

UGANDA / JUDGMENT

Mary Zawedde Mulira and Others v Commissioner for Land Registration and Others (Misc Cause No. 17 of 2025) [2025] UGHCCD 62 (11 April 2025)

[2025] UGHCCD 62

COURT

HC: Civil Division (Uganda)

BEFORE

Baguma, J

CASE / FILE NUMBER

Misc Cause No. 17 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

MISC CAUSE NO. 17 OF 2025

1. MARY ZAWEDDE MULIRA

2. MARIETTE NAKAYIVU LUKWAGO Surviving administrators of the estate of the late
Ignatious Kangave Musaazi]

\$\rightarrow\$ APPLICANTS

3. REV. CAN. ERIYA LUZINDA [Surviving executor of the late Cranimer Kaaya] Suing through
his attorney Rev. Richard Kigongo Kaaya]

VERSUS

- 1. COMMISSIONER FOR LAND REGISTRATION

- 2. ATTORNEY GENERAL

\$\rightarrow\$ RESPONDENTS

3. MARWA PROPERTIES LIMITED

BEFORE: HON. JUSTICE EMMANUEL BAGUMA**RULING**

This application is by notice of motion under Article 26 and 50 of the Constitution, section 40 and 42 of the Judicature Act, rule 3, 6 & 7 of the Judicature (Judicial Review) Rules and order 52 rules 1, 2, & 3 of the CPR seeking for orders that:-

- a) A declaration that the decision of the 1st Respondent in a memorandum of Registration dated 9th January 2025, vesting the Applicant's Certificate of title in respect of land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District in the name of the 3rd Respondent was ultra vires, illegal, null and void.
- b) An order of certiorari to quash the memorandum of Registration issued by the 1st Respondent on 9th January 2025 to vest the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District in the name of the 3rd Respondent.
- c) An order of mandamus to compel the Respondents to reinstate the administrator of the estate of Cranimer Kaaya and the administrators of the

estate of the late Ignatius Kangave Mussazi as the registered proprietors of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District.

- d) An order of prohibition to prohibit the 1st and 2nd Respondents from tampering with the registration of the administrator of the estate of Cranimer Kaaya and the administrators of the estate of Ignatious Kangave Musaazi as the registered administrators of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District.
- e) An injunction to restrain the 1st and 2nd Respondent from tampering with the registration of the administrators of the estate of Cranimer Kaaya and the administrator of the estate of Ignatious Kangave Musaazi as the registered proprietors of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District.
- t) In the alternative, the 1st and 2nd Respondents do pay compensation and damages for the Applicants' land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District.

The application is supported by the affidavit of Mary Zawedde Mulira one of the administratrix of the estate of the late Ignatious Kangave Musaazi and Rev. Richard Kigongo Kaaya the attorney of the 3rd applicant who is the surviving executor of the late Cranimer Kaaya whose details are on record.

Mary Zawedde Mulire in her affidavit briefly stated that; -

- 1. The 1st, 2^d and 3^d applicants are the registered proprietors of the suit land having inherited the same from their late parents the successors in title who got registered on the same on 19th May 1975 under Instrument No. I 95766.
- 2. Sometime in 2015, illegal entries were entered on the register which changed the proprietorship to the 3^d Respondent and this prompted us to petition the Commissioner Land Registration for a redress and after a hearing in 2024, the Registrar rectified the register and re-instated us on the title.
- 3. To my shock and surprise, on 9th January 2025, the 1st Respondent issued ^a memorandum of Registration, vesting the land in the names of the 3^d Respondent yet the same 1st respondent had earlier in 2024 found that the 3^d Respondent had been erroneously and illegally entered on the title.
- 4. The decision of the 1st Respondent was never challenged in court within the prescribed time and the 1st Respondent is functus officio on the matter.
- 5. The impugned decision of the registrar in a memorandum dated 9th January 2025 was arrived at without according the applicants a hearing, without an application for a vesting order and no due process was followed.
- 6. By issuing a Memorandum dated 9th January 2025, the 1st Respondent acted arbitrarily, in abuse of his power and ultra vires, a syndicated sham, procedurally illegal and in total violation of the principles of natural justice.

Rev. Richard Kigongo Kaaya deponed the same evidence like Mary Zawedde and I do not wish to reproduce the same here.

In reply, the 1st and 2^d Respondents opposed the application and in an affidavit sworn by Ndahagire Mark a registrar of title in the office of the 1st Respondent whose details are on record, briefly stated that; -

- ^I. It is true the 1st Respondent received a complaint from the applicants, conducted a public hearing and issued orders to cancel the 3^d Respondents entries on the title in 2024.
- 2. The said hearing was conducted without the 3^d Respondent's participation and he was never accorded a hearing.
- 3. In January 2025 the office of the 1st Respondent received a complaint from the 3^d Respondent and presented evidence that contrary to what had been alleged by the Applicants, there was no subsisting caveat on the suit land at the time of registration of the 3^d Respondent and the 3^d respondent had lawfully purchased the suit land from Tom Kigoonya Kaaya in a sale agreement dated 22^d November 2014 and is in full possession of the suit land since 2015.

- 4. In view of the above, it became apparent that the initial findings vide the amendment order to the effect that the entry of Marwa Property Limited was erroneous in 2015 be removed from the register book having entered in error and illegally due to subsisting caveat on the subject land, was itself erroneous and could not stand.
- 5. The 1st Respondent further received an application for a vesting order from the 3^d Respondent's lawyers of Katende Sempebwa & Co Advocates to vest the land in the names of the 3^d Respondent on ground that they are bonafide purchasers for value.
- 6. The 1st Respondent upon careful consideration of the evidence adduced by the 3^d Respondent granted the application and vested the land in the 3^d Respondent on 9th January 2025.
- 7. The applications for vesting orders do not require a public hearing stated under the law and the 1st Respondent has powers to issue vesting orders without conducting a public hearing.
- 8. The decision of the 1st Respondent of issuing a memorandum of registration dated 9th January 2025 was done in accordance with the law and that the 1st Respondent is clothed with the authority and legal mandate under the law to make such orders.

The 3^d Respondent also opposed the application and in his two affidavits sworn by Abdul Amooti Kwezi one of the directors of the 3^d Respondent whose details are on record, briefly stated that; -

- 1. The 1st Respondent is clothed with jurisdiction and legal mandate to issue the memorandum of registration which is the subject of this suit.
- 2. The applicant wants this court to determine the ownership of the suit land which requires a full interrogation of evidence via a trial and not a mere application for judicial review.
- 3. The 3^d Respondent is the proprietor of the suit land and in possession of the same having purchased it from Tom Kigoonya Kaaya in a land sale agreement dated 22nd November 2014.
- 4. Under clause 6.1 of the said land sale agreement, the vendor warranted that he was the owner of the suit property and had authority to deal with the same.
- 5. On 5th February 2015 the 3^d Respondent obtained a search certificate which showed that the vendor was the registered owner of the suit land with no encumbrance.
- 6. On 21st December 2024, the 3^d Respondent learnt that some parties who turned out to be the applicants were grabbing her land and destroyed about three square miles of the agriculture thereon.
- 7. On 9th January 2025 the 3^d Respondent through his lawyers of M/S Katende Sempebwa & Co. Advocates applied for a vesting order and the 1st Respondent after being convinced with the evidence, issued a memorandum of registration.

- 8. The actions of the 1st Respondent on issuing a memorandum of registration were well within his mandate and power.

Representation.

Counsel David Nambale, Nelson Nerima, Rubihayo Brian, Edgar Ayebazibwe and Luyima Jabal represented the Applicants, counsel Ssekitto Moses and Ssekabira Moses represented the 1st Respondent, counsel Mugisha Moses represented the 2nd Respondent while counsel Sim Katende together with Edwin Mugumya represented the 3rd Respondent.

At hearing, parties agreed to file written submissions

Counsel for the Respondents intimated to court that they will raise two preliminary objections to the effect that; -

- 1. The 3rd Applicant's Attorney Rev. Kigongo Kaaya had no authority to swear *affidavits in support of the application.*
- 2. The 3rd Applicant's attorney had no authority to file the application on behalf of the 3rd applicant.

I have carefully analysed the objections raised in this application and found that the same do not go to the root of the application. The application can still be sustained by the remaining affidavits of 1st applicant since the interest under judicial is not severable since they are questioning procedure on the same title. In the interest of justice, it is my considered view that this matter can be resolved by handling this case on its own merit.

During hearing, parties agreed on three issues for court's determination to wit; -

- 1. Whether the application is amenable to judicial review?
- 2. Whether the decision making process for the impugned memorandum of Registration dated 9th/01/2025 issued by the 1st Respondent was illegal?
- 3. Remedies available to the parties.

Submissions by counsel for the applicant.

Issue No. 1

Whether the application is amenable to judicial review?

Counsel for the applicant referred to rule 7A (1) of the Judicature (Judicial Review) amendment rules 2019 which provides that;

- (i) 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

Counsel submitted that the 1st Respondent is a public office established under the Registration of Titles Act vested with powers to issue certificates of titles and in his application he contested its actions of issuing a memorandum of registration without hearing the applicants, without jurisdiction and without following due process in clear violation of public law.

Issue No. 2

Whether the decision making process for the impugned memorandum of Registration dated 9th/01/2025 issued by the 1st Respondent was illegal?

Counsel submitted that there was procedural impropriety in the process leading to issuance of a memorandum of registration dated 9th January 2025 vesting land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District into the names of the 3rd Respondent.

Counsel referred to Article 42 of the Constitution, the case of Counsel of Civil Service Unions and others Vs Minister for civil service (1985) AC 374 and the case of Mutumba Ismael Vs The Commissioner Land Registration MC No. 145 of 2019.

Counsel submitted that the 1st Respondent on 9th January 2025 without hearing the applicants who are the registered proprietors being administrators of the estate of Cranimer Kaaya and Ignatius Kangave Musaaazi with direct interest in the said land and hurriedly re-registered the suit land into the names of the 3rd Respondent in total disregard to procedure.

Counsel further submitted that the decision of the 1st Respondent was illegal as the same was *functus officio* having handled issues on the same land in 2024 and reregistered the land in the names of the applicants.

On the same ground of illegality, counsel submitted that the decision of the 1st Respondent is illegal as he misapplied the law on vesting order provided for under section 151 of the Registration of Titles Act.

Issue No. 3

Remedies available to the parties.

Counsel for the applicants prayed that this court be pleased to grant the remedies as stated in the motion.

Submissions by counsel for the 1st & 2nd Respondents.**Issue No. 1****Whether the application is amenable to judicial review?**

Counsel for the 1st and 2nd Respondents referred to section 37 of the Judicature Act and rule 7A (1) of the Judicature (Judicial Review) Rules of 2019 and submitted that this court can only entertain an application which is properly brought before it. He contended that this application is incompetent before court as it was brought in an omnibus manner seeking for prerogative orders under judicial review and at the same time as an application for enforcement of human rights and therefore untenable before court.

Counsel referred to the cases of *Master Links Uganda Ltd Vs Attorney General* MC No. 167 of 2022 and *Arua Kubala Park Operators and Market Vendors Corp. Vs Arua Municipal Council* and stated that this application is not amenable to judicial review.

Issue No. 2**Whether the decision making process for the impugned memorandum of Registration dated 01/01/2025 issued by the 1st Respondent was illegal?**

Counsel for the 1st and 2nd Respondents submitted that the 1st Respondent had power under section 151 of the RTA which empowers the registrar of titles to make vesting orders in cases of complete purchase and that power is distinct from the powers to rectify the register under section 88 of the RTA.

Counsel submitted that the powers of the registrar to grant vesting orders do not require a hearing as it is in section 88 on rectifying the register. That upon perusal of the 3rd Respondent application on 9th January 2025, the 1st Respondent found that the 3rd Respondent was the rightful owner of the suit land and proceeded to register him on the title under a memorandum dated 9th January 2025.

He concluded that the procedure leading to the issuance of the memorandum dated 9th January 2025 was lawful and within the mandate of the 1st Respondent.

Issue No. 3**Remedies available to the parties.**

Counsel prayed that the application be dismissed for being improperly before court, not amenable for judicial review and the applicants have failed to prove the grounds for judicial review.

Submissions by counsel for the 3'd Respondent.**Issue No. 1****Whether the application is amenable to judicial review?**

Counsel for the 3'd Respondent referred to rule 74 (1) of the Judicature (judicial review) rules of 2019 and submitted that the impugned decision or the vesting order is not judicial or quasi-judicial in nature, the grant of a vesting order under section 151 of the RTA is not one of the decisions stated under law as requiring a hearing or taking the nature of quasi judicial proceedings and that the application is a private property dispute which can not be entertained under judicial review.

Issue No. 2**Whether the decision making process for the impugned memorandum of Registration dated 1/1/2025 issued by the 1't Respondent was illegal?**

Like counsel for the 1't and 2nd Respondents, counsel for the 3'd Respondent too submitted that the 1't Respondent has powers under the under section 1 ⁵ of the RTA to entertain an application for a vesting order and the same did not require issuing a notice to the applicants and hearing at that.

He contended that the proceedings under vesting orders are different from proceedings under section 88 of the RTA for rectification of the register book and hence the 1't Respondent was not *functus officio*.

Counsel referred to the decision in the case of *Re Ivan Mutaka* [1980] HCB 27 and submitted that the 1't Respondent properly applied the law on vesting orders and rightly issued a memorandum vesting land into the names of the 3'd Respondent.

Issue No. 3**Remedies available to the parties.**

Counsel prayed that this court finds the application incompetent, devoid of merit and proceeds to dismiss the same with costs to the 3'd Respondent.

Determination of court.

Issue No. 1

Whether the application is amenable to judicial review?

The Judicature (Judicial Review) (Amendment) Rules 2019 sets out the factors to be considered by the court when handling applications for judicial review.

Rule 7A provides that;

- (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

Basing on the above provision, Two requirements, therefore, need to be satisfied; first, 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 public law principles and not the claims based on involve enforcement of private law rights.

In the instant case, the application is against the decision of the 1st Respondent, a public office established under the RTA and the same seeks prerogative orders which this court is empowered to issue under judicial review. Much as the notice of motion mentions article 26 and 50 of the constitution among the provisions under which the application was brought, it clearly states the right provisions for judicial review as section 40, 42 of judicature act and rules 3, 6 & 7 of the judicature judicial review rules 2019 as amended. There is also nothing in the orders to suggest that the applicants were seeking enforcement of human rights as counsel for the Respondent wanted to suggest in their submissions.

It is my find that this application is amenable for judicial review and the same is properly before court.

Issue No. 2

Whether the decision making process for the impugned memorandum of Registration dated 01/01/2025 issued by the 1st Respondent was illegal?

According to the Black's Law Dictionary at page 1013 11th Edition Thomson Reuters. 2019 Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions.

In the case of Master Links Uganda Limited & Anor Vs Attorney General **Miscellaneous Cause No. 167 of 2022 court held that** :-

"Judicial review is concerned not with the decision but with the decision making." process. The duty of 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".

It therefore follows that the court may provide specific remedies under judicial review where it is satisfied 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 v Attorney General, HCMC No. 212 of 2018.

In the instant case, the applicants contest the procedure under which the 1st Respondent reached a memorandum of registration vesting land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District that it is illegal, procedurally improper and breached the principles of natural justice.

The applicants contended that the 1st Respondent had no powers to re-hear concluded matters on the suit land as per the findings of 26th April 2024 and 12th July 2024 resulting into an amendment order which re-vested the suit land in the Applicants and the same was effected on 12th December 2024. That the 1st Respondent was *functus officio*. On the other hand, the Respondents argued that the proceedings of 9th January 2025 were different from those of 2024. That this was an application for a vesting order to which the Registrar had power to effect without even according the applicants a hearing.

I have perused the pleadings and submissions of parties in this case and found that there is evidence to show that the title for land comprised in in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District had disputes. Section 151 of the Registration of Titles Act relied on by the 1st Respondent applies to land without disputes where the title is in the names of the vendor but only failed to sign transfer forms, it does not apply to land where there are disputes and the title is not in the names of the vendor.

It is the uncontroverted evidence of the applicants that they petitioned the 1st Respondent in 2024 and a public hearing was conducted after which orders were issued re-instating the applicants on the title. This meant that this land was in the names of other parties other than kigoonya the alleged seller to the 3rd Respondent and hence the 1st Respondent could not seek to entertain a vesting order on such a title. See section 151 of the RTA and the case of Re Ivan Mutako 119801 HCB 27

Secondly, having entertained a public hearing on the same title in 2024, it was erroneous for the 1st Respondent to open the dispute afresh and entertain a hearing again on the same title on 9th January 2025. This was illegal as there is no law that allows the Registrar of titles to review their decisions. Anything done outside the law is illegal and a good ground for this court to review the actions of the body acting so.

On procedural impropriety, in the case of Council for Civil Service Unions & others Vs Minister for the Civil Service (1985) AC 374 Lord Diplock defined procedural impropriety as; -

"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."

In this particular case, it is the uncontested evidence of the applicants that they were never summoned to appear or given an opportunity to be heard when the 1st Respondent issued a memorandum of registration dated 9th January 2025 vesting the land in 3rd Respondent. From the evidence of the Respondents, they stated that there was no need to summon the applicants for hearing as proceedings under vesting orders do not require hearing parties. It is also clear that the application of the 3rd respondents for the vesting order was filed, heard and determined on the same day 9th January 2025.

In the case of Yustus Tinkasimire & 18 Others v Attorney General and Dr. Malinga Stephen (Miscellaneous Cause No. 35 of 2012, court referred to the case of Council of Civil Service Unions v Minister of Civil Service (1985) AC 375 that it was found that;

"Procedural illegality is when the decision-making authority fails to act fairly in the process of its decision making. It would include... failure by an administrative authority or tribunal 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,"

Having considered the evidence on record and submissions of the parties on the issue of procedural impropriety, I find that recourse can be had to the case of **Owor Arthur and 8 Others v Gulu University**, High Court Miscellaneous Cause no. 18 of 2007, **wherein court held that;**

"...the overriding principle of judicial review is to ensure that the individual concerned receives fair treatment. If that lawful authority is not abused by unfair treatment... Implicit in the concept of fair treatment are the two cardinal rules that constitute natural justice; no one shall be a judge in one's own cause and that no one shall be condemned unheard".

In this case, it was a very grave procedural flaw for the 1st Respondent not hear the applicants on an application filed on title which was in their names and knew very well that they had interest in the same. The applicants were in the same office in less than a year for a public hearing on the same title and the 1st Respondent had found for them and re-vested the title into their names. The 1st Respondent ought to have re-heard them before vesting the title into the names of their opponents (3rd Respondent).

The right to fair hearing is a fundamental non derogable right as per Article 28 and 44 of the constitution and cannot be denies a clear case like this one where a party's interest was at stake.

It is therefore my finding that the procedural leading to the issuance of the memorandum of registration dated 9th January 2025 was tainted with illegality and procedural impropriety.

Issue No. 3

Remedies available to the parties.

The applicants having succeeded in proving the grounds for judicial review, they are entitled to the remedies sought in the application.

Conclusion.

In the final result, the application succeeds with the following orders ;-

- 1. A declaration is hereby issued that the decision of the Ist Respondent in ^a memorandum of Registration dated 9th January 2025, vesting the Applicants' Certificate of title in respect of land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District in the name of the 3^d Respondent was ultra vires, illegal, null and void.
- 2. An order of certiorari is hereby issued quashing the memorandum of Registration issued by the Ist Respondent on 9th January 2025 to vest the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot 2 at Bugulumizi, Nakaseke District in the name of the 3^d Respondent.
- 3. An order of mandamus is hereby issued compelling the 1st Respondents to reinstate the applicants/ administrator of the estate of Cranimer Kaaya and the administrator of the estate of the late Ignatius Kangave Mussazi as the registered proprietors of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot2 at Bugulumizi, Nakaseke District.
- 4. An order of prohibition is hereby issued prohibiting the Respondents from tampering with the registration of the administrators of the estate of Cranimer Kaaya and the administaftors of the estate of Ignatious Kangave Musaaazi as the registered proprietors of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot2 at Bugulumizi, Nakaseke District.

- 5. An injunction is hereby issued restraining the Respondents from tampering with the registration of the administrators of the estate of Cranimer Kaaya and the administrator of the estate of Ignatious Kangave Musaazi as the registered proprietors of the land comprised in Leasehold Register Volume 838 Folio 14; Bulemezi Block 928 plot2 at Bugulumizi, Nakaseke District
- 6. Considering the nature and circumstances of this judicial review, I make no orders as to costs.

Dated, signed, sealed and delivered by email on this 11th day of April 2025

EMITI IBaguma

Judge.

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