THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 202 OF 2019

JAFFERY FOREX BUREAU LTD:::::::::::::::::::::::::: APPLICANT

VERSUS

BANK OF UGANDA::RESPONDENT

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under section 33,38 of the Judicature Act and rules 3,6,& 7 of the Judicature (Judicial review) Rules 2009 and Article 42 of the Constitution and section 98 of the Civil Procedure Act and Rule Order 52 r 1 and 3 Civil Procedure Rules for the following prerogative orders and judicial reliefs;

1. A declaration that the respondent's decision to revoke the applicant's foreign exchange and money remittance licenses was unfair, irrational, illegal and procedurally flawed.

2. A declaration that the Respondent's Memorandum against which the revocation of the Applicant's licenses was based, was irrational, irregular and illegal.

3. A writ of Certiorari issues to quash the Respondent's decision to revoke the applicant's licenses.

4. A declaration that the respondent's decision to revoke the Applicant's licenses was illegal and irregular for failure to accord the applicant a fair hearing.

5. A writ of Certiorari quashing the respondent's memorandum relied on to revoke the applicant's licenses.

6. An Order of Mandamus directing the respondent to reinstate the Applicant's licenses and to unfreeze its bank accounts.

7. An Order of Prohibition against the respondent and its respective officers, servants or agents from directly or indirectly or in any other way, interfering with the applicant's business.

8. An Order for payment of damages of UGX 3,500,000,000/= and general damages of UGX 6,000,000,000/= against the respondent.

9. Costs of this application be paid by the respondent.

The grounds upon which these applications are based are set out in the affidavit in support of Mr. Asim Morvi the company's Managing Director which briefly are;

1. That the applicant had been gainfully and profitably carrying on forex and money remittances business since 1997, until the respondent revoked its licences in 2016.

2. That the revocation of the applicant's licenses was based on a memorandum prepared by the respondent in which it was alleged that the applicant company had flouted regulations that govern forex bureau and money remittances business in Uganda.

3. That an investigation by Uganda Police was commissioned by Bank of Africa and its report findings dated 3rd day of October, 2016 cleared the applicant company of any wrong doing.

4. That prior to the revocation, on the 2nd day of March 2016, the respondent issued a notice to show cause why the licenses should not be revoked and the applicant accordingly responded.

5. That despite the applicant responding to the same, the respondent did not offer any response to the applicant on the status of the proceedings against it, but only served it with a notice of revocation of the licenses.

The respondent filed an affidavit in reply and opposed the application: Andrew. B. Kawere-Deputy Director, Non-Bank Financial Institutions swore an affidavit on behalf of the respondent.

1. That the revocation of the applicant's licence was communicated to the applicant by the respondent's letter dated 10th May 2016.

2. That prior to the suspension of the licenses, the respondent invited the applicant's directors to explain the future/forward dealings on their account with Bank of Africa.

3. That after the revocation of the licences, a public notice was issued to the general public calling for possible claims against the applicant from members of the public.

4. That it is not true that the applicants accounts are still frozen by order of the respondent given on March 28th, 2019, the respondent issued a circular to all commercial banks lifting the freeze of the Applicant's accounts after it was satisfied there were possibly no further claims to be made against the applicant.

5. That the applicant has filed a suit against Bank of Africa in commercial court in which it claims from Bank of Africa monetary

remedies on the grounds that the revocation of the licence, the subject of this cause was caused by Bank of Africa.

ISSUES

1. **Whether the Application raises any grounds for judicial review?**

2. **Whether the decision and the entire process adopted by the respondent in revoking the Applicant's licence to operate a Forex Bureau and money remittance business was ultra vires, illegal, irrational and procedurally improper?**

3. **Whether the applicant is entitled to the reliefs sought?**

The applicant was represented by *Mularila Faisal and Alvin Jabbo* and the respondent was represented by *Joseph Luswata.*

Both counsel filed written submissions in this matter and the court has considered them in this ruling. The respondent raised a preliminary issue which this court will first determine.

Whether the Application is competently before the court before exhaustion of alternative remedy?

The respondent's counsel argued that the courts have emphasized the need to exhaust other remedies before seeking judicial review and an application for judicial review will be struck out for remedies denied if there is no evidence that alternative remedies have been exhausted first.

The alternative remedy principle has been espoused and codified by *Regulation 7A of the Judicature (Judicial Review)(Amendment) Rules 2019, SI 32 of 2019*. According to counsel **Section 7** of the *Foreign Exchange Act No. 5 of 2004* and regulation 43 of the *Foreign Exchange (Foreign Exchange (Forex Bureau and Money remittance) Regulations, 2006* confer upon the likes of the applicant, a right of appeal to the High Court against any decision taken by

the respondent against them pursuant to sections 5 & 6 and regulations 41 and 42 of the regulations.

It was respondent's counsel argument that the High court hearing the appeal if convinced, will set aside the decision and order the decision to be reconsidered. This in effect is Certiorari. The court should not undermine the statutory right of Appeal as Parliament has enacted instead of judicial review.

The present application seeks prerogative remedies that have the effect of reinstating the revoked/cancelled licence. It seeks an order of Mandamus reinstating the licence revoked three years ago. A licence to operate a forex bureau is valid for one year or is renewable every year upon satisfaction of the conditions.

The applicant's counsel submitted that the respondent did not provide any evidence to show it communicated to the applicant the reasons for the revocation of its licence, which would have enabled it to formulate grounds of appeal.

That the applicant was stripped of its right of appeal against the decision as there was indeed "no appealable decision. If the respondent had duly communicated the decision then they would have been able to appeal.

Determination

The gist of the issue rotates around the interpretation and application of section 7 of the **Foreign Exchange Act, 2004** which provides;

(1) Any person aggrieved by a decision of the Bank of Uganda under sections 5 and 6 may appeal to the High Court against the decision of the Bank of Uganda within thirty days after being notified of the decision, and the High Court may confirm or set aside.

(2) On appeal under subsection (1) the question for determination by the High Court shall be whether, for reasons stated by the appellant, the decision

appealed against was unlawful or not justified by the evidence on which it was based.

(3) Where the High Court sets aside a decision of the Bank of Uganda under subsection (1), the High Court shall direct the Bank of Uganda to reconsider its decision.

The same provision is reproduced under the **Foreign Exchange (Forex Bureaus and Money Remittance) Regulations, 2006**; Regulation 43

(1) A licensee who is aggrieved by the decision of the Bank of Uganda under the Act and regulations 11(1), 15(6) and (7) and 41 of these regulations appeal to the High Court and the High Court may confirm or set aside the decision.

(2)…….

(3)…….

(4)…….

It is important to appreciate the difference between the terms interpretation and application. Interpretation means action explaining the meaning of something, whereas the term application means the practical use or relevance. Thus application of a statutory provision would always depend on the facts of a given case. Rules of interpretation are to be invoked in case a doubt with regard to the express language used and not when the words are unequivocal.

The source of confusion in this provision is the use of the word Appeal to the High Court. The appeal process envisages a due process and a record and reasons out of which grounds of appeal are formulated and a memorandum of appeal may be filed. Does the provision provide an alternative remedy of Appeal different from Judicial review? The question of interpretation can arise only if two or more possible construction are sought to be placed on a provision.

In the case of ***Seaford Court Estates v Asher [1949] 2 All ER 155***, *Lord Denning* had succinctly summarized the principle on the role of the court in interpretation of a Statute.

" It was said whenever a Statute comes up for consideration, it must be remembered that it is not within human powers to foresee manifold sets of

facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. A judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across the ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases"

While interpreting a special Statute, which is a self-contained code, the court must consider the intention of the Legislature. The reason for this fidelity towards the legislative intent is that the statute has been enacted with a specific purpose, which must be measured from the wording of the statute strictly construed.

Court cannot legislate on the subject under the guise of interpretation against the will expressed in the enactment itself. It is not open to the court to usurp the functions of Parliament. Nor is it open to the court to place an unnatural interpretation on the language used by the legislature and impute an intention, which cannot be inferred from the language used by it by basing itself on ideas derived from other laws. Intention of the Legislature, legislative history, mischief sought to be remedied should be examined. The object and purpose sought to be achieved should be taken care of. Construction, which commends itself to justice and reason, should be adopted. It is the duty of the courts to give broad interpretation keeping in view the purpose of legislation. The interpretation should further the object.

When faced with a challenge to interpret laws, courts have to discharge a duty. The Judge cannot act like a phonographic recorder, but must act as

an interpreter of the social context articulated in the legal text. The judge must be, in the words of *Justice Krishner Iyer*, "animated by a goal oriented approach," because the judiciary is not a "mere umpire, as some assume, but an active catalyst in the constitutional scheme" See ***Bhanumati v State of U.P [2010] AIR SC 3796***

In the present case, the use of the word appeal in both the Statute and the Statutory Instrument is used to refer and mean Judicial review. The nature of the orders sought to be given is indeed judicial review remedies. There is no specific procedure which has been set out in both the main statute and statutory instrument how an appeal is preferred under such circumstances.

A closer look at the letter of revocation would not in any way be useful in preferring an appeal as would have been envisaged under section 7 of the Foreign Exchange Act and Regulation 43 of Foreign Exchange (Forex Bureaus and Money Remittance) Regulations, 2006 but rather judicial review would be the most appropriate in the circumstances of the legislations. The letter reads;

REVOCATION OF FOREX BUREAU AND MONEY REMITTANCE LICENCE

In accordance with section 6(1) and 6(3) of the Foreign Exchange Act, 2004, Bank of Uganda has with immediate effect revoked the Forex Bureau and Money Remittance Licences for Jaffery Forex Bureau Limited.

In order to minimize disruption, we request for your full cooperation so as to ensure orderly exit from the sector.
Yours faithfully

_____

Executive Director Supervision

The action taken under the said letter is an administrative decision out of which judicial review should arise but not an appeal.

The words in an Act of Parliament must be construed so as to give sensible meaning to them. Similarly, an interpretation which would defeat the object of the Legislature cannot be called sensible and must therefore be rejected. Each word in an enactment must be allowed to play its role, however significant or insignificant the same may be achieving legislative intent and promoting legislative object. It is the duty of the court to give effect to the legislative intent.

The spirit behind section 7 of the Foreign Exchange Act is about expeditious lodging of a challenge against the decision of Bank of Uganda. Therefore, it was not about being an alternative remedy to any person aggrieved by the decision of Bank of Uganda.

Indeed, counsel for the respondent also agrees that the orders that are provided under the law for setting aside the decision and order the decision to be reconsidered are in effect ***Certiorari***. In effect the provision is intended to challenge the decision by way of judicial review and not an appeal within the whole context of the statute and statutory Instrument. No part of a statute and no word of a Statute can be construed in isolation. The statutes have to be construed so that every word has a place and everything is in its place.

In court's view, this application fails for being brought outside the statutory limitation period of 30 days as provided by the Foreign Exchange Act. It is true that court had extended time within which an application can be brought under the judicial review rules 2009. The extension could not operate in light of the strict time limit set under the Act. A rule cannot amend a provision of an Act of Parliament.

It is the responsibility of the High Court as custodian of justice and the Constitution and rule of law to maintain the social balance by interfering where necessary for the sake of justice and refusing to interfere where it is against the social interest and public good. The intervention of court should always be guided by the existing law. Judicial review is subject to

principles of judicial restraint, and must not become unmanageable in other aspects.

The application is dismissed with no order at to costs. (Each party shall bear its costs).

I so Order

Dated, signed and delivered by email at Kampala this 8th day of May 2020

Ssekaana Musa
Judge