

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

MISCELLANEOUS CAUSE NO.356 OF 2018

- 1. MONEY LENDERS ASSOCIATION OF UGANDA LIMITED**
- 2. MK FINANCIERS LIMITED----- APPLICANTS**

VERSUS

UGANDA REGISTRATION SERVICES BUREAU----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Rules 3 & 6 of the Judicature (Judicial Review) Rules, 2009 for the following orders;

1. An order of certiorari doth issue quashing the decision of the respondent contained in the letter dated 6th August 2018 to Orima & Co. Advocates.
2. An order of prohibition doth issue prohibiting the respondents from implementing the above decision.
3. A permanent injunction doth issue restraining the respondent from enforcing the decision contained in the letter dated 6th August 2018.

4. General damages be paid to the applicants for inconveniences caused due to the letter/decision afore stated.
5. The costs of this application be paid by the respondent jointly to the applicants.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant but generally and briefly state that;

- 1) The 1st applicant through its General Secretary issued a notice of a national assembly on 31st May 2018 of its members meeting on 28th June 2018.
- 2) The meeting took place and made resolutions arising out of the deliberations of the said meeting.
- 3) The resolutions arising out of the said meeting introduced new directors and made several other resolutions concerning the association.
- 4) The said resolution and Notification of appointment of directors and Secretary of Company were duly filed by the said Mabirizi Male K Kiwanuka on the same 28th day of June 2018.
- 5) The respondent received a complaint from the another group of members through their lawyers-Orima & Co Advocates claiming that the actions of the said Male Mabirizi Kiwanuka were illegal since his membership had been terminated by the National Executive Committee due to gross violation of Association's Constitution on 12th June 2018.

The respondent opposed this application and filed an affidavit in reply through a Senior Registration Officer at Uganda Registration Services Bureau- Mr Mwesigwa Silverio.

The respondent contended that he received a lawyers of Orima & Advocates on 4th July pertaining the illegal filing of the company resolutions by a one Male Mabirizi where his membership and his role as general secretary had been terminated by the National Executice Committee.

That the said Male Mabirizi had been appointed secretary until his removal in resolution filed on 8th August. The respondent wrote a letter to Male Mabirizi and the Management of Uganda Moneylenders Association to appear before the registrar at Uganda registration Services Bureau.

The respondent official in exercise of the powers under the law found that the resolution and Company form 20 for appointment of directors and secretary filed on 28th day of June 2018 were filed irregularly and a decision was taken to recall them off the register to correct the anomaly.

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 applicants were heard before making the impugned decision?*
2. *What remedies are available to the applicant?*

The applicants were represented by *Male H. Mabirizi k Kiwanuka* whereas the respondent was represented by *Counsel Karwani Ronald*.

Both parties tried to raise preliminary objections about the representation of the respective parties in the proceedings of the court. I have decided to ignore the same and consider what I consider to be the merits of the case.

It would appear that both parties are haphazardly raising objections as an afterthought and they never raised them when the case came up for hearing/conferencing.

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.

ISSUE ONE

1. *Whether the applicants were heard before making the impugned decision?*

The main contention in respect of this issue arises from the allegation that the respondent wrote a letter to Male Mabirizi and the management of the MoneyLenders Association inviting them to appear to respond to the complaint by the other faction represented by Orima & Company Advocates.

According to the evidence on record, indeed a letter was written on 24th July 2018 addressed to the Management, Moneylenders Association of Uganda Limited, P.O. Box 7467 Kampala and Mr Male H. Mabirizi K. Kiwanuka, MK Financiers Limited, Kampala, inviting them for a meeting on 2nd August 2018 at 9:00am.

The same letter attached on the affidavit in reply shows that the same was served on or received by Denis Abasa on 25th July 2018. It does not show what position the said Abasa was holding either in the 1st applicant's Association or the 2nd applicant's company.

The said Male Mabirizi who was named in the said letter as an addressee seems not to have received the same letter or did not sign the same if he ever received the same. But it is clear he denies ever receiving the said letter.

It would not matter, if the said Abasa was properly served since the decision would still be questionable once the 2nd party affected by the decision had not been served or properly served.

It can be deduced from the above, that the applicants were never heard before the respondent made a decision that recalled the resolution and notification of appointment of director and secretary dated 28th June 2018.

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.”

Even if the respondent had had the power to do what he did in accordance with the powers conferred by the Companies Act, he had a duty to follow rules of fairness of not condemning the party unheard. The applicant had a corresponding duty to act fairly by according the applicants a hearing in respect to those serious allegations made whose effect was to recall the resolution and Notification of Appointment of Director and Secretary.

This issue is resolved in the affirmative.

ISSUE Two

What remedies are available to the applicant?

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

The applicants have satisfied the court that the decision of the respondent to recall the resolution and Notice of Appointment of Director and Secretary of the company dated 28th June 2018 was arrived at without according the applicants a hearing. The said decision is quashed.

The respondent is ordered to ensure that the concerned parties are heard and the disputes of the company including the legalities of the resolutions are effectively and conclusively determined as soon as possible.

The applicants have not made out any case for damages to be award both in their affidavit in support and submissions.

*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 *Benedicto Musisi vs Attorney General HCCS No. 622 of 1989* [1996] 1 KALR 164 & *Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011**

Since the confusion was brought about by the members of the 1st applicant's company. I decline to award any costs.

I so Order.

SSEKAANA MUSA

JUDGE

09th/02/2019