**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.11 OF 2019**

1. **FIRDOSHALI MADATALI KESHWANI HABIB**
2. **DOLATKHANU MADATALI HABIB ======= APPLICANTS**

**VERSUS**

1. **THE DEPARTED ASIAN PROPERTY CUSTODIAN BOARD**
2. **ATTORNEY GENERAL**
3. **SSEMANDA SALIM ==================== RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

 **RULING**

The Applicants brought this application under Sections 36 of the Judicature Act as amended, Rules 3(1)(a), 4 & 6 of the Judicature (Judicial Review) Rules, 2009 for the following orders;

1. An order of certiorari,
2. Quashing the action and/or decision of the 1st Respondent dated 28th June, 2018 directing Mr. Okello Augustine to deal with the property comprised in FRV 60 Folio 5 at Plot No.42 Kampala Road, Kampala *(hereinafter referred to as the suit property*) for purposes of onward submission for private treaty arrangements
3. Quashing the action or decision of the Executive Secretary of the Departed Asians’ Property Custodian Board granting to the 3rd respondent Mr. Salim Ssemanda a temporary allocation of the property comprised in FRV 60 Folio 5 at Plot No.42 Kampala Road.
4. An Order of Prohibition, prohibiting the Respondents, their workers, agents, persons deriving authority from them including the Minister of Finance, Planning and Economic Development or any officer of the 1st and 2nd Respondents from having any dealings whatsoever with or taking any action in respect of the property comprised in FRV 60 Folio 5 at Plot No.42 Kampala Road, Kampala.
5. A Permanent Injunction restraining the Respondents, their workers, agents, persons deriving authority from them or the Departed Asians’ Property Custodian Board from allocating, transferring or having any dealings whatsoever with the property comprised in FRV 60 Folio 5 at Plot No.42 Kampala Road
6. An order awarding the Applicants, general and exemplary damages payable by the Respondents jointly and/or severally
7. Costs of this application be provided

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of ***Firdoshali Madatali Keshwani Habib*** but generally and briefly state that;

1. The applicants have at all material time been the lawful registered proprietors of land and developments thereon comprised in FRV 60 Folio 5 at Plot No. 42 Kampala Road, Kampala.
2. Pursuant to a Consent Judgment dated 11th December 1991 executed in HCCS No. 995 of 1989, the applicants agreed with the 2nd respondent as follows;
3. The 2nd respondent/Attorney General recognises the applicants’/plaintiff’s right to repossess the land comprised in plot 42 Kampala Road, Kampala City registered as FRV 60 Folio 5 together with all developments thereon but excluding tenants’ severable assets, businesses and trade goods.
4. In consideration of the settlement herein, the Applicants/plaintiffs waive their claims in the suit to damages, *mesne* profits, interest thereon and costs of the suit in relation to the repossessed properties.
5. That since December, 1991, this court ordered Mr Senoga Mukasa, a court bailiff, to put the applicants in possession of the suit property and remove any person bound by the decree who may refuse to vacate the suit property.
6. That the applicants have been in occupation/possession of the suit property and have never been interrupted or challenged.
7. That in February 1991,the applicants applied to the 1st Respondent to repossess the suit property in accordance with the law.
8. The 2nd respondent undertook to review and consider the applicant’s claim within 10 working days.
9. That on 27th October, 1992, relying on the above said consent, the Minister of State for Finance issued the applicants with a Certificate of Repossession in which he indicated that;-
10. The 1st respondent confirmed that the documents submitted by the applicant in respect of the suit property appeared to be in order.
11. The applicants were free to repossess the suit property and repossession is effective fourteen days from the 27th October, 1992.
12. The 1st respondent on 9th November, 1992, through its Executive Director notified the occupants of the suit property that it had been returned to the applicants, who are the registered proprietors.
13. That in contempt of the Consent judgement and in violation of the certificate of repossession issued to the applicant the 1st respondent committed the following unlawful acts;-
14. On 25th January 2018, the 1st respondent granted a one Mr Salim Semanda a temporary allocation of the suit property located on Plot 42 Kampala road, FRV 60 Folio 5, Kampala.
15. On 1st February, 2018 the Custodian Board instructed the Chief Government Valuer to inspect and value the said property and avail a valuation report which was done.
16. On 28th June 2018, the Executive Secretary of the 1st respondent directed Mr. Okello Augustine to handle the file of the suit property for purposes of onward submission for private treaty arrangements.
17. That on 31st July, 2018 two officers of the 1st respondent namely Mr Okello Augustine and Kandole Clement visited the Applicant’s Advocates, namely M/s Jingo, Sempija & Co Advocates, purportedly executing the unlawful instructions of the 1st respondent’s Executive Director.
18. That on 22nd May, 2018 Mr Salim Semanda applied to the Minister of Finance, Planning and Economic Development purportedly requesting to purchase the suit property under private treaty.
19. The action or decision of the 1st respondent of granting a one Mr Salim Semanda a temporary allocation of the suit property was made without jurisdiction and therefore it is illegal, irrational and *ultra vires* the 1st respondent’s powers and it is in violation or in contempt of the Consent Judgment that was executed and confirmed by this court on 11th December, 1991.
20. The action and or decision of the Executive secretary of the Departed Asians’ Property Custodian Board dated 28th June 2018 directing Mr Okello Augustine to deal with the suit property for private treaty arrangements is illegal, irrational and it is ultra vires.

The 1st and 2nd respondent opposed this application and filed an affidavit in reply through Mr Bizibu George William-Executive Secretary of 1st respondent while the 3rd respondent filed an affidavit in the names of the 3rd respondent-Ssemanda Salim.

1. The 1st and 2nd respondent contended that the applicants are illegally in occupation of the suit property comprised in FRV 60 Folio 5 Plot 42 Kampala Road without the consent of the respondent.
2. That the alleged applicants repossession of the suit property by virtue of the consent Judgement is misconceived, illegal, unlawful, null and void.
3. That the said consent judgement did not give/put the applicants into possession of the suit property at all and that it was not a mandatory repossession certificate to the applicants to repossess.
4. The 1st respondent has never issued a certificate of repossession to the applicants as alleged.
5. That the entries made by the Registrar of Titles on the certificate of title of the suit property comprised in FRV 60 Folio 5 at Plot 42 Kampala was procured fraudulently.
6. That the alleged possession and entry of the applicant and transfer of the suit property was illegal, null and void.
7. That the 1st respondent has since exercised its legal mandate and lawful jurisdiction and allocated the suit property described as Plot 42 Folio 60 Kampala Road to Mr. Salim Ssemanda.

The 3rd respondent in his affidavit repeated the content of the mr Bizibu’s affidavit and only added that; On 25th January 2018, the 1st respondent allocated to him the suit property comprised in Plot 42 Kampala road, FRV 60 Folio 5 and has been paying rent.

The affidavits of the respondents refer to documents/annextures but none was attached in support of the averments in the same. This court takes it that the same are none existing and that is why they were never annexed to the affidavit in reply.

The 1st respondent’s Executive secretary and deponent was cross examined by the applicants counsel and as result at the public hearing was conducted on the 4th day of January 2018 at the 3rd respondent’s office in presence of the officers of the 3rd respondent, the Executive Director of the Departed Asian Property Custodian Board and the detective CID attached to the Custodian Board and in absence of the applicant despite the fact that he had been served.

At the hearing of this application the 1st and 2nd respondents deponent Mr Bizibu was cross examined and thereafter the parties were directed to file written submissions which I have read and considered in the determination of this application.

The applicant only raised one issue for determination and the resultant issue of remedies.

1. ***Whether the applicants have any grounds for judicial review?***
2. ***What remedies are available to the applicant?***

The applicants were represented by *Mr John Mike Musisi* whereas the 1st and 2nd respondent was represented by *Mr Bichachi Ojambo and Mr Twesigye Nicholas* represented the 3rd respondent.

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 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 Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.***

For one to succeed under Judicial Review it trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public. In the case of ***Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)*** ,Court noted that;

“Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.”

***ISSUE ONE***

***Whether the applicants have any grounds for judicial review?***

The applicants**’** counsel submitted that the applicants are the registered proprietors of the land comprised in FRV 60 Folio 5 Plot 42 Kampala Road Kampala City. This was confirmed by Mr. Bizibu George William in his cross examination were he clearly stated that by 31st August 1972, the registered proprietor of the suit land was General Product & Traders Ltd and the applicants who held clear shares as indicated on the title. Then he confirmed that his search at lands office confirms the applicants as the registered proprietors of the suit land and the 1st respondent has never been registered on the suit land at any one time.

The registration resulted from the consent Judgment dated 11th December 1991, executed in Civil Suit No 995 of 1989 that was entered into between the Applicants and the 2nd respondent as reflected in ground 3 and paragraph 4 of the affidavit in reply and annexture “B”.

The **C**onsent Judgment stated that;

“the 2nd respondent/Attorney General recognises the Applicant/plaintiff’s rights to reposes the land comprised in Plot 42 Kampala Road, Kampala City Registered as FRV 60 Folio 5 together with all developments thereon but excluding tenant’s moveable assets, business and trade goods.

“In consideration of the settlement herein, the Applicant/plaintiffs waive claims in the suit to damages, mesne profits, interests thereon and costs of the suit in relation to the repossessed properties”

# Following the said consent, on the 27th day of December 1991, court ordered Mr. Senoga Mukasa a court bailiff to execute some orders which included

# To put the Applicant in possession of the suit property

# To remove any person bound by the decree who may refuse to vacate the suit property.

# On the 2nd day of February 1992, the applicant through General Products & Traders Ltd applied for repossession and on the 27th day of October 1992, the Minister of Finance issued a repossession certificate which clearly stated that

# “*it is therefore in accordance with the law to inform you that you are free to repossess your property and that the repossession is effective fourteen (14) days from the date of this letter*.”

# The applicant’s counsel cited the case of *Mabale Growers Tea Factory –vs- Noorali Mohamed SCCA No. 2 of 2015 the Supreme Court* clearly stated that

# “Whatever the minister did on this land that lead to the applicants repossessing the same was in line with the powers granted to the minister by the expropriated properties Act”.

# The applicants’ counsel submitted that after the Consent Judgment of 1991 an application was made to the 1st respondent by the registered proprietors to repossess the property. Copy of the Form DAPCB 1 received by the 1st respondent on the 2nd October 1992 shows that the 1st respondent received the following documents together with the application;

# Certified copy of the title deed

# Certified copy of the certificate of incorporation of General Products and Traders Limited.

# Articles and Memorandum of Association General Products and Traders Limited.

# Power of Attorney

# Consent judgment

# It’s upon receipt of those documents that the minister confirmed that the required documents that were submitted by the applicants regarding the suit property appeared to be in order. The Minister then stated in the letter that the applicants were free to repossess their property and that the repossession was effective 14 days from the date of the letter.

# Following the Minister’s letter, the 1st respondent’s Executive Secretary wrote to the occupants of Plot 42 Kampala road (as evidenced by annexture “K”), notifying them of the return of the property to the applicants and others and instructing them to pay rent to the applicants with effect from 14 days of the date of receipt of the letter FORM DAPCB XI.

# The applicants have since taken possession of the premises in proper compliance with the relevant law and have continued to collect rent from all tenants therein without disturbance from the respondents for a period of 27 years now. For that period of time, the applicants have been in quiet possession of the suit property without any disturbance from anybody.

# As evidenced from section 6 (1) of The Expropriated Properties Act Cap 87, the moment the applicants were granted a repossession certificate, the property divested from government and reverted to the Applicants as from the 9th day of February 1992.

# The Applicants being granted a repossession certificate clearly meant that they are the legal owners of the suit property.

# On the 22nd May, 2018 Mr. Salim Semanda applied to the Minister of Finance, Planning and Economic Development purportedly requesting to purchase the suit property under private treaty as reflected in annexure “E”

# The letter written by the 1st respondent to the 2nd respondent (Annexture D) that the 2nd respondent applied for allocation of the suit premises but that before doing so, he ignored the records in the land office and in the 1st respondent’s custody which showed that the minister of finance had dealt with the property and allowed the applicants to repossess it.

# At the cross examination of Bizibu George William confirmed that the 1st respondent had never appeared on the title to the suit land but choose to allocate this land to the 3rd respondent through an application that was made by the 3rd respondent to the 1st respondent. This application is dated 19th day of January 2018 which was allegedly received on the 17th day of January 2018.

# He added that by law, this property is to be given to sitting tenants of the Custodian board and to them the 3rd respondent made a declaration confirming that he is a sitting tenant. He failed to bring evidence to prove that Ssemanda was a sitting tenant. There was no tenancy agreement between Semanda and Custodian board. There were no receipts to prove payment of rent.

# According to the way Mr. Bizibu answered the questions put to him as to what basis he used to grant a temporary allocation to the 3rd respondent, shows he did not bother to ascertain the status of the property before he thought of dealing with it. He seems to have accepted the lie from the 3rd respondent that he was a sitting tenant or actually. He was not helped by his own answers when he admitted that he had no record of any past payment of rent by the 3rd respondent.

# The action or decision of the 1st Respondent of granting a one Mr. Salim Semanda a temporary allocation of the suit property was made without jurisdiction since the Minister had already dealt with the property. The act was therefore illegal, irrational, *ultra vires* the 1st Respondent’s powers and it is in violation or in contempt of the Consent Judgment that was executed and confirmed by this Court on 11th December, 1991.

# The action and or decision of the Executive Secretary of the Departed Asians’ Property Custodian Board dated 28th June, 2018 directing Mr Okello Augustine to deal with the suit property for private treaty arrangements is illegal, irrational and high handed as the property was dealt with and given back to the applicants in 1992. Neither the minister, nor the 1st respondent can now deal with the property using the expropriation laws.

# It is the respondent’s argument that the judgement of the court was not enough to allow the applicants to repossess the property. However, during cross-examination of Mr. Bizibu, the 1st respondent’s Executive Secretary, he acknowledged that he had on his file the repossession letter, Annexture K to the applicant’s affidavit. The letter was signed by the Minister of State for Finance. It is common knowledge that during the repossession exercise, all letters were signed by the Deputy Minister, Mr. Kintu who also signed the applicants letter of repossession. So, the existence of the repossession letter is not in question and it is in addition to the consent judgement.

# The said letter therefore served as a legal document recognised under section 6(1) of the Expropriated Properties Act Cap 87. It authorised the applicants to repossess their property.

# In Jaffer Brothers Ltd –Vs- Mohammed Magid Bagalaliwo & 2 Others CACA No. 43 of 1997 Hon. Lord Justice G. M OKELLO J.A (as he then was) stated that

# “It is clear from the above that the Minister intended in the letter dated 7th December, 1993 which is Annexture ‘B’, to return the Suit Property to the appellant. That is what the purpose of the Act is and that is what Section 5 (1) thereof and regulation 10 (3) of the Expropriated Properties (Repossession and Disposal) Regulations, 1983 (S. 1 No. 6 of 1983) are intended to accomplish. Deviation of Annexture ‘B’ from Form (3) prescribed in Regulation 10 (3) above should not render Annexture ‘B’ void since its substance is not affected. It was meant, to return the property to the former owner.

# The issuance of Annexture B and F shows that the Minister was satisfied under Section 5 (1) of the Expropriated Properties Act, 198 2.

# I am satisfied that the appellant applied and obtained Annexture B which amounts to a Certificate of Repossession under Expropriated Properties Act, 1982, in time…

#

# The learned Judge stated further

# As I have held above, Annexture B and F constitute a Certificate of Repossession. The Certificate immediately clothed the appellant with equitable right over the Suit Property, pending the transfer of the legal right by Government on registration. Registration is a formality as Government is bound under the Act to transfer the property to the former owner with a Certificate of Repossession.....”

# Annexture B referred to by the lord Justice above is the letter of repossession. The judge ruled that for all intents and purposes the repossession letter tantamounts to a repossession certificate. Deviation from the prescribed form under the regulations does not render the repossession void.

# From the evidence above, the 1st respondent’s acts of giving the suit land to the 3rd respondent yet it had been repossessed by the applicants under the law was illegal, irrational and filled with Procedural impropriety.

# The applicants counsel prayed that the court grants the Order of Certiorari to quash the 1st respondent’s decision granting a temporary allocation of the suit premises to the 3rd respondent. The honourable Minister of Finance who is represented by the 2nd respondent also be prohibited from dealing with the said property since he has already done so when he allowed the applicants to repossess it.

The 1st and 2nd respondent’s counsel submitted that the Consent Judgment only recognised the applicants’ right to repossess the suit property and that the Consent was not repossession certificate. The said consent Judgment did not provide for mandatory repossession but only recognised the applicants’ rights to apply for the repossession of the suit property.

While DAPCB was managing the suit property, there was suit in Court vide HCCS No. 995 of 1989 over the same property and DAPCB was not a party to nor was the said consent brought to the attention of DAPCB.

It was incumbent upon the applicants to bring to the attention of DAPCB the consent judgment and to make an application and follow due process for repossession as provided under the Act which in the instant case where not complied with.

The respondents counsel contended that the document dated 27.10.1992 signed by the Minister of State for Finance Cabinet, is a mere letter and not a certificate of repossession. He further argues that the repossession must be signed by the Minister of Finance, Planning and Economic Development and not the Minister of State for Finance.

The 1st respondent has decided to deal legally with the property in accordance with their lawful mandate under the Expropriated Act and allocated the suit property to the 3rd respondent, allocattee.

The respondents’ counsel has submitted on illegality and has gone ahead to attach evidence on the submissions without any affidavit.

The 3rd respondent joined issue with the 1st and 2nd respondent’s submission and only reiterated most of the points raised by them.

# *Determination*

# This court notes that the respondents’ counsel has submitted evidence from the bar in their submissions and as such the same are ignored in the determination of this suit.

# The respondent counsel has submitted that the “ *the said consent was not brought to the attention of DAPCB*” this is not derived from the evidence of Mr Bizibu as the deponent and nowhere is it mentioned in his affidavit.

# Secondly, half of the 1st and 2nd respondents’ submissions are now introducing basically new evidence on illegality which was never conversed in the affidavit of Mr Bizibu. This is compounded by an irregular manner in which documents/evidence has been attached to the submissions in proof of the alleged illegality without any affidavit and after closure of the respondents’ case.

This appears to be a desperate move by the respondents to create a mountain out of a mould. The advocates should always remain professional in their work as officers of court. Among such documents are records for Indians who were compensated for their properties. This court cannot begin to get into such issues and the respondent is at liberty to institute its own case to prove the illegality in the repossession exercise.

# The applicants challenge the 1st respondent’s decision on one ground that it was illegal, irrational and procedurally improper and ultra vires.

Illegality as a ground of review looks at the law and the four corners of the legislation i.e its powers and jurisdiction. When power is not vested in the decision maker then any acts made by such a decision maker are ultra vires.

In the case of ***R v lord President of the Privy Council, ex parte Page [1993] AC 682*** *Lord Browne-Wilkinson* noted;

“ *The fundamental principle(of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making bodies are exercised lawfully. In all cases…this intervention….is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful.”*

In addition, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion.

The respondents seem to premise their decision to allocate the land comprised in Plot 42 Kampala Road on grounds that the same was not repossessed. The applicants have produced cogent and credible evidence that the said land was repossessed by the applicant in 1992. The Certificate of title is in the names of the applicants and the Executive Secretary admitted in cross examination and the land registry indicates that the applicants are the registered proprietor.

The unanswered question is how and why did the 1st applicant who is not registered on the said title? and does not even collect rent from the said building come to claim that the said building repossessed 26 years ago was not properly repossessed.

How did the 3rd respondent who is not even a tenant on the premises come to apply for the land that was not advertised for public bidding? Why did the 1st respondent decided to allocate the said land through private treaty to the 3rd respondent?

The actions and decisions of the 1st respondent appear to be clouded with illegality and without any justification. The 1st respondent alludes to questioning documents executed 26 years ago as being unauthentic since they were executed by Minister of State for Finance instead of The Minister of Finance, Planning and Economic Development.

This court takes judicial notice of the fact that in 1992 the Ministry responsible for finance was Ministry of Finance. The one quoted by the respondent was created in 1998 when ministry of Finance was merged with Ministry of Planning and Economic Development form the current Ministry of Finance, Planning and Economic Development.

This court also takes judicial notice of the fact that the Minister responsible for signing the repossession certificates then was the Minister of State for Finance and the same government ministry officials and servants like the 1st respondent cannot turn around to question the powers after the entire exercise of repossession was completed.

The actions of the 1st respondent are clearly illegal and abuse of authority and power for which this court can bring into question any decision taken in order to uphold the rule of law.

In the area of administrative exercise of power, the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

The law requires that statutory power is exercised reasonably, in good faith and on correct grounds. The courts assume that Parliament cannot have intended to authorise unreasonable action, which is therefore ultra-vires and void.

The applicants repossessed the land comprised in plot 42 Kampala Road through a consent that was duly executed with Attorney General in 1991. The applicant proceeded to lodge the documents with the DAPCB in 1992 for repossession which included;

Certified copy of the title deed; Certified copy of the certificate of incorporation of General Products and Traders Limited; Articles and Memorandum of Association General Products and Traders Limited; Power of Attorney; Consent judgment.

The applicants were notified of the conclusion of the repossession exercise and the minister’s letter was conclusive as noted in the case of ***Mabale Growers Tea Factory –vs- Noorali Mohamed SCCA No. 2 of 2015 the Supreme Court*** clearly stated that;

**“Whatever the minister did on this land that lead to the applicants repossessing the same was in line with the powers granted to the minister by the expropriated properties Act.**

The respondents’ argument that the same was not in the form-3 of the second schedule to the Expropriated Properties Act is equally devoid of merit.

***Section 43 of the Interpretation Act* provides;**

*Where any form is prescribed by Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document or which is not calculated to mislead.*

# The letter of the Minister was conclusive in determining the applicants’ repossession exercise and the same would ably suffice even without the form specifically provided for under the Expropriated Properties Act.

# Therefore it was illegal for the 1st respondent to try and reopen the repossession exercise concluded 26 years ago under the guise of the same having not been concluded.

# The decision to allocate the said piece of land to the 3rd respondent was equally illegal and contrary to the expropriated properties Act. The 3rd respondent was not a sitting tenant on the said land and above all the land in question was never gazetted by way of a statutory instrument for sale.

# The actions of the 1st respondent were so unreasonable and irrational and clouded in abuse of power.

# The applicants were never accorded a hearing before the 1st respondent unilaterally decided to allocate the land registered in their names. The right to a fair hearing and natural justice is one of the cornerstone of our constitution.

#

This position was restated in ***Council of Civil Service Union v. Minister for the Civil Service 1985 AC 374*** held that it’s a fundamental principle of natural justice that a decision which affects the interests of any individual should not be taken until that individual has been given an opportunity to state his or her case and to rebut any allegations made against him or her.

In the case of ***Twinomuhangi vs Kabale District and others [2006] HCB130*** Court held that;

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

In the present case, the 1st respondent took a decision to allocate the land in question well knowing that the same was in registered in the names of the applicants. The 1st respondent deliberately refused to inform them about their intended illegal actions or decisions that were to be taken and yet they affected their rights as the registered proprietors.

This Court finds that the decision to allocate Plot 42 Kampala Road to the 3rd respondent was tainted with illegality, irrationality and procedural impropriety. The said decision is indeed ultra vires.

***ISSUE TWO***

***What remedies are available to the applicants?***

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

***Certiorari***

The primary purpose of certiorari is to quash an ultra-vires decision. By quashing the decision certiorari confirms that the decision is a nullity and is to be deprived of all effect. See ***Cocks vs Thanet District council [1983] 2 AC 286***

In in simple terms, certiorari is the means of controlling unlawful exercises of power by setting aside decisions reached in excess or abuse of power. See ***John Jet Tumwebaze vs Makerere University Council and Another HCMC No. 353 of 2005***

The effect of certiorari is to make it clear that the statutory or other public law powers have been exercised unlawfully, and consequently, to deprive the public body’s act of any legal basis.

The further effect of granting an order of certiorari is to establish that a decision is ultra vires, and set the decision aside. The decision is retrospectively invalidated and deprived of legal effect since its inception.

The applicant has prayed for the quashing of the decision of the respondent since it was illegal and unlawful and reached in breach of rules of fairness.

The applicants have satisfied the court that the decision of the 1st respondent was illegal, irrational and procedurally improper. The said decision of 1st respondent to allocate plot 42 Kampala road to the 3rd respondent is hereby quashed.

***Damages***

The applicants have not made out any case for damages to be award both in their affidavit in support and submissions. The applicants sought an award of Exemplary/Punitive and general damages, such awards are not made in judicial review applications of this nature. The law only provides for damages in exception cases and they are not granted automatically.

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, “This is what I have lost, I ask you to give these damages” They have to prove it.* See ***Bendicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

This Court awards no damages.

***Costs***

The applicants are awarded costs of this application. The costs are against the 1st and 3rd respondents only.

I so Order.

**SSEKAANA MUSA**

**JUDGE**

**21st/06/2019**