

UGANDA / JUDGMENT

Tumwebaze v Uganda Land Commission & Anor (Hct-05-cv-ma-0123-2008) [2009] UGHC 238 (25 August 2009) [2009] UGHC 238

COURT

High Court of Uganda

BEFORE

Gidudu, J

CASE / FILE NUMBER

Hct-05-cv-ma-0123-2008

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0123-2008

(From HCT-05-CV-MA-076-2008)

JOHN TUMWEBAZE APPLICANT

VS

1. THE UGANDA LAND COMMISSION)
2. THE ATTORNEY GENERAL) RESPONDENTS

BEFORE: THE HON. MR. JUSTICE LAWRENCE GIDUDU

RULING

John Tumwebaze, hereinafter referred to as the Applicant by this application seeks Judicial Review of the decision of the Uganda Land Commission - hereinafter referred to as the 1st Respondent, to cancel the lease offer to him. He, by this application seeks an order of certiorari to quash the decision of the 1st Respondent contained in Minute 1/2008 (a)(4) of 13th June 2008. He also seeks general damages for inconveniences caused by the actions of the 1st Respondent.

The major ground for the relief sought is that the 1st Respondent did not give the Applicant an opportunity to be heard thereby violating the Rules of Natural Justice by which public bodies such as the 1st Respondent are obliged to observe in the conduct of public affairs.

Mr. Ngaruye, learned counsel for the Applicant cited the celebrated Author, H. W. Wade on Administrative law under the heading Right to a fair hearing where the author discusses an analogy from the Book of Genesis in the Holy Bible where God is said to have given Adam and Eve a hearing after they had eaten the forbidden fruit before imposing a punishment. They were first heard before being punished.

Mr. Wanyama learned counsel for the 1st and 2nd Respondents opposed the application contending that the 1st Respondent had powers under S. 53 of the Land Act to review its decision to offer the Applicant a lease. In the alternative, Mr. Wanyama contends that if the Applicant was not given a hearing then the court should refer the matter to the 1st Respondent to give the Applicant the hearing. He opposed a claim for damages since the Applicant is in occupation and that each party should bear its costs.

The brief facts of this matter are that on 21st September 2006, the 1st Respondent offered the Applicant a 49 years' lease subject to the 5 years of developments in respect of Plot M 11 Mbaguta Street in Mbarara Town. A lease agreement was duly signed effective 1st June 2008, the Secretary of the 1st Respondent communicated to Mr. B. Makaru with a copy to the Applicant, a decision of the 1st Respondent that had cancelled the offer made to the Applicant following a complaint of Mr. Makaru that he was the sitting tenant. The 1st Respondent had on 13th June 2008 cancelled the offer to the Applicant under Minute 1/2008 (a) (4). After the decision, the chairman of the 1st Respondent wrote to the Commission Land Registration to cancel the title issued to the Applicant (Annexure "D") and the Director of the Privatization Unit followed with notice on 26/9/2008 (Annexure "E").

1. have perused the "OS", the affidavit of the Applicant and the Annextures thereto and considered the deposition of Bonabana Calorine which opposed the application. What comes out clearly as the undisputed facts are that the 1st Respondent offered a lease to the Applicant in respect of Plot M 11 Mbaguta Street Mbarara town which it later cancelled, apparently upon a complaint by another person (B. Makaru) who claimed to be a sitting tenant.

It is not in dispute that the cancellation was done without the Applicant being offered an opportunity to respond to the claims made by Mr. Makaru. It is this failure to be heard that the Applicant makes the subject of this application where the 1st Respondent through the affidavit of Bonabana (para 10) depones that there is no law compelling the 1st Respondent to hear the Applicant before cancelling the offer and subsequent title. With respect, the deposition of Bonabana Calorine of the Attorney General's Chambers is made in great ignorance of the basic principles of Administrative law which is a subordinate branch of constitutional law consisting of the body of rules which govern the detailed exercise of executive functions by officers or public authorities to who are entrusted by the Constitution to govern. The right to be heard is one such fundamental Rules under this branch of law.

In an application for Judicial Review, the court is not concerned with the correctness or fairness of the decision but is concerned with the decision making process in arriving at the decision.

This

- (e) Do such other things as may be necessary for or incidental to the exercise of those powers and the performance of those functions.

And S. 23 of the Interpretation Act Cap 3 provides:

- 11. Where any Act confers a power on any persons to do or enforce the doing of any act or thing, all such powers shall be understood to be also given as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

Clearly, these two pieces of legislation do not empower the 1st Respondent to arbitrarily revoke a lease without giving the leaseholder an opportunity of being heard why the lease should not be revoked. The provisions are not applicable to this application and that leaves the Applicant's claim uncontroverted or unchallenged.

A key principle of Natural Justice is that a person cannot incur the loss of liberty or property or livelihood unless he has had an opportunity of a fair hearing.

See Wandsworth Board of Works (1863) 14 C. 3. (NS) 180 reported in Nut cases - Constitutional and Administrative law

(fourth Edition) by Dr. Mawecu Spenser and John Spencer at P. 139. This is an old common law principle which public bodies such as the Uganda Land Commission have to observe in the performance of their functions.

Apparently, by the time the 1st Respondent cancelled the offer to the Applicant, the Applicant had already obtained a land title on 25th September 2007. The Applicant was no longer a mere offeree of a lease but a Registered Proprietor under the Registration of Titles Act (Cap.230). This has implications and without going into details, there are procedures by which land under the RTA may be de-registered. That may be for a future substantive suit.

For now, the proceedings before me reveal that the 1st Respondent violated the rule requiring the Applicant to be heard before his lease offer could be cancelled. The objection to this application has been lukewarm and just fell short of admitting that the 1st Respondent acted without hearing the Applicant's side. Consequently, the proceedings leading to the decision contained in Min. 1/2008 (1) (4) of June 13th 2008 are faulted for reasons discussed above and the decision revoking or cancelling the Applicant's lease offer and subsequent directives to deregister his proprietorship are hereby quashed.

The 1st Respondent is directed to hear the Applicant's objection before any decision is made regarding the proprietorship of Plot M 11, Mbaguta Street Mbarara town.

There was no evidence regarding any special damage suffered by the Applicant, however the annexures to his affidavit show that since he went into occupation, he has been in litigation and this has affected his plans to develop the property. For this inconvenience I shall award damages.

Considering that the first five years the Applicant should have developed the property expire in September 2011 which is about

1. years to go, but taking into account the fact that the Applicant is in occupation of the premises and collecting rent, I consider the sum of Ten million reasonable as general damages. The Applicant gets rental income from the property todate.

I award the Applicant costs of this application.

Before taking leave of this matter, I wish to observe that having read the proceedings in C. S. 42/2007 which was struck off on technical grounds and after perusing the various correspondences in this matter, it might be advisable in future for either the Applicant or the 1st Respondent to bring a suit under Order 7 CPR for the effective determination of their respective rights after taking evidence.

Lawrence Gidudu Judge

25/8/2009

25/8/2009

Applicant in court

Ngaruye for Applicant

Mr. Wanyama for Respondents

Tushemereirwe - clerk

Ruling delivered.

Lawrence Gidudu Judge 25/8/2009

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