

THE REPUBLIC OF UGANDA

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

MISCELLANEOUS CAUSE NO. 274 OF 2022

TWED PROPERTY DEVELOPMENT LTD----- APPLICANT

VERSUS

NATIONAL BUILDING REVIEW BOARD----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 42 of the Constitution, Section 33 and 36 of the Judicature Act as amended, Rules 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009 and Section 98 of the Civil Procedure Act for the following reliefs by way of judicial review;

- 1. A declaration that a report of review of documentation for development of plot 18 Kyadondo Road and Plot 16 Lourdel Road was illegal and unlawful and was calculated to embarrass, intimidate and harass the applicant company without due compensation.*
- 2. A declaration that the respondent's recommendation of the applicant's building development be halted was done without due regard to the process of law and the principles of natural justice.*
- 3. A declaration that the applicant cannot be held responsible/culpable for failure to ensure adherence of site operations under clause 6.14. 13.5, 13.11 and 21.9 of their own safety management plan which is social obligation*

undertaken by the applicant on their own accord and does not establish any criminal sanction.

- 4. A declaration that the respondent could not constitute itself in a quasi-judicial organ to arbitrarily review its own decisions without recourse to a report from the building committee faulting the applicant on their own accord and does not establish any criminal sanction.*
- 5. An order to Certiorari quashing the respondent's report and recommendation/decision to halt the applicant's development project.*
- 6. An order of prohibition and injunction prohibiting the respondent from issuing any such orders in respect of the matter complained of.*
- 7. An injunction restraining the respondent from harassing, intimidating arresting the agents, servants and employees.*
- 8. An award of general and exemplary, punitive damages for the harassment, intimidation and embarrassment, unconscionable and oppressive conduct of the respondent.*
- 9. Costs of the suit.*

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavit of Dan Twebaze-The Managing Director of the applicant which is detailed but briefly are;

1. The respondent is the registered proprietor of land comprised in Plot 18 Kyadondo Road and Plot 16 Lourdel Road and is developing the said land by constructing a hotel and office block.
2. The applicant while constructing has been subjected to numerous disturbances, intimidations and other orders without lawful justification to halt their project and indeed the applicant has scaled their project and has been subjected to several summons to appear before security and government enforcement agencies with their technical staff to show cause why criminal prosecution should not be

preferred against them and the project should be stopped all together.

3. That the applicant has since discovered a letter/report which has been written by the respondent to the Anti-Corruption Unit of State House dated 1st July 2022 in which the respondent has made a number of allegations of noncompliance to the Building regulations and accused the applicant company for criminal transgressions and the said security agencies are purporting to investigate the applicant company for non-compliance.
4. That the respondent in making the said report, was faulting the applicant company for safety violations and is recommending that security agencies and others should hold the applicant culpable for failure to ensure adherence to clause 6.14,13.5, 13.11 and 21.9 of the applicant company own safety.
5. That the applicant insist that they are the very author of those Safety Management Plan which they devised on their own to ensure safety for all and the respondent cannot fault them for failing to adhere to them or create a penal offence for the alleged failure to adhere to the applicant's internal documents i.e the said plan and it equally directed the State House Anti-Corruption Unit to enforce it.
6. That the respondent's in their report further directed the Anti-Corruption Unit to halt the building development of the applicant on grounds that they did not have approved Traffic Impact Assessment Report and Storm water Drainage Plans & Calculation reports and further they do not have Approved and Certified Electrical drawings which allegations are not true.
7. That the applicant's buildings plans were approved by the legally mandated authority KCCA in 2018 fulfilling all requirements for approval and this was prior to commencement of the new Building Control Regulation that was enacted in 2020 and the said regulations

cannot act retrospectively to revoke or vitiate their approved plans or act to their prejudice.

8. That the said inspections were done in absence of the applicant and was denied an opportunity to be heard and the applicant is yet to confirm that there are no records of inspections. At all the alleged inspections, the applicant has been absent or it has been deliberately done in their absence without any opportunity to be heard.
9. That the applicant was informed by the respondent in the letter/complaint by Mr. Caleb Kakuyo and Mrs. Doreen Sandra Rwabubuyu on 20th August raised a number of issues which the applicant responded to. The same persons have been raising baseless and frivolous & vexatious allegations against them ever since they acquired the plot. The same allegations have been investigated on more than six occasions and found to be untrue and simply malicious.
10. That on November 2021, KCCA Building Control Committee which is mandated by the Building Control Regulations to carry out investigations of such complaints visited the site and carried out a thorough investigation. The same committee made a number of findings which all seem to contradict the reports of the respondent and on all these occasions the respondent refused to attend site visit and meeting.
11. That to date there has not been any appeal against the findings and decisions of the Building Control Committee to the respondent Board and which is only mandated to hear such appeal or review such decision and not to carry out such investigations.
12. That the said project employs over 400 persons whose livelihood shall be affected if the project is halted on baseless allegations which have not been substantiated at all.

13. That the applicant has loan obligations from several financial institutions, and halting of their project is going to have dire consequences and shall occasion irreparable damages which the respondent cannot reimburse. The halting of the project is occasioning a loss of over 100,000,000/= per day.
14. That the applicant has contractual obligations with an international franchise of the hotel chain of Hilton World Wide and Resort to complete the project in a specified timeframe. Failure of which there will be penalties and to date Hilton World Wide and Resort is monitoring and is satisfied with the quality, safety and construction process of the project.
15. That the cost of the project is valued over US \$95,000,000 and the said project is being financed by loan capital from financial institutions which finance is pegged to timelines and any impediment and suppression of the project has a cost implication.
16. That the conduct of the respondent is very highhanded, oppressive and unconscionable and is causing untold suffering to the applicant for which they should be awarded punitive/exemplary and general damages.

The respondent opposed this application and filed an affidavit in reply through *ENG FLAVIA G BWIRE, the Executive Secretary* as follows;

1. The respondent contended that they have not pronounced any final and conclusive decision with regard to the complaint. The building committee has not issued a report on the matter. The application is time barred.
2. That the respondent received a complaint from BKA Advocates complaining about an alleged damage to the perimeter wall fence which was a common boundary which had cracked. The respondent visited the site in order to resolve the complaint.

3. That the respondent's staff visited the site on 18th November 2021, to monitor compliance and indeed confirmed that there were various contraventions with the building Control Act.
4. That the respondent wrote on the same day to the applicant ordering them to halt the building works until the issues of non-compliance with the said Act were addressed and the site made safe. The respondent further informed the applicant that the matter had been referred to KCCA Building Committee for further investigations.
5. That the respondent wrote to the KCCA Building Committee requiring them to halt construction works and ensure the site was made safe and compliant with the Building Control, Act. The letter also required the Building Committee report to the Respondent on the action taken within a period of 15 days.
6. That as part of investigations by the State-House Anti-Corruption Unit, the respondent was requested to provide analysis of documentation provided to the Anti-Corruption Unit by KCCA a report on the same to facilitate the Unit's investigation.
7. That the respondent prepared a report based on the said documentation which was submitted to State House Anti-Corruption Unit in which recommendations were contained therein where in relation to the Building Control Regulatory framework and these recommendations could only be enforced by the respondent as mandated under the Building Control Act, 2013.
8. That the honourable Minister of Works & Transport issued a Circular Instrument No. 1 of 2020 to all Chief Administrative Officers, Town Clerks and Executive Director KCCA to issue Building Permits to previously approved building projects and ascertain the competence of supervision and Contractor's technical team in a bid to operationalize the Building Control Act, 2013. Furthermore, the same

circular required all developers to resubmit particulars of the project team.

9. That the applicant had been given an opportunity to be heard on the matter on numerous occasions and has in fact sent letters in response to the respondent. The applicant was requested to submit documents and was invited to attend a meeting at the respondent's premises on November 18th, 2021 which they did not attend neither did they request for the same to be rescheduled.
10. That the respondent is only government agency empowered to investigate and resolve complaints relating to building operations in Uganda and that to date no final conclusive decision has been drawn by the respondent.
11. That the respondent is charged with the mandate to ensure planned, decent and safe building structures are erected in harmony with the environment. Therefore, the respondent acted within the confines of the same Act, given the need to ensure safety of life and property moreover, the respondent recommended to the building committee for further action which is recommended under the said Act.
12. That the respondent could not attend the said meeting on November 23rd, 2021 because the Building Committee of KCCA had been required to report to the respondent on an action taken on the applicant's site within a period of 15 days which were still running.
13. That the respondent is mandated by the Building Control Act to not only receive appeals where the person is dissatisfied with the decision of a Building Committee to monitor building developments, oversee, inspect and monitor operations of building committees, guide and assign functions to the Building Committee or building related accidents and to act upon complaints by the Building Control Officers, Building Committees or any person in respect of any

building permit approval process as was done with regard to the applicant's site.

14. That the respondent did not direct the State House Anti-Corruption Unit to halt applicant's development rather simply informed them of the respondent's findings on the applicant's construction site and stated recommendations which were to be implemented by the respondent

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

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

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

The applicant was represented by *Mr. Yesse Mugenyi and Mr. Nasser Lumweno* whereas the respondent was represented by *Ms. Leliah Katusiime and Ms. Joan Atukei*

The parties have raised a number of preliminary objections in their submissions. I have not found it necessary to waste time resolving them since they would not determine the main issues or the gist of the dispute of the parties. The same have been ignored.

Determination

Whether the decision of the respondent to investigate the applicant's building project was illegal?

The applicant's counsel submitted that the respondent purported to adjudicate on a complaint illegally brought to them by State House Anti-

Corruption Unit which allegedly arose between the applicant and the neighbours of the applicant; Caleb Kakuyo and Doreen Sandra Rwambuya.

The applicant in their submissions seeks to know whether the respondent can usurp original jurisdiction and conduct a parallel investigation and adjudicate on the matter that had been handled by KCCA Building Committee.

It was further contended that the respondent directed the Building Committee of KCCA to investigate and report back in 15 days. The building board has concluded the investigation and has not preferred or no party has preferred any appeal to the respondent.

The respondent counsel submitted that the Building Control Act restricts appeals to the failure of the Building Committee to notify the applicant their decision with regard to a building permit. Therefore, the failure of KCCA Building Committee to address the complaint does not give rise to a right of appeal under the Building Control Act.

It was the respondent's submission that the mandate of the respondent is to monitor building developments among others and that all building related matters are not appeals under section 37 and may be resolved as complaints otherwise aggrieved parties in the built environment would have no other recourse saves for court action.

Counsel reiterated further that the respondent being the regulator of the built environment is empowered to monitor building developments which involves inspection, investigation and addressing building related complaints. Therefore, the respondent's mandate is not restricted to hearing and determining appeals but resolution of complaints related to building operations. Therefore it was in this regard that when the

respondent received the complaint lodged by Caleb Kakuyo that it acted upon the complaint.

The respondent submitted that the Building Control Act ought to be interpreted in light of the regulatory mandate stipulated under the Object clause. The built environment is riddled with a number of issues some of which do not fall under the right of appeal. In his view it was misconceived that the respondent's powers are only limited to only appeals arising from decisions of the building committees. In counsel's view the respondent has implied power beyond what is stated in the Building Control Act. Counsel relied on section 23 of the Interpretation Act to support her argument.

Analysis

The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. It is the courts to determine whether the authority has made an error of law bearing in mind the broad degree of discretion in decision making. The court should identify the all-important dividing line between decisions that have been reached lawfully and those that have not. There are two questions: (i) was the decision taken within the powers granted? and (ii) if it was, was the manner in which it was reached lawful?. *See Citizens Alert Foundation (CAF) Ltd & 4 Others v AG & 2 Others HCCM No. 339 of 2020*

The courts have in practice had sufficient room for manoeuvre to be able to avoid being driven to reach unsatisfactory conclusions in interpretation of the law by the pressure exerted by conceptual reasoning. The court will employ the elasticity provided by the law giving such power and discretionary nature in executing of the said duties under the law. The

applicant has cited the Building Control Act which was breached when the respondent decided to hear the matter which was not preferred by way of appeal.

The respondent counsel vehemently argued that the respondent has some implied powers which should be applied when the Building Control Act is read together with the regulations made thereunder.

Section 9 of the Building Control Act provides for the functions of the respondent as follows:

- (a) To monitor building developments;*
- (b) To ensure the design and construction of buildings and utilities to which the public is have access cater for persons with disabilities;*
- (c) To oversee, inspect and monitor operations of Building Committees;*
- (d) To prepare and submit to the Minister, reports relating to any matter under this Act, as the Minister may require;*
- (e) To hear and determine appeals from persons dissatisfied with the decisions of a building Committee;***
- (f) To determine the fees to be charged by urban and district building committees for approval of plans, issue of building permits and occupation permits; and*
- (g) To perform any other function conferred on it by this Act.*

The respondent contended that it was exercising implied power in the applicant's case when they entertained a complaint directly from a complainant. Every case should be judged upon the overall intent of the legislation and interests of justice. In particular, if there had been 'substantial compliance' with the requirement and if the irregularity was capable of being waived, then whether the non-compliance could be justified depended upon the consequences of the non-compliance which, in

the circumstances did not materially prejudice the applicant. *See R v Immigration Appeal Tribunal Ex.p Jeyeanthan [2000] 1 WLR 354*

The general intent of the Building Control Act was to create a body through which appeals should be handled from all over the country. The mandate or jurisdiction in building disputes should be to the respective Building Committees in every district in Uganda. It would be erroneous for the respondent to begin doing work or a function not specifically assigned to it under the Act by broadly interpreting powers and functions in an exaggerated manner.

The respondent indeed got entangled in its web when it assigned itself functions which would make it complainant, a prosecutor and an adjudicator. Where would the decision made be referred to after the respondent has prematurely handled a complaint directly? The spirit of the law was to create the respondent as an appellate body and not a first instance body to determine disputes in the building industry. This is not such an action which the court can waive or disregard otherwise it would create confusion in building or construction industry and a clash of duties in public bodies in the building industry.

The general duty or function to monitor building developments in the country should not be used to hearing every manner of complaints otherwise the respondent will be overwhelmed with work. The respondent should have advised the complainant to make their complaint to the Building Committee instead of handling directly and later making a reference to them.

The respondent was basically usurping the powers of the building committee and acting in excess of its powers when it directed the committee to halt the activities or construction of the applicant's project. Enforcement decisions are not, however, entirely immune from attack on

ground of illegality. If the enforcement of the Building Control Act is done in total disregard of the main function of hearing of appeals, then the rule of law could be offended.

If a power granted for one purpose is exercised for a different purpose, that power has not been duly exercised. When a decision-maker pursues a purpose outside the four corners of legislation, such an act is illegal since it involves taking into account irrelevant consideration. Therefore, the decision-makers like the respondent should not pursue 'collateral objects' or they should not pursue ends which are outside the "objects and purposes of the statute".

The actions of the respondent were out of the four corners of the Building Control Act since the regulations equally provided that the Building Committee should investigate any matter and report to the board. The respondent under the regulations is supposed to act upon complaints by building control officers and building committees through an appeal process. The respondent was wrong to exercise powers not conferred under the law to entertain the complaint of Mr Caleb Kakuyo and Doreen Sandra Rwambuya. The respondent exceeded her power or the purpose pursued was 'improper' or 'ulterior' or extraneous to those required by the building Control Act and the regulations made thereunder.

The respondent's argument that her actions were implied in the Building Control Act is baseless since the law would only permit the board to undertake tasks that are 'reasonably incidental' to the achievement of that purpose, provided they do not contradict any statutory power. In addition, if a discretionary power is conferred without express reference to purpose, it must still be exercised in accordance with such implied purpose as the courts attribute to the legislation.

The respondent acted illegally to entertain the complaint directly and purport to investigate the same contrary to the Building Control Act and Building Control Regulation which vests the power to investigate with the Building Committees.

2nd Illegality- *Writing a letter to State House Anti-Corruption Unit*

Secondly, the respondent acted illegally and in total abuse of power and authority when it wrote to a letter dated 1st July 2021 to State House Anti-Corruption Unit with a view of commencing a criminal investigation into the management of the applicant and its consultants with a view of having them criminally prosecuted and equally halting the building operations of the applicant.

The respondent is creature of statute with specific mandate to execute in the building industry. The mandate must be exercised by the respondent within the provisions of the law. It is improper for the applicant delegate wide discretionary powers to another authority over which it is incapable of exercising direct control, unless it is expressly empowered so to delegate.

The respondent has been given wide power to cause any investigation in the building sector and this power should only be exercised in such a manner with facilitates the sector. The respondent resorted to use of underhand methods of intimidation by inviting bodies not conversant with the sector to investigate and also to prefer criminal charges which is illegal and contrary to the Building Control Act and Building Control Regulations.

The action of the respondent writing to State House Anti-Corruption Unit smacks of improper motive and bad faith on its part since the law does not envisage such an action to be taken. The respondent counsel submitted that the respondent is bound to work with other state organs in execution of

their duties. Whereas this is very true and acceptable, the respondent should not whimsically write to all manner of agencies with a view to create fear and intimidation of such persons like what the respondent did in this case.

Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud or dishonesty, malice or personal interest. These motives, which have the effect of distorting or unfairly biasing the decision-maker's approach to the subject of the decision, automatically cause the decision to be taken for an improper purpose and thus take it outside the permissible parameters of the power. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise.

There was never any justification or basis for the respondent to write a letter on 1st July 2022 to State House Anti-Corruption Unit and attaching a report with recommendation that:

- 1) *The developer should be held responsible for the failure to ensure adherence of site provisions under clause 6.14, 13.5, 13.11 and 21.9 of the safety management plan.*
- 2) *The building developments be halted until the following requirements are acquired without which they would be no basis for monitoring the pending building developments.*

This was intended for an improper purpose and motive to cause fear and intimidate the applicant. Why was the respondent making such serious recommendations when there was no final conclusive decision taken by the Board? It is also not in dispute that the respondent had referred the matter to the Building Committee and the same was still doing its investigations in the matter.

Furthermore, the respondent's action was illegal. An illegality is when the decision making authority commits an error of law in the process of decision making. See: *Council of Civil Service Union vs Minister of Civil Service [1985] AC 22, Lugolobu Bruce vs Tororo District Local Government HCT-040CV-MC-0019-2014.*

Power or discretion conferred upon a public authority must be exercised reasonably and in accordance with law. It can equally be said that fettering of one's discretion is to abuse that discretion. The law expects that public functionaries would approach the decision making process with an open mind. Reason and justice and not arbitrariness must inform every exercise of discretion and power conferred by statute. See: *Johannesburg Stock Exchange v Witwatersrand Nigel Ltd 1988 (3) SA 132*

The respondent's request for criminal prosecution of the applicant was rejected when in the said letter in reply they noted as follows;

"Owing to the conflicting finding between NBRB and ERB, it may not be possible for SH-ACU to pursue criminal proceedings in relation to the complaint which was the aim of the investigation."

The improper delegation of power by the respondent was rejected and it was illegal for the respondent to resort to tactics in enforcing the Building Control Act outside the known remedial provisions and thus criminalising activities likely to affect the applicant's project.

3rd Illegality-Order to halt applicant building operations.

The applicant also challenged the decision of the respondent to write halting the building operations of the applicant. The respondent wrote a letter dated 18th November 2021 halting the applicant building operations as follows;

*“Require you to **stop all building operations on site with immediate effect** and to rectify all the required areas mentioned herein to make the building operations and environment safe for both those on site and occupants of the neighbouring plots”*

The duty to halt building operations under the Building control Act is vested with Building Committee. Section 40 provides that;

(1) A building Committee may, by notice in writing, order any person to stop a building operation.....

Regulation 40 of the Building Control Regulations equally provides that;

“Where the Board is of the opinion that a building operation is in contravention of the Act, these regulations or the code, that such building operations may result into a public nuisance or risk of accidents, the Board may-

(b) recommend to the Building Committee to stop the building operations; or

(c) Proceed to take any legal action in accordance with the Act or these regulations.

The law has created a clear demarcation of power and roles in the exercise of any supervisory role. The respondent should not hijack specific roles vested with the Building Committee otherwise they will conflict and crash is administrative chaos. The respondent should act within the four corners of the law and there is no specific provision mandating the respondent to directly halt any building project.

The respondent’s role of enforcing compliance with the Building Control Act is done through other organs created under the law. The respondent should avoid usurping the powers given to subordinates due to

overzealousness in enforcing compliance with the law or rather to 'keep in its lane'.

The respondent's counsel does not cite any law under which they issued the order to stop all building operations on the applicant's site but rather they have contended that the applicant's building operations are still ongoing and were never at any anyone time halted.

The decision of the respondent to purport to halt or stop the applicant's operations was illegal and unlawful.

Whether the respondent acted unfairly and in breach of natural justice when it issued a report to State House Anti-Corruption Unit?

The applicant's contend that they have interacted with the respondent's before the said report was made to State House-Anti-Corruption Unit. The respondent's contend that they interfaced with the complainants-Caleb Kakuyo and Doreen Rwambuya.

The applicant contended that the respondent staffs were captured on his CCTV visiting the neighbouring plot on 18th November 2021 and that the pictures which are shown by the respondent were taken at the adjacent plot.

The respondent contends that the applicant was informed of the complaint received to appear for a meeting on 18th November, 2021 but the applicant neglected to appear for the meeting.

The respondent further submitted that the applicant was granted an opportunity to present evidence, some of which has never been forwarded to the respondent until to-date and the respondent is yet to conclude investigations into the complaint due to lack of documentation.

The respondent later refers to a meeting that was called by SH-ACU and hosted at their Board Room as one of the meetings on 4th August 2022.

The respondent urged the court to appreciate the attempts to ensure safety of life and property.

Analysis

The respondent was acting illegally when they purported to investigate a complaint made by Kakuyo and Rwambuya which resulted in a report being made to State House Anti-Corruption Unit.

The applicant therefore can rightly contend that the findings and/ or recommendations by the respondent were made without according the applicant a hearing in respect of the report made to State House Anti-Corruption Unit and in total breach of the rules of natural justice.

The respondent contended that there is no final decision made by the respondent and the matter has been forwarded to Building Committee for further investigation.

It can be deduced from the facts, pleadings and evidence that the respondent did not accord a fair hearing to the applicant when carrying out the said investigations when they illegally received a complaint from Mr Caleb Kakuyo and Doreen Sandra Rwambuya.

It can be seen and deduced from the above statements that the respondent did not summon, seek or hear the applicant's explanation or defence in the process of making any findings and/ or recommendations on the review report of forwarded documentation for development of Plot 18 Kyadondo Road and Plot 16 Lourdel Road. The respondent merely looked at the documents and made serious recommendations with a view of prosecuting the applicant and also with clear intentions of halting the building project.

Whenever a public function is being performed there is an inference, in the absence of an express requirement to the contrary, that the function is required to be performed fairly. The inference will be more compelling in the case of any decision which may adversely affect a person's rights or interests or when a person has legitimate expectation of being fairly treated.

In the case of *Twinomuhangi vs Kabale District and others* [2006] HCB 130 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.”

The applicant indeed legitimately expected to be heard before any report purporting stop any construction of the building project could be made. The project employs over 400 employees and it involved colossal sums of money and loans obtained by the applicant to make it stand. The respondent in their report to State House Anti-Corruption Unit made a recommendation that; *The building development be halted until the following requirements are acquired without which there would be no basis of monitoring the pending development:*

The principle of legitimate expectation is concerned with the relationship between public administration and the individual. It seeks to resolve the basic conflict between the desire to protect the individual's confidence in expectations raised by administrative conduct and the need for the administrators to pursue changing policy objectives.

At the root of the principle of legitimate expectation is the constitutional principle of rule of law, which requires regularity, predictability and certainty in government's dealings with the public.

The origins of this ground of review is traced in the case of *Schmidt vs Secretary of State for Home Affairs [1969] 1 All ER 904*. Lord Denning noted that;

"It all depends on whether he has some right or interest or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say"

The legitimate expectation may be based on some statement or undertaking by, or on behalf of, public authority which has the duty of making the decision, if the authority has through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied an inquiry. See: *World Point Group Ltd vs AG & URA HCCS No. 227 of 2013*.

In the circumstances of this case, it was only right that the respondent accorded the applicant a hearing to determine the basis for trying to bring this mega project to a halt. It bears emphasis that the said documents should have been easily been obtained from the Building Committee or the Building Control Officer.

The failure of the respondent to summon the applicant before making the report to SH-ACU was a breach of rules of fairness. In addition, the order to stop building operations was made without a fair hearing of the applicant. The exchange of letters between the parties could not be used as the basis to waive the fair hearing principles. The respondent approached the matter and complaint with a preconceived bias when they inferred that the communications were satisfactory substitute for a hearing.

This issue is resolved in the affirmative

What remedies are available to the applicant?

The applicant has sought an order of *certiorari* to quash the respondent's report and the recommendations/decision to halt the applicant's development project.

Certiorari is one of the most powerful public law remedies available to an applicant. It lies to quash a decision of a public authority that is unlawful for one or more reasons. It is mainly designed to prevent abuse of power or unlawful exercise of power by a public authority. See *Public in East Africa by Ssekaana Musa page 229*.

Certiorari is simply concerned with the decision-making process and only issues when the court is convinced that the decision challenged was reached without or in excess of jurisdiction, in breach of rules of natural justice or contrary to the law.

The effect of the order of *certiorari* is to restore status quo ante. Accordingly, when issued, an order of *certiorari* restores the situation that existed before the decision quashed was made.

This court therefore issues an Order of *Certiorari* quashing the respondent's report and/or the recommendation/decision to halt the applicant's development project.

This court further issues an Order of *Prohibition* to restrain the respondent from issuing such orders in respect of the matter complained of without compliance with the Building Control Act and Building Control Regulations.

The applicant sought general and punitive damages of the financial loss, embarrassment, inconvenience occasioned by the oppressive and arbitrary conduct of the respondent.

The applicant contended that the applicant is incurring a cost per day of almost 23,000,000 on the financing costs, professional fees of over 40

consultants 18,000,000/=. Site management and administration of 2,800,000/=. The applicant further contends that the greater part of loss is the penalty and opportunity cost of Ushs. 55,000,000/= arising from failure to secure franchise of Hilton International due to delay from the suspension of their building operations.

The applicant therefore sought a sum of 600,000,000/= as appropriate general damages and also sought 300,000,000/= as punitive damages.

The respondent's counsel opposed the said award of 600,000,000/= sought as being excessive and also contended that the applicant was also in contravention of the law.

The court in exceptional circumstances under judicial review may award damages without categorising what nature of damages is awarded. Where there is tortious liability of misfeasance related to abuse of office or authority.

The peculiar circumstances of this case would persuade this court to award some damages to the applicant arising out of the blatant abuse of power to halt construction of the applicant's building project illegally.

This court awards the applicant has sought a total sum of 900,000,000/= as general and punitive damages which I find extremely excessive and exorbitant. I award the applicant s sum of 50,000,000/= as damages.

This application is hereby allowed with costs to the applicant.

I so Order.

SSEKAANA MUSA

JUDGE

07th July 2023