

UGANDA / JUDGMENT

Prof. Eleanor Maxine Ankrah and Another v Commissioner Land Registration and Others (Miscellaneous Cause 178 of 2024) [2025] UGHCCD 77 (20 June 2025)

[2025] UGHCCD 77

COURT

HC: Civil Division (Uganda)

BEFORE

Simon Peter M. Kinobe, J

CASE / FILE NUMBER

Miscellaneous Cause 178 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

[CIVIL DIVISION]

MISC. CAUSE NO. HCT-00-CV-MC-0178-2024

(FORMERLY MISC. CAUSE NO. HCT-00-LD-JRC-0001-2024)

1. PROF. ELEANOR MAXINE ANKRAH

[Suing as the Administratrix of the estate of

the Late Kodwo Esuman Ankrah]

2. PAUL ASIIMWE ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

- 1. COMMISSIONER LAND REGISTRATION
- 2. RUTH ZAWEDDE
- 3. LUKWAGO MARIETTA AGNES
- 4. MULIRA JOAN MARY

- 5. KIRABO MARIAN MUSAAZI
- 6. NDUGGA IAN
- 7. MUGANZI MARIA NANTEZA ::::::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE

RULING

20.06.2025

BACKGROUND:

This application arises from an amendment order made by the 1st Respondent directing the cancellation of entries on the Register of Titles for land known as Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 formerly Plot 22 registered in the names of different people but specifically, Block 428 Plot 187 was registered in the name of Paul Asiimwe (the 2nd Applicant) jointly with Patricia Asiimwe Kahigi, Plot 188 was registered in the name of Paul Asiimwe and Plot 192, registered in the name of Kodwo Esuman Ankrah whose executrix, is Prof. Eleanor Maxine Ankrah (the 1st Applicant). The remaining titles for Plots 184, 185, 186 and 189 were registered in the name of Prof. Eleanor Maxine Ankrah as executrix of the Estate of the Late Kodwo Esuman Ankrah, while plot 190 registered in the names of Kityo John and lastly Plot 191 was registered in the names of Charles Kyagaba and Miisa Nabulime Nakitende.

From the pleadings filed by the Parties, it is clear that the cancellation of the entries for Plots 184, 185, 186, and 189, 190 and 191 was completed as at the time of filing the Application for judicial review, while the completion of the cancellation of entries for Plots 187, 188 and 192 was affected by the temporary injunction order issued by this Honorable Court. It is also clear to me that only the 1st Applicant as Executrix of the Estate of the Late Kodwo Esuman Ankrah and the 2nd Applicant challenged the decision of the 1st Respondent by filing the present application challenging the process leading to the cancellation of the entries on the register of titles for Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 Land at Businsi, Wakiso District.

The Parties to this Application:

20.06.2025

The Applicants in this application are Prof. Eleanor Maxine Ankrah, the executrix of the Estate of the Late Kodwo Esuman Ankrah formerly the registered proprietor of Busiro Block 428 Plot 22 which was subsequently sub-divided into Plots 184, 185, 186, 187, 188, 189, 190, 191 and the residue being Plot 192.

The second Applicant is the registered proprietor of Plot 187 jointly with Patricia Asiimwe Kahigi and Plot 188 which is registered in his individual capacity.

The 1st Respondent is the Commissioner Land Registration who is a public servant appointed under the Registration of Titles and is charged with the control of the Office of Titles and exercises the powers and performs duties conferred or imposed by the Registration of Titles Act, Cap 240 or any other laws.

The 2nd Respondent was at first appearing with the Commissioner Land Registration as the only two Respondents in the matter. On the 7th day of May 2024, the 2nd Respondent applied to this Court for leave to file her affidavit out of time, this Application was allowed. Despite the order of this Court allowing the 2nd Respondent to file her affidavit out of time, none has been filed to-date.

The 3rd, 4th, 5th, 6th and 7th Respondents filed Miscellaneous Application No. 0225 of 2025 seeking leave to be added as Respondents in Miscellaneous Cause No. 0178 of 2024 and for Miscellaneous Cause No. 0178 of 2024 to be amended to reflect the names of the 3rd, 4th, 5th, 6th, and 7th Respondents, as Respondents.

I allowed the Application with no orders as to costs and gave directions for filing of written submissions. The 2nd, 3rd, 4th, 5th, 6th and 7th Respondents stated that

they would rely on the affidavit and submissions of the 1st respondent. I will proceed to determine the application solely on the affidavit and submission by the 1st Respondent.

The Applicants in this Application are seeking the following reliefs: -

- a) An order of Certiorari to issue quashing the decision of the 1st Respondent to cancel the entries and registration of KODWO ESUMAN ANKRAH on the certificate of title for Busiro Block 428 Plot 22 situated at Businsi, Wakiso District.
- b) An order of Certiorari to issue quashing the decision of the 1st Respondent to recall and cancel the duplicate certificates of title for the newly created plots arising out of the subdivision of Busiro Block 428 Plot 22, namely plots 184, 185, 186, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.
- c) A declaration to issue that the 1st Respondent acted irregularly, unlawfully and illegally in making the decision to cancel the certificates of title for the suit land and that the decision was ultra vires the 1st Respondent's powers.
- d) An order of Prohibition to issue restraining the 1st Respondent and all his agents, servants, agencies, departments, authorities and or officials from implementing and/ or enforcing the 1st Respondent's decision cancel the registration of Kodwo Esuman Ankrah on certificates of title formerly comprised in Busiro Block 428 Plot 22 and now plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.

20.06.2025

- e) A consequential order of mandamus be issued compelling the Respondent to register the 1st Applicant on the certificate of title for Busiro Block 428 Plot 192 in her capacity as the Administratrix of the estate of the Late Kodwo Esuman Ankrah.
- f) An injunction be issued restraining the 1st Respondent from registering any instrument adversely affecting the Applicants interests and or proprietorship over the suit land comprised in Busiro Block 428 Plot 22 and now plots 184, 185, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.
- g) An injunction be issued restraining the 1st Respondent from registering or entering the 2nd Respondent on the title for the suit land comprised in the suit land comprised in Busiro Block 428 Plot 22 and now plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District as the Executor of the estate of the Late Mary Ruth Nansikombi.
- h) An order of Court be issued directing the 1st Respondent to maintain and or restore the 1st Applicant on the certificate of title for land comprised in Busiro Block 428 Plots 184, 185, 186 and 189 land at Businsi, Wakiso District.
- i) An order be issued directing the 1st Respondent to maintain and or restore the 2nd Applicant on the certificate of title for land comprised in Busiro Block 428 Plots 187 and 188 land at Businsi, Wakiso District.

20.06.2025

- j) The Respondents jointly pay general damages to the Applicants; and
- k) The Costs of this Application be paid by the Respondents.

FACTS FOR THE APPLICANTS:

- a) The suit land was comprised in Block 428 Plot 22 measuring 39.990 hectares (98.81 acres) and belonged to Kodwo Esuman Ankrah who purchased the same in 1977 and obtained title on 8th November 1979.
- b) Sometime in 2014, the 1st Applicant and her husband Kodwo Esuman Ankrah caused the subdivision of Block 428 Plot 22 measuring 39.990 hectares (98.81 acres) into plots, namely plots 184, 185, 186, 1 87, 1 88, 1 89, 1 90, 191 and 192.
- c) The 1st Applicant is the Executrix of the estate of her deceased husband, the Late Canon Kodwo Esuman Ankrah, who passed away on the 29th day of May 2015.
- d) The 1 st Applicant was registered on titles for Busiro Block 428 Plots 184, 185, 186 and 189 while Plot 192 is still registered in the deceased's names.
- e) The 2nd Applicant is the registered proprietor of the land comprised in Busiro Block 428 Plots 187 and 188, and at Businsi.

- f) The Applicants recently learnt that in October 2023, the 2nd Respondent, purporting to be the holder of letters of probate of the estate of the Late Mary Rita Nansikombi lodged a complaint before the 1st Respondent seeking for an amendment order in respect of the suit land comprised in Busiro Block 428 Plots 184, 185, 186, 187, 188, 190, 191 and 192 and at Businsi.
- g) The Applicants have established that on the 22nd day of January 2024, the 1st Respondent, acting on the 2nd Respondent's complaint, made the following orders:

20.06.2025

- i) That the entries of KODWO ESUMAN ANKRAH of P. O. Box 472 Mukono under instrument number KLA 91665 on Busiro Block 428 Plot no. 22 be cancelled and revert the entire land into the names of Mary Rita Nansikombi as the registered proprietor.
- ii) That the duplicate certificates of titles for the newly created plots arising out of the subdivision of Busiro Block 428 Plot 22 namely plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi in the possession of Kodwo Esuman Ankrah be recalled and cancelled.
- iii) That upon a formal application by the 2nd Respondent as the purported Executor of the estate of the Late Mary Ruth Nansikombi to be registered on the title, the said executor ought to be entered.
- h) That upon obtaining a copy of the said amendment order and proceedings of the purported public hearing conducted on 6th December 2023, the Applicants observed that;
- i) The notice of intention to effect changes in the register for the suit land comprised in Busiro Block 428 Plots 184, 185, 186, 187, 188, 190, 191 and 192 land at Businsi was purportedly issued to ERIABU SSEMPIRA and KODWO ESUMAN ANKRAH, both deceased.
- ii) The Applicants, who are currently registered on part of the affected land, namely Busiro Block 428 Plots 185, 186, 187, 188 and 189, were neither served a copy of the said complaint nor were they summoned or notified of the said proceedings, despite being entitled to mandatory notice under Sections 37 and 81 of the Registration of Titles Act Cap. 230.
- i) That the said proceedings conducted by the 1st Respondent, it is evident that the Respondents were fully aware that part of the suit land comprised in Busiro Block 428 Plots 184, 185, 186 and 189 are registered in the names of

20.06.2025

the 1st Applicant while Plots 187 and 188 are registered in the 2nd Applicant's names.

- j) The Applicants contend that the 1st Respondent was duly bound to issue a notification to the Applicants as affected parties, which he did not do.

- k) The Applicants contend that the 1st Respondent's actions in relation to the suit land were unlawful and deliberately calculated to defeat the Applicants proprietary interests therein and are malafide and illegal, to the extent, that:
- i) The 2nd Respondent held out as sole administrator of the estate of the Late Mary Rita Nansikombi, whereas not.
- ii) The 2nd Respondent purporting and misrepresenting the suit land as constituting part of the deceased's estate, with an intention of defeating the Applicants' possessory and proprietary interests.
- iii) The 1st Respondent purporting to issue and serve a notice of intention to effect changes in the register for the suit land comprised in Busiro Block 428 Plots 184, 185, 186, 187, 188, 190, 191 and 192 land at Businsi addressed to KODWO ESUMAN ANKRAH despite having constructive notice that he is deceased by virtue of the registration of the 1st Applicant as Executrix of the deceased's estate.
- iv) The Respondents, deliberately omitting to issue a copy of the complaint or notice of intention to effect changes on the register to the Applicants as affected persons appearing in the register book on part of the affected land, namely Busiro Block 428 Plots 185, 186, 187, 188 and 189.
- v) The Respondents acting illegally in the circumstances.
- l) As a result of the Respondents' actions, the Applicants have suffered great inconvenience, humiliation, psychological and mental torture, which has negatively affected their well-being and that of their immediate family for which they seek for an award of general damages against the Respondents.

20.06.2025

- m) The Applicants therefore seek to set aside the amendment order wrongfully issued by the 1st Respondent without according the Applicants the right to be heard.
- n) It is in the interest of justice and the administration of justice that the Applicants application is granted in the terms proposed in the Notice of Motion.

FACTS FOR THE 1ST RESPONDENT

- a) That the 1st Respondent's delay in filing its affidavit in reply to this Application was as a result of failure to locate the registry file within time from Busiro, Wakiso MZO for perusal to enable the 1st respondent prepare and file a reply to this Application.
- b) The 1st respondent in the circumstances seeks leave from this Honorable court to accept the evidence contained herein outside the statutory time for filing an Affidavit in reply.

- c) That the 1st Respondent shall raise the following preliminary objection at the earliest opportunity possible;
- i) The 1st Applicant is an administratrix/executrix of the estate of the Late Kodwo Esuman Ankrah and cannot delegate her powers to the 2nd Applicant, Paul Asimwe to swear an affidavit in support of the application on her behalf and on behalf of the estate. That as a result of the above preliminary objection, the amended Affidavit in support of the application is improper, barred in law and the same ought to be struck off court record, and consequently the application should be dismissed for lack of lawful/ proper supporting affidavit. 5.
- d) That Eriabu Ssempira's interest was procured illegally as there are no records on the register on how he got registered onto the title.

20.06.2025

- e) That at the time of the said transfer and registration on the title on 18th November 1977, the said Late Kodwo Esuman Ankrah was not a citizen of Uganda and hence the said transaction or any other further transactions by the Late Kodwo Esuman Ankrah were illegal to that effect.
- f) That all 3rd party interest holders including that of the 2nd Applicant are acknowledged and shall be protected by the 1st Respondent. The 1st Respondent is already working on reinstating all the 3rd party interest holders on the register whose legal interests were affected by the Amendment Order and they are to be given back their Certificates of Title. The Certificate of Titles of the 3rd party interest holders were only canceled for purposes of creating way to first clear all the illegalities on the register and thereafter have those (3rd party interest holders) restored.
- g) That before the implementation of the Amendment Order, the 1st Respondent invited the 2nd Respondent for a meeting in which she was informed in the presence of her lawyers that all 3rd party interest holders who were affected by the Amendment Order, their Certificate of Titles will be reinstated to which through a commitment letter addressed to the 1st Respondent by the 2nd Respondent agreed and acknowledged to honor and protect the same.
- h) That the 1st Respondent is not a party to the said injunction and in the absence of an order of court restraining the 1st Respondent from exercising its statutory mandate under section 91 of the Land Act, it is entitled in the circumstances and for grounds set out in section 91 to entertain and determine a complaint with the aim of rectifying its register.
- i) I further state that the 1st Respondent rightly executed its mandate which is clearly provided for under the Land Act and that the 1st Respondent could not be restrained from exercising its legal mandate. If the Applicants wanted to

20.06.2025

restrain the 1st Respondent from rendering a decision, it was incumbent upon them to secure an injunction from court for that Purpose.

- j) That the 1st Respondent duly exercised its mandate under Section 91 (2) of Land Act, issued a Notice of Intention to effect changes on the register, inviting the 1st Applicant and the said Eriabu Ssempira through their known postal office addresses. The 1st Respondent further placed an advert in the newspaper of the said notice.
- k) The 1st Respondent did not issue and serve notices to all the 3rd party interest holders including the 2nd Applicant since their interests were to be reinstated after clearing the illegalities on the register
- l) That the 1st Applicant adamantly refused to appear and attend the public hearing regardless of being afforded an opportunity to be heard in accordance with the rules of natural justice on matters alleged in the said complaint.
- m) That upon conclusion of the said public hearing the office of the 1st Respondent duly made available the findings of the public hearing and the decision of the 1st Respondent to cancel the entry of the Late Kodwo Esuman Ankrah off the register book in respect of the Certificate of Title of the suit land for being registered illegally without proper procedures.
- n) That the 1st Applicant or any other interested parties were notified of the hearing where they would have raised their concerns but she elected not to appear. As such, the 1st Respondent properly conducted its findings and came to the decision made as per the Amendment Order referred to herein.
- o) That the 1st Respondent is not a party to the said pending suit in Civil Suit No. 177 of 2024. There is no order of injunction or interim order issued nor served upon the 1st Respondent restraining any administrative action by the 1st Respondent. At least none had been served on the 1st Respondent.

/ 20.06.2025

- p) That the 1st Respondent duly exercised its mandate under the law and followed the right procedures prior to making the decision in the Amendment Order.

That the 1st Respondent has never caused any inconvenience, humiliation, psychological or mental torture to any of the Applicants, and if any, the same is self-induced of which the 1st Respondent cannot be held liable. The Applicants are not entitled to any damages.

- q) The Application ought to be dismissed with costs awarded to the 1st Respondent.
- r) That most of the Applicants' averments in the affidavit are false and the same ought to be rejected.

- s) On the 23rd day of October 2023, the office of the 1st Respondent received a complaint from M/s Mudawa & Kyogula Advocates acting on behalf of the 2nd Respondent, Zawedde Ruth, being the Administrator of the Estate of the Late Mary Ritah Nansikombi, seeking cancellation of registrations on land comprised in Busiro Block 428 Plot 22 which was later on subdivided into Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192, land at Businsi, Wakiso District.
- t) That in the said complaint, it was alleged that Mary Ritah Nansikombi who died in 2014, left a will and in that will she bequeathed the land namely Busiro Block 428 Plot 22 to her granddaughter Zawedde Ruth.
- u) That upon conducting a search, the said land had already been purportedly transferred to a one unknown person by the name of Eriabu Ssempira illegally in 1977. That the same Eriabu Ssempira transferred the land to a one Kodwo Esuman Ankrah a Ghanaian National who could not own Private Mailo.
- v) That the complaint was primarily premised on the illegal manner through which a one Eriabu Ssempira and subsequently Kodwo Esuman Ankrah, a non-

citizen who could not own private Mailo obtained registration of the said land, which was formally Busiro Block 428 Plot 22.

- w) The contention was that the transfer of land comprised in Busiro Block 428 Plot 22 to Eriabu Ssempira and the subsequent transfer to Kodwo Esuman Ankrah a Ghanaian national who could not own private Mailo were illegal. That it was thus illegally effected.
- x) That upon consideration of the contents of the complaint, the 1st Respondent, being the custodian of all documents and instruments relating to land registration, called for the registry file to study and appreciate the history of proprietorship of the said land, the instruments thereon and other relevant documents.
- y) That having analyzed the record, the 1st Respondent realized that the matters raised in the complaint of the 2nd Respondents viz; alleged illegal registration of Eriabu Ssempira and the subsequent transfer to Kodwo Esuman Ankrah a non-citizen who could not own private Mailo, as proprietor of land comprised in Busiro Block 428 Plot 22 were matters falling within the powers of the Commissioner Land Registration under section 91 of the land Act as amended.
- z) That, accordingly, the 1st Respondent issued a notice for a public hearing of the matter. On the 15th day of November 2023, the 1st Respondent issued a notice of intention to effect changes on the register to Eriabu Ssempira and Kodwo Esuman Ankrah wherein they were invited for a public hearing scheduled on 6th day of December, 2023.

- aa) That in view of the fact that there could be other interested parties, the 1st Respondent further caused a Notice to be advertised in the Daily monitor newspaper of wide circulation in Uganda on the 16th day of November, 2023 at page 36 notifying and inviting any party with an interest in the said land like the 1st Applicant of a scheduled appearance for 6th December 2023 for

20.06.2025

purposes of a public hearing regarding the complaint. As such, the 1st Applicant was aware of the scheduled date for the public hearing.

- bb) That the purpose of the above newspaper advertisement thereof was to afford notice to any interested party herein to appear on the date fixed for hearing.
- cc) That pursuant to the advertised and posted notice, on the 6 th of December, 2023, the 2nd Respondent and her lawyers appeared at the 1st Respondent's offices for a public hearing which the 1st Applicant ignored. No reason was assigned for their non-appearance. The public hearing was conducted, evidence and submissions were received from the 2nd Respondent and her lawyers.
- dd) The 1st Respondent further considered its records touching the land in issue, the evidence adduced before it by the 2nd respondent/ complainant and the submissions and made its decision dated 22nd January, 2024 wherein it was found that the entries and registration of Eriabu Ssempira and Kodwo Esuman Ankrah on the register were illegal and the same were cancelled and the register rectified accordingly.
- ee) That the duplicate certificate of titles for the newly created plots arising out of the subdivision of Busiro Block 428 Plot 22 namely plots 184, 185, 186, 187, 188, 190, 191 and 192 land at Businsi were cancelled.
- ff) That the 1st Respondent duly discharged its statutory duty and mandate under the law by rectifying the register.
- gg) That I verily believe that this Application is incompetent, misconceived and as such an abuse of Court process.
- hh) That it is in the interest of justice that this Application be dismissed for want of merit with costs to the 1st Respondent.

20.06.2025

REPRESENTATION

The Applicants were represented by Mr. Arinaitwe Tonny of M/S Arinaitwe Law Advocates, appearing jointly with Mr. Twikirize Timothy of M/S Twikirize & Co. Advocates. The 1st Respondent was represented by Mr. Ssekito Moses, an Advocate working with the office of the Commissioner Land registration. The 2nd, 3rd, 4th, 5th, 6th and 7th Respondents were represented by Mr. Rutaro Robert of M/S Elgon Advocates.

ISSUES FOR DETERMINATION:

Under Order 15 rule 5 of the Civil Procedure Rules SI 71-1 court is empowered to frame issues from materials before it. The issues framed by court are; -

- 1. Whether there are any legal grounds for judicial review?
- 2. Whether the Applicants are entitled to the remedies sought?

DETERMINATION

I have read the submissions of both Counsel for the Applicants and Counsel for the 1st Respondent together with the authorities submitted by all Counsel. I have also had the opportunity of reading the Amended Notice of Motion, the supporting affidavits and the affidavit in reply by the 1st Respondent.

The parties cited extensive authorities which I agree with and find no reason to depart from. The said authorities shall be applied herein in the same manner with perhaps contrasting scenarios and interpretations.

Also, both parties raised preliminary objections regarding the affidavits both in support and in reply. I find no merit in the said objections as the law is settled on

20.06.2025

the issues raised. I accordingly disregard the same. I also note that this court is more interested in the merit of the matter and I will thus proceed to determine the same.

From the onset I make the following observations.

- 1. The 1st respondent is mainly run and administered by advocates who have had both legal and procedural training in land transactions as a core subject. I would expect that the same are grounded in and have a good understanding of the law.
- 2. The 1st Respondent is the custodian of all documents and instruments relating to land registration, and any missing document is its sole responsibility. This responsibility cannot be inferred to another person. The 1st respondent's negligence in the management of documents/records within its custody cannot be used to infer illegality.

- 3. I note that the 1 st applicant has had undisputed possession and registration for over 46 years. That is longer than many of us have lived. Any issue relating to recovery of this land cannot be done without an analysis of the law on limitation.
- 4. I also note that the title the subject hereof moved from Mary Ritah Nansikombi 1958 (whose estate the 2nd - 3 rd respondents administer), to Eriabu Kigundu Sempira 1977 then to Kodwo Esuman Ankrah 1979 and then subdivided into several plots some transferred to different parties and others in the names of the Administrator of the estate of Kodwo Esuman Ankrah. Not all affected persons were served with notice as by law required.

20.06.2025

- 5. I note that the certificates of title the subject of this application have been passed on from several parties with the possibility of most of them being bonafide purchasers for value without notice.
- 6. I note that notice cannot be validly issued to someone who is deceased, especially when the 1st respondent, as the registry's custodian, should have the contact details of the deceased's successors.
- 7. I note that the 1st respondent's powers under Section 88 of the Land Act do not operate in exclusion of other legislation on limitation and the protection of Bonafide purchasers.

THE LAW GOVERNING APPLICATIONS FOR JUDICIAL REVIEW

The primary law providing for judicial review is the 1995 Constitution of the Republic of Uganda (as Amended) which in Article 42, lays down the right to just and fair treatment of all persons in administrative decisions taken by those with authority. Article 42 specifically states that:

"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her".

The Judicature (Judicial Review) (Amendment) Rules SI. 32 of 2019, defines judicial review as the process by which the High Court exercises its supervisory jurisdiction over 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.

20.06.2025

In the case of Byaruhanga John Patrick Versus Commissioner Land Registration Misc. Applic. No. 235 of 2024, Court observed that;-

"under judicial review, courts check the exercise of powers by those exercising quasi-judicial functions. Administrative quasi-judicial functions should be exercised judiciously in line with the principles of natural justice. Individuals should be treated fairly by authority to which s/he has been subjected to".

Rules 3 and 6 of the Judicature (Judicial Review) (Amendment) Rules SI. 32 of 2019, provides for the cases amenable to judicial review and the remedies available. It provides that:

"An application for a declaration or an injunction (not being an injunction mentioned in sub rule (1)(b) may be made by way of application for judicial review, and on such an application, the High Court may grant the declaration or injunction claimed if it considers that, having regard to—
*

- *(a) the nature of the matter in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;*
- *(b) the nature of the persons and bodies against whom relief may be granted by way of such an order; and;*
- *(c) all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review"*.

ISSUES NO. 1 WHETHER THERE ARE ANY LEGAL GROUNDS FOR JUDICIAL REVIEW

In the case of PASTOLI Vs. KABALE DISTRICT GOVERNMENT COUNCIL AND OTHERS [2008] 2 EA 300, it was held that in order to succeed in an application for Judicial Review, the applicant must show that the decision or act complained

20.06.2025

of is tainted with illegality, irrationality or procedural impropriety. (also see; Byaruhanga John Patrick Versus Commissioner Land Registration Misc. Applic. No. 235 of 2024,)

Judicial review is not concerned whatsoever with and does not deal with private rights. (see; - MC No. 235 of 2024 Byaruhanga John Patrick Vs Commissioner for Land registration)

Private rights have been defined as what is proper under law, morality or ethics, something that is due to a person by just claim, legal guarantee or moral principle, a power privilege or immunity secured to a person by law a legally enforceable claim that another will do or will not do. Right is correlative to duty. Where there is no duty there can be no right, but the converse is not necessarily true where there may be duties without rights. In order for a duty to create a right it must be a duty to act or forbear. (see; - the Black's Law Dictionary 10th edition)

Procedural impropriety

In the case of *Twinomuhangi vs Kabale District and others [2006] HCB130* Court Held that;

"*Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural fairness towards one 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*." (Also see; ALEX NYIKA AND ANOR Vs. THE COMMISSIONER LAND REGISTRATION MISCELLANEOUS CAUSE NO. 0259 OF 2022)

20.06.2025

According to Section 88 (2) (f) of the Land Act Cap 236 the Registrar of Titles must give not less than twenty-one days' notice of the intention to take appropriate action. Subsection (3) of section 88 of the Land Act mandates the Registrar of Titles to conduct a hearing giving the interested party an opportunity to be heard in accordance with the rules of natural justice.

The Applicants submitted that, in cancelling their titles to wit; Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192, land at Businsi, the 1st Respondent did not follow the provisions of Section 88 of the Land Act. That they were not given notice and therefore not accorded a hearing before their titles were cancelled by the 1st Respondent. The 1st Respondent on the other hand contends that the office of the 1st Respondent received a complaint from Mudawa and Kyogula Advocates regarding the purported illegal entries on land at block 428 plot 22 measuring approximately 39.9 hectares.

Acting on the aforementioned complaint the 1st Respondent issued a notice of intention to effect changes on the register and the said notice was sent to the postal address of Kodwo Esuman Ankrah vide PO Box 472 Mukono. This was equally addressed Eriabu Kigundu Sempira from whom Ankara acquired his interest. As for plot 192 block 428 the system did not bear a postal address on the certificate of title. However, the respondent used the last known address on the system of Kodwo Esuman Ankrah vide PO Box 472 Mukono.

In addition to the placement of the notice at the formation postal address the 1st respondent placed a notice in the Monitor Publications inviting Eriabu Kigundu Sempira and Kodwo Esuman Ankrah for the hearing which was scheduled for the 6th of December 2012. From a further read of the application, the affidavits and submissions, I note that the other affected persons holding interests in the land the subject hereof, were never served with notice at all. A look at paragraph 13 and 15 of the 1st respondent's affidavit together with paragraphs 17 and 18 of

20.06.2025

the Affidavit of the 2nd applicant, shows that the 1st Respondent knew that there were other registered proprietors for Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 but did not issue and serve notices to all the "3rd Party" interest holders including the 2nd Applicant contrary to Section 88 of the Land Act.

The 1st Respondent in paragraph 13 states that;

"3rd Party interest holders including the 2nd Applicant are acknowledged and shall be protected by the 1st Respondent. The 1st Respondent is already working on reinstating all the 3rd party interest holders on the register whose legal interests were affected by the amendment order and they are to be given back their certificates of title. The certificates of titles of the 3rd Party holders were cancelled for purposes of creating way to first clear all the illegalities on the register and thereafter have those 3rd party interest holders restored".

From the above I note the following;

- 1. a notice was allegedly sent to deceased persons to wit Kodwo Esuman Ankrah the same ought to have been sent to her administratrix (the 1st applicant)
- 2. Eriabu Kigundu Sempira (deceased) and other 3rd party interest holders including the 2nd applicant were never served with notice.
- 3. That the notice served through the Monitor Publication was ineffective. (see; Byaruhanga John Patrick Versus Commissioner Land Registration Misc. Applic. No. 235 of 2024)

It therefore follows that this is a proper case for judicial review on grounds of procedural impropriety.

This court has held that Section 88 of the Land Act requires proper service of notices to those bound to be affected by the decision of the first respondent (see;

Byaruhanga John Patrick Versus Commissioner Land Registration Misc. Applic. No. 235 of 2024,)

20.06.2025

In a country where the vast majority of the population does not have access to print media, it is prudent for the first respondent to ensure that service of notices is done physically or through the registered known address of all the persons complained against and or are likely to be affected by the decision.

I also note that every title has the address of the registered proprietor, and it is incumbent on the 1st respondent to ensure that it does as the custodian of the registry of titles.

It is my finding therefore that there was no effective service of notices to the applicants and that the same was done in bad faith calculated towards extinguishing the interests of the registered proprietors (in this case the applicants) without according them a right to be heard.

Indeed, the applicants were not present for the hearing because the notice was not sent to them. The notice that was published was addressed to deceased individuals.

Therefore, it is my holding that there was procedural impropriety on the part of the 1st respondent in its failure to serve effective notice on the applicants and thereby failing to accord the applicant a fair hearing as required by Section 88 of

the Land Act cap 236.

In the case of BIRUS PROPERTY SERVICES LTD VERSUS (1) THE COMMISSIONER LAND REGISTRATION AND INSPECTORATE GENERAL OF GOVERNMENT MISC. CAUSE NO. 001 OF 2015 it was observed that:

"*In summary the failure to comply with the provisions of Section 91 (now 88) of the Land Act as amended rendered the actions and decisions of the 1st Respondent illegal and nugatory".*

Court found that there was no notice given to the Applicants in accordance with Section 91 (8) of the Land Act and held that there was no proper hearing since

20.06.2025

the Applicant was denied a right to hearing which is an essential element of natural justice.

In ALEX NYIKA AND ANOR Vs. THE COMMISSIONER LAND REGISTRATION MISCELLANEOUS CAUSE NO. 0259 OF 2022 it was held that; -

"*On the matter before me, it is not in dispute that that the Respondent is a public body that acted in exercise of its public function. The matters in issue involve public law principles that are relevant to other officers of the Respondent in regard to management of land registration and also have a bearing on other members of the public. The application thus raises public law matters and is thus amenable for judicial review".*

Illegality

Illegality according to Black's Law Dictionary 10th Edition, is: *"an act that is not authorized by law or the state of not being legally authorized or the state or condition of being unlawful".*

In WAMALA ABDU Vs. COMMISSIONER LAND REGISTRATION MISCELLANEOUS CAUSE NO. 16 OF 2021 it was held that, *"Illegality is when the decision-making authority commits an error of law in the process of taking or making the act,...".*

In the case of *R v Lord President of the Privy Council, ex parte Page [1993] AC 682 Lord Browne-Wilkinson* noted that;

"The *fundamental principle (of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making body are exercised lawfully. In all cases...this intervention....is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which*

20.06.2025

is procedurally irregular or is Wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful.

The term lawfully refers to exercising one's mandate in a way that is allowed or recognized by law or in accordance with the law.

It was submitted by the Applicants that the 2nd Respondent applied through M/S Mudawa & Kyogula Advocates to cancel the title known as Busiro Block 428, Plot 22 Land at Businsi which she alleged was illegally transferred by Eriabu Sempira to himself in 1977, and then by Eriabu Sempira to Kodwo Esuman Ankrah in 1979 a non-citizen of Uganda both Eriabu Sempira and Kodwo Esuman Ankrah did not have any interest in any of the plots 184, 185, 186, 187, 188, 189, 190, 191. I also note with emphasis that Eriabu Sempira and Kodwo Esuman Ankrah were deceased. As of the date of cancellation, Kodwo Esuman Ankrah and his estate had been the unchallenged registered owners in possession of the said land for over 46 years.

I agree with the submission of the Applicants that as at 24th October, 1977, the Late Mary Ritah Nansikombi ceased to have any interest in the land known as Busiro Block 428 Plot 22 when an instrument of transfer from Mary Ritah Nansikombi to Eriabu Sempira was entered by the 1st Respondent. I further agree with the Applicants' submission that on 15th August, 1979, the Estate of the Late Eriabu Sempira, also ceased to have any interest in the land known as Busiro Block 428 Plot 22 when the 1st Respondent entered an instrument of transfer from Eriabu Sempira to Kodwo Esuman Ankrah, The exceptions that would expunge these title entries were outside the precincts of the jurisdiction of the 1st respondent under Section 88 of the Land Act and ought to have been referred to court for adjudication. A decision of this nature would have required a review of the law of limitation, the principles of Bonafide purchaser, together with the

20.06.2025

principles of prescription that only court can determine and adjudicate. The 1st Respondent's special powers under Section 88 of the Land Act are subject to other provisions of law, for example the Limitation Act of 2023. The 1st Respondent did not consider any of the above laws/ principles in arriving at its decision to cancel the certificates of title belonging to the applicants. The 1st Respondent therefore committed a fundamental error of law in the process and perpetrated an illegality.

It is thus my finding that the 1st Respondent acted ultra vires its jurisdiction and acted with total disregard to the provisions of law on Limitation and bonafide that would render the decision made illegal.

Irrationality/unreasonableness

Irrationality/unreasonableness has been defined to mean when there has been such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and law before it would have made such a decision. Such a decision is said to be in defiance of logic and acceptable moral standards. (*See: Council of Civil Unions Vs Minister of the Civil Service [1985] AC 374.* Also, WAMALA ABDU Vs. COMMISSIONER LAND REGISTRATION MISCELLANEOUS CAUSE NO. 16 OF 2021)

The question that this court must answer is whether the impugned decision of the respondent was tainted with gross unreasonableness given the circumstances of this case as presented and discussed above. (Also see; Byaruhanga John Patrick Versus Commissioner Land Registration Misc. Applic. No. 235 of 2024,)

The 1st Respondent's actions were irrational in that there was no evidence showing how the transfers from Mary Ritah Nansikombi to Eriabu Sempira and

20.06.2025

from Eriabu Sempira to Kodwo Esuman Ankrah were illegal. The Court makes the following observations which show that the 1st Respondent's actions were irrational, illegal and tainted with procedural impropriety:

- a) There was no notice to the applicants as required by law and that as a result the applicant was excluded from the hearings and decisions taken without according them a fair hearing.
- b) The 1st Respondent issued a notice of intention to effect changes in the Register addressed to Kodwo Esuman Ankrah well knowing that Kodwo Esuman Ankrah was deceased and had an Executrix for his Estate who is the 1st Applicant.
- c) The 1st Respondent knew that the 1st Applicant was the executrix of the Estate of the Late Kodwo Esuman Ankrah vide Admin Cause No. 168 of 2015 which had already been given to the 1st Respondent, and it had acted on it and effected transfer of Plots 184, 185, 186, 187, 188 and 189 between 2015 to 2021.
- d) The 1st Respondent issues notice of intention to effect changes in the register to Eriabu Sempira who no longer had any interest in the land having transferred the same to Kodwo Esuman Ankrah
- e) The 1st Respondent submitted that pursuant to the amendment order attached as Annexure E, the other reasons why the impugned plots were cancelled is that Esuman Kodwo Ankrah procured registration onto the title when he was a non-citizen. I found this conclusion unreasonable as there was no evidence leading to this effect. I also find that while a noncitizen cannot own freehold/mailo in Uganda, this does not extinguish their interest in land.

20.06.2025

The proliferation of litigation arising out of exercise of the powers conferred upon the Registrar of Titles or the Commissioner Land Registration under Section 88 of the Land Act only demonstrates either that the Registrars of Titles have failed to appreciate the jurisdictional limits to the powers conferred under the said section or there is apparent abuse of authority and power by them leading to very prejudicial decisions, depriving innocent parties of their proprietary interests in land. It appears that there is need to place personal liability or some other form of sanction on some of the Registrars for their illegal and prejudicial actions. Unfortunately, Section 88 of the Land Act did not make provision for remedies for abuse of the powers vested in the Registrars under the section.

It is quite absurd that notwithstanding several decisions rendered by the Courts, the Registrars of Titles continue to wantonly cancel titles in total disregard of their limited powers under the section. It is further apparent that such registrars have either inadvertently or deliberately misconstrued the type of errors that are envisaged under section 88 and relied on such disguised errors to cancel titles of bonafide land purchasers. They then hide under statutory immunity bestowed upon them much to the detriment of the many persons who have been deprived of their proprietorship of the land and cannot maintain a personal action against the errant Registrars. Sadly, those that cannot afford proper legal representation are either forced to negotiate with fraudsters or loose their interests in land. Further, it is also evident that the Registrars are aloof to instances where claims for cancellation of titles are barred by the Statute of Limitations or even adverse possession. They have cancelled titles even under circumstances where courts of law would not impeach such titles, for example on account of limitation or adverse possession. Such instances are where the transfers were effected by the Office of Titles itself and were never challenged throughout a period of over 12 years and someone raises the errors over 15 years later as is in this case and uses

20.06.2025

the office of Titles to circumvent limitation and adverse possession by cancelling the title under the perceived errors, more-over not attributed to the registered proprietor. Some have been found to be Bonafide purchasers for value without notice that enjoy the protection of the law, only for their titles to be cancelled. The Registrars in cancelling the proprietorship of registered proprietors purportedly act pursuant to Section 88 of the Land Act. I note with emphasis that Section 88 of the Land Act was never intended to be used to circumvent challenges to proprietorship that are time barred or have been affected by adverse possession or claims arising out of alleged fraud or alleged errors that would require evidence to be adduced. Claims of alleged forgery are akin to fraud and must be investigated by the High Court. Powers given to a public body for one purpose cannot be used for ulterior purposes which are not contemplated at the time the powers are conferred. If a court finds that powers have been used for unauthorized purposes, or purposes 'not contemplated at the time when the powers were conferred', it will hold that the decision or action is unlawful as is in this application. In this particular application the 1st Respondent exercised jurisdiction it did not have, did not serve notice as required by law thereby excluding parties affected by its decision, disregarded the laws on limitation, adverse

possession and Bonafide purchasers.

Where a public authority or decision maker has directed itself correctly in law, the court in judicial review will not interfere, unless it considers the decision was irrational. The court will, however, only quash a decision if the error of law was relevant to the decision making process. This could be ascertained where there is ulterior purpose or motive as is in this application. It is a fundamental principle of administrative law that anybody vested with adjudicatory function, must keep within the confines of its jurisdiction. This jurisdiction must be exercised in line

20.06.2025

with all the provisions of law including those on limitation among others. A decision without jurisdiction or contrary to law is void.

I accordingly determine issue No. 1 in the affirmative.

ISSUE NO. 2: WHETHER THE APPLICANTS ARE ENTITLED TO THE REMEDIES SOUGHT?

Rule 3 (1) and (2) of the Judicature (Judicial Review) Rules, S. I No. 11 of 2009 provides as that;-

"a party may apply for an order of prohibition, certiorari, declaration and injunction by way of judicial review in appropriate case.

Section 40 of the Judicature Act Cap 16 also provides for the powers of the High Court to issue orders under judicial review as follows:

> *"(1) The High Court may make an order, as the case may be of..... (b) prohibition, prohibiting any proceedings or matter; or (e) A declaration or injunction not being an injunction referred to in paragraph (d)*

Having found that the process leading to the cancellation of the Applicants' titles was tainted with illegality, irrationality and with procedural impropriety and having set aside the amendment order for being null and void and of no consequence, I now make the following orders as follows:

1. The application by the Applicants succeeds and the reliefs sought by the Applicants are granted as prayed.

20.06.2025

- 2. The amendment order cancelling the entries for the Certificate of title for Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, is hereby set aside with further orders as follows:

- 2.1. A prerogative order of Certiorari issues quashing the decision of the Commissioner Land Registration cancelling the entries and registration of KODWO ESUMAN ANKRAH on the certificate of title for Busiro Block 428 Plot 192 situate at Businsi, Wakiso District, for having been cancelled without according the Estate of the Late Kodwo Esuman Ankrah represented by the 1st Applicant, a hearing as required by Section 88 of the Land Act Cap. 236.
- 2.2. An order of Certiorari issues to quash the decision of the Commissioner Land Registration recalling and cancelling the duplicate certificates of title for land known as Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District, for failure to follow the rules of natural justice prior to cancellation of the certificates of tiles for the said plots.
- 2.3. The 1 st Respondent acted irregularly, unlawfully and illegally when it made a decision to cancel the certificates of titles for land known as Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District and that the decision was ultra vires the 1 st Respondent's powers.
- 2.4. An order of Prohibition is issued restraining the 1 st Respondent, it's agents, servants, agencies, departments, authorities and or officials

20.06.2025

from implementing and/ or enforcing the 1st Respondent's decision to cancel the details of Eriabu Sempira and of Kodwo Esuman Ankrah from the register of titles and from enforcing the consequential orders cancelling the entries for the Certificates of Title for land known as Busiro Block 428 plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.

- 2.5. This Court issues an injunction restraining the 1st Respondent from registering any instrument that adversely affects the Applicants' interest in land known as Busiro Block 428 plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.
- 2.6. An order of mandamus is also issued to compel the 1 st Respondent to immediately restore the entries of the Applicants in the register book for Certificates of title for land known as Busiro Block 428 plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.
- 2.7. A consequential order is issued directing the 1st Respondent to immediately restore the Applicants and those affected by the amendment order back on the Certificates of titles for the land comprised in Busiro Block 428 Plots 184, 185, 186, 187, 188, 189, 190, 191 and 192 land at Businsi, Wakiso District.
- 3. The Costs of this Application are awarded to the Applicants, and they are to be paid by the Respondents jointly and severally.

20.06.2025

4. As for damages, this court is reluctant to grant this remedy and denies this prayer. This court held in *Sundus Exchange & Money Transfer Limited & 7 Others vs. Attorney General* HCMC10 No..161 of 2019, ordinarily, damages are sought through ordinary suits in civil law actions as it is strictly a matter of private law. Damages can only, but rarely, feature as a form of collateral challenge in proceedings for judicial review. If the main purpose of litigation is to seek damages, a party ought to pursue a claim in civil action and not through judicial review, especially where there are complex factual issues to be resolved, such as the assessment of damages. The award of general damages in judicial review is thus an exception rather than the general rule.

I, so order

.....

SIMON PETER M. KINOBE JUDGE

DATE: 20.06.2025

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughccd/2025/77/eng@2025-06-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/prof-eleanor-maxine-ankrah-and-another-v-commissioner-land-registration-and-others-miscellaneous-cause-178-of-2024-2025-ughccd-77-20-june-2025-unknown--6a3ea4d83b1caa91297e56ae>

Prepared on 12 October 2026 · Esheria