

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

MISCELLANEOUS CAUSE NO. 66 OF 2020

SADRUDIN VALIMOHAMED:.....APPLICANT
VERSUS

- 1. DEPARTED ASIANS' PROPERTY CUSTODIAN BOARD**
- 2. ATTORNEY GENERAL**
- 3. BAGUMA GEOFFREY:.....RESPONDENTS**

RULING

BEFORE: HON. JUSTICE SSEKAANA MUSA

This is an application for leave to file an application for Judicial Review against the respondents out of time brought under Section 33 of the Judicature Act and rule 5(1) of the Judicature (Judicial Review) Rules, 2009.

The Applicant is aggrieved by the decision of the 1st respondent made on 8th January 2019 temporarily allocating land comprised in LRV 558 Folio 2 Plot 5 Mackenzie Vale Kololo to Baguma Geoffrey the 3rd respondent which was made on the 8th January 2019 but the applicant was only made aware of it in December 2019.

The applicant's father, the late Tajdin Alidina Valimohamed was the registered proprietor of land comprised in LRV 558 Folio 2 Plot 5 Mackenzie Vale Kololo having acquired it and had it registered in his names on 18th February 1969.

The said property was taken over during the expulsion of Asians by the Idi Amin Military regime in 1972. In June 1992, Tajdin Alidina Valimohamed applied for repossession and a certificate of repossession was granted to him on 16th October 1995 and he was subsequently re-registered on the certificate of title on 3rd November 1995.

On 6th November 2015 the late Tajdin Aldina Valimohamed granted powers of Attorney to his sons; Nazim Valimohamed, Nooreddin Valimohamed and Saddrudin Valimohamed as his lawful attorneys and agents in managing his properties in Uganda which included the suit property. The late Tajdin Alidina Valimohamed has been in interrupted possession and use of property since 1995 and had appointed M/s Mubiru-Kalenge, Bwanika & Co Advocates to manage the property through a management agreement.

On the 5th September 2019 the lawyers and managing agents of the property, M/s Kalenge, Bwanika, Ssawa & Co Advocates were served with a letter from Departed Asians Property Custodian Board stating that the property had been subject of investigations by Parliamentary Committee of Commission, Statutory Authorities and State Enterprises (COSASE).

That on 10th December 2019 the applicant was informed by the lawyers that Tight Security Limited, the security company which had been engaged to guard the suit property, could not guard the suit property as they had been denied access to the suit property by Uganda Police Officers.

That towards the festive season of December 2019, the applicant was informed by his lawyers that the property was being offered around to people in Kampala for Sale and on 20th December the applicant received further confirmation of this through an email from Silu Virani of Property Services Ltd and the applicant was given a pack of documents which

included a Letter of Allocation to a one Baguma Geoffrey which was dated 8th January 2019.

The applicant was represented by *Mr. Christopher Bwanika, Mr. Robert Ssawa* and *Ms Geraldine Nakazibwe* while the 1st & 2nd respondents were represented by *Mr. Wanyama Kodoli* and 3rd respondent was represented by *Mr. Kabega Musa* and *Mr. Kirya Taita Julius*.

Submissions

The Applicant submitted that Honourable Court to finds that there is good reason for extending the period within which the application for Judicial Review shall be made on the basis: **The Applicant was not aware that a decision had been made by the 1st Respondent to make a Temporary Allocation of the Suit Property to the 3rd Respondent, until towards the end of December 2019.**

In its Application and in the Affidavit in support thereof, the Applicant shows that he has good reasons for extending the period within which the Application will be made, because neither the Applicant nor the lawyers were aware of the 1st Respondent's decision to make a Temporary Allocation of the Suit Property to the 3rd Respondent until after late December 2019, as neither the Applicant, nor the Lawyers or Tight Security Limited were ever served with a copy of the letter of Temporary Allocation.

The Applicant further depones that the 1st Respondent concealed the information about its Temporary Allocation of the Suit Property to the 3rd Respondent while at the same time distracting the Applicant and his lawyers by demanding from the Lawyers documents of ownership of the Suit Property and informing them that it was *about to finalize its findings with* regard to the Suit Property. The Applicant additionally depones that, no communication or report of those findings was ever made to the Applicant or the Lawyers, 5 but instead, on the 10th of December 2019, the

1st Respondent forcefully grabbed, confiscated and unlawfully took possession of the Suit Property.

It was the submission of the applicant that the applicant for Judicial Review was unaware of the making of the decision challenged or to be challenged in the Judicial Review is crucial in adjudging good reason for extending the period within which the application will be made. The starting proposition is that time does not start to run before the challenged decision is communicated to the Applicant/the affected party. This proposition is supported by three High Court of Uganda authorities. See *Anup Singh Choudry v Attorney General (HCT-00-CV-MC-0057-2012)*, *Dott Services Limited & Anor v Attorney General (Misc. Cause No. 0133 of 2016)*. Musota J., (as he then was), restated that Rule 5(1) of the Judicature Judicial Review Rules 2009 gives the court allowance to exercise discretion to extend time in favor of the applicant where court considers that there is good reason for extending the period within which the application shall be made. Further that Courts' discretion to extend time must be judicious and based on good reasons and this depends on the circumstances of a given case.

Counsel for the 1st and 2nd respondent on the other hand submitted the statutes of limitation are in their nature strict and inflexible enactments. Once the axe falls, it falls. Counsel further contended that the statutes of limitation are not concerned with the merits and the justification of filing the intended Judicial review out of time are misconceived.

Counsel for the 3rd respondent also opposed the application by contending that the application was made one year and two months from the time the decision contested was made. The Applicant's lawyers were in the know and in September 2019, the 1st respondent wrote to them about the Parliamentary investigations about the said property. Counsel further contended that there was inordinate delay by the applicant; he was indolent in failing to timely bring this application before the court. See

Nassolo Asiat v Ssembabule District Local Government and Inspectorate of Government High Court Miscellaneous Cause No. 08 of 2011.

Determination

Under rule 5(1) of the **Judicature Judicial Review Rules 2009**, the application for judicial review has to be made within **three (3) months** from the date when the grounds of the application first arose unless the court considers that there is good reason for extending the period within which the application will be made. Rule 5(1) so far as is relevant reads as follows: -

5. Time for applying for judicial review.

(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.

In the case of *Dott Services Limited & Anor v Attorney General (Misc. Cause No. 0133 of 2016)*. Musota J., (as he then was), held that Courts' discretion to extend time must be judicious and based on good reasons and this depends on the circumstances of a given case. This court agrees with the courts view on extension of time to file an application for judicial review.

The applicant contends that he was never informed about the decision to temporarily allocate the suit property to the 3rd respondent. It appears there is no specific answer to this contention. This would be good reason enough to allow the applicant to file an application for judicial review out of time.

The starting proposition is that time does not start to run before the challenged decision is communicated to the Applicant/the affected party. *Anup Singh Choudry v Attorney General (HCT-00-CV-MC-0057-2012)*.

It is an important principle in respect of good public administration that there should be certainty about the validity of administrative decisions and that a time limit contributes to such certainty. So, while court upheld that the three month time limit for applying for Judicial Review begins to run on the date on which the decision is made, nevertheless, Court held that *there is also an important principle, in respect of the rule of law, that the state must accord to individuals the right to know of a decision before their rights can be adversely affected.* As such if the impugned decision was not received until a later date that can be taken into account in considering whether to extend the time. The principle of certainty in good administration had to be balanced with the principle of the rule of law, and the appropriate balance is achieved, by giving consideration to the knowledge and awareness of the petitioner when dealing with extension of the time limit. **See Odubajo v Secretary of State for the Home Department, Court of Session (Outer House) [2020] CSOH 2 2020 S.L.T. 103**

A similar view is taken by *De Smith's Judicial Review 8th ed* (by The Rt Hon. Lord Woolf, et al, Sweet & Maxwell, 2019) Ltd who state at Para [3-026] that: -

“where an adverse decision has not been communicated to the affected party, constitutional principle may require that no action may be taken in reliance on that decision, for the reason that the claimant would not have had the opportunity to challenge the decision in the courts or elsewhere.” In *R (Lekstaka) v Immigration Appeal Tribunal [2005] EWHC 745 (Admin)*, accessed at: <http://www.bailii.org/ew/cases/EWHC/Admin/2005/745.html>, Collins J amplified this by stating that *‘where a decision determining the appellant’s status involved a fundamental right, it must be communicated to a person affected by it. In the absence of such notification, there was no operative determination.’*

Therefore, lack of knowledge of decision is a strong factor influencing the court’s decision whether an extension of time for bringing the application for judicial review should be granted. The fact that an applicant was

unaware that the suit property had been temporarily allocated to the 3rd respondent until after the time limit had elapsed is powerful evidence in relation to the question of whether an extension of the time limit should be granted.

The court may be more indulgent when a Fundamental right is involved. It is a rule devised on the principle of judicial circumspection and has to be applied wisely. The court should not fix any hard and fast rules for extension of time to file an application for judicial review upon expiry of 90 days but rather the measure of delay should depend upon the nature of action involved and on facts and circumstances of each case.

The applicant has availed good reason for the delay in filing an application for judicial review. This court directs the applicant to file his application for judicial review within 14 days from the date of this ruling.

This application is allowed with no order as to costs.

It is so ordered.

Dated, signed and delivered be email and whatsApp at Kampala this 17th day of July 2020

SSEKAANA MUSA
JUDGE