THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

IN THE MATTER OF ARTICLE 42 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

AND

IN THE MATTER OF SECTION 36 AND 38 OF THE JUDICAATURE ACT CAP 13 (AS AMENDED)

AND

IN THE MATTER JUDICATURE (JUDICIAL REVIEW) RULES, SI. NO. 11 OF 2009

MISC. CAUSE NO. 301 OF 2019

SIMON SEMBAGA:: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY :: RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed this application under Rule 3 and 4 of the Judicature (Judicial Review) Rules seeking for orders that;

a) A writ of certiorari doth issue against the respondent quashing its decision to terminate the applicant's employment contract.
b) A declaration that the applicant's dismissal was wrongful, unfair and lawful.

c) A declaration that the respondent' continued non-payment of the applicant's terminal benefits amounts to a continuous non-payment of the applicant's terminal benefits amounts to a continuous illegality, cruel, inhuman and degrading treatment contrary to Article 24 of the Constitution.
d) A writ of mandamus doth issue compelling the respondent to pay the applicant all accruing emoluments including but not limited to gratuity, compensation in lieu of notice of termination, severance allowance, repatriation allowance and others incidental thereto.
e) General and exemplary damages
f) Costs of the suit.

The applicant was employed by the respondent as an office attendant. Following the hearing of the applicant's case regarding his involvement in actions of fraud and dishonesty, the applicant was terminated from employment of the respondent on the 15th May 2018. The applicant appealed to the respondent's Staffs Appeals Committee and his dismissal was upheld and communicated in a letter dated 27th July 2018. The applicant filed for judicial review application challenging his dismissal and claimed that his dismissal was irrational and arbitrary in as far as it was based on offences committed by the tax payer and wrongly imputed on the applicant.

The respondent through an affidavit in reply sworn by Jimmy Okuja denied all allegations made by the applicant and further stated that the application and prayers are not amenable to judicial review and that the application is time

barred. He further stated that the decision to terminate the applicant was fair and lawful in the circumstances.

The respondent was represented by counsel Charlotte Katutu whereas the applicant did not appear in court nor was he represented.

The respondent raised before this court a preliminary objection at the hearing of the application.

The parties were ordered to file written submission to wit, the respondent accordingly filed the same but the applicant did not. Court however considered the evidence on file.

Preliminary objections

Whether the application is time barred.

The respondent submitted that Rule 5 (1) of the Judicature (Judicial Review) Rules, S.I No.11 of 2009 provides that the time limit of 3 months for filling an application for judicial review. This time is computed from the date when the grounds of the application first arose or when the impugned decision was delivered to the aggrieved party.

The respondent submitted that in the instant case, the foundation of the applicant's action is the termination from employment of the respondent which was communicated on the 15th may 2018 following the Management Disciplinary Committee. This decision was upheld by the Staff Appeals Tribunal where the applicant appealed the decision of the MDC on the 27th July 2018.

The respondent therefore submits that this application was filed on the 20th September 2019 more than 11 months late. It therefore submitted that this was

after the expiry of the prescribed time. (see; Uganda Revenue Authority versus Uganda Consolidated Properties Ltd Civil Appeal No. 31 of 2000).

On whether the application and prayers are amenable to judicial review, the respondent submitted that Rule 7A (1) (a) and (b) of the Judicature (Judicial Review) Rules provides that court in considering an application for judicial review shall satisfy itself that the application is amendable to judicial review and that the agreed party has exhausted the existing remedies available within the public body or under the law.

Counsel submitted that the application was not amenable as the dispute related to breach of private law being a contract of employment of the applicant as an office attendant of the respondent.

He further stated that it is now settled law that judicial review applies to a case of breach of public law and not breach of private law. (See: Arua Kubala Park Operators and Market Vendors' Cooperative Society Ltd v Arua Municipal Miscellaneous Cause No. 0003 of 2016.

Counsel submitted that this application is not amenable to judicial review since the respondent exercised her right under the contract to terminate the employment contract on ground that the applicant had committed misconduct when he engaged in acts of fraud and dishonesty in relation in log book for motor vehicle UAX 399X.

Counsel submitted that the applicant's claim of unfair and unlawful termination is exercising her private duties other than exercising her right under the application. He therefore prayed that this application be upheld and holds the preliminary objection.

In rejoinder to the applicant's submission, the respondent submitted that the applicant admitted and conceded to the fact that the judicial review application was filed out of the period of time under the law.

Counsel further relied on the matter of Picture Industries Ltd v Attorney General & Anor HCMA No. 258/ 2013 where court held that stated that statutes of limitations are in their nature strict and inflexible. He stated that the proper procedure should have been for the applicant to apply for the extension of time within which to file judicial review for a good reason for the extension. That this right was not exercised by the applicant

Counsel therefore submitted that there is no plausible reason for refereeing the matter to the constitutional court and the applicant cannot after failing to exercise the options available to him purport to apply for constitutional reference at the point of preliminary objections.

Counsel therefore prayed that this court dismisses the application with costs to the respondent.

Determination

In regard to the application be time barred, the applicant either inadvertently or ignorantly did not seek leave of court to extend the time within which such an application can be brought.

In the case of ***IP Mugumya vs Attorney General HCMC No. 116 of 2015***, the Applicant challenged an interdiction which occurred on 6th July 2011 by an application for judicial review filed on 11th August 2015. Hon Justice Steven Musota (as he then was) dismissing the application for being filed out of time

contrary to Rule 5(1) of the Judicature (Judicial Review) Rules 2009 had this to state;

"It is clear from the above that an application for judicial review has to be filed within three months from the date when the grounds of the application first arose unless an application is made for extension of time…the time limits stipulated in the Rules apply and are still good law. "

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation.

If the applicants wanted to invoke the jurisdiction of this court they should have come at the earliest reasonably possible opportunity or sought leave of the court to file their application out of time but not to file the same as of right after such a long time of almost a year. The court could have exercised its discretion to extend the time depending on the facts to determine whether to extend the time to file for judicial review depending on the reasons on how the delay arose.

Inordinate delay in making an application for judicial review will always be a good ground for refusing to exercise such discretionary jurisdiction of this court to entertain the application. The court refuses relief to an applicant on ground of laches because of several consideration e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

This court therefore finds that this application is time barred.

On whether the application is amenable, it is a well-established proposition that where a right or liability is created by statute which gives a special remedy for enforcing the same, the remedy provided by statute must be availed of in the first instance.

Rule 5 of the Judicature Judicial Review (Amendment) Rules 2019 which introduces Rule 7A (1) (b) is couched in the following terms;

"The court shall in handling applications for judicial review, satisfy itself of the following;

a) *That the Application is amenable for judicial review;*
b) *That the aggrieved person has exhausted the existing remedies available within the public body or under the law;"*

This court has pronounced itself in matters where applications where filed without exhausting available remedies. In ***Sewanyana Jimmy vs Kampala International University HCMC No. 207 of 2016***, the court while dismissing a similar application for failure to exhaust existing remedies within the body held that;

Where there exists an alternative remedy through statutory law then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions and there structures will be strengthened and respected. ***(See also the case of Okello vs Kyambogo University & Anor (Miscellaneous Cause No.23 of 2017)***.

The present application seems to be avoiding the existing remedy or procedures set out under the Employment laws. Every litigant who approaches the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective. It is a settled principle that where there is an effective alternative remedy under the statute, the High Court does not exercise its jurisdiction as a self-imposed restriction. But, then, there may be circumstances when the High court may interfere.

In judicial review proceedings, it is important to remember that the remedy is not intended to detract properly constituted authorities the discretionary powers vested in them. In simple terms, it is not permitted to substitute the courts as the bodies making decisions. It is intended however, that the relevant authorities use their powers in a proper manner. In the case of ***R v Secretary of State for the Home Department ex parte Doody [1994] 1 AC 531*** Lord Mustill noted;

"The court must constantly bear in mind that it is the decision maker not the court that Parliament has entrusted not only the making of the decision but also the choice of how the decision is made"

It would not be appropriate under judicial review to determine matters in respect of employment laws when there is a court that has been created to handle such matters and claims. The available alternative procedure to challenge the decision is the most appropriate since it is a labour complaint.

The present application does not fall within the exceptions and is therefore incompetently filed.

I therefore uphold the preliminary objections.

In the result, this application is allowed with no order as to costs.

I so order.

SSEKAANA MUSA
JUDGE
18th December 2020