

2. The Prerogative order of certiorari against the Respondents jointly and/or severally quashing the decision of cancelling the Applicant's Certificate of Title issued on 22nd September, 2023 vide instrument number MSK00052120.
3. An order of prohibition restraining the Respondent's from taking any further step on the land comprised in FRV 1003, Plot 58-72 Elgin Road, Land at Town Yard Cell, Katwe-Butego, Masaka to the detriment of the Applicant.
4. An order of prohibiting the Respondents jointly and/or severally from referring to the Applicant as suspended.
5. An order of mandamus compelling the 1st Respondent to reinstate the Applicant as the proprietor of the land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka.
6. The Respondents pay the Applicant general damages.
7. Costs of the application be provided for.

The grounds of this application are set out in the affidavit in support of the application sworn by the Applicant, Nagujja Sylvia Lutta, but briefly are that: -

- i. The Applicant was the registered proprietor of land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka, having been registered as the proprietor on 12th July, 2022, the same having been transferred to her by the administrators of the estate of the late Kakumba Francis and has since it's acquisition been in possession and holds the Certificate of Title thereto.
- ii. The 2nd Respondent while purportedly acting for the 1st Respondent issued a Notice of intention to effect changes in the Register dated 24th August, 2023 but conveniently declined to serve or otherwise communicate the same to the Applicant.
- iii. The Applicant filed Civil Suit No. 084 of 2023; Nagujja Sylvia Lutta -v- Masaka City Council in the High Court of Uganda at Masaka for the determination of

the question of the true ownership of the land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka.

iv. During the pendency of Civil Suit No. 084 of 2023 and all the while being aware of the said suit, the 2nd Respondent purportedly acting for the 1st Respondent cancelled the Applicant's name from the Certificate of Title in the Lands Registry in respect of the land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka.

v. The decision by the 2nd Respondent while purportedly acting for the 1st Respondent to cancel the Applicant's name from the Certificate of Title in the Land Registry at Masaka in respect of land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka was procedurally improper and ultra vires.

vi. The decision by the 2nd Respondent while purportedly acting for the 1st Respondent to cancel the Applicant's name from the Certificate of Title in the Land Registry at Masaka in respect of land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka was reached in violation of the Applicant's fundamental right to a fair hearing.

vii. The 2nd Respondent, while purportedly acting for the 1st Respondent, illegally and unlawfully cancelled the Applicant's name from the Certificate of Title in the Land Registry at Masaka in respect of land comprised in FRV 1003, Plot 58-72 Elgin Road, land at Town Yard Cell, Katwe-Butego, Masaka.

viii. The 2nd Respondent is an agent/servant of the 1st Respondent on whose behalf she made the impugned decisions and the 1st Respondent is therefore impleaded in vicarious capacity.

ix. It is in the interest of justice that the orders sought in this application are granted.

Kabira Aisa filed an affidavit –in- reply for the Respondents opposing this application.

80 **Back ground to the suit.**

The background to this suit is that the Applicant's husband, Francis Kakumba, was registered as owner of land comprised in **Masaka Freehold Register volume 1003 Folio 7 also known as Plot 58-72 Elgin Road at Town Yard Cell, Katwe Butego in Masaka City**, on the 15th August, 2011.

85 In 2017, he allowed market vendors from the main market to operate on his land as the new Masaka Main Market was being constructed. Mr. Kakumba then passed on.

On the 12th/7/2023 Adminstrators of the late Kakumba's Estate transferred the land into the Applicant's name. Upon completion of the market, vendors relocated to the new market, leaving Kakumba's land vacant. When the Applicant started fencing off the land so as to put
90 up some developments, she met resistance from officers from Masaka City Council claiming that the land belonged to Masaka City. The Applicant then filed a suit at High Court Masaka vide; Civil Suit No. 084 of 2023 against Masaka City Council. She also applied for an interim order and temporary injunction to restrain Masaka City Council from interfering with the suit land pending determination of the suit. Court issued an interim order on the 8th /9/2023
95 restraining Masaka City Council from interfering with the land in any way pending disposal of the main application for temporary injunction.

On the 22nd/9/2023, before the application for temporary injunction was heard, the Respondent cancelled the Applicant's title. The main suit at Masaka High Court is yet to be disposed of. The Applicant has now filed this application to restore registration of the suit
100 land in her names pending determination of the suit at Masaka High Court Circuit.

Legal representation

Learned Counsel Innocent Alli Balpe represents the Applicant while Arinaitwe Sharon is for the Respondents.

When the application came up for hearing, Counsel for the Respondents raised preliminary
105 points of law on grounds that: -

This application is improper, incompetent, misconceived, frivolous and abuse of Court process as the Applicant has not exhausted the existing remedies available within the public body or

under the law before filing this application and that this application does not disclose a cause of action as against the 2nd Respondent. Counsel for the Respondents made no submissions
110 to substantiate her objections.

The law on Judicial Review

Judicial review is defined under Rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019 to mean;

115 *"...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;"*

Rule 7A (1) of the Judicature (Judicial Review) (Amendment) Rules, 2019, enjoins Courts in considering applications for judicial review to satisfy themselves that: -

120 *(a) the application is amenable for judicial review,*

(b) the aggrieved person has exhausted the existing remedies available within the public body or under the law and;

(c) the matter involves an administrative public body or official among others

In this case, the Applicant seeks for Judicial review remedies on ground that the 2nd
125 Respondent acted outside her jurisdiction when she cancelled her title without giving her an opportunity to be heard and without jurisdiction and yet the matter was already filed before court for determination of ownership of the suit land.

The 1st Respondent falls within the provisions of Rule 7(A) (1) (c) above and as such, considering the nature of complaint raised against the Respondents by the Applicant, I would
130 find that this case is amenable for judicial review. What this court has to determine now, is whether the 2nd Respondent's action of cancellation of the Applicant's title was contrary to the provisions of the law.

In the case of ***Dr. Julianne Sansa Otim – v- Makerere University Misc. Cause No. 258 of 2016*** Court noted that;

135 *"for an application for judicial review to succeed, the Applicant must demonstrate that the decision arrived at was tainted with illegality, irrationality or procedural impropriety."*

In the case of ***Namuddu Hanifa -v- The Returning Officer, Kampala District and 2 Others, Miscellaneous Cause No. 69 of 2006***, court noted that;

140 *"the applicant in order to succeed, in an application for judicial review, has to satisfy court that the matter complained of is tainted with any, or a combination of illegality, irrationality and/or procedural impropriety."*

Remmy Kasule, J, (as he then was) in the ***Namuddu Case (supra)***, further expounded that;

145 *"Illegality is when the authority that made the decision being questioned committed an error of law in the process of making that decision. Acting ultra-vires or contrary to the provisions of the law or its principles are instances of illegality."*

Irrationality goes to unreasonableness of the decision taken or act done in that no reasonable decision making authority, addressing itself to the same facts and the law before it, would make such a conclusion. The decision being questioned is in defiance of logic and/or acceptable moral standards.

150 *Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction*
155 *to make a decision."*

Section 91 of the Land Act, as amended by the Land Amendment Act, 2004 provides as follows:

160 (1) *Subject to the Registration of Titles Act, the Commissioner shall, without referring a matter to a Court or a district land tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, then issue of fresh certificates of title or otherwise.*

My understanding of the above provision of the law is that once there is a pending matter before court, the Commissioner cannot cancel title in respect of the land in issue in court.

165 In this case, the 2nd Respondent cancelled the Applicant's title when she, the Applicant, had already filed a suit vide; **HCCS No. 084 of 2023 Nagujja Sylvia Lutta -v- Masaka City Council** in court for determination of ownership of the land in issue and court had already issued an interim order restraining Masaka City Council from interfering with the suit property pending disposal of the temporary injunction. I find that the 2nd Respondent acted illegally when she cancelled the Applicant's names from the title in total disregard of the interim order and when
170 the main suit filed before court for determination of ownership of the land was still pending.

Remedies

The Applicant sought for orders of certiorari, mandamus, prohibition, damages and costs of this application.

175 **In the case of *John Jet Tumwebaze –v- Makerere University Council and ors (Civil Application No. 78 of 2005)*, Ag. Justice Remmy Kasule (as he then was) gave the definition of *Certiorari* as a prerogative writ issued to quash a decision which is *ultra vires* or vitiated by an error on the face of the record.**

In *Stream Aviation Ltd -v- The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)* Justice V. F. Musoke Kibuuka
180 **held that;**

“the prerogative order of certiorari is designed to prevent the access of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.”

In the case of *Semwo Construction Company –v- Rukungiri District Local Government MC No. 30 of 2010* it was stated as follows: -

“mandamus is a prerogative writ to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body’s office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review”

In this case therefore, having found that the 2nd Respondent acted illegally when she cancelled the Applicant’s names from the title in total disregard of the court orders and when the main suit filed before court for determination of ownership of the land was still pending, this court makes the following orders: -

- 1. A Declaration is hereby made that cancellation of the Applicant’s title by the 2nd Respondent was illegal, null and void.**
- 2. An order of Certiorari be and is hereby issued quashing the cancelation of the Applicant’s Certificate of Title by the 1st Respondent issued on the 22nd September, 2023 vide instrument number MSK00052120.**
- 3. An order of Mandamus be and is hereby issued compelling the 1st Respondent to re-instate the Applicant on the certificate of title of land comprised in Masaka Freehold Register volume 1003 Folio 7 also known as Plot 58-72 Elgin Road at Town Yard Cell, Katwe Butego in Masaka City, pending determination and orders**

of High Court Masaka in HCCS No. 084 of 2023 Nagujja Sylvia Lutta -v- Masaka City Council.

- 210 4. General damages are not granted in this application for the reason that there is a pending suit at Masaka High Court for determination of ownership of the land.
5. The Respondents pay costs of this application.

I so order.

215 Dated, signed and delivered by mail at Kampala on the 24th day of January, 2024.

Esta Nambayo

JUDGE

24th/1/2024.