

**Pastor Daniel Walugembe v Ndyomugenyi
And Another (Miscellaneous Cause 181 of
2023) [2024] UGHCCD 115 (2 August 2024)**
[2024] UGHCCD 115

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- b) A declaration that the 1st Respondent's act of constituting herself into an authority with power and mandate to determine proprietary rights and interests in land is illegal, irregular, irrational and ultra vires.
 - c) A declaration that the 1st Respondent's act of passing recommendations and directives in respect to matters already adjudicated upon and fully determined by courts of law, is illegal and amounts to usurpation of judicial power.
 - d) A prerogative order of Certiorari doth issue quashing all the decisions, directives and recommendations of the 1st Respondent contained in the report dated 13th June 2023.
 - e) An order of Prohibition doth issue restraining the 2nd Respondent's agents from implementing the directives and recommendations in the 1st Respondent's report dated 13th June 2023.
 - f) An order compelling the Respondents to pay general damages to the Applicant.
 - g) Costs of the application be paid to the Applicant.
- [2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit deposed by the Applicant in support of the application. Briefly, the grounds are that the Applicant is a bonafide occupant/owner with an equitable interest in kibanja measuring 28.7 acres on land comprised in FRV 59 Folio 21 located at Busia and Kimwanyi Zones, Katanga valley, Wandegeya in Kampala, which he purchased from Bulasio Buyise, Jonathan Masembe, G. Kalimu, Samalie Namboga, among others. The Applicant stated that his predecessors in title were decreed by Court to be bonafide occupants on the suit land vide HCCS No. 857 of 2000: Jonathan Masembe & 3 Others v Makerere University & 2 Others. Subsequently, the Applicant's equitable interests were also later confirmed in HCCS No. 699 of 2017: Pastor Daniel Walugembe v Bulasio Buyise & 4 Others. He stated that he has been in possession of the land since 1996 and has set up several commercial and residential houses and a church.
- [3] The Applicant stated that on 1st June 2023, the 1st Respondent summoned him for a meeting at State House Legal Department in respect of several complaints from alleged kibanja tenants from Katanga, specifically a one Dr. Ntwatwa Lule Sekiyivu. The Applicant averred that his lawyers in a letter dated 6th June 2023 challenged the legality of the impugned meeting and forwarded documents confirming the decisions by the courts over ownership of the land in question. He further averred that despite the objections from his lawyers, the 1st Respondent went ahead and convened a meeting in which she constituted herself into an investigating and fact finding authority on matters relating to his interests in the land. He also averred that the 1st Respondent did not avail to him copies of any complaints by the alleged tenants to enable him respond fairly to their allegations.
- [4] The Applicant further stated that the 1st Respondent released a report containing observations, recommendations and directives that deprived him of his proprietary interests by ordering that a one Dr. Ntwatwa Lule takes possession of part of the Applicant's kibanja at

Katanga valley. The Applicant stated that in 2019, the said Dr. Ntwatwa Lule and others had filed HC Misc. Application No. 434 of 2019: Hassan Ssegawa Kambuga & 4 Others vs Pastor Daniel Walugembe (in the High Court Land Division) seeking to challenge the Applicant's interest in the kibanja; which application was heard and dismissed by the Court. The Applicant therefore averred that the 1st Respondent's impugned recommendations and directives are contrary to and have the effect of altering the findings contained in the highlighted judgments and rulings of courts of law that are vested with competent jurisdiction to entertain land disputes.

- [5] The Applicant also averred that on 7th March 2022, the High Court Land Division issued a temporary injunction restraining the 2nd Respondent, its agents, employees or any other person acting under their behalf, from evicting the Applicant from his kibanja; which order was brought to the attention of the 1st Respondent. The Applicant averred that the 1st Respondent is a non-entity and has no mandate to determined proprietary rights under the law. He concluded that the impugned report is therefore illegal, irrational and irregular and it is in the interest of justice, equity and good conscience that the application is granted.
- [6] The Respondents opposed the application through an affidavit in reply deposed by **Sandra Ndyomugyenye**, the 1st Respondent, who is a Principal Legal Officer in the Legal Department of State House. The deponent stated that the report made by the Respondents including the recommendations therein do not give rise to grounds for judicial review. She stated that State House received several complaints in respect of the land comprised in FRV 59 Folio 21 Kyadondo situate at Katanga valley. A one Dr. Ntwatwa Lule Sekiyivu through his lawyers requested for the intervention of State House in the dispute and a meeting was scheduled on 31st May 2023 to interact with the complainants and other interested parties. The Applicant did not turn up and was notified of the next meeting slated for 8th June 2023. The Applicant's lawyers attended the meeting on 8th June 2023 and were given an opportunity to make their representations in respect of the Applicant's interests. The deponent averred that after hearing all the concerned parties that attended the meeting, she made a report wherein she stated her observations and recommendations among which was maintenance of the status quo and awaiting final determination of the Court to guide the parties on the matter. She concluded that the various claimants to the suit land had no connection to any ongoing court case and the recommendations made were for purposes of preservation of order and peace which is in line with the Respondent's mandate. She prayed for dismissal of the application.
- [7] The Applicant filed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

- [8] At the hearing, the Applicant was represented by **Mr. Rubihayo Brian** and **Ms. Ankwase Germina** from M/s Mwesigwa Rukutana & Co. Advocates while the Respondents were represented by **Ms. Clare Kukunda**, a Senior State Attorney from the Chambers of the Attorney General. It was agreed that the hearing proceeds by way of written submissions which were duly filed and have been taken into consideration in the determination of the matter before Court.

Preliminary Objection

- [9] Counsel for the Respondents raised a preliminary point of law in their submissions to the effect that the 1st Respondent is not a proper party to the instant application. Counsel reasoned that being a principal legal officer at State House, the 1st Respondent is a public officer and the report she made was not a decision of government but was authored in her ordinary duties as a public officer and the proper party to be sued is the Attorney General who is the legal representative of Government as mandated under Article 250 of the Constitution.
- [10] In reply, Counsel for the Applicant submitted that the actions of the 1st Respondent were not only of vicarious liability but her participation in calling of a public hearing and conducting the same necessitated her presence in the instant application. Counsel argued that as long as the party joined is necessary in order to enable court effectively and completely adjudicate upon and settle all questions involved in the matter, that party may be joined as a party to the suit without necessarily disclosing a cause of action against that party.
- [11] It is not in dispute that the Attorney General is the official legal representative of Government in all matters in courts of law as provided for under Article 250 of the Constitution. It is also not in dispute that the 1st Respondent is a public servant and that she performed the actions that are the subject of the instant application in the course of her duty as a public servant. Ideally, she would be entitled to representation by the Attorney General for her acts or omissions. However, proceedings in judicial review are peculiar in certain respects. Under rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019, judicial review is defined to mean, among others, "a process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of ... bodies or persons ... who are charged with the performance of public acts and duties". It is therefore possible under the law to bring an action in judicial review directly against a public officer provided the matters raised are amenable for judicial review. A public officer who, during the performance of public acts or duties, conducts proceedings or makes decisions that are not in accord with the basic standards of legality, rationality, procedural propriety or fairness, can appropriately be subjected to the court's supervisory powers of judicial review.

[12] In light of the above position of the law and on the facts before the Court, the action in judicial review was properly brought against the 1st Respondent since it is conceded that she is a public officer who was acting in performance of her official duties. The point of objection is, therefore, devoid of merit and is overruled.

Issues for Determination by the Court

[13] Three issues were agreed upon for determination by the Court, namely;

- *a) Whether the application is amenable for judicial review?*
- *b) Whether the application discloses grounds for judicial review?*
- c) *Whether the Applicant is entitled to the reliefs claimed?*

Resolution of the Issues

Issue 1: Whether the application is amenable for judicial review? Submissions by Counsel for the Applicant

[14] Counsel for the Applicant cited the case of *Mohamed Allibhai v Attorney General HC Misc. Cause No. 217 of 2021* in which the Court held that a subcommittee of Parliament that undertook inquiries and made findings and recommendations in form of a report acted as a quasi-judicial body and its actions amounted to conduct of a public body that is subject to judicial review. Counsel submitted that the 1st Respondent purported to exercise quasi-judicial authority when she involved herself in matters of the public by summoning public officials and members of the public, conducting an inquiry into land ownership, making findings, recommendations and directives in a report dated 13th June 2023 which directives were subsequently issued to public officials to withdrawal the security forces that were guarding the premises; leading to a change in the status quo on the suit land. Counsel further submitted that the application also seeks to challenge the manner in which the 1st Respondent conducted public business and is not an attempt at enforcement of private rights as argued by the Respondents' Counsel. Counsel for the Applicant also stated that it is not true that the impugned report only contained recommendations and observations which, in law, do not amount to decisions reviewable under judicial review. Counsel stated that the report contained a directive to the Resident City Commissioner and the District Police Commander which was fully implemented in total disregard of existing court orders. Counsel concluded that the application is amenable for judicial review.

Submissions by Counsel for the Respondents

[15] Counsel for the Respondents cited the provisions of Rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2019 to the effect that in considering an application for judicial review, the court shall satisfy itself that the application is amenable for judicial review; that the aggrieved person has exhausted the existing remedies available within the public body

or under the law; and that the matter involves an administrative public body or official. Counsel submitted that the subject of challenge herein is a report authored by the 1st Respondent whose mere perusal shows that it only lays out the deliberations and resolutions of meetings that were held as a result of disputes that arose in respect to land comprised in FRV 59 Folio 21 Kyadondo County situate at Katanga valley in Wandegeya Kampala. Counsel stated that the complaints arose out of a desire by each of the concerned parties to protect their private interests in the land. Counsel submitted that no decision was made by the Respondents to deprive the Applicant of his interest in the suit land. Counsel further stated that in paragraph 1 on page 3 of the report, the Applicant was encouraged to seek a proper lasting solution to end the tensions concerning the suit land by approaching relevant offices and persons for possible mediation.

- [16] Counsel argued that the report that is the subject matter of the challenge does not involve matters of public law principles but rather it concerns the enforcement of private law rights to the land comprised in FRV 59 B Folio 21 Kyadondo County. Counsel also argued that there was no decision to be subjected to judicial review since the report only contains deliberations, recommendations and observations carried from a meeting by a public officer. Counsel relied on the decisions in **Wakiso Transport Tours and Travel Ltd v IGG & 3 Others*, HC MC No. 53 of 2013* and **Dott Services Ltd v Attorney General & Another*, HC MC No. 125 of 2009* for the above submission. Counsel prayed to the Court to find that the present application is not amenable for judicial review.

Determination by the Court

- [17] Rule 7A (1) of the Judicature (Judicial Review) (Amendment) Rules, 2019 provides that;

- *"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."*

- [18] It follows, therefore, that for a matter to be amenable for judicial review, it must involve a public body in a public law matter. 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*, P.37 (2009) Law Africa Publishing, Nairobi. It is, therefore, 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. In that regard, the duty of the applicant in an application such as this is to satisfy the court on a balance of probabilities that the decision

making body or officer subject of the challenge did not follow due process in making the respective decisions or acts and that, as a result, there was unfair and unjust treatment of the applicant and which is likely to have an effect on other members of the public.

- [19] The present case is premised on a challenge by the Applicant against the action by 1st Respondent, a principal legal officer at the State House Legal Department, of calling for a meeting, making inquiries, deliberations and recommendations as contained in a report dated 13th June 2023. There is no dispute as to whether the 1st Respondent is a public official. I have also found evidence showing that the matter under consideration was a public law matter that concerned the interest of several members of the public. It is therefore not correct as suggested by the Respondents' Counsel that the matters concerned enforcement of the Applicant's private rights. It is conceded by the Respondents that when the 1st Respondent called for the meetings, she was performing a public duty by virtue of her office as a public officer. It would be self-defeating for the same Respondents to argue that the matter in issue was not a public law matter.
- [20] The other point raised by Counsel for the Respondents was whether there was a decision at all that could be subjected to judicial review. Counsel argued that the report in issue only contained deliberations, observations and recommendations which do not amount to decisions. Counsel referred the Court to the decisions in **Wakiso Transport Tours and Travel Ltd v IGG & 3 Others*, HC MC No. 53 of 2013; *Dott Services Ltd v Attorney General & Another*, HC MC No. 125 of 2009* and **Luwero Town Council v Attorney General* HC MC No. 150 of 2013* in which the courts variously held the view that the reports being challenged could not be subject of judicial review since they only contained findings, recommendations and observations which did not amount to decisions and in respect of which a writ of certiorari could not issue.
- [21] I have before had occasion to express an opinion over this kind of argument and have drawn a distinction in circumstances when reports bearing recommendations may be subjected to judicial review and when not. In **Master Links Uganda Limited v Attorney General* HC MC No. 167 of 2022,* I did state that in view of evidence that the sub-committee of Parliament in that case had undertaken inquiries, made findings and recommendations in form of a report, it acted as a quasi-judicial body. As such, its actions and decisions amounted to conduct of a public body that was subject to the court's supervisory power by way of judicial review. I further noted that the above decisions cited by learned Counsel for the Respondent were made in different contexts and I do not understand the highlighted findings as setting a general principle of the law that a report containing recommendations by a public body cannot contain a decision capable of being subjected to judicial review. Whether or not such a report contains a decision that is judicially reviewable will depend on the nature of the recommendations set out in the report. I still find this to be the correct position of the law on the matter.

[22] According to the Black's Law Dictionary, 5th Edition, page 1144, a recommendation refers "to an action which is advisory in nature rather than one having any binding effect". On the other hand a "directive" means an official or authoritative instruction or direction (See: The Cambridge Dictionary at [*\[https://dictionary.cambridge.org\]\(https://dictionary.cambridge.org/*\)](https://dictionary.cambridge.org)). The Black's Law Dictionary (supra) at page 414 defines a "direction" as "That which is imposed by directing; a guiding or authoritative instruction; order; command". The first question, therefore, in a discourse like this is whether what is termed as a recommendation in a report is actually a recommendation or a directive. Merely terming a statement as a recommendation while it bears the force and effect of a directive does not make such a purported "recommendation" less of a decision. While I would agree that a recommendation within the strict meaning assigned to the term would not constitute a decision that is judicially reviewable, the same cannot be said for directives disguised as "recommendations" or such a kind of self-executing recommendations.

[23] As such, to answer the question as to whether the "recommendations" in the impugned report constitute a decision that can be subjected to judicial review, the Court needs to look at the nature of the recommendation that is subject of the Applicant's challenge. In recommendation No. 3 at page 3 of the report dated 13th June 2023, it is stated as follows;

"The dispute between the landlords remained unresolved. Pastor Walugembe in this particular case is in possession of a 1996 agreement with Bulasio Bwisi who was kibanja (bonafide occupant) on the land. Since then Pastor Walugembe has been grappling with gaining access to the land. However, Dr. Ntwatwa is also in possession of a 1991 agreement with the same Bulasio Bwisi and was in possession of a title issued on 12th March 1991 Plot 394 sub-divided by 390 of Bulasio. He has also been in physical possession since 1991. These titles were cancelled by a decree against Mr. Jonathan Masembe, Bulasio Bwisi, G. Kagimu and Samalie Namboga to reinstate the *title of Makerere University under Civil Suit No. 857 of 2000 (High Court of Uganda) Land Division. As the decree declared, those whose titles were challenged and cancelled and their licensees were to remain as bonafide occupants.*

In simple terms, by the time Pastor Walugembe purchased the land in 1996 from Bulasio Bwisi, this particular plot was already occupied by Dr. Ntwatwa who had purchased it from the same person.

Therefore, the meeting concluded, Dr. Ntwatwa is allowed to use his land without any disturbance from other parties claiming interest unless court pronounces itself otherwise."

[24] It is claimed by the Applicant that this finding and recommendation by the 1st Respondent amounted to a directive, which contradicted court decisions and orders that were already in place. It is further averred that the directive was actually implemented by the Resident City Commissioner and the District Police Commander of Kawempe Division in Kampala who placed Dr. Ntwatwa in possession. This evidence was not controverted by the Respondents and, it being affidavit evidence, it is deemed correct and credible before the Court. Looking at the impugned recommendation, it is clear to me that it was not simply advisory in nature;

rather it directed the taking of some action which was actually taken, according to evidence. Where a person such as the present Applicant is affected and aggrieved by such a directive, he has no other way of challenging such an action and directive by a public officer other than by way of invoking the court's supervisory powers of judicial review. In the premises, I find that the report contains a decision that is amenable for judicial review.

- [25] My attention was drawn to the decision in **Albinos Asiimwe v Sandra Ndyomugenyi & Anor, HC MC No. 135 of 2023** which case arose from the same report. In that case, my learned brother found that according to the application before him, the report contained no decision that was amenable for judicial review. I have noted that the application by **Albinos Asiimwe** was based on grounds that are different from the present application. The challenge in that application was not based on the same recommendation which the Court has found was, indeed, a directive. **Albinos Asiimwe** did not plead or establish that he was affected by the impugned directive, the same way it affected the present Applicant. The finding by the learned Judge in that case was, therefore, based on the facts and circumstances of that case and cannot be used to predetermine the present case. In all, therefore, on Issue 1, my finding is that the Applicant has established that the application is amenable for judicial review.

Issue 2: Whether the application discloses grounds for judicial review?

- [26] Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. See: **Rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019**. Judicial review is thus concerned not with the decision but the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal 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 v Yustus Tinkasimmire & Others, CACA No. 208 of 2013** and **Kuluo Joseph Andrew & Others v Attorney General & Others, HCMC No. 106 of 2010**.
- [27] It follows, therefore, 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 decisionmaker 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.

- [28] On the case before me, although in the application the Applicant challenged the impugned report on grounds of illegality, irrationality and judicial impropriety, during their submissions, Counsel for the Applicant only zeroed on the ground of illegality. I will, therefore, dwell only on the ground of **illegality** as raised in the application.

Submissions by Counsel for the Applicant

- [29] It was submitted by Counsel for the Applicant that by the 1st Respondent acted without jurisdiction/ ultravires by summoning the Applicant, public servants (the RDC, DPC and LCs) and other members of the public for a meeting held at the State House Legal Department to discuss matters pertaining to the interests of the parties in the suit land. Counsel submitted that the 1st Respondent constituted herself into an investigating and a fact finding authority, conducted the hearing and issued directives in respect of land ownership. Counsel argued that the 1st Respondent assumed powers and a mandate not vested upon her by law.
- [30] On the second leg, it was submitted that the 1st Respondent reinvestigated and altered court decrees in a matter already adjudicated upon by the courts. Counsel submitted that inquiries into matters between the Applicant and the complainants before the 1st Respondent amounted to a retrial and the impugned report overturned the decrees and orders in HCCS No. 699 of 2017 where it was declared that the Applicant is a bonafide occupant on land comprised in FRV 59 Folio 21 and HCMA No. 434 of 2019 which dismissed the claim by Dr. Ntwatwa and others that attempted to lay a claim on the same land as against the Applicant. Counsel stated that contrary to the above court orders, the 1st Respondent directed the RDC and DPC to ensure that Dr. Ntwatwa takes possession of the Applicant's land yet the said Dr. Ntwatwa was one of the applicants in MA No. 434 of 2019. Counsel prayed that the Court finds that the 1st Respondent acted beyond her powers when she usurped powers to overrule a decision of the High Court which is a preserve of the appellate courts and that her decisions and recommendations in the report are illegal and unenforceable.

Submissions by Counsel for the Respondents

- [31] In response, it was submitted by Counsel for the Respondents that the State House as a Government entity is seized with authority to entertain any complaint that is addressed to it by a member of the public. Counsel submitted that in the instant case, a complaint was made to State House by Dr. Ntwatwa Lule and the 1st Respondent in her capacity as the Principal Legal Officer in the State House Legal Department acted on it by calling meetings with the complainant and all interested parties in order to establish the facts and find a resolution to the matter that would bring about order and peace. Counsel stated that the 1st Respondent only made recommendations and did not deprive the Applicant of his interests. Counsel submitted that the Respondents, therefore, did not act illegally or unlawfully by

entertaining a complaint from a member of the public and/or authoring a report of the deliberations and findings that were reached at in the meetings that led up to the making of the report.

- [32] Counsel for the Respondent refuted the Applicant's assertion that the 1st Respondent re-investigated and altered or overturned court decrees to the detriment of the Applicant which counsel argued was a disingenuous assertion that was devoid of any merit. Counsel referred the Court to recommendation 2 of the report made by the 1st Respondent and argued that it recognized that the Applicant has several rulings in his favour regarding the suit land and advised him to seek an eviction against trespassers in order to assert his rights on the same. Counsel stated that the Applicant was also advised to find a lasting solution to the tensions over the suit land and that the withdrawal of security personnel on the land was meant to ensure that Dr. Ntwatwa "enjoys quiet possession" of the land which implied that he was in possession of the land. Counsel further stated that the submission that the 1st Respondent ordered that Dr. Ntwatwa takes over possession of the land is a misconception. Counsel concluded that the 1st Respondent had an obligation to entertain the petition of Dr. Ntwatwa Lule and to carry out fact finding into the same in order to inform the next course of action.

Determination by the Court

- [33] Illegality has been described as the instance when the decision making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality. Lord Diplock in the case of **Council of Civil Service Unions v Minister for Civil Service (1985) AC 375,** made the following statement;

"By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it. Whether he has or not is, par excellence, a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised".

- [34] A public authority or officer will be found to have acted unlawfully if they have made a decision or done something without the legal power to do so. Decisions made without legal power are said to be ultra vires; which is expressed through two requirements: One is that a public authority/officer may not act beyond their statutory power; and the second covers abuse of power and defects in its exercise. See: **Dr. Lam-Lagoro James v Muni University, HCMC No. 007 of 2016**.

- [35] On the case before me, it is alleged by the Applicant that the 1st Respondent made findings, recommendations and directives without the authority to do so. It is the case for the Respondents that State House as a public office is empowered to entertain any complaint made to it by a member of the public and the 1st Respondent, as an officer in the Legal Department, properly exercised those powers. The Respondents also denied making a decision that deprived the Applicant of his interests in the land in issue and overturning or

altering any court decisions.

- [36] I agree that in execution of its mandate, the State House or any of its departments has the power and mandate to receive complaints from members of the public over matters within their mandate. I also agree that the maintenance of peace, public order and security falls within the mandate of State House. As such, the act by the 1st Respondent of calling meetings upon receiving a complaint from a member of the public with concerns over public order and security, would not be a problem and would not offend any law. However, the problem arises where either the purpose of calling the meeting or the business conducted at the meeting falls outside the mandate of the entity. For instance, an officer in the Legal Department of State House, even when he/she has lawfully convened an official meeting, has no power to make a legal provision having the force of law; since this falls within the ambit of the Legislature. Similarly, the officer has no power to hear and determine disputes, rights and interests between persons; as this falls within the mandate of the courts. This is an arrangement that is constitutionally put in place and is not debatable.
- [37] As such, however well-intentioned the meeting called by the 1st Respondent was, if it delved into matters and resulted into directives outside her mandate, such conduct would be ultra vires and illegal. According to Hood Phillip's Constitutional and Administrative Law, 7th Edition at page 662, "a minister, a local authority and any public body may only validly exercise powers within the limits conferred on them by common law or statute. A decision may fall outside those powers and so be ultravires because the body concerned has attempted to deal with a matter outside the range of power conferred on it – substantive ultra vires; or because it has failed, in reaching its decision, to follow a prescribed procedure – procedural ultra vires*".
- [38] In the instant case, it is shown by the Applicant that at the meeting convened by the 1st Respondent, she investigated into a dispute over land, came to her own conclusion, different from the findings reached in earlier decisions by the courts and made a directive that was not based on any orders of the court. This is well reflected in "recommendation" No. 3 in the report which is highlighted in paragraph 23 herein above; whereby the 1st Respondent allowed Dr. Ntwatwa "to use his land without any disturbance from other parties claiming interest unless court pronounces itself otherwise". This directive has two ramifications; one is that the 1st Respondent is understood to mean that her directive carried the force of law and it could only be varied if a party went to court to challenge it; secondly, the position espoused by the 1st Respondent was not based on any of the existing court decisions that had already made pronouncements over the dispute. This course of action was clearly outside the mandate of the 1st Respondent. It cannot be justified as it is ultra vires and out rightly illegal.
- [39] The other part of the allegation of illegality is that the 1st Respondent's course of action deprived the Applicant of his interest in the land in issue and altered, varied or contradicted existing court orders. It was the evidence of the Applicant that the 1st Respondent allowed Dr. Ntwatwa Lule to take possession of part of the land which had been decreed by the

courts as belonging to the Applicant. Pursuant to the decrees in HCCS No. 857 of 2000 and HCCS No. 699 of 2017, the rights over the land in issue were determined by the courts in favour of the Applicant. This was well noted by the 1st Respondent in her report wherein she acknowledged that the Applicant was in possession of several rulings in his favour. There was also evidence before the 1st Respondent that Dr. Ntwatwa Lule and 99 Others had filed HC Misc. Application No. 434 of 2019 seeking to challenge the Applicant's interests in the land; which application was dismissed by the court. There was no evidence before the 1st Respondent that any of the above indicated court decisions was appealed and reversed or varied.

- [40] The worst case scenario was that in HC Miscellaneous Application No. 1710 Of 2021: Walugembe Daniel vs Attorney General & 8 Others, the Court had issued an order of a temporary injunction in favour of the Applicant against the 2nd Respondent and 8 Others restraining them from evicting or interfering with the Applicant's utilization or development of his kibanja. As already seen above, the directive allowing Dr. Ntwatwa "to use his land without any disturbance from other parties claiming interest unless court pronounces itself otherwise" contradicts this express order of the court and is out rightly illegal. The 1st Respondent is not vested with powers under any law to alter, vary or contradict a decision of a court of law.
- [41] In light of the above findings, the Applicant has established that the findings and directive in "recommendation" No. 3 of the report by the 1st Respondent dated 13th June 2023 were made ultra vires the mandate of the 1st Respondent and are therefore illegal. The application therefore succeeds on this ground.

Issue 3: Whether the Applicant is entitled to the reliefs claimed?

- [42] In view of the findings in issue 2 above, the application has succeeded on the ground of illegality. The Applicant is therefore entitled to a declaration that the act by the 1st Respondent of exercising powers and mandate not vested in her by law and passing directives in form of recommendations concerning matters already adjudicated upon and determined by courts of law, was ultra vires and thus illegal.
- [43] Regarding the prayer to issue a writ of Certiorari, rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019 defines "certiorari" as an order by court to quash a decision that is ultra vires. In **Editors Guild Uganda Limited & Another v Attorney General, HC MC No. 400 of 2020,** the Court stated that when a decision is illegal or ultra vires, the remedy is certiorari. A writ of certiorari should often feely be granted by the courts, where a prejudicial decision has been made by a public authority in the course of exercise of its statutory or public authority. In the instant case, it has been established by the Applicant that the decision by the 1st Respondent as contained in "recommendation" No. 3 in the report dated 13th June 2023 is ultra vires and illegal. I have, however, found that the illegality of this directive disguised as a recommendation has not vitiated the entire report owing to my finding that the 1st Respondent, in the first place, was within her mandate to convene

the impugned meetings. As such, an order of certiorari shall issue only to quash "recommendation" No. 3 in the report dated 13th June 2023.

- [44] The Applicant also prayed for an order of Prohibition restraining the Respondents, their servants or agents from implementing the directives and recommendations in the 1st Respondent's report dated 13th June 2023 against the Applicant. Under rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019, prohibition is defined as an order issued by court to forbid some act or decision which would be ultra vires. It is clear to me that any further enforcement of the impugned directive would be an ultra vires and illegal act. I therefore allow to issue an order of prohibition forbidding the Respondents, their servants or agents from implementing the directive contained in "recommendation" No. 3 in the report by the 1st Respondent dated 13th June 2023.
- [45] The Applicant further made a claim for general damages. The position of the law is that in judicial review, there is no right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. In that regard, *rule 8(1) of the Judicature (Judicial Review) Rules, 2009* provides as follows:

"8. Claims for damages

(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if;

(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter which the application relates; and

(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages."

- [46] The agreed position of the law is that the additional cause of action which may be included in an application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See: *Three Rivers District Council v Bank of England (3) [2003] 2 AC 28; X (Minors) v Bedfordshire County Council [1995] 2 AC 633; and *Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104 at page 104 -105*.

- [47] On the case before me, despite the finding that the impugned directive was made ultra vires and illegal, no grounds or circumstances exist that justify any award of damages in light of the position of the law set out above. In the premises, I have not found any basis or justification for grant of any order for damages over and above the judicial review remedies set out herein above.

[48] Regarding costs, Section 27 of the Civil Procedure Act provides that costs follow the event unless the court, for good cause, decides otherwise. Given the findings herein above, the Applicant is entitled to costs of the application and the same are accordingly awarded to him against the Respondents.

It is so ordered.

Dated, signed and delivered by email this 2nd day of August, 2024.

Boniface Wamala JUDGE

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Prepared on 14 October 2026 · Esheria