

3. A declaration that the sale of Houses 1-6 in Kumbu Housing Estate along old Bukoba Road was irregular, illegal, and an abuse of the Respondent's discretionary powers;
4. A declaration that the above decisions were taken without observing the law, the rules of natural justice and equity as required by the Constitution and are null and void;
5. An order of prohibition doth issue prohibiting the Respondent or its agent or representative from evicting the Applicant from Plot 16B Mutuba Gardens or ordering him to vacate the premises, wherein he is still a tenant as per the executed tenancy agreement;
6. An order of certiorari doth issue quashing the Respondent's decision communicated to the Applicant in 1, 2, and 3;
7. An order of mandamus doth issue compelling the Respondent to sale Plot 16B Mutuba Gardens to the Applicant as per Respondent's resolution dated 27th February, 2014;
8. Costs of the application be provided for;

The grounds of the application as contained in the affidavit of Sittankya Leonard, the Applicant, are briefly that;

- i) The Applicant is a civil servant with the Respondent and was a Senior Internal Auditor and he entered into a tenancy agreement with Respondent with a condition that the agreement would not be terminated until the prepaid rent had elapsed in October, 2019;
- ii) He made a request to purchase the property which was allowed by the Respondent through a Council's resolution;
- iii) The Respondent sold houses 1-6 Kumbu Housing Estate in violation of the existing laws which is illegal and irregular;
- iv) The Respondent without any reason refused to sell the suit property(Plot 16B) to the Applicant despite several reminders which decision was discriminatory,

unreasonable, irrational and an abuse of the discretionary powers of the Respondent;

- v) The Applicant has spent a lot of money on the property and is residing on the same with his family and should be given the first option to purchase;
- vi) The Committee Chairperson made a recommendation on the 4th December, 2017 for the eviction of the Applicant which decision is irregular and contrary to the tenancy agreement;

In reply, Omoko Paul of the Attorney General's Chambers Mbarara Regional office opposed the application and stated as follows;

1. The procurement or disposal process is managed in accordance with the governing laws under which the legislative body of Council has no role whatsoever, in determining the successful bidder;
2. The Applicant has not proved his alleged payment of rent and has neither availed any approvals for the alleged renovations on the property in issue;
3. The recommendation to remove the Applicant from the house is yet to be concluded by a competent authority;
4. The application does not meet the requirements of the law;

Goreth Namugga of the Attorney General's chambers filed a supplementary affidavit in which she stated that in practice, it is the Housing Committee of the Respondent Council that recommends/approves any Applicant officer to the council for purposes of renting a house owned by the Respondent Council and the Applicant was not recommended hence his occupation and tenancy were informal and temporary. The Town Clerk does not have the mandate to dispose of or rent out any premises owned by the council in absence of approval by the Works Committee which has recently recommended that the house under dispute be issued to another officer. The disposal process is governed by laws under which the council has no role and the process is still ongoing.

None of the parties filed submissions.

Determination of the Application;

Issues;

1. Whether the Respondent's decisions were illegal, irrational and in contravention of the law
2. What are the remedies available?

Issue one; whether the Respondent's decisions of;

- 1. refusing to sell House Plot 16B to the Applicant*
- 2. selling houses 1-6; and*
- 3. ordering the eviction of the Applicant from the suit house; were illegal, irrational and a contravention of the law;*

Section 36 (1) of the Judicature Act Cap 13, provides for the power of the High Court to issue orders under judicial review. It provides as follows;

“(1) The High Court may make an order, as the case may be, of-

- (a) mandamus, requiring any act to be done;
- (b) prohibition, prohibiting any proceedings or matter; or
- (c) certiorari, removing any proceedings or matter to the High Court.”

Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules SI 11 of 2009, provides that a party may apply for an order of prohibition, certiorari, declaration and injunction by way of judicial review in appropriate case. *Rule 3A of the Judicature (Judicial Review) (Amendment) Rules SI 32 of 2019* provides that;

“Any person who has a direct or sufficient interest in a matter may apply for judicial review.”

The grounds on which the court exercises its judicial review jurisdiction were expounded in the case of *Pastoli vs. Kabale District Local Government Council and Others* [2008] 2 EA 300 as follows:

*“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety...**Illegality** is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...**Irrationality** is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...**Procedural Impropriety** is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”*

1. Refusing to sell House Plot 16B to the Applicant

The Applicant alleges that he made a request to the Respondent asking to purchase the house he is currently using as a tenant under the tenancy granted to him by the respondent vide agreement dated the 6th day of March 2012. He stated that his request was approved but the Respondent has refused to sell the house to him.

The Applicant adduced a letter dated the 10th day of February, 2014 in which he made a request to the Council for purchase of the house. The Applicant adduced minutes of the Council meeting held on the 24th day of February, 2014 in which it was proposed that the houses be sold to raise funds and members unanimously agreed to the proposal.

It is the Applicant's allegation that the other seven houses including some which were not approved for disposal were indeed sold save for his house. The Applicant has however not adduced any evidence to prove that the Respondent has refused to sell the house in Plot 16B to him.

Nevertheless, judicial review is concerned with the process of how a decision is made and the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. (*See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016*).

The Applicant herein seeks to enforce a private contract between himself and the Respondent which arose from a tenancy agreement. The decision to dispose of public assets cannot be lightly taken or made and the procedures of disposing of public assets has to be followed. The Applicant seeks to enforce private rights to the local government property in order to give effect to the tenancy agreement which was a private contract. It is clear that the Applicant did not receive the house as part of his appointment since he has not adduced any such evidence.

The evidence on the record shows that upon his transfer of office, he made a request to have his family continue residing in the house however, at the same time, a proposal was being passed to have him vacate the house since he was no longer employed by the Municipal Council. Although there might be a breach of the tenancy agreement, such private rights cannot be enforced under the remedy of judicial review.

Justice Mubiru in *Arua Kubala Park Operators & Market Vendors' Co-Operative Society Ltd Vs. Arua Municipal Council Misc. Cause No. 003/2016* observed that “*where a transaction is unrelated to the public interest, an aggrieved party has remedy in private law... Where a relationship is regulated by the law of contract, administrative law remedies should generally not be available. It is important that the parties are held to their contractual obligations through ordinary suits and not by invoking public law remedies.*”

In the instant case, I am inclined to associate my position with the decision taken by the learned Judge and further add that not every decision made by a public body should be challenged under judicial review. If the matter mainly arises out of a private contract that creates private rights, then such a matter and any decision purportedly taken thereunder should be challenged through ordinary suits unless there is evidence to prove that public rights are affected and certain decisions have been reached through in a manner that is contrary to public interest and without following the established laws and procedures.

The Applicant has not adduced any evidence to prove that the public assets to wit the staff houses were sold through the procedures under the Public Procurement and Disposal Act through which he would be entitled to purchase if he met the necessary bidding requirements. No evidence has been adduced to support his claim or entitlement to the house through such bidding process.

I therefore find that the Applicant is seeking to enforce private rights which cannot be entertained through the remedy of judicial review.

2. Selling houses 1-6;

Upon resolving to sell the houses on the 24th day of February, 2014, the Mayor made a request for clearance from the Hon. Minister of Finance, Planning and Economic Development vide a letter dated 28th March 2017.

The Hon. Minister gave his approval vide the letter dated 20th April, 2017 permitting the Mayor to dispose of the houses subject to no objection from the Minister of Local Government.

The Minister of Local Government gave a no objection approval to the disposal of the houses on the 24th April, 2017.

The Respondent contends that the house is a public asset and can only be disposed of in accordance with the governing laws and the Council has no role in determining the successful bidder.

It is clear from the evidence adduced by the Applicant that a resolution has been passed to have some of the Council Staff houses disposed of including the house that was under the Applicant's tenancy. However, in agreement with the Respondent, I am of the view that the disposal process was not officially conducted since the houses are public assets that have to be disposed of in accordance with the Public Procurement and Disposal of Assets Act.

The Applicant stated in his affidavit in support of the application that the Respondent has sold off some of the houses but did not adduce any evidence of such sales. The evidence on record shows that the houses have been cleared for disposal but there is no evidence of whether such disposal has been conducted or not and I have already observed that disposal of public assets has to be done in accordance with the relevant law and procedure.

There is no evidence of such disposal or evidence to prove that if the houses have been disposed of, the right laws and procedures were not followed. The evidence adduced shows that the houses were cleared for sale/disposal and without evidence that the disposal has been done, I am inclined to agree with the Respondent that this Application cannot be maintained since the disposal process is ongoing.

3. Ordering the eviction of the Applicant from the suit house

The Applicant adduced evidence that he entered into a tenancy agreement with the Respondent on the 6th day March, 2012 in which it was expressly agreed under Clause 6

that termination can only occur when the period for which rent was prepaid has elapsed. According to the letter dated the 30th day of January, 2017, the Applicant confirmed his appointment and transfer of service from Masaka Municipal Council to Ministry of Finance, Planning and Economic Development and requested to continue living in the house until the 30th day of November, 2019.

From the consideration of the letter, the Applicant stated that rent was Shs. 100,000 per month and that he had prepaid rent for 71 months. However, there is no evidence of such amount for rent to cover the stated 71 months. This is mainly because the Applicant went ahead to state that he made renovations to the tune of Shs. 8,760,000/= and received a refund of Ugx. 3,000,000/=. He then assumed that the remaining balance of 5,160,000/= was implied to be prepayment on the rental fee.

I note that there is no evidence from the Respondent acknowledging such refund or arrangement to have the balance on the refund cover the rental fee for the 71 months as alleged by the Applicant. However, Clause 4 of the Tenancy Agreement allowed for the Applicant to renovate the house and costs of the renovations would be considered as advance rental payments.

The Council Works, Production and Environment Committee made recommendations on the 4th December, 2017 one of which being that the Applicant be instructed to vacate the house since he was no longer an employee of Masaka Municipal Council.

In his affidavit in reply, Omoko Paul stated that there is no decision to evict the Applicant from the property and that the recommendation by the Works Committee is yet to be discussed and concluded by a competent authority.

Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure

that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.*

I have already resolved that the rights arising out of the tenancy agreement are private rights that cannot be enforced under the remedy of judicial review. The decision to evict the Applicant from the house was proposed because he had ceased to be an employee of the Respondent which is only fair as the staff houses are public property meant to be used by the particular department to accommodate their staff members.

However, there is a tenancy agreement between the Applicant and Respondent which creates a private contractual relationship and any rights and obligations created therein can only be enforced by an ordinary suit as they are private rights.

In the result, the Applicant cannot maintain an action under judicial review and therefore this application bears no merits.

The application is accordingly dismissed with costs.

I so order.

Dated at Masaka this 5th day of November, 2021.

Signed;  _____

Victoria. N.N. Katamba

Judge.

