

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. CAUSE NO. 27 OF 2012

5

HARED PETROLEUM LTD.....APPLICANT

VERSUS

- 10 **1. ATTORNEY GENERAL**
 2. JINJA MUNICIPAL COUNCIL
 3. INSPECTOR GENERAL OF
 GOVERNMENT....RESPONDENTS

15 **BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

RULING

20 This Application was brought under Article 50 of the Constitution, Sections
36 and 38 of the Judicature Act, Section 98 of the CPA and Rules 5 (1) (3)
and 6 (1) of the Judicature (Judicial Review) Rules, S.I No. 11/2009.

The Applicant seeks the following reliefs:

- 25 1. A declaration that the report of the IGG was irrational and irregularity
 made in excess of his authority.
2. An Order of Certiorari to quash the report of the IGG and or directions
 made to the Commissioner Land Registration to cancel the Applicant's
 Certificate of Title.

3. An Order of Prohibition against the IGG to stop the enforcement of the above direction or order permanently withdraw such directions from the Commissioner of Lands.
4. A permanent Injunction restraining Jinja Municipal Council and or their agents from acting on the IGG's directions and or dealing with the suit land in any way that affects the Applicant's interest.

The background to this matter is that the Applicant HARED PETROLEUM bought land from one Robert MugabiLutada – comprised in LRV 4038 Folio 17 Situate at Masese.

On 5/1/2010, a transfer was duly effected in favour of the Applicant.

The same year, the residents of Jinja Municipal Council filed a complaint with the Inspector General of Government –IGG alleging that Jinja Municipal Council had irregularly bought land from the Bibanja holders of Masese 1 to benefit sitting tenants which did not materialize.

Instead the same land was leased instead to one Sam Robert MugabiLutada who did not compensate the customary owners/bibanja holders. Lutada instead transferred his interest to the Applicant at a consideration.

The IGG carried out investigations and on 18/8/2011 issued a report directing the Commissioner of Land Registration to cancel the Applicant's Title and that the land in issue be handed over to Jinja Municipal Council.

The application was brought against the Attorney General, the Inspector General of Government and Jinja Municipal Council and was supported by the affidavit of Musa Bashir Yusuf Chairman of the Applicant Company.

- 5 The summary of the grounds for the application are that the IGG acted in excess of his authority by ordering the Commissioner Land registration to cancel the Applicant's title. Further that if the directions are implemented and the land is allocated to 3rd parties, it will occasion injustice to the Applicant.
- 10 It is also further alleged that the Applicant acquired a good title for value and therefore the IGG's directives are in excess of that office's authority and irrational.

It is to be noted that the instant application was filed on 25/5/2012 as an
15 amended Notice of Motion.

On 15/6/2012, an affidavit in reply deposed by Baranabawe Francis, the Town Clerk of Jinja Municipal Council was filed.

- 20 The Attorney General (Respondent No.1) and the IGG (Respondent No.3) did not file affidavits in reply to this amended Notice of motion.

This means that the Attorney General (Respondent No.1) and IGG (Respondent No.3) have not answered or responded to the allegations raised
25 by the Applicant. In **ESSO Petroleum Company Vrs. South Port Corporation (1956) ALL ER, 864**. It was held that the function of pleadings

is to give notice of the case, which has to be met so that the opposing party may direct his evidence to the issue disclosed by them.

The same decision was applied in **Plath Vrs. The Acasia Company Ltd**
5 **(1959) EA 248.** Similarly, it is trite law under the provisions of Order 6
CPR that issues for determination in a suit generally flow from the pleadings
and the Court may only pronounce itself on the issues arising from the
pleadings or such issues as the parties have framed for the Court's
determination.

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In the instant case therefore the Court will have to rely on what is available on
record.

The affidavit of the 2nd Respondent on the other hand raises very interesting
15 scenarios and issues in this matter.

First and foremost the deponent avers that the IGG found out that the
procedure for acquisition of the land by the Applicant was illegal and
fraudulent.

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Further that the Applicant is complicit in the illegalities and irregularities as
the Applicant assumed ownership of the suit land before it acquired the same.
That the transfer of the suit land to the Applicant was illegal and irregular and
that the suit land belongs to the second Respondent. He further avers that the
25 Applicant used a fictitious Robert LutadaMugabi to grab the suit land from
the second Respondent and that the sale agreement between the Applicant and

Robert Lutada is a mockery as the Applicant was the Architect of all the fraudulent activities and is not a bona fide purchaser for value.

While all this was going on, the second Respondent consulted with the
5 Solicitor General after passing a Council Resolution that they did not wish to proceed with the case and sought an out of court settlement.

The Solicitor General wrote back to the 2nd Respondent advising them on the way forward and that an out of Court settlement was possible to an extent,
10 since the report of the IGG raises very serious and fundamental issues that can only be resolved by the Court.

On 21/10/2013, the 2nd Respondent wrote to the Registrar of this Court communicating that they no longer wished to be party to the suit, having
15 opted to pursue an out of Court settlement.

On 4/12/2013, a consent was recorded before the Registrar, between the Applicants and the second Respondents where in the following were agreed upon:

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1. The Applicant pays the second Respondent Shs.114 million in final settlement of the claims against the Applicant, to recoup funds spent by the 2nd Respondent on compensating former occupants of the suit land.
- 25 2. That no further interest whether legal or equitable shall be claimed by the second Respondent and or any other person or body of persons

claiming to derive any interest in the suit land from Jinja Municipal Council.

3. That the Applicant shall have no further claims against the Respondent
5 and shall have quiet possession of the same.

When this matter therefore came up for hearing on 18/2/2014 Counsel for the Applicant waved this consent in Court and submitted that as a result thereof, this is highlight and hence any further discussion or adjudication of this
10 dispute is purely academic.

I do not agree with the above position. The allegations set out in the report of the IGG e.g. fraud and illegalities as well as the issues raised by the application that the IGG's report was irrational, irregular and issued in excess
15 of authority can only be resolved by Court, unless both the Applicants and Respondent No. 2 are complicit and part and parcel of the fraud, and illegalities that have led to this dispute.

Another interesting turn of events is that in a preliminary objection contesting
20 the capacity of the Attorney General as a party to the suit the 3rd Respondent i.e. the IGG was stuck out as a party and the Attorney General maintained. Be that as it may, the Attorney General seems to have abandoned this matter as they filed no reply to the amended Motion and they did not appear in Court having earlier on 15/11/2013 submitted in Court that their office was still
25 consulting in view of the proposed out of Court settlement by the 2nd Respondent.

Back to the arguments by the parties, it has been submitted by the Applicants that the 2nd Respondent has since settled, relinquishing all its claims to the property and recognised the Applicant as the rightful owner.

5 Secondly that the 1st Respondent have failed to settle.

It is further submitted that since the IGG had directed that the land be handed over to the 2nd Respondent who has since relinquished its interest in the land and recognised the Applicant as the rightful owner, the report should be
10 rendered redundant.

It is also argued that the IGG acted in excess of their authority in commencing investigations in the matter when the inspectorate was not fully constituted in accordance with Article 223 (2) of the Constitution and Section 3 (2) of the
15 IGG Act 2002. That at the time there was only an acting IGG exercising the powers of the whole Inspectorate of Government. Ref: **Constitutional Petition 46/2011; Sam Kutesa & Others Vrs. AG** was cited where it was held that the IGG is only in existence when fully constituted.

20 It was further submitted that the IGG has no powers to make findings on fraud. That the instructions to the Commissioner for Land Registration to cancel the Applicant's title were unlawful. Ref: **Livercot Impex Vrs. Attorney General** was cited. In that authority, it was held, that the IGG had no powers to reverse the decision of the land Commission which derives its
25 power from the Constitution.

The same with the decisions of the Commissioner for Land Registration whose mandate is derived from the RTA. That matters of ownership and fraud can only be determined through a trial in a competent Court of law. On the basis of the submissions and the prayers in the application, the report of
5 the IGG should be quashed.

In the book **Judicial Review of Administrative actions by Hillary Dolony Maxwell** the author observes that Judicial Review is concerned with not the decision, but the decision making process. Essentially, Judicial Review
10 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 standards of legality, fairness and rationality.

15 In **Mugabi Edward Vrs. Kampala District Land Board and Wilson Kasayaki (Misc. Cause 18/2012)**, it was held that a Court before who an administrative decision is challenged will review the acts, decisions and omissions of an administrative authority in order to establish whether they have exceeded or abused their powers.

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The instant application is meant to fall within the above position i.e. whether the IGG acted within his mandate and powers in execution of his duties in respect of this matter. Was the IGG by law enjoined to take the decisions enumerated because if he was not so enjoined the Court may by way of
25 Judicial Review quash them without in anyway attempting to determine the interest of any of the parties before this Court.

In the instant case, the IGG wrote to the Commissioner Land Registration on 18/8/2011 making a series of recommendations in effect asking the said Commissioner to invoke sections 91 of the land Act and cancel the Title of
5 Ms. Hared Petroleum.

I looked at the said report of the IGG and the letter to the Commissioner for Land Registration. The letter is concluded as recommendations, but in effect, the Commissioner for Land Registration is being asked to act on own motion
10 under Section 91 of the Land Act.

The IGG no doubt derives his mandate from the Constitution. The Commissioner for Land Registration also derives powers from the Constitution.
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The IGG has accordingly no mandate to reverse the decisions of the Commissioner for Land Registration who derives authority from the Registration of Titles Act.

20 The IGG's mandate stops at pronouncing him/herself on matters of who has an interest in land for example, who is a bona fide purchaser for value and on whether any fraudulent actions have been unearthed.

The consequences therefrom can then only be adjudicated and decided upon
25 by the Courts of law.

The above position was upheld in **LivercotImpex Ltd and UIA Vrs. Attorney General and Your Choice – Misc. Cause 173/2010.**

Prerogative Orders were also discussed in the case of **Jet Tumwebaze Vrs. Makerere University Council – Civil application 87/2005.** There in Certiorari was defined as an order to quash a decision which is ultra vires or vitiated by an error on the face of the record.

A declaration on the other hand is a pronouncement by Court after considering the evidence of an existing legal situation.

A declaration enables a party to discover what his/her legal position is about the matter the subject of declaration and thus open the way to the party concerned to resort to other remedies to give effect to the legal position.

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Mandamus is an order issued to compel performance of a statutory duty by a public officer imposed on him/her by statute.

This application is partly based on the ground that the parties have settled out of Court.

To me this means the parties have decided to resolve their disagreements without necessarily removing the issue of whether the action of the IGG amounted to irrationality and irregularity. Following the authority of **Jet Tumwebaze (supra)**, the declaration sought would not enable the parties discover their rights and hence pursue the necessary remedies available.

The submission that the IGG was not duly constituted in my view is not supported by the pleadings but rather a submission/evidence from the bar. There is nothing in the report, letter, application or otherwise that supports
5 this position. May be Court should have been asked to take judicial notice of the fact that at that time, the IGG office was not duly constituted. The prayer that the IGG acted in excess of his authority and hence a declaration to that effect for not being duly constituted cannot stand.

10 However an Order of Certiorari to quash the directives of the IGG to the Commissioner Land Registration to cancel the Applicant's Certificate of Title is in order and called for as it was issued in excess of the authority and mandate of the office of the IGG which has its own mandate that does not extend to other offices/institutions duly mandated under the Constitution and
15 enabling laws.

To that extent the directives were ultra vires.

The order for prohibition can also not stand since having ordered Certiorari
20 on grounds of ultra vires and therefore the report/directives quashed then there stands nothing to prohibit.

Finally, the order for an Injunction can no longer hold water since the actions supposed to be affected by the injunction have already been covered by the
25 consent and hence the prayer is overtaken by events.

It is the decision of this court therefore that this application succeeds in respect of the prayers for the orders for Certiorari as the IGG's report was ultra vires and erroneous. The orders arising therefrom cannot be enforced and it is quashed together with the said Orders/directives.

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Costs to the Applicants.

Godfrey Namundi

10 **Judge**

28/02/2014

28/2/2014:

15 NabothMuhairwe for Applicant

Muhammed Amin – Director of Applicant present

Respondents absent

Court: Ruling read in open court.

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Godfrey Namundi

Judge

28/02/2014

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