THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 13 OF 2019

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO THE JUDICATURE (JUDICIAL REVIEW) RULES S.I 11 OF 2009

JOHN SSENTONGO :: APPLICANT

VERSUS

1. **THE COMMISSIONER LAND REGISTRATION**
2. **THE ADMINISTRATOR GENERAL**
3. **MUSIIGE MOSES KAMYA**
4. **KAHALIDI KIZZA a.k.a MUSIIGE ISAAC**
5. **HASSAN SSENTAMU :: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under *Sections 33 and 36 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Rules 3(1)(a), 6(1) and (2), and 8 of the Judicature (Judicial Review) Rules S.I 11 of 209*, for orders that;

a) A declaration that the decision of the 1st Respondent cancelling the Applicant's proprietorship on the certificate of title for land comprised in Kibuga Block 8 Plot 304, Land at Namirembe measuring 0.10 Hectares (hereinafter referred to as **"the suit land"**) is arbitrary, irrational, and ultra vires the law.
b) A declaration that the subsequent transfers of the suit land to the other Respondents is illegal, null and void.
c) An order of Certiorari doth issue to quash the decision of the 1st Respondent cancelling the Applicant's proprietorship on the certificate of title for the suit land.
d) An order of prohibition doth issue, preventing the 1st Respondent from effecting any further changes on the register or taking further

decisions in regard to the Applicant's interest and certificate of title for the suit land.

e) An order of prohibition doth issue, preventing the Respondents or any person or persons from any further interference with the Applicant's interest in the suit land.
f) An order that the Applicant is reinstated as proprietor of the land.
g) An order that the Applicant be awarded general damages and costs of the application to be paid by the Respondents jointly.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit sworn by the Applicant in support of the application. Briefly, the grounds are that the Applicant was at all material times prior to the cancellation of his proprietorship on the certificate of title, the registered proprietor of the suit land. The Applicant stated that without being accorded an opportunity to be heard in accordance with the law and principles of natural justice, the 1st Respondent cancelled his proprietorship on the certificate of title to the suit land. The Applicant avers that the decision by the 1st Respondent was arbitrary, irrational and ultra vires the law in as far as the Applicant was never afforded a hearing in accordance with the law and the principles of natural justice. The 1st Respondent's decision was also never communicated to the Applicant. Owing to the Respondent's actions, the Applicant has suffered psychological anguish, embarrassment and anxiety. It is in the interest of justice that the application is granted.

[3] The Respondents opposed the application through affidavits in reply deposed on behalf of the 1st and 2nd Respondents and by the 3rd and 5th Respondents. The affidavit in reply for the 1st Respondent was deponed to by **Gooloba Haruna**, a Senior Registrar of Titles with the 1st Respondent, who stated that upon receipt of a complaint from the 4th Respondent's lawyers, about the proprietorship of the suit land, summons and a notice of intention to effect changes were issued to the Applicant, among others, by registered mail. The notice required the concerned parties' attendance for a public

hearing which the Applicant failed or refused to attend. The deponent further averred that due process of the law was followed leading to the cancellation of the certificate of title which had been illegally issued to the Applicant.

[4] The affidavit in reply for the 2nd Respondent was sworn by **Atuhaire Charity**, an Asst. Administrator General, who stated that the Administrator General (the 2nd Respondent) became administrator of the estate of the late Moses Sekakozi Musiige (in some documents referred to as "Musinge") vide a grant issued on 02/04/1980. The said deceased was the original registered proprietor of the suit land. The deponent stated that sometime in 1990, Ahmed Nyenje, Khalid Kizza Kabanda, Hassan Ssentamu and Musa Kamya Musiige represented to the 2nd Respondent that they were the rightful beneficiaries to the deceased's estate upon which the estate was transferred to them as joint tenants. It was, however, later found out that the dealings subsequent to the above mentioned transfer were tainted with illegality. Consequently, the 1st Respondent cancelled the title and reinstated the deceased Moses Sekakozi Musiige as the registered proprietor. The 2nd Respondent was obliged to administer the estate by distributing it to the rightful beneficiaries which was done. The deponent finally stated that the Applicant has no cause of action against the 2nd Respondent in the circumstances.

[5] The 3rd Respondent, **Moses Kamya Musiige**, in his affidavit in reply stated that the 4th and 5th Respondents plus himself are the current registered proprietors of the suit land upon transfer from the 2nd Respondent as the rightful beneficiaries of the estate of the late Moses Sekakozi Musiige. He stated that their proprietorship of the suit land cannot be cancelled without proof of any fraud or illegality on their part. He stated that he was aware that pursuant to a complaint made by the 4th Respondent, the Commissioner Land Registration heard from the parties and made a decision to amend the register of the suit land by cancelling the registration of the Applicant and registering the Administrator General as proprietor.

He averred that the Applicant was offered an opportunity to be heard by being invited for the public hearing which he declined. He further averred that at the time of the alleged transactions leading to the transfer of the suit land to the Applicant, he and his brothers were all minors who could not have had capacity to contract. The power of attorney that was used by one Ahmed Nyenje to effect the sale and transfer of the land was illegally procured and all the actions based upon it were a nullity.

[6] The 5th Respondent, **Hassan Ssentamu**, in his affidavit in reply stated that the 3rd, and 4th Respondents plus himself are the surviving beneficiaries of the estate of the late Moses Sekakozi Musiige. He stated that he has not had any dealings with the Applicant and has no personal knowledge of any sale agreement dated 12th April 1992. He did not sign any power of attorney to Ahmed Nyenje. He further averred that he was 17 years at the time of the alleged agreement and thus had no legal capacity to contract. He concluded that the Applicant has no cause of action against him, the 3rd and 4th Respondents.

Brief Background to the Application

[7] The 3rd, 4th and 5th Respondents are children of the late Moses Sekakozi Musiige, the original registered proprietor of the suit land who passed away in 1979. The Administrator General was appointed Administrator of the estate of the said deceased person vide a grant issued on 02/04/1980. On 27/02/1990, the suit land got registered in the names of Ahmed Nyenje, Khalidi Kizza Kabanda, Hassan Ssentamu and Musa Ssekakozi Musiige as "Joint Tenants". Khalidi Kizza Kabanda, Hassan Ssentamu and Musa Ssekakozi Musiige are 4th, 5th and 3rd Respondents herein respectively. By agreement dated 21st April 1992, the above named "Joint Tenants" are said to have executed an agreement of sale of the suit land with John Sentongo (the Applicant). On 25/06/1992, the suit land was registered in the name of John Sentongo. At all times material to this transaction, the suit land was subject to a lease granted to Shell Uganda Limited, which Company is operating a Fuel Station on the suit land.

[8] Sometime in 2018, the Office of the Commissioner Land Registration received a complaint from M/s Semuyaba, Iga & Co. Advocates acting on behalf of the 4th Respondent herein to the effect that the transactions leading to the transfer of the suit land from the name of the original registered proprietor to the Applicant were illegal on the basis that at the time of the said transactions, the 3rd, 4th and 5th Respondents were all minors and executed neither the sale agreement nor the power of attorney purportedly authorizing a one Ahmed Nyenje to transfer the suit land on their behalf. The Office of the Commissioner Land Registration (the 1st Respondent) issued a summons and a notice of intention to effect changes on the register which are said to have been served upon the concerned parties, including the Applicant, inviting them for a public hearing. It is claimed by the 1st Respondent that the Applicant did not appear for the said hearing despite evidence of service, pursuant to which the 1st Respondent went ahead to conduct the hearing ex parte, issued the amendment order and effected the same on the register. In effect, the entry of the Applicant's name on the register of the suit land was cancelled and the name of the late Moses Ssekakozi Musiige was reinstated on the title. On basis of the Letters of Administration held by the Administrator General (the 2nd Respondent), the suit land was transferred into the name of the 2nd Respondent, who in turn transferred the property into the names of the 3rd, 4th and 5th Respondents as the rightful beneficiaries to the estate of the late Moses Sekakozi Musiige. It is on basis of these developments that the Applicant filed the instant application.

Representation and Hearing

[9] At the hearing, the Applicant was represented by Mr. Luswata Joseph; the 1st Respondent by Mr. Ssekitto Moses; the 2nd Respondent by Mr. Mathias Mike Mwanje; the 3rd and 4th Respondents by Mr. Kuteesa Paul; and the 5th Respondent by Mr. Kalori Semwogerere. Counsel for the 3rd and 4th Respondents had sought leave to cross examine the Applicant on his affidavit which application had been granted. However, it appears that

course was eventually abandoned and a schedule to file written submissions was agreed to and set by the court. The submissions were duly filed by Counsel, which I have reviewed and taken into consideration in the course of determination of this matter.

Issues for determination by the Court

[10] Each Counsel raised the issues differently. However, from the submissions, I find the following issues sufficient for determination of the matter before the Court;

1) **Whether this application is properly before the Court?**
2) **Whether the application discloses any grounds for judicial review?**
3) **What remedies are available to the parties?**

[11] Under **the 1st issue**, a number of preliminary points of objection were raised, to wit;

a) *Whether this application for judicial review was brought within time?*

b) Whether the application is incompetent for failure by the Applicant to exhaust existing remedies under the law?

c) Whether the application was properly brought against the 2nd, 3rd, 4th, and 5th Respondents?

1st Preliminary Issue: Whether this application for judicial review was brought within time?

Submissions

[12] It was submitted by Counsel for the 3rd, 4th and 5th Respondents that the application was filed outside the prescribed 90 days for filing an application for judicial review and since there was no application for extension of time within which to file the application as directed by the rules, the application is incompetent and is a nullity. Counsel submitted that on this ground alone, the Court ought to dismiss the application.

[13] In response, Counsel for the Applicant submitted that the application seeks to review the decision of the 1st Respondent of cancelling the Applicant's proprietorship of the suit property that happened on 11th September 2018 and purportedly communicated on 2nd October 2018; and then the subsequent transfer of the suit property to the 2nd Respondent on 20th November 2018 and later to the 3rd to 5th Respondents on 11th January 2019. Counsel for the Applicant argued that the decision under challenge is one composite decision comprising the amendment of the register, the purported communication of the decision of amendment and the transfers taken at different times between April 2018 and completed on 11th January 2019. The Applicant seeks to reverse this entire process on grounds that it is tainted with illegality, procedural unfairness and impropriety. Counsel argued that the time for filing the application started to count from at least the 20th November 2018 when the first transfer of ownership of the suit property happened. Counsel concluded that this application having been filed on 28th January 2019 was filed within time.

Court Determination

[14] *Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009* provides as follows;

> *"Time for applying for judicial review*
>
> *(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made."*

[15] The position of the law is that time limitations are substantive provisions of the law and limitation of actions is not concerned with merits of the case. In ***Dawson Kadope vs Uganda Revenue Authority, HC MA. No. 40 of 2019*** while citing the decision in ***I.P Mugumya vs Attorney General, HC M.A No. 116 of 2015***, the court held that from the clear

wording of the rule [5 (1)], failure to bring the application within the prescribed time and the failure to seek and obtain the court's order extending the time renders the application for judicial review time barred and therefore not amenable for judicial review. The court added that the general effect of the expiration of the limitation period is that the remedy is also barred. Thus it is generally agreed that provisions as to time limitation are usually strict and inflexible; such that litigation is automatically stifled after the fixed time has elapsed, regardless of the merits of a particular case. Also See: ***Hilton vs. Steam Laundry [1946] 1 KB 61 at p.81.***

[16] In the instant case, the decision challenged by the Applicant is the order by the 1st Respondent amending the register of the suit land that had the effect of cancelling the entry of the Applicant as the registered proprietor of the suit land and reinstating the name of the late Moses Ssekakozi Musiige as the original registered proprietor. This decision by the 1st Respondent was taken on 11th September 2018. It is the agreed position that a judicial review challenge is directed, not at the merits of the decision, but at the decision making process. That being the case, the grounds of judicial review are properly said to have first arisen upon the making of the decision. It is at that point that the process through which the decision was made can be subjected to challenge for either its legality, rationality or procedural impropriety or fairness. As such, contrary to the submission of the Applicant's Counsel, the dates on which such a decision was implemented cannot be part of the calculation of the time within which the application for judicial review ought to have been brought.

[17] In the circumstances therefore, in terms of the provision under Rule 5 (1) of the Judicial Review Rules, the grounds of the present application first arose on the 11th September 2018. Filing the application for judicial review on 28th January 2019 was way out of time since the three months' period elapsed by 11th December 2018. The Applicant ought to have sought leave to bring the application out of time as permitted by the same rule. I should also point out that in terms of Rule 5(1) cited above, whatever reason that

an applicant has that prevented them from bringing the application when the grounds of the application first arose, are supposed to be used as justification for seeking leave to bring the application outside time. Such justification, however genuine, cannot constitute an exception to the strict application of the set timeline. As such, an explanation that the applicant did not become aware of the decision until a certain time cannot shift the date as to when the time started counting. It can only constitute a sufficient ground for extension of time.

[18] On the above premises, therefore, this application was brought outside the time fixed by the law. It is accordingly time barred and incompetent. It ought to be struck out. However, for completeness and assuming I had reached a different finding on this preliminary point of objection, I have found it necessary to deal with the other issues raised in the application since they are pertinent in the interest of justice.

2nd Preliminary Issue: Whether the application is incompetent for failure by the Applicant to exhaust existing remedies under the law?

Submissions

[19] It was the submission of all the Respondents' Counsel that the present application for judicial review is improperly before the Court for reason that before bringing the application, the Applicant did not satisfy the requirement of exhaustion of existing remedies available within the public body or under the law as per rule 7A (1) (b) of the Judicature (Judicial review) (Amendment) Rules 2019. Counsel submitted that the Applicant ought to have exercised the remedy provided for under Section 91 (10) of the Land Act as amended by appealing against the decision of the 1st Respondent to the District Land Tribunal within 60 days. Counsel made reference to the case of ***Henry Muganwa Kajura vs. the Commissioner Land Registration MC 232 of 2019*** in which an application for judicial review was found incompetent on account of failure to exhaust an existing remedy. Counsel further referred to the decisions in ***Fuelex Uganda Ltd vs Attorney General & Another, HC***

M.C No. 048 of 2014; Preston v. IRC [1995] 2 All ER 327; and ***Hon. Lukwago Erias & Others vs Electoral Commission & Others, HC M.C No. 432 of 2019*** on the subject of exhaustion of existing remedies.

[20] For the Applicant in reply, Counsel relied on the decision in ***R vs. Huntingdon District Council Exparte Cowan & Another (1984) 1 All ER 58*** where it was held that where an applicant applies to the High Court for judicial review and there is an alternative remedy available to him by way of appeal, the court should always ask itself which of the two alternative remedies is the more convenient and effective, in the circumstances, not only for the Applicant but in public interest and should exercise its discretion accordingly. Counsel submitted that in the instant case, the District Land Tribunals referred to under Section 91(10) of the Land Act were disbanded and there was, therefore, no forum where the appeal could be lodged. Counsel submitted that the submission for the Respondents to the effect that the appeal could be filed at the High Court or in the Magistrates' Courts was without authority. Counsel submitted that accordingly, the so-called alternative remedy of appeal was not convenient or effective and judicial review was therefore available to the Applicant. Counsel also made reliance on the decision in ***Salim Alibhai & Others vs Uganda Revenue Authority, HC M.C No. 123 of 2020***.

Determination by the Court

[21] *Rule 5 of the Judicature (Judicial Review) (Amendment) Rules, No. 32 of 2019* introduces *Rule 7A* into the principal Rules. *Rule 7A (1) thereof* which lays out the factors to consider in handling applications for judicial review provides as follows;

> *"7A. Factors to consider in handling applications for judicial review.*
>
> *(1) The Court shall, in considering an application for judicial review, satisfy itself of the following—*
>
> *(a) that the application is amenable for judicial review;*

(b) that the aggrieved person has exhausted the existing remedies available within the public body or under the law; and

(c) that the matter involves an administrative public body or official." [Emphasis added]

[22] It is argued for the Respondents that the present application was brought without compliance with the provision under Rule 7A (1) (b) as above cited. The Respondents cited the provision under Section 91 (10) of the Land Act which provided the Applicant with an option to appeal before making the present application. *Section 91 (10) of the Land Act as amended* provides as follows:

"Any party aggrieved by a decision or action of the Commissioner under this section may appeal to the District Land Tribunal within sixty days after the decision was communicated to that party".

[23] It has been stated that where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions and their structures will be strengthened and respected. See: ***Sewanyana Jimmy v Kampala International University HCMC No. 207/ 2016*** [**Per Ssekaana J**]. In ***Charles Nsubuga vs Eng. Badru Kiggundu & 3 Others, HC MC No. 148 of 2015***, **Musota J.** (as he then was) while citing with approval the decision of the Constitutional and Human Rights Division of the High Court of Kenya in the case of ***Bernard Mulage vs Fineserve Africa Limited & 3 Others Petition No. 503 of 2014***, relied on the following passage:

"*There is a chain of authorities from the High Court and the Court of Appeal that where a statute has provided a remedy to a party, this court must exercise restraint and first give an opportunity to the relevant bodies or state organs to deal with the dispute as provided in the relevant statute. This principle was well articulated by the Court of Appeal in Speaker of*

National Assembly versus Ngenga Karume [2008] 1 KLR 425 ***where it was held that: In our view there is merit … that where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed".***

[24] The Court of Appeal of Uganda in the case of ***Leads Insurance Limited vs Insurance Regulatory Authority & Another, CACA No. 237 of 2015*** approved the statement of the law by the Learned Trial Judge thus:

> ***"The remedy by way of judicial review is not available where an alternative remedy exists. This is a preposition of great importance. Judicial review is collateral challenge; it is not an appeal. Where Parliament has provided by statute appeal procedures, it will only be very rarely that the court will allow the collateral process of judicial review to be used to attack an appealable decision. See: Breston Vs IRS 1985 Vol. 2 … Land Reports pg 327 at page 330 Per Lord Scarman"***.

[25] The Court in the ***Leads Insurance Limited vs Insurance Regulatory Authority & Another (supra)*** decision went ahead to find that if the applicant is to satisfy the Court to entertain the judicial review in presence of an alternative remedy, the applicant has to show some exceptional circumstances or some other ground why it is inappropriate for the matter to be dealt with by the alternative forum. The Court cited with approval the decision in ***Housing Finance Company of Uganda Ltd vs The Commissioner General URA, HC M.C No. 722 of 2005*** where it was stated:

> ***"I must hasten to add that there are exceptions to the 'rule' at hand. If a matter in question or decision in issue is questioned on the basis of the same being ultra vires or procured by fraud, ill will, or some other circumstances that makes it imperative that judicial review be embarked upon, leave may be granted regardless of the existence of an alternative remedy"***.

[26] In the instant case, although the Applicant did not specifically plead any exceptional circumstances as to why he did not explore the existing alternative remedy, it is clear from the application and the submissions by the Applicant's Counsel that the application was brought upon the grounds of illegality (ultra vires) and procedural impropriety. It is also stated in the submissions by the Applicant's Counsel that alternative remedy of appeal was not convenient and effective since the forum to which the appeal was supposed to be lodged was non-existing. According to Section 91 (10) of the Land Act, the appeal was supposed to be lodged with the District Land Tribunal. Pursuant to Practice Direction No. 1 of 2006, and following the expiry of contracts of Chairpersons and Members of the District Land Tribunals, the jurisdiction that was being exercised by the District Land Tribunals was conferred upon Magistrates Courts presided over by Magistrates of the rank of Magistrate Grade 1 and above. By necessary implication, the appeal that was supposed to be lodged with the District Land Tribunal in accordance with Section 91 (10) of the Land Act would have had to be lodged with the Magistrates' Court. It was also argued for the Respondents that it was, as well, a viable alternative for the appeal to be filed with the High Court since it has unlimited jurisdiction.

[27] Regarding the filing of the appeal before the Magistrates Court, I have already pointed out that the present application challenges the decision of the 1st Respondent on the basis of illegality (ultra vires) and procedural impropriety. It is clear that the decision is not being challenged on its merits. It is also clear that only the High Court has original jurisdiction to review and set aside decisions of public bodies on the grounds raised in this application through exercise of the power of judicial review. For that reason, it would have been strange for the Applicant to present the matter before a Magistrate's Court raising the present challenge. In my view, it would not make it less strange even where the matter was called an appeal and was citing the provision herein in issue. In absence of specific rules operationalising the provision under Section 91 (10) in this respect, the

Magistrate's Court would not issue the remedies sought in this application. As such, I am in agreement with Counsel for the Applicant that the existing remedy available in the present case was neither convenient nor effective in the circumstances.

[28] Regarding the option to lodge the appeal in the High Court, reliance was placed on the decision in ***Sarah Nakku & Others vs The Commissioner Land Registration & Another, HC Civil Appeal No. 064 of 2010*** in which the trial Judge exercised jurisdiction to entertain the appeal despite an objection to the jurisdiction of the court by the respondents. I note that in the said case, the trial judge was persuaded by the absence of the District Land Tribunals, the existing questions as to whether the appeal should have properly been lodged before the Magistrate's Court and the fact that the High Court enjoys unlimited original jurisdiction and such appellate jurisdiction as granted under the law. Clearly therefore, the finding by the Court was based on the particular circumstances of the case. The decision cannot be used as a yardstick to reach a determination that appeals referred to under Section 91 (10) of the Land Act may, as a rule, be filed in the High Court. As such, in view of such questions on the requisite forum, it would be unfair for the Applicant to be tied upon such an alleged alternative remedy, especially since it would involve a gamble as to whether a particular trial Judge would exercise their discretion in a similar way like the Judge in an earlier case. Clearly therefore, the above questions make the alleged alternative remedy less convenient or effective. The Applicant cannot be obliged to explore such a remedy in place of an express power of the High Court in judicial review.

[29] Lastly on this point, it is also my considered finding that the rule for exhaustion of existing alternative remedies is a rule of discretion on the part of the court and the exercise of discretion is stricter where the challenge by the aggrieved party is premised on the merits of the decision rather than the decision making process. Where the challenge is directed against the decision making process, the judicial review option may be more preferable.

Borrowing the words of my learned brother **Ssekaana J.**, in ***Salim Alibhai & Others vs Uganda Revenue Authority, HC M.C No. 123 of 2020***, he had this to say on this point;

> ***"The rule of exhaustion of alterative remedies is not cast in stone and it applies with necessary modifications and circumstances of the particular case ... When an alternative remedy is available, the court may refrain from exercising its jurisdiction, when such alternative, adequate and efficacious legal remedy is available but to refrain from exercising jurisdiction is different from saying that it has no jurisdiction. Therefore, the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of alternative remedy, the High Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the application seeks enforcement of any of the Fundamental rights; (ii) where there is failure of natural justice; or (iii) the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. See M.P State Agro Industries Development Corporation Ltd v Jahan Khan [2007] 10 SCC 88"***.

[30] In the circumstances, therefore, and for the reasons above stated, there was no adequate and effective alternative remedy in the instant case that would properly be invoked by this Court to lock out the present application. This case was properly brought by the Applicant as an application for judicial review and the Court is in position to exercise its discretion to entertain the application. The application would, therefore, have been properly before the Court but for my finding on the first preliminary issue.

3rd Preliminary Issue: Whether the application was properly brought against the 2nd, 3rd, 4th, and 5th Respondents?

Submissions

[31] Counsel for the 2nd Respondent submitted that although the 2nd Respondent is a public body, its role in this matter was not performed in a public capacity but rather as an Administrator of the estate of the late Moses Ssekakozi Musiige. Counsel submitted that the application for judicial review discloses no decision that was taken by the 2nd Respondent that is amenable to judicial review and, as such, the application was not properly brought against the 2nd Respondent. Counsel for the 3rd to 5th Respondents submitted that the application is unsustainable against them as they are not public officers who exercise functions in official capacity. Counsel submitted that the application did not cite any exercise of a public function that was undertaken by the 3rd to 5th Respondents that is amenable to judicial review. Counsel prayed that the application ought to be dismissed as against the 2nd, 3rd, 4th and 5th Respondents.

[32] In response, Counsel for the Applicant submitted that it is a principle of public policy that the entire dispute by a party should be brought and determined in one case. It is for that reason that Order 1 Rule 10(2) of the CPR allows the addition to proceedings of any party whose presence is necessary to resolve the dispute at once. Counsel submitted that the orders sought in this application, if granted, would affect the interest of the 3rd to 5th Respondents. They are therefore necessary parties to achieve the principle of completeness, more so since they set in motion the decision in issue. Counsel for the Applicant further submitted that the 2nd Respondent was part of the conduct that is being challenged by the Applicant.

Court Determination

[33] This objection is premised on the scope and purpose of judicial review. It is a settled position of the law that the purpose of judicial review is to check that public bodies and officials do not exceed their jurisdiction or be allowed to carry out their duties in a manner that is detrimental to the public interest. Judicial review is essentially exercised against a public body or official in a public matter. It therefore follows that the subject under challenge must relate to the conduct of a public body or official whose activities can be controlled by judicial review. Additionally, the subject matter must involve claims based on public law principles and not the enforcement of private law rights. See: **Ssekaana Musa, *Public Law in East Africa*, (2009) LawAfrica Publishing, Nairobi, at p. 37.**

[34] On the matter before the Court, there is no dispute that the 3rd, 4th and 5th Respondents are not public officers nor that they do not exercise any public functions in as far as the matter before the Court is concerned. However, like it was submitted for the Applicant, the impugned decision and action of the 1st Respondent was set in motion by the 4th Respondent for his own benefit and for the benefit of the 3rd and 5th Respondents. The 2nd Respondent is a public body who participated in the actions being challenged. It is clear to me that the orders being sought by the Applicant could not be granted without affecting the interest of the 2nd to the 5th Respondents. In accordance with the cardinal principle of fair hearing, there is no way the Court would make orders that would fundamentally affect the said Respondents' interest without their involvement. It was therefore fit and proper that the said Respondents be made parties to the application. The application was therefore properly brought as against the 2nd to the 5th Respondents.

[35] I now turn to the merits of the application by dealing with the substantive issues 2 and 3.

<u>Issue 2:</u> Whether the application discloses any grounds for judicial review?

[36] It is settled law that judicial review is concerned not with the decision itself but with the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal against the decision and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. The duty of the court, therefore, is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice. See: ***Attorney General vs Yustus Tinasimiire & Others, Court of Appeal Civil Appeal No. 208 of 2013*** and ***Kuluo Joseph Andrew & Others vs The Attorney General & Others, HC MC No. 106 of 2010***.

[37] The *Judicature (Judicial Review) (Amendment) Rules 2019,* set out the factors to be considered by the Court when handling applications for judicial review. *Rule 7A thereof* provides as follows:

> *"(1) The court shall, in considering an application for judicial review, satisfy itself of the following –*
>
> *(a) That the application is amenable for judicial review;*
>
> *(b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
>
> *(c) That the matter involves an administrative public body or official.*
>
> (2) *The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment."*

[38] For a matter to be amenable for judicial review, it must involve a public body in a public law matter. In my view, therefore, the conditions under *paragraphs (a) and (c) of sub-rule (1) of Rule 7A* above may be considered concurrently. The Court must, therefore, be satisfied; first, that the body under challenge must be a public body whose activities can be controlled by judicial review; and secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights. See: **Ssekaana Musa, *Public Law in East Africa*, (2009) LawAfrica Publishing, Nairobi**, at **p. 37.**

[39] It follows, therefore, that in order to bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large. The "public" nature of the decision challenged is a condition precedent to the exercise of the courts' supervisory function. See: ***Arua Kubala Park Operators and Market Vendors' Cooperative Society Ltd vs Arua Municipal Council, HC MC No. 003 of 2016*** **[Per Mubiru J]**.

[40] On the matter before me, it is not in dispute that the 1st Respondent is a public body that acted in exercise of its public function over a matter involving public law principles, to wit, the management of the national land register. Although the Applicant as well seeks protection of his individual rights, the issues raised carry sufficient public interest in as far as they seek to challenge the decision and action of a public body over a matter of public interest. As I have already stated herein above, the addition of the 2nd to the 5th Respondents was necessary for the proper resolution of this dispute and for purpose of adhering to the cardinal principle of fair hearing. As such, it is my finding that the matter before me is amenable for judicial review and involves an administrative public body or official. I have also already pronounced myself on the element of exhaustion of existing remedies that were available to the Applicant.

[41] Considering the merits of the application, therefore, the duty of the Applicant is to satisfy the Court, on a balance of probabilities, that the 1st Respondent did not follow due process in making the impugned decision and that, as a result, there was unfair and unjust treatment of the Applicant which course of conduct is likely to put the rights of other members of the public at peril. In this regard, the court may provide specific remedies under judicial review where it finds that the named authority has acted unlawfully. A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: ***ACP Bakaleke Siraji vs Attorney General, HC MC No. 212 of 2018***.

[42] The specific allegation by the Applicant in the present case is that the 1st Respondent acted illegally on the ground of lack of jurisdiction and failure to observe the rules of natural justice. I will examine each of these allegations under a separate head.

The ground of Illegality for lack of Jurisdiction

Submissions

[43] It was submitted by Counsel for the Applicant that the 1st Respondent wrongly invoked Section 91 of the Land Act where the allegation in issue involved fraud since investigation of any fraudulent transactions in the transfer of land is a preserve of the High Court. Counsel relied on the case of ***Centenary Rural Development Bank Limited vs Commissioner Land Registration & Another, HC M.C No. 11 of 2017***. Counsel submitted that since the 1st Respondent had made a finding that there was no transfer instrument by which the disputed property was transferred from the name

of the late Moses Ssekakozi Musiige, this was a matter that fell outside the jurisdiction of the 1st Respondent conferred upon the entity under Section 91 of the Land Act. Counsel concluded that a decision taken without jurisdiction is null and void. Counsel also referred the Court to the decision in ***Hilda Namusoke & 3 Others vs Owalla's Home Investment Trust (E.A) Ltd & Another, SCCA No. 15 of 2017***.

[44] In reply, Counsel for the 1st Respondent submitted that the 1st Respondent rightly exercised its jurisdiction to cancel the Applicant's name from the register book. Counsel submitted that in line with the powers of the 1st Respondent under Section 91 of the Land Act, the Applicant's name was cancelled not for fraud but for having obtained registration illegally. Counsel submitted that this was clear from the amendment order which is attached on the pleadings, in which the reason for the cancellation is clearly stated. Counsel invited the Court to find that the 1st Respondent acted within the confines of the law to rectify the register. Counsel referred the Court to the same Supreme Court decision in ***Hilda Namusoke & 3 Others vs Owalla's Home Investment Trust (E.A) Ltd & Another (supra)***. The submissions of Counsel for the 3rd to 5th Respondents are to the same effect.

Court Determination

[45] The provisions under Section 91 of the Land Act Cap 227 as amended in 2004 are clear. It should be noted that by virtue of the Land Amendment Act of 2004, the title of "Registrar" was substituted with "Commissioner Land Registration". As such, where in some provisions the law refers to a "Registrar", the same should be read as making reference to the "Commissioner Land Registration". In that regard, Section 91 (1) of the Act provides as follows:

> *"Subject to the Registration of Titles Act, the registrar shall, without referring a matter to a court … have power to take such steps as are necessary to give effect to this Act, whether by endorsement or*

alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise."

[46] Section 91 (2) of the Land Act as amended provides as follows –

"(2) The Commissioner 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 made in error;

(d) contains an illegal endorsement;

(e) is illegally or wrongfully obtained; or

(f) is illegally or wrongfully retained;

give not less than twenty-one days' notice, of the intention to take the appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section".

[47] The Amendment Act 2004 introduced two new sub-sections under Section 91, to wit;

"(2a) The Commissioner shall conduct a hearing, giving the interested party under sub-section (2) an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law.

(2b) Upon making a finding on the matter, the Commissioner shall communicate his or her decision in writing to the parties, giving the reasons for the decision made, and may call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party."

[48] Other sub-sections under Section 91 provide for the procedure and other aspects of exercise of these special powers of the Commissioner Land Registration.

[49] In the present case, the ground relied upon by the Commissioner Land Registration to make the decision and take the action he did is stated in the Amendment Order issued by the Registrar dated 11th September 2018. In the second last paragraph at page 2 of the Order, Mr. Opio Robert, Ag. Commissioner Land Registration, states as follows:
"The decision to cancel is based on the fact that; under the law a minor can only transact if he/she has a guardian … appointed by court and there is no evidence that such guardian was appointed for the three minors before they executed the Powers of Attorney and Ahmed Nyenje, Hassan Sentamu, Musa Sentamu and Musiige Isaac alias Khalid Kizza Kabanda were not duly appointed administrators of the estate of the late Sekakozi Musiinge but the Administrator General hence could not be registered on the title neither could they transfer to John Sentongo".

[50] The Commissioner then went ahead to invoke the powers conferred upon him under Section 91 of the Land Act and made the following orders;
"1. Cancellation of the entry of Ahmed Nyenje, Khalid Kizza Kabanda, Hassan Sentamu & Musa Sentamu registered under instrument No. KLA139549 of 27/2/90.
2. Cancellation of the entry of John Sentongo registered under instrument No. KLA153185 of 25/6/92.
3. Reinstatement of the entry of Moses Sekakozi Musiinge as the registered proprietor of the certificate of title comprised in Mailo Register Kibuga Block 8 Plot 304 Land at Namirembe."

[51] The foregoing forms the 1st Respondent's decision and the premise upon which the said decision was taken. It is upon that decision that all subsequent actions complained of by the Applicant were taken. As such, it is to that decision and its premises that the Court has to look in order to establish the grounds relied upon by the Commissioner in exercise of the special powers conferred upon him under Section 91 of the Land Act. From a plain and clear reading of the cited decision and the grounds thereof, I do

not see any element or even mention of fraud as one of the grounds for the decision taken by the Commissioner. I have not found any basis for this allegation by the Applicant.

[52] It was stated by Counsel for the Applicant that the reason given by the commissioner was that there was no transfer instrument by which the disputed property was transferred from the name of the late Moses Ssekakozi Musiige and that such constituted fraud which put the matter outside the powers of the Commissioner. As shown above, no such matter is included as one of the reasons for the decision of the Commissioner. I do not see from where the Applicant imported this ground. Even if the complaint made by the 4th Respondent had made mention of fraud, which has not been shown to the Court to be the case, the moment such a ground did not form part of the Commissioner's investigation and decision, it cannot be invoked to challenge the clear decision of the Commissioner. Once the Commissioner established that an entry on the register was illegally entered and that registration on the certificate of title was illegally obtained, that was sufficient for him to invoke the powers conferred upon him under Section 91 of the Land Act.

[53] For the above reasons, it is clear to me that the decisions sought to be relied upon by Counsel for the Applicant were cited totally out of context. The decisions in ***Hilda Namusoke & 3 Others vs Owalla's Home Investment Trust (E.A) Ltd & Another (supra)*** and ***Centenary Rural Development Bank Limited vs Commissioner Land Registration & Another (supra)*** do set out the correct principles of the law on the subject but are substantially inapplicable to the facts and circumstances of the present case.

[54] In the premises, the Applicant has not adduced any material to satisfy the Court on a balance of probabilities that the 1st Respondent made the impugned decision and acted without jurisdiction. This claim by the Applicant fails.

The ground of lack of an opportunity to be heard

Submissions

[55] Counsel for the Applicant submitted that administrative acts that impinge on fundamental human rights in consequence of some provision in a statute must be performed strictly in terms of the provisions of the statute. Counsel relied on the decisions in ***Maina vs Nairobi Liquor Licensing Court (1973) EA 319*** and ***Centenary Rural Development Bank Limited vs Commissioner Land Registration & Another (supra)*** for that submission. Counsel submitted that in the instant case, the 1st Respondent did not strictly follow the relevant provisions of the Land Act in a number of instances as highlighted in their submissions. Counsel pointed out lack of service whereby the 1st Respondent purported to serve through the post office instead of personal service which would have been the effective mode of service in the circumstances. Counsel submitted that there is no specific law that allows service of process through the post office for purpose of Section 91 of the Land Act. Counsel argued that under Section 35 of the Interpretation Act, service of process through the post is only deemed effective if authorised by an Act under which the documents being served are issued. Counsel argued that if the Act is silent on how the process under it should be served, resort must be had to the rules of personal service.

[56] Counsel for the Applicant further submitted that even if it was to be accepted that service of process through the post was authorised, the same was not effective within the circumstances of the present case. Counsel referred the Court to the test laid down by the Supreme Court in the case of ***Geoffrey Gatete vs William Kyobe, SCCA No. 7 of 2005*** on what constitutes effective service. Counsel for the Applicant also submitted that the 1st Respondent did not adhere to the timelines provided for under Section 91 of the Land Act which invalidated any hearing that is said to have been conducted by the 1st Respondent. Counsel further submitted that there was no hearing at all since there is no evidence of any attendance list

or record of proceedings which is a mandatory requirement in terms of the relevant provision of the law. Counsel therefore concluded that the process of cancellation of the Applicant's registration as proprietor of the suit property was tainted with procedural irregularities that it cannot stand.

[57] For the 1st Respondent, Counsel submitted that the Applicant was accorded the right to be heard but he failed or ignored to attend. Counsel submitted that under Section 91 (2a) of the Land Act, the Commissioner is enjoined to conduct a hearing, giving the interested party an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law. Counsel submitted that in the instant case, the 1st Respondent followed due process and effected service of process through registered mail on the address provided by the Applicant. Counsel relied on the decision in the case of ***Sarah Nakku & Others vs The Commissioner Land Registration & Another (supra)*** in which service done in similar circumstances was held to have been effective and to have constituted an opportunity to the interested party of being heard. Counsel invited the Court to find that the Applicant was accorded a right to be heard and deliberately refused and/or declined to attend the hearing.

[58] For the 3rd to 5th Respondents, Counsel submitted that the 1st Respondent in its affidavit in reply had demonstrated that it fulfilled the conditions under the law necessary to conduct a hearing within the rules of natural justice. The summons, notices and other correspondences were duly posted to the Applicant's last known postal address. Counsel submitted that the 1st Respondent did all it could within its powers to accord the Applicant a right to be heard. Counsel invited the Court to find that the application by the Applicant does not disclose any grounds for judicial review and the same ought to fail.

Court Determination

[59] This ground is based on judicial impropriety and failure by the public authority to adhere to the rules of natural justice. As a ground for judicial review, "procedural impropriety" has been defined to mean "the failure to observe basic rules of natural justice or failure to act with procedural fairness toward the person who will be affected by the decision." See: ***Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374*** **[Per Lord Diplock]**. Under the law, procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: ***Dr. Lam – Lagoro James Vs. Muni University (HCMC No. 0007 of 2016)***.

[60] Procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause. The latter essentially provides against bias. Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: ***Byrne v. Kinematograph Renters Society Ltd, [1958]1 WLR 762***.

[61] The complaint in the present case is that the Applicant was not given an opportunity to be heard. Where the party aggrieved by the decision or action of a public body was summoned and appeared before the body, the court in judicial review would be required to examine the nature of the proceeding for procedural propriety and fairness. However, where the party does not attend the proceeding, the major focus is upon consideration of whether the said

party was effectively served with process requiring them to attend the proceeding and the party declined, failed or refused to attend. Where there is proof that the aggrieved party was effectively summoned to attend the proceeding and they kept away, the public body would have executed their obligation to adhere to the principles of natural justice. The Court would be unable to examine any other complaints regarding procedural fairness in absence of such a party at the impugned proceeding.

[62] On the case before me, it is alleged by the Applicant that he was not served with any summons or notice from the 1st Respondent. The Applicant claims that the alleged service through the post office was not effective and that, in the circumstances, the 1st Respondent ought to have made resort to personal service. According to the 1st Respondent, service of the summons, notices and other correspondences was effected by registered mail through the postal address provided to the 1st Respondent by the Applicant; which is P.O Box 719 Kampala. Proof of such service is attached to the affidavit in reply deponed by Gooloba Haruna for the 1st Respondent. As per the record, it is not true as alleged by Counsel for the Applicant in the submissions that the return of service does not include postage done to the Applicant. Both Annexures "AII" and "BII" include postage to the Applicant.

[63] As a matter of fact, the Applicant does not deny ownership of the postal address referred to above. He does not deny that he provided the same to the 1st Respondent as his address for purpose of matters concerning the register. Neither does he claim or lead any evidence to show that he had changed the said address and had ever communicated such change to the 1st Respondent. As such, as at the time of the proceedings herein in issue, the 1st Respondent was entitled to reach out to the Applicant by using the provided address.

[64] It was argued by Counsel for the Applicant that there was no law that authorized the 1st Respondent to effect service of court process through the post and that in absence of such legal authorization, the 1st Respondent

ought to have resorted to the rules of personal service. Counsel relied on the provision under Section 35 of the Interpretation Act for this submission. *Section 35 of the Interpretation Act Cap 3* provides as follows:

> ***"Service by post.***
>
> *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".*

[65] With due respect, Counsel for the Applicant misconstrued the above provision. The provision is in respect of instances where an Act of Parliament authorizes or requires any document to be served by post. It regulates how and when such service would be said to have been effected. The provision does not require or even say that service by post is only usable where an Act of Parliament specifically provides for it. Contrary to the submission by the Applicant's Counsel, there is nothing in the provision that disallows use of service by post in absence of a statutory provision. The submission by the Applicant's Counsel to that effect is therefore misguided and out of context in terms of the said provision.

[66] Further to that, even if the 1st Respondent needed legal authorization to effect service through the post, there is ample authorization from a reading of the provisions under Section 91 of the Land Act together with Section 202 of the Registration of Titles Act (RTA). Under Section 91 (1) of the Land Act, the special powers of the Registrar (Commissioner Land Registration) granted under the said section are subject to the Registration of Titles Act. Under Section 202 of the RTA, any notice under this Act may be served or given by letter posted to the person concerned at his or her address for service. It is clear therefore that while exercising the power conferred upon the 1st Respondent under Section 91 of the Land Act, the 1st Respondent is

empowered to make use of the provisions of the RTA. The argument by learned Counsel for the Applicant to the contrary is therefore without merit.

[67] It was further argued for the Applicant that the 1st Respondent did not adhere to the time lines set by Section 91 of the Land Act which invalidated any proceeding conducted by the 1st Respondent. Counsel pointed out that according to Section 91 (2) of the Land Act as amended, the 1st Respondent had to give a 21 days' notice from the date of service for the hearing of the complaint. According to the record, the Applicant, among others, was served with a summons dated 16th March 2018 by post on 16th March 2018. The Applicant was later served with a Notice of Intention to Effect Changes in the Register dated 26th April 2018 on the 27th April 2018. The Applicant was further served with the notice of the cancellation decision by letter dated 28th September 2018. The service was effected on 2nd October 2018. For all intents and purposes, the above are the notices that were necessary for the proper exercise of powers conferred upon the 1st Respondent under Section 91 of the Land Act. I do not find breach of any of the timelines. The notices were in compliance with the timelines set by the law and there is ample evidence that the 1st Respondent followed due process before making the cancellation decision.

[68] Counsel for the Applicant also submitted that under Section 91 (10) of the Land Act, any transfers following amendment of the register are prohibited until after 60 days following the cancellation decision. With due respect, this submission is based on a misconstruction of Section 91 (10) of the Land Act. The 60 days' period is for purpose of appeal by a person aggrieved by the decision of the Commissioner. The provision does not grant an automatic stay of execution of the said decision as Counsel seems to import into the said provision. There is nothing in the provision that prohibits the Commissioner from implementing his/her decision before the expiry of the time provided for within which to appeal. This submission is also devoid of merit.

[69] Lastly, Counsel for the Applicant submitted that no hearing at all was conducted by the 1st Respondent since there was neither an attendance list nor a record of proceedings. As I have stated herein above, where the aggrieved party did not attend the hearing when summoned, what transpired at the hearing would not be subject of the court's examination except for purpose of ensuring that the rules governing such a hearing were complied with. It is a given that where rules of procedure are in place, they must be followed even when a hearing is done ex parte. Where no rules of procedure exist, the public body is expected to adhere to the rules of natural justice. In the instant case, no rules of procedure governing the exercise of the 1st Respondent's power are in place. But under Section 91 (2a), the Commissioner is obliged to conduct a hearing, giving the interested party an opportunity to be heard in accordance with the rules of natural justice, but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law.

[70] As already shown, the Applicant did not attend the hearing. All the 1st Respondent had to prove is that the Applicant was duly summoned to attend and he did not. The 1st Respondent has proved this assertion on a balance of probabilities. In my view, that amounts to according the Applicant an opportunity to be heard. I have found persuasive the finding of the Court in the case of ***Sarah Nakku & Others vs The Commissioner Land Registration & Another (supra)*** whose circumstances are closely similar to those of the present case. It is also clear from the provision under Section 91 (2a) of the Land Act that the 1st Respondent is not obliged to comply with the rules of evidence applicable to a court of law. As such, provided the 1st Respondent has complied with the rules of natural justice, he/she is not obliged to have in place the kind of a record of proceedings envisaged under a court hearing.

[71] In the circumstances, the Applicant has not proved that he was not accorded an opportunity to be heard. I am satisfied that the 1st Respondent

followed due process and adhered to the rules of natural justice during the exercise of the powers conferred upon the entity under Section 91 of the Land Act. I have found neither procedural impropriety nor unfairness in the conduct of the matter by the 1st Respondent. As such none of the grounds raised by the Applicant for judicial review has succeeded. Issue 2 is therefore answered in the negative.

Issue 3: What remedies are available to the parties?

[72] In light of the above findings, the application would first have failed on account of being incompetent for having been filed out of the time provided for under the law. However, my further finding is that even on merit, the application would not succeed. As such, the Applicant is not entitled to any of the remedies claimed in the application. The application is accordingly dismissed with costs to the Respondents.

It is so ordered.

Signed, dated and delivered by email this 17th day of November, 2021.

Boniface Wamala
JUDGE