

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.129 OF 2019**

**JUSTICE ANUP SINGH CHOUDRY----- APPLICANT**

**VERSUS**

- 1. WAKISO DISTRICT LAND BOARD**
- 2. REGISTRAR OF TITLES WAKISO**
- 3. CIVIL AVIATION AUTHORITY----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application under Section 36 of the Judicature Act as amended, Rules 3(1)(a), & 6 of the Judicature (Judicial Review) Rules, 2009 for the following reliefs by way of judicial review;

1. An Order of Mandamus compelling the 1<sup>st</sup> respondent to continue and finalise the process of converting the applicant's customary tenure into a freehold tenure system of land holding as applied for by the applicant and approved by the respondent and make a final report to the 2<sup>nd</sup> respondent to effect the process of conversion of the applicant's customary land tenure into a freehold land tenure and issue a freehold Title thereto.

2. An Order of Mandamus compelling the 2<sup>nd</sup> respondent to convert the applicant's customary land into a Freehold as approved by the 1<sup>st</sup> respondent under Minute No. 13:1 (26)(a)/04/WDLB/2017 in a meeting held on the 21<sup>st</sup> April 2017 for land comprised in Plot No. 3-29 Brother Aman Drive Entebbe.
3. An Order restricting the 3<sup>rd</sup> respondent not to interfere in the titling process of the 2<sup>nd</sup> respondent.
4. General damages
5. Costs for the Application be awarded to the Applicant.

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavit of Anup Singh Choudry which is detailed but briefly the grounds are;

- 1) The applicant is the customary owner of land comprised in plots 3-29 Brother Aman Drive Entebbe and has a legal right to own land.
- 2) The applicant in February 2017 under the provisions of the Land Act applied to the 1<sup>st</sup> respondent to convert his customary land tenure into a Freehold land tenure and the application was approved by the District Land Board on the 21<sup>st</sup> day of April 2017 under minute No. 13:1 (26) (a)/04/WDLB/2017.
- 3) That after the approval of the applicant's application, the secretary of the 1<sup>st</sup> respondent did not take any further step to make a report to the Registrar of Titles to convert the customary tenure into a Freehold.

- 4) That instead the approval documents were handed over to Wakiso District Land Officer Mr Kasozi Gilbert who instead wrote to the applicant requesting him to obtain authority and or a letter of no objection from the Civil Aviation Authority.
- 5) That the Civil Aviation Authority does not in any way have any interest in the applicant's land or legally mandated to participate in the conversion process and titling process of the said land.
- 6) That the applicant has on several occasions demanded from the 1<sup>st</sup> respondent to perform its public duty by making a report to the 2<sup>nd</sup> respondent for the purposes of conversion of the applicant's customary land tenure into a freehold ;and tenure but it has kept a deaf ear.
- 7) The acts of the 1<sup>st</sup> respondent's Chairperson, its Secretary and the District Land Officer are irrational and without good cause.
- 8) That the applicant's business has suffered fundamentally and his grape farming project as an investment has been suffocated by the refusal and delays by the respondents to process his customary tenure into a Freehold Tenure system of land holding.
- 9) That the applicant has already obtained clearance from the Municipal Council of Entebbe and national Environmental Authority for a grape fruit farm.
- 10) The applicant has other freehold registered plots of land next to the current customary land and facing the perimeter which was

converted from customary land tenure to freehold land tenure without any interference from the 3<sup>rd</sup> respondent.

The respondent opposed this application and filed an affidavit in reply through Gilbert Kasozi the Senior Land Management Officer of Wakiso District as follows;

1. The applicant applied to convert customary land holding to Freehold land holding and on 21<sup>st</sup> April, 2017 deliberated upon the applicant's application which was deferred for clearance from the Civil Aviation Authority as the land in issue neighbours Entebbe International Airport.
2. That in addition, the Area Land Committee purportedly inspected plots 18, 30, 32,34, 36 & 38 Brother Aman Drive and a report confined to the same was prepared, whereas the deed plans attached to the application related to plots 3,5,7,9,11,13,17,19,21,25 and 27 Brother Amans Drive, a disparity which is fundamental.
3. That the applicant, the physical planner and the Area land Committee were requested to have the issues raised cleared before the Board could make a final pronouncement.
4. That the Civil Aviation Authority in a letter dated 16<sup>th</sup> March, 2018, requested the Senior Land Officer not to allocate plots 3-27 Brother Amans Drive to the applicant or any other private person as the plots constituted a buffer between the Airport and lake Victoria as per Aviation Safety and Security Requirements.
5. That the Civil Aviation Authority declined to grant a no objection to his application for the land citing safety and security reasons.

6. That the applicant has no absolute right to be granted a conversion to freehold.
7. That the Land regulations empower the District Land Board to attach any condition as the board may consider necessary or desirable.
8. That the applicant's application was not approved but deferred for the different reasons.

The 3<sup>rd</sup> respondent in affidavit in reply sworn by Joseph.J. Okwalinga- the Acting Corporation Secretary briefly stated as follows;

1. That on the 14<sup>th</sup> August 2017, the 3<sup>rd</sup> respondent wrote a letter to the Town Clerk and requested that the allocation of property touching the airport be halted pending verification of security risks and attendant matters that relate to the management, operation and manning international airports.
2. That on the 20<sup>th</sup> October 2017, the 3<sup>rd</sup> respondent again notified the Senior Land Management Officer-Wakiso District that the 3<sup>rd</sup> respondent was mandated pursuant to section 46 of the Civil Aviation Authority Act to ensure safety of the Airport.
3. That on 3<sup>rd</sup> September 2018, the 3<sup>rd</sup> respondent wrote to the applicant advising him that it was not in position to consent to his application as conversion of the property touching the Airport facility pose a security risks and may attract penalties from Regulators.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Three issues were framed by the applicant for court's determination;

1. *Whether the 1<sup>st</sup> respondent's decision to defer the applicant's application pending a letter of no objection by the legal officer was illegal or ultra vires?*
2. *What remedies are available to the applicants?*

The applicant was represented by *Mr Turinawe Julius* whereas the 1<sup>st</sup> respondent was represented by *Nambale, Nerima & Co Advocates* and 2<sup>nd</sup> respondent was represented by *Ssekito Moses*.

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 may 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 is 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.

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.”

*Whether the 1<sup>st</sup> respondent's decision to defer the applicant's application pending a letter of no objection by the legal officer was illegal or ultra vires?*

The applicants' submissions are premised on the fact that there is unreasonable delay to convert and register his plots because the 1<sup>st</sup> respondent has demanded a letter of no objection from the 3<sup>rd</sup> respondent by the 1<sup>st</sup> respondent's legal officer.

The demand for a letter of no objection from the 3<sup>rd</sup> respondent was irrational and has no basis in law. The 2<sup>nd</sup> respondent is mandated by statute to issue land titles without the interference of the 3<sup>rd</sup> respondent where the ownership is in dispute.

It was the applicant's submission that it was illegal for the land officer to seek for the opinion of the 3<sup>rd</sup> respondent since they latter has no right whatsoever to engage in the approval and titling process nor does it have

any right to interfere in the applicant's land ownership where it has no ownership legal rights.

It was the applicant's contention that he has other freehold registered plots of land just next to the land in question which he applied and was easily converted into freehold from customary land tenure without any such interference of the 3<sup>rd</sup> respondent or requesting the applicant to get a letter of no objection from the 3<sup>rd</sup> respondent.

The 1<sup>st</sup> respondent contended that the applicant's application has never been approved but was rather deferred pending the letter of no objection from Civil Aviation Authority.

### ***Determination***

It can be deduced from the facts, pleadings and evidence that the 1<sup>st</sup> respondent has not yet made a final decision in the matter of the application for a conversion of the customary ownership into a freehold.

The 1<sup>st</sup> respondent deferred the decision whether to convert or not in their letter dated 12<sup>th</sup> May 2017;

***"I am pleased to inform you that Wakiso District Land Board under Min. No. 13:1(26)(a)/04/WDLB/2017 of its meeting held on 21<sup>st</sup> April, 2017 considered your application but deferred the same pending clearance from the Civil Aviation Authority"***

It would appear that there is no final decision on the matter since the land board was seeking clarifications from the different offices like the Physical Planner-Entebbe Municipal Council, The Area Land Committee and clearance from Civil Aviation Authority.

What the applicant's case is as can be deduced from the submissions and facts is that there is a delay to process his customary land into freehold



to enable the applicant obtain a land title which he intended to use as a collateral for a loan to help set up a grape farm land.

The applicant states that it is unreasonable to delay the conversion and registration of his plots in violation of his constitutional right and that conversion and registration of a land title and its use have a different meaning.

This court will not try to make any finding of fact in absence of a final decision since this will prejudice the parties if the final decision is made later and such decision is challenged in any court.

Judicial review may be used to compel the performance of public duties by public authorities or decision makers. The 1<sup>st</sup> respondent has a duty to convert or not to convert customary land into freehold. Failure to act is automatically unlawful and can be remedied by judicial review, by grant of an order of mandamus.

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. *See Wanzusi Robert Fulton Matukhu & Nandarwula Shamim v Kampala Capital City Authority High Court Miscellaneous Cause No. 02 of 2019*

Parliament or the authority granting power cannot be supposed to have intended that powers granted by it be open to any kind of abuse. It is to be presumed that the body upon which power is bestowed will act judiciously in effecting the intent and scheme of the enabling law.

This court is alive to the fact that the 1<sup>st</sup> respondent in its letter dated 12<sup>th</sup> May 2017 did not set out any specific timeline within which the applicant's deferred application would be considered but failure to act within a reasonable time is equally an abuse of authority and the courts ought to compel such a person/body to take immediate action.

*What remedies are available to the applicants?*

The court is satisfied there is no final decision on the applicant's application to convert customary ownership to freehold ownership.

Since the 1<sup>st</sup> respondent received the necessary communications or clarifications it sought from the different offices by 3<sup>rd</sup> September 2018, it should make a final decision in the matter in order to avoid any prolonged delay.

An Order of Mandamus issues to compel the 1<sup>st</sup> respondent to take a decision within 60 days from the date of this ruling.

Since the dispute is not yet resolved, it is only fair that each party should bear its costs.

I so Order.

**SSEKAANA MUSA**  
**JUDGE**  
**20<sup>th</sup>/12/2019**