judicial review is concerned not with the decision, but the decision-making process.

Further still counsel for the 1st Respondent submits that the Respondents contends that in the affidavit in reply that the suit land was transferred to Mitchell Cotts Uganda and currently registered in the names of Tumwekwase Berman. Further that the land has no matching records and is subject to court cases. That there is no title registered in the names of Omulangira Yusuf Suuna.

Counsel for the 1st Respondent thus submits that if order of mandamus is issued rights of other parties who currently own the land will not have been considered or defended themselves in this application and the cardinal principal of the right to be heard will be infringed by this Honourable Court and that based on the 2nd Respondents affidavit in reply this honourable court should use its discretion and decline to issue an order of mandamus.

Counsel for the 2nd Respondent in addition submitted that this is not a proper case for judicial Review wherein this court can issue a compelling order directing the Commissioner Land Registration to issue certificates of tittle over existing certificates of Title as that would amount to sanction an illegality of double Titling.

Relying on the case of ***Arua Kubala Park Operators and Market Vendors Cooperative Society Limited v Arua Municipal Council MC No. 3 of 2016*** where **Stephen Mubiru J**, observed while upholding the decision of court in the case of ***Associated Provisional Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223 that;***

“Judicial review is premised on allegations that a public body acted without powers (lack of jurisdiction), went beyond its powers (exceeded jurisdiction) failed to comply with application rules of natural justice proceeded on a mistaken view of the law (error of law on the face of the record) or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it”.

Counsel for the 2nd Respondent further stated that the applicants cannot be compensated for the suit land in the alternative as prayed by the applicants since it does not form part of the estate of the Omulangira Yusuf Suna Kiwewa. And that since the Applicants remedy being sought is the right to property which involves other individuals as the land has already been transferred as per the evidence in the affidavit of Mugaino Baker.

The Applicants counsel in rejoinder submitted that the Respondents contend that issuance of certificates of title over existing titles would amount to sanctioning an illegality and the 2nd Respondent speculates that there could be some freehold titles that were processed on Block 269 however there is no evidence to support the submission.

And that their submissions are contradicted by paragraph 7 of the 2nd Respondent’s affidavit in reply where he stated that there are no matching records for Kyadondo Block 269 Plot 3034 and Kyadondo Block 265 Plot 73, there can be no existing titles for the land since by his own admission there are no matching records.

Court Analysis

In regard with issue 2 the applicants contended that it is the duty of the 2nd Respondent to register the land under the Block and Plot register and issue a certificate of Title accordingly, thus, failure by the 2nd Respondent to issue certificates of Title is in breach of the Respondents statutory duties and violates the Applicants legitimate expectation.

The Respondents argued that the remedy being sought by the applicants is the right to property which involves other individuals as the land has already been

transferred as per the evidence on record and thus, they cannot issue new certificates of Titles as it will be double titling and that the applicants can neither be compensated for the same.

Basing on the above submissions there is a need to carry out more investigations in order to come to the conclusion of the true ownership of the suit land and ascertain each and every person who has interest in the same land and on the same not there should first be a conclusion to every case that has been instituted in regard to the same suit land so as to properly deliver justice to all concerned parties.

The Ministry issued deed plans to the applicant which may appear to have been upon verification and ascertaining the true ownership of the land in issue. This has been the basis for the applicant to seek to compel the 2nd respondent issue certificates of title. This would have implied that once this step had been taken then the applicant would have acquired the certificates of title in accordance with the law and indeed had a legitimate expectation to have certificates of title over the same piece of land.

The doctrine of legitimate expectation belongs to the main domain of public law and intended to give relief to the people when they are not able to justify their claims on the basis of law in a strict sense of the term though they have suffered a civil consequence because their legitimate expectation has been violated.

Therefore, this doctrine provides a central space between 'no claim' and a 'legal claim' wherein a public authority can be made accountable on ground of an expectation which is legitimate. It confers upon a person a right which is enforceable in the case of its denial.

But whether an expectation is legitimate or not is a question of fact which has to be determined not according to the claimant's perception but in the larger public interest.

The principle at the root of the doctrine of legitimate expectation is Rule of Law which requires regularity, predictability and certainty from government when dealing with the public. An expectation could be based on an express promise or representation or by established action or settled conduct. See ***R v North and east Devon Health Authority, ex p Coughlan [2001] QB 213***

The doctrine of legitimate expectation is directly related to the doctrine of Promissory Estoppel against administration. It envisages that if someone acts on a promise made, or assurance given by the Administration, then the Administration cannot be allowed to go back on its promise or assurance. The doctrine is based in equity in order to protect the innocent and unsuspecting persons from being injured by acting on the promise made or assurance given, by the administration.

A person can be said to have a “legitimate expectation” of a particular treatment, if any representation or promise is made by authority, either expressly or impliedly. Every fact situation giving rise to promissory estoppel also creates a legitimate expectation in the representee that the administration will fulfill its representations. Therefore, ‘legitimate expectation’ and ‘promissory estoppel’ are used interchangeably although legitimate expectation is broader.

The applicant genuinely expected to be issued a certificate of title upon issuance of deed plans and this could only be breached upon good and genuine reasons or justification.

In the case of ***National Buildings Construction Corporation v S.Raghunathan*** [1998]AIR (SC) 2779:[1998] 7 SCC 66 the Supreme Court of India observed:

“The doctrine of ‘Legitimate Expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention to treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of ‘Legitimate Expectation’ was evolved which today has become a source of substantive as well as procedural rights. But claims based on ‘Legitimate Expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

Public authority or officers should normally be required to stand by their word such that the public who deal with them will reciprocate by complying with their authority. Whenever they disregard their commitments, promises and

representations made to the citizenry, it would bring about unpredictability and loss of trust in the office/officer which is inimical to the Rule of Law.

The 2nd respondent has stated that the land in issue is already registered in names of another person and is also subject to other claims by NSSF who have established a project thereon. The creation of title or titles without first cancelling the said existing land title would indeed cause a problem of double titling and cause more confusion to the existing disputes over the same land.

There appears to be an existing problem on the true ownership which should be thoroughly investigated with concrete proof as to the true ownership of the land in issue. Otherwise the applicant had legitimate expectation to be issued with certificate of title upon the Ministry of Lands having issued deed plans to facilitate the issuance of title.

However, a legitimate expectation, even when made out, does not always entitle the expectant relief. Public interest, change of policy, conduct of the expectant or any other valid or *bonafide* reason given by the decision-maker, may be sufficient to negative the 'legitimate expectation'.

In the case of ***Sethi Auto Service Station v Delhi Development Authority*** [2009] AIR (SC) 904 the Supreme Court of India held that:

"It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take decisions under law and the court is expected to apply an objective standard which leaves the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which give rise to judicial review but the granting of relief is very much limited."

In the instant case there appears some justification for the 2nd respondent's refusal to do what the law would ordinarily compel them to in order not to

frustrate the applicant's legitimate expectation. The fact that there are some legal issues concerning this land and this would affect the applicants' legitimate expectation.

Whether the Applicants are entitled to the remedies sought?

The applicants prayed for the grant of relief for of Mandamus to compel the 2nd respondent issue certificates of title over the disputed land. It may indeed not be possible as noted earlier since this would cause some legal problems of double titling but the 2nd respondent should harmonise the position or issue of ownership within reasonable time.

However, having found that the applicants had a legitimate expectation, the court will grant a declaration under section 36(1)(e) and 3 of the Judicature Act as follows:

It is declared that Yusuf Suuna Kiweewa's land comprised in Mailo Register Volume 273 Folio was eligible for the issue of a certificate of title under Block and Plot, and his interest cannot be extinguished without payment of adequate compensation, unless there is proof that he has sold the land or dealt with it in any such manner that extinguished his interest.

I make no order as to costs.

Ssekaana Musa

Judge

19th December 2023