

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
MISCELLANEOUS CAUSE NO.113 OF 2018

PONSIANO LWAKATAKA----- APPLICANT

VERSUS

- 1. INSPECTOR GENERAL OF POLICE-UGANDA POLICE FORCE**
- 2. KASIGIRE MICHEAL, DIVISIONAL POLICE COMMANDER**
KIRA ROAD POLICE STATION-----RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed an application for enforcement of rights under Article 24 and 44 of the Constitution, Section 98 of the Civil Procedure Act and Order 52 rule 1,2,& 3 of Civil Procedure Rules seeking the following orders;

- a) A declaration that the applicant is entitled to have his Pistol CZ 75 9MM No. AK 050 herein referred as the suit fire arm.
- b) An Order directing that the respondents to return the suit firearm to the applicant immediately.
- c) A declaration that the 2nd respondent a police officer in contempt of directives of the Inspector General of Police.
- d) Punitive and Exemplary damages amounting to UGX 200,000,000/= and UGX 100,000,000/=
- e) Costs of the Application

The main grounds upon which this application is premised are set in the affidavit of **Ponsiano Lwakataka** are that;

1. That since 2001, the applicant has been a certificate holder for pistol CZ 75 9MM NO. AK050 in Uganda to date.
2. That in 2017, the respondent without hearing the side of the applicant and/or without justification confiscated the suit firearm from the applicant.
3. That by licensing the applicant to hold the suit firearm, entitles him to protection using the same.
4. That on 30th May 2018 subsequent to filing applicant's application, the 1st respondent in his capacity directed the 2nd respondent as a surbordinate to hand over the suit firearm to the applicant.
5. That the 2nd respondent has wilfully ignored 1st respondent's instructions to hand over the suit firearm to the applicant which is for applicant's security.
6. That the 2nd respondent is insolent, and his conduct is highhanded and oppressive.
7. That the applicant is a prominent businessman and a professional rally driver.
8. That the applicant has never misused the suit firearm and thus he has no bad record regarding the same.
9. That the Attorney General of Uganda advised the respondent through the regional Police CIID of the Greater Bushenyi to return the suit firearm to the applicant which was ignored.

The 1st respondent in reply or opposition to this application filed an affidavit by Kasigire Micheal who is the Divisional Police Commander, Kira Road Police Station.

The 1st respondent contends that the applicant has indeed been misusing the suit firearm as per the letter dated 23rd May 2017.

The suit firearm is still a subject of investigation in the cases listed in the letter and the suit firearm cannot be handed back to the applicant as it is still a subject of investigation.

That before the gun licensing application can be approved, the Licensing Committee has to sit and discuss the application and the Licensing Committee is yet to sit and consider the applicant's renewal application.

At the hearing of this application and in the interest of time court directed the parties to file written submissions which they both filed and I have considered them in this ruling.

The applicant was represented by **Shaban Sanywa** and the respondents were represented by **Namara** from the Attorney General's Chambers. The applicant's counsel raised the following issues for determination

ISSUES

- 1. Whether the suit firearm is still under investigation as contended by the 2nd respondent?***
- 2. Whether the 2nd respondent is in contempt of directives of the 1st Respondent-IGP?***
- 3. Whether the applicant is entitled to have the suit firearm?***
- 4. Whether the applicant is entitled to the remedies sought?***

Preliminary Consideration

This court notes that the procedure adopted by the applicant is quite strange and it is not clear under what procedural law the applicant has moved court. He cited Articles of the Constitution, Section 98 of the Civil Procedure Act and also Anti Torture Act. It is not clear whether this was a case for enforcement of rights or seeking remedies generally without any set procedure or a case of guess work or testing court's powers under section 98 of Civil Procedure Act.

This application ought to have been brought under the Firearms Act and it sets out the procedure for control, manufacture, import, export, sale, repair, storage and possession of firearms and ammunition and for other matters connected therewith. See ***Long Title to the Act***

Similarly, Section 22 of the Firearms Act provides that; *Any person aggrieved by the decision of the Chief Licensing Officer.....may appeal in writing to the Minister, whose decision shall be final.*

The applicant avoided the said law and this court should not entertain an application of this nature in disregard of the clear procedure set out under a different legal regime. The application would fail and should be dismissed on this preliminary consideration alone.

Whether the suit firearm is still under investigation as contended by the 2nd respondent?

The applicant contended that he is entitled to return of his gun which was seized from him. He has attached several documents including permission to acquire the said firearm, permit to purchase or acquire firearm and firearm certificate.

The 1st respondent has stated that the applicant has indeed been misusing the suit firearm and refers to a letter dated 23rd May 2017 and it is contended that; Mr Ponsiano Rwakataka is a civilian Firearm holder. However his firearm has been involved in a number of offences as follows;

- (i) Masaka CRB 131/2014-Threatening Violence/ Assault
- (ii) Kases CTB 1306/2014- Threatening Violence
- (iii) Kasese CRB 046/2014- Assault
- (iv) Kasese CRB 462/2014- Transporting Immature Fish
- (v) Sheema CRB 088/2017 Threatening Violence, Transporting Immature Fish with Unlicensed Firearm
- (vi) Natete-2013- Threatening Violence.

It is further noted in the said letter as hereunder;

'Although in all the above cases he has not been convicted due to poor investigations, his involvement in gun crime is worrying. There is no need to wait for the worst to happen. This is therefore to recommend that his license be revoked and his firearm confiscated without any delay'.

Section 5 of the Firearms Act provides;

The Chief Licensing Officer may in his or her discretion suspend or revoke a firearm certificate without assigning any reason for the suspension or revocation.

The applicant attempted to respond to the said letter in rejoinder but the answers availed are very insufficient to justify release such a dangerous weapon to him before he clears his name with the concerned offices.

Section 40 of the Firearms Act provides that;

In any prosecution under this Act the burden of proof that any accused person is entitled to purchase, acquire or have in his or her possession any firearm or ammunition by virtue of any certificate or permit or by virtue of any exemption shall lie on the accused person.

The applicant ought to clear his name in respect of all these cases pending at different police stations. The same office which recommended the confiscation of his gun should equally be satisfied that the release of the said gun shall not become a security risk to the public.

The applicant in his application does not explain under what circumstances was his gun confiscated from him and seems to make it appear like the said firearm was merely surrendered to police without commission of any crime.

The 1st respondent as the licensing officer is entitled to revoke the licence without assigning any reason for the suspension and this exercise of discretion is intended to protect the public against misuse of firearms.

It is true that discretionary power conferred upon legal authorities is not absolute, even within its apparent boundaries, but is subject to general legal limitations.

Therefore discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise discretion are usually expressed in different ways, i.e discretion must be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, that there must not be any malversation of any kind or that the decision must not be arbitrary or capricious.

In the case of ***R v Commission for Racial Equality ex p Hillingdon LBC [1982] QB 276*** Griffiths LJ has said;

“Now it goes without saying that Parliament can never be taken to have intended to give any statutory body a power to act in bad faith or a power to abuse its powers. When the court says it will intervene if the particular body acted in bad faith it is but another way of saying that the power was not being exercised within the scope of the statutory authority given by Parliament. Of course it is often a difficult matter to determine the precise extent of the power given by the statute particularly where it is a discretionary power and it is with this consideration that the courts have been much occupied in the many decisions that have developed our administrative law since the last war.”

It can therefore be deduced from the above decision that where Parliament confers power upon some Minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not the court. Whether the discretion is exercised prudently or imprudently, the authority's word is to be law and the remedy is to be political only.

On the other hand, 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.

In the case of *Sharp v Wakefield [1891] AC 173* court observed that;

“ ‘discretion’ means when it is said that something is to be done within the discretion of the authorities that something is to be done according the rules of reason and justice, not according to private opinion: Rookes case; according to the law and humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.”

The applicant in this matter has not set out circumstances or plausible facts upon which the exercise of discretion not to release his gun or renew his license by the 2nd respondent could be challenged on grounds of wrongful exercise of discretion by the licensing authority within the parameters set out in the above decisions.

The application accordingly fails and is dismissed with costs.

I so order

SSEKAANA MUSA

JUDGE

5th/10/2018