

UGANDA / JUDGMENT

Nantabala Vs Attorney General (Misc. Cause No. 030 of 2016) [2019] UGHC 17 (22 August 2019) [2019] UGHC 17

COURT

High Court of Uganda

BEFORE

Luswata, J

CASE / FILE NUMBER

Misc. Cause No. 030 of 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISC. CAUSE NO. 030 OF 2016

NANTAMBALA JOYCE..... APPLICANT

VERSUS

1. THE ATTORNEY GENERAL

2. INSPECTOR GENERAL OF GOVERNMENT..... RESPONDENTS

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

1.0 Introduction and brief facts

1.1 This is an application for judicial review brought by Motion under Sections 36, 37 and 38 of the Judicature Act Cap 13, Rule 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules 2009 seeking for orders of certiorari and prohibition and/or an injunction quashing the decision and actions of the Inspector General of Government (IGG) investigating matters pertaining to the applicant's title and ownership of Plot 4 Spire Road while the same matter is still before the High Court, general damages and costs of the application. M/s Asingwire & Partners presented the application, while the Directorate of Legal Affairs of the IGG opposed it. Both counsel filed written submissions

* 1. The brief grounds are that, the applicant as the owner of a commercial plot known as FRV JJA 249 Folio 10, Plot 24 Spire (hereinafter referred to as the suit land) was sued in HCCS No. 014/2016 (hereinafter referred to as the main suit) (TSMP(U) Ltd Vrs Nantambala Joyce), to challenge her proprietorship. That although the suit is still pending before the High Court, the IGG, through her regional office in Jinja, has overstepped her powers by investigating her ownership, which offends the rule of *sub judice* and is against the rule of law.

2. In her affidavit filed in support of the application, Nantambala states that after the main suit commenced, she learnt of the IGG'S investigations in the suit land. She then instructed her lawyers to formerly communicate to the IGG that, owing to the pending suit, her investigations were illegal. That inspite of that formal communication, the regional officer of the IGG still summoned her to contribute to their investigations, and she fears that unless prevented by Court, the IGG shall continue to interfere in the Court case, which amounts to interference with powers of constitutional bodies and *ultra vires* her powers.
3. Ms. F. Mariam Wangadya, a Deputy IGG filed an affidavit in reply on behalf of the IGG. She stated that her office has the constitutional mandate to investigate acts, omissions and decisions of public officers, and therefore the letter by Nantambala's lawyers could not deter the IGG from her mandate. Further that, the investigation in question was carried out under their zonal office in Jinja in response to a complaint that Jinja District officials in collusion with officials of the Ministry of Lands, Housing & Urban Development in Jinja, (hereinafter referred to as the public officers) fraudulently prepared and issued a land title for the suit land. That their investigation did not extend to ownership of the suit land and that Nantambala was summoned only to give evidence or defend herself against allegations that she participated in the fraud of the stated public officials, and that her lawyer's communication could not deter the IGG from her mandate. That the IGG's investigations resulted into the prosecution of the stated public officials before the Anti-Corruption Court for abuse of office, and Nantambala who was not a subject of the IGG's investigations, was only required as a witness but failed to obey lawful orders of the IGG. She concluded that the application was merely an abuse of office meant to frustrate the lawful actions of the IGG.

1. The issues

In their submissions, counsel raised two issues for determination

1. Whether the actions of the IGG in conducting the impugned investigations were lawful
2. What remedies are available to the parties?

To that I will add one issue which in my view required the court to investigate first i.e:-

1. Whether this is a proper case for judicial review?

3.0 The law

3.1 Judicial review is a remedy under the arm of administrative law which involves an assessment of the manner in which a decision is made. The remedy is created under Section 36 of the Judicature Act. According to the decision of Justice Musota in **Fuelex Uganda Ltd Vs AG Misc Cause No. 48/2014**, the remedy is least concerned with the merits of the decision in issue and more concerned with the decision making process itself. For judicial review to succeed, any of the following grounds must be proved; illegality, unfairness, irrationality and procedural impropriety. See for example, **Namuddu Hanifa Vs. The Returning Officer, Kampala District and 2 Others (Misc Cause No. 57 of 2006)** and **Yustus Tinkasimire & 18 Others Vs. Attorney General and Dr. Malinga Stephen (Misc Cause No. 35 of 2012)**.

4.0 Issue one

4.1 In order for a party to succeed on an application for judicial review they must prove the following:-

1. That there is a decision by a judicial or quasi-judicial body or authority.
- ii) There was a process or proceedings leading to such a decision.
- iii) That the process or proceedings were fraught with any or any of the following; illegality, unfairness, irrationality, or procedural impropriety.

4.2 I am prepared to believe that the IGG is a public authority whose decisions could be the subject of a judicial review. That said, it is not clear when the IGG made the decision to commence and carry on an investigation on how certificates of title were issued by the stated public officers with respect to the suit land. In their letter dated 24/6/16, M/s Asingwire indicated that while visiting the Land Registry, Nantambala overheard people from the IGG's office investigating the suit land. Likewise, in their letter to Nantambala dated 18/7/16, the Head of the IGG's regional office confirmed that investigations had commenced, and invited Nantambala to record a statement.

4.3 In her affidavit, Ms. Wangadya generally conceded that after receiving a complaint that the stated public officials had fraudulently prepared and issued a land title for the suit land, the IGG commenced investigations which run their course resulting into prosecutions at the Anti Corruption Court. They did so even after receiving notice from Nantambala's lawyers that issues regarding ownership of the suit land were already the subject of a High Court Case. I would conclude that a decision was made by the officials of the IGG to investigate whether the preparation and issuance of a certificate of title with respect to the suit land by the stated public officers was done fraudulently. This would therefore be a proper case for judicial review.

4.4 I hasten to add that there must have been a process leading to the above decision. My task is not to confirm the propriety (or lack of it) of the IGG'S decision but, whether the process followed to arrive at that decision was illegal or tainted with procedural irregularities.

5.0 Issue Two

5.1 My understanding of the applicant's case and submissions is that no contest is raised against the mandate and powers of the IGG. She contends however that the IGG is barred by law from commencing and conducting any investigation, inspection or examination that involves a matter that is already before the Courts of law because it interferes with the independence of the Judiciary and acts against the rule of law. She argues that the investigation of the manner in which the certificate of title was prepared and issued, commenced after the same matter was filed in Court, the IGG had knowledge of the suit and, the matter being investigated being one involving fraud, could only be decided upon by the High Court.

5.2 In their submissions, the respondent recounted her constitutional mandate under Articles 225(1)(b) and (e), 226 and 230 and Section 8(1)(e) of the IGG Act to investigate any act, omission, advise, decision or recommendation by a public officer, done in the exercise of their administrative functions. That they were therefore investigating the action of preparation and issuance of the certificate of title by the stated public officers, who were charged and are now being prosecuted.

6.0 My decision

6.1 It is provided under Section 19(1)(c) of the IGG Act 2002 that, the IGG has no powers to question or review any civil matter which is before court at the commencement of the Inspectorate's investigation. That section has been the subject of much controversy in our Courts, and counsel have provided two useful authorities that I believe should greatly assist the Court in her decision.

6.2 The earlier position of the Supreme Court in her decision in **Gordon Sentiba & Ors Vrs IGG SCCA 06/2008**, appeared to have mirrored the above provisions of the IGG Act. Justice Odoki stated at page 25 that:-

The Respondent (IGG) is barred from questioning or reviewing decisions of Courts or investigating civil matters which are before the courts and cannot do so indirectly by requesting the court to allow her to investigate pending proceedings. There are no exceptions given regarding these limitations and in my view, they are an absolute bar.

6.3 In a subsequent decision on the same matter, the Supreme Court in **Kulata Basangwa Vrs Uganda SCCA 3/2018**, considered the issue whether institution of criminal proceedings by the IGG are barred by Section 19) (1) of the IGG Act. The facts there are much similar to those before me. Basanga then a Commissioner of Land Registration, was charged with abuse of office for hastily and unlawfully sanctioning the registration of land in favour of one party against the interests of another deemed to be its purchaser. The prosecution was challenged for the reason that Basanga had also filed two civil actions (in which she was a party), touching the matters before the criminal court. The Court concluded that by instituting the criminal proceedings, the IGG did not seek to question or review the civil matters before court, but had instituted separate proceedings against a public official in person before the criminal court. The Court reasoned that the institution of criminal proceedings against an individual public officer by the IGG does not amount to questioning or reviewing a civil matter before a court, nor does it amount to

interference with independence of the judiciary. They reasoned specifically that:-

“It cannot be a correct proposition of the law that where a civil suit is pending between two parties, no criminal proceedings may be instituted against one of the parties arising from the same facts.”

6.4 The court went ahead to explain that in the **Gordon Sentiba case (supra)** the Supreme court did not bar criminal proceedings against persons party to civil proceedings, but that infact Odoki did CJ state that-

“In this case, nothing prevented the respondent from investigating officers it considered had abused their power and take appropriate action according to its well laid down procedure”

6.5 In this case, the IGG commenced and continued an investigation against four public officers (named in the charge sheet) and one Kalisa Kalangwa Moses alias Nantambala Joyce at the Anti-Corruption Court. I am prepared to believe that those officers could have been involved in the issuance of title to Nantambala. It is yet to be decided whether A6 in that charge sheet is Nantambala or somebody else.

6.6 In the main suit, Nantambala’s occupation of the suit land is being challenged for fraud. Clearly the public officers are not party to the main suit, and their prosecution is premised on how they executed their public mandate. There is also no bar against the prosecution of A6 in these circumstances. It could be argued that the decision of the criminal court may have a bearing on the civil proceedings, but according to the authorities I have discussed above, their prosecution does not amount to questioning or reviewing of the main suit or interference with the independence of the civil court which is hearing that suit.

6.7 I would conclude that the actions of the respondent to conduct the investigation were lawful and the second issue is thus decided in favour of the respondent.

7.0 Issue three: Remedies

7.1 The applicant seeks a writ of certiorari to quash the respondent’s decision to commence and conduct an investigation concerning matters of ownership of the suit land, and a similar writ to quash the IGG’s invitation to investigate the title while the same matter is before the High Court. She also seeks an order of prohibition or injunction to stop the investigations. Counsel argues that the justification of those orders is to protect the efficacy of the independence of the civil Court.

7.2 In their response, counsel for the IGG argued that there was no illegality in the decision to commence proceedings. That what and what was investigated were not issues regarding ownership of the suit land, but fraudulent actions of public officials. Further that the IGG’s officials did not pursue their constitutional mandate in a manner that was irrational, or with procedural impropriety. They argued that Nantambala was given a chance to be heard which she ignored, and thus her application is only meant to frustrate them as a government institution duly carrying out their mandate.

7.3 I do agree with the respondent's arguments. Under the circumstances of this case, the IGG was not precluded from commencing and carrying on an investigation with respect to the stated public officials. The decision to do so was rational considering that matters to do with issuing title to the suit land were the mandate of those officials. It was neither an outrageous nor illogical decision to commence investigations then prosecute those officials even in light of the fact that civil proceedings questioning the true ownership of the suit land were in place. The proper procedure in commencing and continuing those investigations was followed.

7.4 In their letter to Nantambala dated 18/7/16, the IGG mentioned that during the course of their investigations, they had retrieved documents allegedly presented by Nantambala to the Jinja District Land Board and Departed Asians Property Custodian Board upon which Nantambala was allocated the suit land. She was as a result, invited to the offices of the IGG to peruse the document and make a statement on the matter. Such a statement would have most likely indicated her explanation or defence on the matter. I agree with respondent's counsel that those summons would amount to inviting Nantambala for a hearing. It is clear from her advocate's communication dated 18/7/2016 that Nantambala was not prepared to heed the summons and infact did not do so. She voluntarily excluded herself from a possible hearing where her side of the story would have been told and documented. She thereby rejected being part of a fair hearing of the dispute before the IGG's agent.

7.5 I would conclude that Nantambala has not satisfied court that she is entitled to the remedy of judicial review. Since I have not found fault in the actions and decisions of the IGG, Nantambala's claims that she suffered inconvenience, anguish and suffering, and is also under threat of criminal prosecution, cannot be sustained. Accordingly no general damages can be awarded.

7.6 This application is accordingly dismissed with costs to the 2nd respondent.

I so order.

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EVA K. LUSWATA

JUDGE

22/8/2019

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