

**Sekabira v Commissioner Land
Registration (Misc Cause 44 of 2022)
[2024] UGHCCD 103 (21 June 2024)**
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[1] This application was brought by Notice of Motion under Articles 26, 28, 42 and 44 of the Constitution, Section 98 of the CPA, Sections 33 and 36 of the Judicature Act Cap 13, and the Judicature (Judicial Review) (Amendment) Rules S. I No.11 of 2019, for several reliefs, namely;

a) Declarations that;

i) The Applicant is entitled to a duplicate certificate of title for land comprised in Busiro Block 526 plot 51.

ii) The Respondent is duty bound to create and maintain a substitute certificate of title for land comprised in Busiro Block 526 Plot 51.

iii) The Respondent's omission to create a substitute title on land comprised in Busiro Block 526 plot 51 is unlawful and ultravires.

iv) The Respondent's omission to create a duplicate certificate of title for land comprised in Busiro Block 526 Plot 51 is unlawful and ultra vires.

b) Orders that;

i) A prerogative order of Mandamus doth issue compelling the Respondent and any other person acting on authority therefrom to create and maintain a substitute title and duplicate certificate of title for land comprised in Block 526 Plot 51 land at Bumpenje.

ii) General damages be paid to the Applicant.

iii) Costs of the application be granted 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 in support of the application deposed by **Sekabira Samuel**, the Applicant. Briefly, the grounds are that the Applicant is a grandson and surviving beneficiary of the estate of the late Nasanayiri Kakumeme of Buwoya-Busiro who passed on, on 26/08/1966. The late Nasanayiri owned land comprised in Block 526 Plot 51 at Bumpenje whose interest was still registered as a caveat on the main title comprised in MRV 193 Folio 5 and was on blue page at the time of his death. Letters of administration to the late Nasanayiri's estate were granted to the Administrator General vide Administration Cause No. 221 of 1991 but the Administrator General failed to effect transfer of the suit land into the Applicant's name because of lack of a certificate of title. The Applicant avers that the suit land exists and he is in possession and occupation of the same. The Applicant's lawyers requested for a search report from the Respondent and followed up several times but the Ministry officials advised them that the blue page for the suit land was missing. The lawyers wrote to the Respondent requesting for creation of a substitute Blue Page File on the suit land and to issue a substitute and duplicate certificates of title to enable the Applicant transfer the land into his names but the requests were ignored. The Applicant concluded that the Respondent's refusal to create a substitute title has left him stranded and without any means of obtaining a duplicate certificate of title and a legal transfer of the same from the Administrator General and the conduct amounts to a breach of a statutory duty; thus this action.

[3] The Respondent neither replied to the application nor appeared at the hearing despite sufficient evidence of service of process. The hearing therefore proceeded ex parte pursuant to Order 9 rule 20(1)(a) of the CPR. The Applicant was represented by **Ms. Rebecca Nakiranda** of M/s Nakiranda & Co. Advocates. Hearing proceeded by way of written submissions which were duly filed by the Applicant's Counsel and have been taken into consideration in the course of determination of this matter.

Issues for Determination by the Court

[4] Two issues are up for determination by the Court, namely;

a) Whether the Respondent's omission to create and issue a certificate of title to the suit land comprised in Block 526 Plot 51 raises grounds for judicial review?

b) Whether the Applicant is entitled to the remedies sought?

Resolution of the Issues

Issue 1: Whether the Respondent's omission to create and issue a certificate of title to the suit land comprised in Block 526 Plot 51 raises grounds for judicial review?

Submissions by Counsel for the Applicant

[5] Counsel for the Applicant cited the case of **Council of Civil Service Unions v Minister for Civil Service (1985) AC 375** to illustrate the meaning of illegality under judicial review. Counsel submitted that the Respondent has exclusive power under Section 170 (b) of the Registration of Titles Act at his or her discretion to effect any registration on behalf of or issue a certificate of title to a particular claimant. Counsel submitted that the Respondent's omission and or failure to exercise a statutory discretion to create a certificate of title for the suit land without any legal reason yet he is the only body legally mandated to create and issue certificates of title for any land in Uganda is unlawful and illegal. Counsel prayed to the Court to allow the application.

Determination by the Court

[6] **Rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules 2019** provides that;

"*The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching the decision and that, as a result, there was unfair and unjust treatment"*.

[7] In that regard, the duty of the applicant in an application like this is to satisfy the court on a balance of probabilities that the decision making body or officers subject of his challenge did not follow due process in making the respective decisions or acts and that, as a result, there was unfair or unjust treatment of the applicant which is likely to have an effect on other members of the public.

[8] In the instant case, the complaint by the Applicant is that the Respondent's omission and or failure to exercise a statutory discretion to create a certificate of title for the suit land is tainted with illegality. 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".

- [9] A public authority will be found to have acted unlawfully if it has made a decision or done something without 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 may not act beyond its statutory power; the second covers abuse of power and defects in its exercise. See: *Dr. Lam –Lagoro James v Muni University, HCM No,007 of 2016*.
- [10] It is also the position of the law that where discretionary power is conferred upon a legal authority, it is not absolute, even within its apparent boundaries, but is subject to general limitations. As such, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise of the discretion are usually expressed in different ways, such as requirement that the discretion has to be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, or that the decision must not be arbitrary or capricious. See: *Smart Protus Magara & 13 Others v Financial Intelligence Authority, HCMC No. 215 of 2018*.
- [11] In the instant case, it was averred in the affidavit in support of the application that the Applicant is a beneficiary to the estate of the late Nasanayiri Kakumeme that is administered by the Administrator General who failed to effect transfer of the suit land into the Applicant's names because of lack of a certificate of title. It was further averred that the Applicant is in possession and occupation of the suit land and has on several occasions written to the Respondent requesting for creation of a substitute title on the suit land in vain. The Applicant states that the Respondent has omitted and/or failed to create and issue a certificate of title to the suit land without any legal justification. These assertions were not contested by the Respondent.
- [12] Under Section 170 of the Registration of Titles Act Cap 230, the Registrar has powers and duties at his or her discretion to effect any registration and issue a certificate of title to a particular claimant. Looking at Annexure H to the affidavit in support of the application, as per the hand written comments thereon by the Acting Commissioner Land Registration, it was recommended that a survey of the land was to be conducted since "the late Anasanayili Kakumeme under Instrument 215156 had 37 Acres which reduced and his blue page was missing to show his residue balance". There is further evidence by way of Annexure E which is a survey report on boundary opening of the suit land which has a finding to the effect that the plot measures 1.217 Hectares (3.00 Acres); which tally with the area on the title. This evidence was not challenged by the Respondent. It follows, therefore, that the Respondent's omission and/or failure to exercise its statutory duty and cause issuance of a certificate of title to the suit land as requested by the Applicant was an unlawful exercise of discretion and

amounts to abuse of power. This constitutes an instance of illegality. Issue one is answered in the affirmative.

Issue 2: Whether the Applicant is entitled to the remedies sought?

[13] In view of the above finding, the application has succeeded on the ground of illegality. The Applicant is, therefore, entitled to a declaration that the Respondent's omission and/or failure to create a substitute and duplicate certificates of title on the suit land was unlawful. An order of Mandamus accordingly issues compelling the Respondent to create and maintain a substitute title and a duplicate certificate of title for the suit land.

[14] The Applicant also claimed 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."

[15] 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*.

[16] On the case before me, the Applicant has established a claim based on breach of statutory duty by the Respondent which has occasioned loss and damage to the Applicant. This is sufficient to sustain an action for payment of damages in addition to the claim and reliefs granted under judicial review. I therefore find a fit and proper case for assessment and award of damages in the present circumstances.

- [17] The position of the law is that general damages are awarded at the discretion of the court and the purpose of general damages is to restore the aggrieved party to the financial position that he/she would have been in had the breach complained of not occurred and in as far as money can do. See: *Robert Cuossens v Attorney General, SCCA No. 8 of 1999*. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial Bank v Kigozi [2002] 1 EA 305*.
- [18] In their submissions, Counsel for the Applicant stated that the Applicant was subjected to great inconvenience, mental stress and financial loss at the hands of the Respondent and proposed a sum of UGX 20,000,000/= as general damages. Taking the present circumstances into consideration, I find a sum of UGX 5,000,000/= (Five Million Shillings Only) appropriate as general damages to the Applicant and I award the same accordingly.
- [19] Regarding costs, in line with Section 27 of the Civil Procedure Act Cap 71, the Applicant is entitled to costs of the application and the same are awarded to him against the Respondent.

It is so ordered.

Dated, signed and delivered by email this 21st day of June, 2024.

Boniface Wamala JUDGE

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