

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 314 OF 2016**

- 1. BISANGWA KASIMBA JOSEPHAT**
- 2. BISONS CONSULTS INTERNATIONAL LTD ::::::::::::::: APPLICANTS**

VERSUS

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

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

1. This judicial review application was brought under articles 26, 28(1), 42 and 50 of the Constitution, section 36 (1) of the Judicature Act and Rules 3(1) (a), 6 and 8 of the Judicature (Judicial Review) Rules, 2009 seeking:

- i. Certiorari quashing the first Respondent's decision to transfer the land comprised in Busiro block Magula close plots 18-25 to another person in contravention of an order of this court that stayed all pending transfers and transaction on Busiro block Magula close plots 13, 14, 15, 16, 17, 18-25 and 7-12, land at Buyira Entebbe Municipality pending the determination of the main application.
- ii. A declaration that the first Respondent acted illegally, irrationally and in contempt of court when she allowed a transaction and transfer of the land comprised in Busiro block Magula close plots 18-25 to be effected when there was a standing court order that stayed all pending transactions on this land.

- iii. Mandamus compelling and directing the first Respondent to restore the suit land to the former registered proprietor who is the first Respondent.
 - iv. Certiorari against the Respondents quashing the first Respondent's decision to remove a caveat on the suit land because it is illegal, irrational and contrary to statutory provisions and the rules of natural justice.
 - v. A declaration that the first Respondent acted illegally and irrationally when it vacated a caveat on suit property before the lapse of the required statutory period thereby occasioning a miscarriage of justice.
 - vi. An order prohibiting the Respondents from further interference with the Applicants caveat until directed by a court with competent jurisdiction and the lapse of statutorily stipulated provisions.
 - vii. A permanent injunction restraining the Respondents from further interference with the Applicant's caveat until directed by a court with competent jurisdiction and the lapse of statutorily stipulated provisions.
 - viii. General damages.
 - ix. Aggravated damages.
 - x. Exemplary and/or punitive damages.
 - xi. Costs of this application.
 - xii. Any other consequential relief as court deems necessary.
2. Mr. Sebugwawo Marvin of M/s. Sebugwawo & Co. Advocates represented the Applicants and the Respondents were represented by Ms. Arinaitwe Gorreti from the Attorney General's Chambers.

3. The application was supported by the affidavit of Mr. Kasimba Bisangwa Josephat the first Applicant and Managing Director of the second Applicant. The grounds for the application were briefly that on 13th July 2015, the Applicants lodged a caveat on the suit land. The caveat was registered pursuant to a memorandum of understanding between the Applicants and the representatives of the customary land owners that the Applicants would finance the registration of the customary land and would in turn get four acres of the land and buy another four acres. The first Respondent in her personal capacity and also as an agent of the second Respondent caused the issuance of a notice for an application by the registered proprietor to remove the Applicant's caveat which was served on the Applicants by way of registered mail on 11th November 2015. Before the statutory stipulated time of 60 days lapsed, the caveat was removed from the certificate of title.
4. The first Respondent's actions were contrary to the constitutional provision of a right to a fair hearing, rules of natural justice and were illegal, irrational and in contravention of the Constitution and the Registration of Titles Act. Further there was an interim order to preserve the status quo that was served on the Respondents but the same was disregarded by the first Respondent by permitting a transaction to be made on the land. The actions of the first Respondent of disregarding an order of court were unconstitutional and a total disregard of the rule of law.
5. Mr. Ssebalu Duncan an advocate of the High Court working with M/s. Sebugwawo & Co. Advocates also swore an affidavit in support of this application. He averred that misc application No. 1325 of 2015 was determined on 18th December 2015 wherein an interim order staying all pending transfers and or transactions on the suit land was granted till 19th January 2016 when the substantive application was fixed for hearing. The said order was served on the first Respondent which they acknowledged receipt of on 21st December 2015. After conducting a search at the land offices in Wakiso, the Applicants discovered that the first Respondent on 22nd December 2015 at 3:28pm under instrument Wak-00071339 just a day after being served with the court order caused a transfer of a portion of plot 18-25 to a one Azhar Jaffer. The first Respondent acted in contempt of court as she disregarded a lawful order and that those actions are unconstitutional, irrational and illegal.

6. Mr. Yusuf Kakerewe a senior registrar of titles in the Ministry of Lands, Housing and Urban Development deponed an affidavit opposing the application. He averred that it was true that the Applicants lodged a caveat on the suit land vide instrument No. WAK 00054766 dated 13th July 2015. The notice of caveat was issued and sent to the registered proprietor notifying them of the caveat entered on the title. In response to the notice, the registered proprietor said that the caveat was entered in error as they had no contractual obligations with the caveator to enter a caveat. Basing on the said application, a notice to remove the caveat was issued and delivered to the Applicants' address on 15th October 2015 and not to the post office on 2nd November 2015. It was not true that the caveat was lapsed without giving the Applicants an opportunity to be heard as the opportunity was given but they did not act accordingly.
7. The office of the Registrar of titles was enjoined to remove the caveat as requested by the registered proprietor since the caveator did not avail the office with the court order stopping the removal. The caveat having been removed, the registered proprietor was at liberty to deal in his property and the plots have been separated into FRV WAK 1516 folio 17, 18 and WAK 1170 folio 9 and transferred to Azar Jaffer. The application should be dismissed with costs to the Respondents as the same is unfounded, bad in law and brought in bad faith.
8. The issues for determination are; (1) whether the first Respondent acted illicitly and irrationally when it vacated the Applicants caveat on the suit land; (2) whether the first Respondent in transferring the suit land acted in contempt of a court order that stayed all pending transfers and transactions on the suit land and (3) what are the available remedies?

b) Law

9. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374.**

10. In **Stream Aviation Ltd v. The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)** Justice V. F. Musoke Kibuuka held that the prerogative order of *certiorari* is designed to prevent the excess of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.
11. In **Semwo Construction Company v. Rukungiri District Local Government HC MC 30 of 2010** Justice Bamwine explained that: “... mandamus is a prerogative writ to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body’s office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review.”
12. Prohibition lies to restrain authorities or bodies which are inferior to the High Court from assuming jurisdiction where there is none or from doing what they are not authorized to do. It does not correct the practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.¹
13. Section 139 (1) of the Registration of Titles Act (herein after the RTA) provides that “any beneficiary or other person claiming any estate or interest in land under the operation of this Act or in any lease or mortgage under any unregistered instrument or by devolution in law or otherwise may lodge a caveat with the registrar in the form in the fifteenth schedule to this Act or as near to that as circumstances permit, forbidding the registration of any person as transferee or proprietor of and of any instrument affecting that estate or interest until after

¹Peter Kaluma “Judicial Review Law Procedure and Practice” second edition, p.119.

notice of the intended registration or dealing is given to the caveator, or unless the instrument is expressed to be subject to the claim of the caveator as is required in the caveat, or unless the caveator consents in writing to the registration.”

14. Section 140(1) of the RTA provides that “upon the receipt of such caveat the registrar shall notify the receipt to the person against whose application to be registered as proprietor or, as the case may be, to the proprietor against whose title to deal with the estate or interest the caveat has been lodged; and that applicant or proprietor or any person claiming under any transfer or other instrument signed by the proprietor may, if he or she thinks fit, summon the caveator to attend before the court to show cause why the caveat should not be removed; and the court may, upon proof that the caveator has been summoned, make such order in the premises either *ex parte* or otherwise, and as to costs as to it seems fit.” Subsection (2) provides that “except in the case of a caveat lodged by or on behalf of a beneficiary claiming under any will or settlement or by the registrar, every caveat lodged against a proprietor shall be deemed to have lapsed upon the expiration of sixty days after notice given to the caveator that the proprietor has applied for the removal of the caveat.”

15. I have considered all the pleadings and submissions of the parties. The Respondent insists that the caveat was removed after the expiry of 60 days and the Applicants insist that it was before this expiry. Even though the Applicants produced annexure L- a search certificate purporting that by 11th December 2015 there was no incumbrance, none of the parties provided the date the said caveat was vacated for the court to consider. I am reluctant to rely on this search certificate alone as proof of the date on which the caveat was removed.

16. However to the extent there was a court order annexure AAA to the affidavit of Ssebalu Duncan dated 18th December 2015 which stayed all pending transfers and/or transactions on the suit land till 9th January 2016 when the main application was to be heard, it was contemptuous and unlawful for the Registrar to transfer a portion of the suit land to wit plots 18-25 to Azzar Jaffer or have any dealings done on the suit land on 22nd December 2015 during its sustainance.

17. Be that as it may, considering the circumstances of this case, setting aside the subdivision and/or the transfer may create more confusion and injustice. Instead this court considers that the underlying dispute between the original land owners and the Applicants is what should be prioritized to determine if the sale and transfer to Azhar Jaffer was proper or not. After such determination of this substantive issue, a competent court can make the determination whether to set aside this sale or not if any of the parties seeks its redress.
18. Based on all the above, this application succeeds in part, it was contemptuous and unlawful for the Registrar to have any dealing with the land during the sustenance of a court order but in my discretion no orders of setting aside the transactions shall be given.

I so order.

Lydia Mugambe
Judge
10th April 2019