THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT RUKUNGIRI

MISCELLANEOUS CAUSE NO. 004 OF 2023

TINDIBYAMA CONSTRUCTION AND

GENERAL SUPPLIES COMPANY LTD ::::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1. ATTORNEY GENERAL
2. THE INSPECTORATE OF GOVERNMENT
3. KANUNGU DISTRICT LOCAL GOVERNMENT:::::::::::: RESPONDENTS

BEFORE: JUSTICE HON. TOM CHEMUTAI

RULING

This is an application for judicial review brought by way of Notice of Motion under Sections 33, 36, 37 and 38 of the Judicature Act, Rules 3 and 6 of the Judicature (Judicial Review) Rules and Section 98 of the Civil Procedure Act, seeking for the following orders;

1. **A declaration that the 1st and 2nd Respondents' investigation into matters concerning land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District is illegal, ultra-vires and procedurally improper.**
2. **A declaration that the 1st and 2nd Respondents' findings contained in their report vide "HQT /CO/146/2023" communicated in their letter dated 7th August, 2023, on alleged grabbing of Government Land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District are illegal, ultra-vires and procedurally improper.**

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3. A declaration that the 1st and 2nd Respondents' directive that the land at Mushorero village be surveyed and registered in the names of the 3rd Respondent communicated in their letter dated 7th August, 2023 concerning land situated at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District are illegal, ultra-vires and procedurally improper.
4. An order for certiorari quashing the findings and directives contained in the 1st and 2nd Respondents' letter dated 7th August, 2023 and report vide "HQT/CO/146/2023" which were communicated to the 3rd Respondent concerning land situated at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District.
5. An order of prohibition prohibiting the 3rd Respondent from acting upon the directives of the 1st and 2nd Respondent communicated in their letter dated 7th August, 2023 concerning land situated at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District.
6. An order of mandamus compelling the 3rd Respondent to remove the land situated at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District from the inventory of the 3rd Respondent as a Public property.
7. A permanent injunction prohibiting the 1st and 2nd Respondents from conducting further investigations into matters concerning land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District.
8. Permanent injunction prohibiting the 3rd Respondent from acting upon the directives and recommendation of the 1st and 2nd Respondent contained in their letter dated 7th August, 2023 and report vide

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"HQT/CO/146/2023" concerning land situated at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District.

9. General Damages.
10. Costs of the application be provided for.

The grounds of the application are stated as follows;

1. That the 2nd Respondent issued its findings, directions and recommendations contained in its letter of 7th August, 2023 and report vide "HQT/CO/146/2023" addressed to the 3rd Respondents to the effect that;
   I. It was therefore irregular for the Village and Parish Chairpersons to enter into an agreement on behalf of the Community with M/S Tindibyama Construction and General Supplies Company Limited.
   II. In view of the above findings, you are directed to ensure that Public land at Mushorero village is surveyed and registered in the names of the District to avoid further disputes. The District should also take possession of the tea plantation that has been established on this land.

2. That the 2nd Respondent acted outside its legal mandate in investigating the activities and dealings between private citizens and the Applicant's company was not a Public body.

3. That the land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District, which is the subject of the report is not Public land as claimed by the 1st and 2nd Respondent in its letter of 7th August, 2023 and the report attached thereto and outside the scope of the 2nd Respondent.

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4.That the 2nd Respondent did not undertake proper due diligence while conducting their investigations which led to their misguided decision that was communicated in their letter of 7th August, 2023.

5.That 2nd Respondent acted with material bias, unreasonableness, irrationality, gross irregularly, procedure impropriety while ignoring the rules of natural justice during the process that led to its report vide "HQT /CO/146/2023" communicated in its letter of 7th August, 2023.

6.That the land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District is private property registered to Zakariya Rwanga, who bequeathed it to Mushorero Community, and the Community members are free to deal with any private entity regarding that land and such dealings are outside the scope and mandate of the Respondents.

7.That it is in the interests of justice and fairness that this Application is allowed and the orders sought herein are granted.

The application was supported by an affidavit of Mr. Martin Byaruhanga, the Applicant's Director, sworn on 6th November 2023. There were three supplementary affidavits in support of the application, one sworn by Mr. Nabaasa Justus on 15th November, 2023, Mr. Ngirenta Patrick, sworn on 2nd January 2023 and lastly by Mr. Bavaakule John, sworn on 15th Novermber,2023.

The Respondents utterly opposed the application.

The 1st Respondent filed in Court its affidavit in reply, which was sworn by Ms. Kanyago Anna, a Senior State Attorney, dated 24th Janauary,2024. The 1st Respondent contended the application is incompetent and that it did not

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disclose a cause of action against the 1st Respondent. That the application was meant to determine individual ownership right in the suit land as opposed to the judicial review process. It further contended that 2nd Respondent lawfully investigated the matters in the suit land since it was a Public land.

The 2nd Respondent filed its affidavit in reply, it was sworn by Mr. Crescent Babyetsiza, the 2nd Respondent's Ag. Director of the Directorate of Anti-Corruption. It was dated 5th February,2024. The 2nd Respondent contended that it received a complaint that the Kanungu District's Speaker was in the process of grabbing the suit land, which was Public land. That the 2nd Respondent did investigation and in its report it was indicated that the suit land was unregistered Public land. That it directed the 3rd Respondent's Chief Administrative Officer to have the suit land registered to avoid future disputes. It contended that the land in dispute was Public land and not private land. The 2nd Respondent further contented the application had no issues for judicial review determination but rather it was concerned with land ownership dispute.

The 3rd Respondent filed it affidavit in reply, sworn by Tweheyo David, the 3rd Respondent's Chief Administrative Officer. It was dated 24th January,2024. The 3rd Respondent stated that the suit land has always been a Public unregistered land. That it has never been exclusively owned by the Mushorero Community. That all the dealings on the suit land were illegal. It objected to the application being incompetent as it sought to determine private ownership rights in the suit land.

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Representation

Counsel Kiconco Katabazi appeared for the Applicant. While Counsel Kalembe Riata appeared for the 1st and 2nd Respondent. Counsel Mugana Mary represented the 3rd Respondent.

Background

The brief background to this application is that the 2nd Respondent received a complaint that the Kanungu District's speaker (Frank Byaruhanga) was in the process of grabbing land at Mushorero Village, Bujengwe Parish, Kinkiizi West County, Kanungu District (herein referred to as suit land).

The Kanungu District's speaker in the 2nd Respondent's report was referred to as "Frank Byaruhanga' and herein this application is referred to as 'Martin Byaruhanga'. Which in all reference is made to the same person.

The said frank Byaruhanga's Company/the Applicant entered into a memorandum of understanding with Community leadership of the Mushorero, whereby the Applicant was to use the suit land to plant tea. The memorandum of understanding was later cancelled and the parties entered into another one whereby the Applicant was to construct a three-classroom school block and two toilets for the Mushorero Community in exchange for the suit land which was about 37.66 acres.

The 2nd Respondent did its investigation into the alleged grabbing of the suit land and found that there was a grabbing of Public land at Mushorero village. It also directed the 3rd Respondent's Officers to ensure that the suit land is surveyed and registered in the names of the 3rd Respondent. It also ordered

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that the 3rd Respondent should take possession of the tea plantation established on the suit land.

The Applicant was dissatisfied with the report and findings of the 2nd Respondent that the suit land was Public land. The Applicant contended that the suit land is a private property, that it was formerly registered and owned by the late Zakariya Rwanga. The Applicant averred that late Zakariya Rwanga in his will, bequeathed the suit land to the Mushorero Community. The said Community members are free and with the mandate to deal with the suit land. The Applicant hence filed this application for judicial review.

Court's determination

This is an application for judicial review.

Section 38 of the Judicature (Amendment) Act, 2002, provided that

38. "Judicial review

(1) The High Court may upon application for judicial review, grant any one or more of the following reliefs in a civil or criminal matter—

(a) an order of mandamus requiring any act to be done;

(b) an order of prohibition, prohibiting any proceedings or matter;

(c) an order of certiorari; removing any proceedings or matter into the High Court;

(d) an injunction to restrain a person from acting in any office in which he or she is not entitled to act;

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(d) a declaration or injunction not being an injunction referred to in paragraph (d) of this subsection.

(2) The Court may upon any application for judicial review, in addition to or in lieu of any of the reliefs specified in subsection (1), award damages.

(3) The High Court may grant an application for a declaration or an injunction under paragraph (e) of subsection (1) if it considers that having regard to—

(a) the nature of the matters 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 an order referred to in paragraph (a); 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.

(4) On an application for judicial review as mentioned in subsection (1), any relief may be claimed as an alternative or addition to any other relief so mentioned, if it arises out of or relates to or is connected with the same matter.

(5) No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like affect as the order applied for or where the order applied for would be rendered unnecessary.

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(6) No return shall be made to any order made under this section and no pleadings in prohibition shall be allowed and subject to any right of appeal, the order shall be final.

(7) An application for judicial review shall be made promptly and in any case within three months from the date when the ground of the application arose, unless the Court has good reason for extending the period within which the application shall be made".

According to the **Black's Law Dictionary at page 852**, judicial review is defined as a Court's power to review the actions of other branches or levels of Government; especially the Court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a Court's review of a lower Court's or administrative body's factual or legal findings.

The fundamental purpose of judicial review is to determine whether Public authorities are acting in accordance with the laws made by Parliament. It provides protection for individuals against State power, and ensures Government, Public bodies and Regulators can all be held accountable. See **Petnum Pharmacy Limited vs National Drug Authority Miscellaneous Cause No. 56 of 2018 and Rule 2 of the Judicature (Judicial Review) Rules, S.I. No. 11 of 2009 (as amended)**

In case of **Mrs Anny Katabaazi-Bwengye Vs Uganda Christian University, High Court, Civil Division Miscellaneous Cause No.268 of 2017t,** it was held that;

"In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned

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with the Courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case my fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and Court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. See; **John Jet Tumwebaze vs Makerere University Council & 2 Others Miscellaneous Cause No. 353 of 2005, Dott Services Ltd Vs Attorney General Miscellaneous Cause No.125 of 2009** and **Balondemu David vs The Law Development Centre Miscellaneous Cause No.61 of 2016."**

In the affidavit in support of the application, Mr. Martin Byaruhanga, who is also Director of the Applicant's Company averred in paragraph 7 of his affidavit in support of the application, that the suit land was a private registered property and not Public unregistered land as claimed by the 2nd Respondent. He added that the suit land formerly belonged to the late Zakariya Rwanga who bequeathed it to the Mushorero Community and the latter gave it to the Applicant in the exchange for construction of a school classroom block and toilets.

I note that the Applicant attached to the application, a search statement dated 29th September,2023 from the Ministry of Lands, Housing and Urban Development, which indicated that the land was located at Kinkizi, Block 49, Plot 8, measuring 57.2304 hectares. The registered owner was indicated as

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Rwanga Zakariya. The said search statement was signed by the Registrar of titles.

The averments of the suit land being registered and particulars of it were further provided in the supplementary affidavits in support of Bavaakule John, and Ngirenta Patrick

On the basis of the Applicant's claim of the suit land being registered land, the Court on 13th February ,2024, ordered the Certificate of title of the suit land be provided before 26th February, 2024.

The opening of the boundary of the suit land was supposed to be done by the Kanungu District's surveyor on 27th February ,2024 as the Court had directed.

All of a sudden, one Twongyeirwe Ezra (the alleged Head of the family of late Zakariya Rwanga) wrote to the Court and stated that the suit land was unregistered and that they did not have the title of the suit land which the Court had requested for.

Accordingly, there was no opening of the boundary because the suit land was unregistered.

It is worthy to note that the Applicant after realizing that the suit land was unregistered, did not apply to the Court to amend the application accordingly.

The 2nd Respondent's report clearly indicated that the suit land was unregistered Public land, which it ordered that it be registered.

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Order 6 Rule 7 of the Civil Procedure Rules (CPR) embeds a rule against departure from pleadings as follows;

"No pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading."

The parties are bound by their pleadings and cannot be permitted to depart from what they have pleaded. See **Struggle (U) Ltd vs. Pan Africa Insurance Co. Ltd (1990) KLR 46-4.**

The Applicant's search report indicated that the late Rwanga Zakariya was the registered proprietor of the land, which it alleged to own. This points to the fact that the land claimed by the Applicant is not the same as the land which the 2nd Respondent investigated and did a report on.

Needless to say, the 2nd Respondent's Report indicated that Martin Byaruhanga, who is also the Director of the Applicant's Company was in the process of grabbing the Government land.

It is trite law that Judicial review is not concerned with the decision in issue but with the decision-making process through which the decision was made. Upon evaluation of the pleadings and parties' submissions, the Applicant did not prove by evidence that the investigations done by the 2nd Respondent, which eventually led to its report dated August 2023 (HQT/CO/146/2023) were irregular or in any way tainted with fraud.

The claims of the Applicant that the family of late Rwanga Zakariya was not consulted or involved in the 2nd Respondent's investigation are baseless because the 2nd Respondent's report is well-detailed. The 3rd Respondent's

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leaders, the Security, and the local leaders were interviewed by the 2nd Respondent and involved before reaching it conclusion. Hence indeed the suit land is Government land.

In conclusion, I find no merit in the application and the same is dismissed with costs to the Respondents.

Dated this day ...24th .... of .....April.....2024

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TOM CHEMUTAI

JUDGE

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