THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.338 OF 2020

COMMUNITY JUSTICE AND ANTI CORRUPTION FORUM-------- APPLICANT

VERSUS

1. **LAW COUNCIL**
2. **SEBALU AND LULE ADVOCATES---------- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36 of the Judicature Act as amended AND the Judicature (Judicial Review) Rules, 2009 for the following Judicial review orders;

1.) An order of Mandamus directing the 1st respondent to revoke certificate of inspection and approval of chambers issued to the 2nd respondent under the name "Sebalu and Lule Advocates".

2.) An Order of Mandamus directing the 1st respondent to require the 2nd respondent to stop using the name "Sebalu and Lule Advocates by the 2nd respondent.

3.) An order of prohibition restraining the 1st respondent from approving the continued use of the name "Sebalu and Lule Advocates by the 2nd respondent.

4.) Costs of the application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of MACHO PATRICK-Executive Director of the applicant but generally and briefly state that;

1) The continued use by the 2nd respondent of the Surnames of partners who ceased to practice law with the firm violates and contravenes the Advocates (Professional Conduct) Regulations and the Advocates (Inspection and Approval of Chambers) Regulations.

2) That the 1st respondent has a statutory duty to regulate advocates and law firms in Uganda and to enforce compliance with law firms and advocates and professional ethics in force in Uganda.

3) That the 1st respondent has annually issued a certificate of inspection and approval of chambers to the 2nd respondent.

4) That there are two law firms approved by the 1st respondent ; Sebalu and Lule Advocates and Godfrey S. Lule Advocates bearing the name of Advocate Godfrey S. Lule.

5) That Godfrey S. Lule, one of the advocates whose surname forms part of 2nd respondent's name Sebalu and Lule Advocates left the law firm and partnership more than 10 years ago while the other partner Mr. Paulo Sebalu passed on more than 5 years ago.

6) That the applicant received instructions from EBRAHIM ALARAKHIA KASSAM to recover from 2nd respondent UGX

120,000,000/= being monies received and unlawfully retained by the 2nd respondent in SCCA No. 10 of 2006.

The respondents opposed this application and the 1st respondent filed an affidavit in reply through its Senior State Attorney-Bageya Motooka Aaron who stated briefly;

1. The 2nd respondent is legal aid service provider licenced by the 1st respondent and falls in realm of the 1st respondent's mandate of supervision and regulation.

2. That whoever is aggrieved with matters of approval of chambers or any other discrepancies concerning inspection can petition the Law Council for remedies.

3. That I know that a complaint of professional misconduct can be lodged before the Disciplinary Committee of the Law Council or by any person.

4. That no such complaint relating to the facts of this application has been lodged before the Disciplinary Committee of the Law Council or any person.

The 2nd respondent filed an affidavit in reply through James Mukasa Sebugenyi a partner in the 2nd respondent law firm stating as follows:

1. That the applicant has not exhausted all available remedies and the instant application does not lie and ought to be dismissed with costs.

2. That the applicant is wrongly seeking judicial review remedies in a matter that involves exercise of discretion by the 1st respondent.

3. That it is the Disciplinary Committee that handles complaints against advocates, including those arising out of breach of any statutory duty, and the 1st respondent too has mandate to lodge a complaint with the Committee against an advocate.

4. That the Disciplinary Committee doesnot exercise its discretion against any advocate without first according them a hearing or taking into account all the surrounding circumstances.

5. That the current partners of the 2nd respondent did lawfully acquire the goodwill of the law firm, and this includes the name of the law firm.

6. That the 2nd respondent has for many years operated under the firm names SEBALU &LULE ADVOCATES and has under that firm name gained local, regional and international recognition.

7. That the 2nd respondent's clients know her by her firm name SEBALU & LULE ADVOCATES over the years acquired clients on account of the goodwill she has gained under the said firm name.

8. That if the 2nd respondent is forced to change her name, it would have adverse effect on the goodwill of the firm, and it would tantamount to denying her, her constitutional right to practice her professional.

9. The applicant filed this application after he failed to recover 120,000,000/= from the 2nd respondent after she was instructed by a one Ebrahim Alarakhia.

10. That the applicant filed another suit in the commercial division of the High Court seeking to recover the said 120,000,000/= under a specially endorsed plaint contending that the said money was unlawfully retained and it belonged to the applicant's client.

11. That the applicant engaged the 2nd respondent in a spate of correspondences in which she demanded from the 2nd respondent the said sum of 120,000,000/= plus purported interest at commercial rate totalling 743,008,370 and the said demand amounted to extortion, blackmail and an attempt to embarrass the 2nd respondent.

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 proposed for court's resolution;

1. *Whether the application is competently before court?*

2. *Whether the 1st respondent has duty to compel the 2nd respondent to stop using the name "Sebalu and Lule Advocates".*

3. *What remedies available to the parties?*

The applicant was represented by *Mr. Arinatitwe Lawrence* and *Mr. Tibaijuka Atenyi Charles* represented the 2nd respondent and *Mr. Natuhwera Johnson* represented the 1st respondent.

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 my 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.

ISSUE ONE

Whether the application is competently before the court?

The respondents' counsel submitted that this application was filed out of time since the applicant stated that they received instructions in February 2020 to recover money from the 2nd respondent and the certificate of approval which they have sought to impeach was issued in February 2020.

The applicant submitted further that the applicant did not apply for extension of time and this renders the application incompetent since it was filed out of time.

Analysis

Under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

> *(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.*

The applicant in the Notice of motion stated that the 2nd respondent was issued with Certificate of Inspection and Approval of Chambers on 5th February 2020 and 19th January 2019 and these appear to be the dates when the decisions were taken which are a subject of challenge.

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

The reasons advanced by the applicant's counsel are that it is a continuous breach is flawed since there must be a cut-off period which must be considered as the timeline or breach of duty. The rule of laches is not a rigid rule which can be cast in a strait-jacket. The courts do not follow a rigid, but a flexible, measure of delay. It should be emphasized that the rule that the court may not enquire into belated and stale claims is not applied in a rigid manner.

The time limits set by legislations are matters of substance which ought to be considered in the circumstances of the case. In the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000;*** The court of Appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

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 applicant wanted to invoke the jurisdiction of this it 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 expiry of the time set by law of 3 months.

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 application is dismissed for being filed out of the statutory period of 3 months period. But for completeness, I proceed to determine the rest of the issues.

Application will serve no useful purpose

Secondly, the respondent also contended that the application will not serve any purpose since the certificate of Approval of Chambers remains valid for one year and at the end of the year it has to be renewed. The application seeks to revoke a certificate of approval which expired on 31st December 2020.

Counsel argued courts should refrain from granting a remedy that will not serve any useful purpose, regardless of the merits of the case See ***Mugenyi & Co. Advocates v National Insurance Corporation SCCA No. 13 of 1984.***

Judicial review being a discretionary remedy will only issue if it will serve some purpose. In this case, the said certificate of approval has expired and it cannot be revoked.

Analysis

Mootness is another doctrine which the courts may consider in determining competency of the application for judicial review. It relates whether a decision 'presents an existing controversy or live controversy', which is a necessary ingredient if the courts wish to avoid 'giving advisory opinions on abstract propositions of law.

If there is no live controversy, the matter is moot in the sense that the decision of the court will make no difference. However, mootness is not an absolute bar to justiciability, and the court has discretion to hear the matter if it will be in the interests of justice to do so. In this regard, one relevant factor is whether the court's order will have some practical effect on the parties or on others. Another is whether it would be in public interest to hear the case, either because it would 'benefit the larger public or achieve legal certainty. See ***Van Wyk v Unitas Hospital 2008 (2) SA 472 (CC)***

In this case, the facts as presented are not sufficient for this court to decipher whether the case as before it is moot or has been overtaken by delay to institute the same.

Whether the 1st respondent has duty to compel the 2nd respondent to stop using the name "Sebalu and Lule Advocates".

The respondent's counsel has submitted that the applicant is trying to use the court's supervisory role in bad faith and with a hidden motive to try and recover costs allegedly owed by the 2nd respondent. Indeed, the applicant filed a case in commercial court seeking to recover the alleged costs. This application is intended to arm-twist the 2nd respondent into paying the alleged costs and therefore has no genuine grievance tenable in judicial review.

The applicant has stated in her affidavit of Macho averred that the 1st respondent has neglected her statutory duty to regulate advocates and law firms in Uganda, which duty includes the duty of enforcing compliance with the law and professional ethics; that she has annually issued to the 2nd respondent a certificate of Approval of chambers under the said firm name in violation of the law, and that this is ultra vires and unlawful.

The respondent has submitted that the regulations have not been violated or contravened by either respondent; there is nothing ultra vires or unlawful about the respondent's acts. Nor has there been any neglect of duty by the 1st respondent. On the contrary, the 1st respondent has diligently carried out her statutory duties and none of the respondents can be faulted for the certificates of Approval of chambers that have from time to time been issued by the 1st respondent to the 2nd respondent.

Regulation 24(3)(4) of the Advocates (Professional Conduct) Regulations and regulation 7(e) of the Advocates(Inspection and Approval of Chambers) Regulations, 2005 provide as follows;

Reg 24(3)-No advocate shall carry on any practice under a firm name consisting solely or partly of the name of a partner who ceased to practice as an advocate.

Reg 24(4)- An advocate or firm of advocates affected by sub-regulation 3 of this regulation shall be allowed five years from the date of change in the composition of the firm, in which to effect the required change in the firm name.

Reg 7(e) of the Advocates (Inspection and Approval of Chambers) regulations, 2005 provides;

The certificate of Approval of Chambers may be revoked on any of the following grounds-(e) carrying on practice under a name consisting solely or partly of the name of a partner who has ceased to practice as an advocate subject to the Act and other regulations made under it.

The respondent's counsel submitted that the above regulations are directory rather than mandatory. Acts of the offending advocate or law firm are not invalidated by that sub-regulation. That is why the law gives an allowance of up to five years within which to effect a change in the firm name and it is silent on what happens if after five years the name of the firm is not changed.

It was further argued that regulation 7(e) which was promulgated much later in a separate Statutory Instrument merely gives Law Council discretionary power to revoke the firm's certificate of Approval of chambers. The Law council has no obligation to revoke the certificate or to force a law firm to change its name. It is a matter entirely within the Law Council discretion.

Therefore, the annual renewal of the 2nd respondent's chambers under the firm name "Sebalu and Lule Advocates", Law council has lawfully exercised her discretion under the Advocates (Inspection and Approval of Chambers) Regulations, 2005 and the approval has not violated or contravened any law at all and there has not been anything unlawful or ultra vires as contended by the Applicant.

The 2nd respondent further submitted that the Partnership Act of 2010 governs the partnership business and provides that; A partnership business may be continued in the firm name after a partner's death, unless the other partners opt to dissolve the partnership. *See Section 16(3) and 35(1) of the Partnership Act.*

The other partners had every right to continue operating under the firm name "Sebalu and Lule Advocates" after the retirement of Mr. G.S Lule and the subsequent demise of the late Sebalu, the rest of the partners had justification for doing so under the Partnership Act.

Analysis

The applicant's contention in this case is simply that the 1st applicant has wrongly approved the 2nd respondent to continue using the name *"Sebalu and Lule Advocates"* after the death of one of the partners and by extension the retirement of one of the partners-Mr. G.S Lule.

The complaint does not arise from any of the persons who would directly be aggrieved by the persons continuing to use the names i.e estate of the late Sebalu or one of the retired partners. The complainant/applicant raises the complaint premised on the dispute he has with the 2nd respondent as a law firm when it refused to remit to her money allegedly owed to her client.

The applicant is an Independent Non-governmental Organisation which among others runs Legal Aid Chambers, and an anti-corruption program. They derive their interest in challenging the 2nd respondent from instructions they received from their client Mr. EBRAHIM ALARAKHIA who sought to recover costs of 120,000,000/= arising out of several suits *(HCCS No. 49 of 1995, CACA NO. 48 of 2002 and SCCA No. 10 of 2006).*

The 2nd respondent after successfully winning the above cases for the applicant's client, they filed bills of costs and sum of 120,000,000/= was agreed upon and paid to the 2nd respondent as costs for the entire litigation process. It is this amount of money the applicant as an NGO operating Legal Aid Chamber is trying to recover as money received and retained unlawfully and has filed a case in commercial court 871 of 2020.*(the commercial court has since dismissed the suit on 9th March 2021)*

The first question this court has to consider is whether the applicant has sufficient interest in instituting this application for judicial review or is pursuing vengeance motive. The 2nd respondent in her affidavit in reply by Sebugenyi has stated that; The applicant has engaged the 2nd respondent in

spate of correspondences in which she demanded from them the said sum of 120,000,000/= plus purported interest at commercial rate totalling to 743, 008,370/= and the said demand amounted to extortion, blackmail and an attempt to embarrass the 2nd respondent.

The above cannot be far from the truth, the applicant has brought this application for selfish reasons with the sole intention of trying to arm-twist the 2nd respondent in paying money received as costs in civil matters and legal work handled by the law firm-Sebalu and Lule Advocates for Ebrahem Alarakhia. This is contrary to the Advocates Act which bars Advocates sharing professional legal fees with non-advocates or allowing a successful party from making a profit out of the employment of an Advocate. See ***Commissioner Lands v Oginga Odinga [1972] EA 125 at 126.***

The applicant as a law firm or Legal Aid Chamber ought to have separated its roles in this matter or application for judicial review and at most it would still have filed an application of this nature in the names of their client to challenge the 2nd respondent directly as their former client rather than descending into the legal arena as parties to challenge another law firm after refusing to heed to their demands which appear extortionist in character. It is clear this application is an abuse of court process and specifically judicial review which restricts the interest of an applicant in matters of this nature.

Rule 3A of the *Judicature (Judicial Review) (Amendment) Rules, 2019* provides that;

Any person who has direct or sufficient interest in a matter may apply for judicial review

The applicant as a Non-governmental Organisation has no direct or sufficient interest in challenging the 2nd respondent in using the names of their former partners. It is clear the application was filed to achieve another aim and not to vindicate the rule of law as they seem to portray.

The interest required by law is not a subjective one; the court is not concerned with the intensity of the applicant's feelings of indignation at the alleged illegal action, but with objectively defined interest. Strong feelings will not suffice on their own although any interest may be accompanied by sentimental considerations.

In particular, a citizen's concern with legality of governmental action is not regarded as an interest that is worth protecting in itself. The complainant must be able to point to something beyond mere concern with legality: either a right or to a factual interest. Judicial review applications should be more restrictive to persons with direct and sufficient interest and should not be turned into class actions or *actio popularis* which allow any person to bring an action to defend someone else's interest under Article 50 of the Constitution.

The 'unqualified' litigants or persons without direct and sufficient interest are more likely to bring weak or half-baked actions and that these are likely to create bad precedents.

On this point alone, this court would decline to exercise its judicial review jurisdiction since the applicant is unable to show the requisite direct or sufficient interest.

In further redress of this issue, the court will try to address the complaint of the applicant for completeness of the matter and in public interest. The law governing the use of names as set out in the Advocates Act and the regulations is clear and requires harmonious interpretation in order to make sense of the same.

Regulation 24(3)(4) of the Advocates (Professional Conduct) Regulations and regulation 7(e) of the Advocates(Inspection and Approval of Chambers) Regulations, 2005 provide as follows;

Reg 24(3)-No advocate shall carry on any practice under a firm name consisting solely or partly of the name of a partner who ceased to practice as an advocate.

Reg 24(4)- An advocate or firm of advocates affected by sub-regulation 3 of this regulation shall be allowed five years from the date of change in the composition of the firm, in which to effect the required change in the firm name.

Reg 7(e) of the Advocates (Inspection and Approval of Chambers) regulations, 2005 provides;

The certificate of Approval of Chambers may be revoked on any of the following grounds-(e) carrying on practice under a name consisting solely or partly of the name of a partner who has ceased to practice as an advocate subject to the Act and other regulations made under it.

The applicant is challenging the decision of the 1st applicant of granting the 2nd respondent an Approval of Chambers to practice as 'Sebalu and Lule Advocates' in the year 2020. An advocate may practice under chambers which have been approved by the law council and the law governing approval of chambers is the Advocates (Inspection and Approval of Chambers) regulation and they provide for the discretionary exercise of power to revoke or not to approve chambers of a partner who has ceased to practice as an advocate.

Discretionary powers are easily recognised by the permissive statutory language that confers them: they are signalled by the use of the words in empowering provisions such as 'May'. Such powers are characterised by the element of choice that they confer on their holders. A 'public officer' has discretion whenever the effective limits of his power leave him/her free to make a choice among possible courses of action and inaction.

The applicant in this matter seems to argue that the 1st respondent has a duty which it has failed to exercise under the law. This court does not

agree with this submission because the nature of the provisions when properly construed appears to confer powers on to the 1st applicant rather than a duty.

The difference between powers and duties can be expressed very simply by saying that while powers enable things to be done, duties require them to be done. If an official has a duty, she is obliged to perform it. Where she has a power, a measure of discretion or choice is implied. Naturally, whether a legislative provision confers a power or imposes a duty depends to a large extent on the language used. However, powers are often expressly coupled with duties, so that legislation will typically empower a public official to do something while simultaneously imposing on it a duty to exercise the power in a certain way.

The 1st respondent has to exercise the discretionary power in approving chambers where a partner has ceased to practice as an Advocate. The exercise of power should also be well guided by other laws governing the nature of the business or subject and not in isolation. For example, the Partnership Act provides that;

Section 16(3); *Where, after a partner's death, the partnership business is continued in the firm name, the continued use of that name or of the deceased partner's name as part of the firm's name shall not of itself make his or her executors or administrators of the Estate or effects liable for any partnership debts contracted after his or her death*.

Section 35(1); *Subject to any agreement between or among the partners, a partnership may at the option of the other partners, be dissolved by the death or bankruptcy of any partner*.

The above provisions envisage continuity of partnership upon death at the option of the partners whether in the firm name or not. The 1st respondent

as a regulator must exercise the discretionary power by examining the partnership deed of the firm. It should never be construed that upon death the partnership ceases or other partners should stop to carry on business in the same name.

The language used is always crucial to discovering the intention of the legislature. The Act as a whole and purposes for which it was enacted may indicate whether powers are sufficiently expressed in addressing any mischief the law intended to address. There is a very strong argument in favour of implying a power if the main purpose of the statute cannot be achieved without it, or if it is necessary to the proper functioning of an administrative body.

The regulations the applicant seems to premise her argument that there is a duty imposed not to approve a law firm of a deceased person is very permissive and does not create any sanction if at all it had been intended to be mandatory. The different legislations must be read together to make good sense of the intention or mischief intended to be addressed by all the legislations. Interpretation must depend on the text and context. A statute is best interpreted when the interpreter knows why the legislation was enacted.

In the present case, the 2nd respondent has been operating as a law firm for some good time and the different partners have been part of the success story of the firm "*Sebalu and Lule Advocates*". They have built the brand together with the deceased while in employment and executing their professional work as advocates. The 2nd respondent in their affidavit stated that;

1. *That the 2nd respondent has for many years operated under the firm names SEBALU &LULE ADVOCATES and has under that firm name gained local, regional and international recognition.*

2. *That the 2nd respondent's clients know her by her firm name SEBALU & LULE ADVOCATES over the years acquired clients on account of the goodwill she has gained under the said firm name.*

3. *That if the 2nd respondent is forced to change her name, it would have adverse effect on the goodwill of the firm, and it would tantamount to denying her, her constitutional right to practice her professional.*

The remaining partners have every right to continue operating under the firm name because they have been part and parcel of the success story in making the brand of '***Sebalu and Lule Advocates***'. It can never be construed that the only persons appearing in the firm name should be allowed to carry on business in the firm name or that upon death they should cease to enjoy the use of the brand name they have been part of for some time.

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 be rejected. It is the duty of court to give effect to the legislative intent. See ***Avishek Goenka v Union of India [2012] 5 SCC 321: [2012] AIR SC 2226***

The interpretation of the Partnership Act clearly shows that Parliament intended to allow Partnership business to continue even after death of any partner under the same firm name. Any interpretation which would have the effect of stopping other partners from operating the business under the same firm name would be contrary to the spirit of the Act and other regulations made under other legislations should construed harmoniously.

The Advocates regulations should be understood and interpreted harmoniously with a later Statute-Partnership Act which was enacted in

2010 and it must be appreciated that at the time of enactment the legislature was alive to the existing laws that affect partnership business like law firms.

The 1st respondent breached no law and duty when they allowed the 2nd respondent to use the name ***"Sebalu and Lule Advocates"*** and approved the chambers to continue operating as such.

In the final result, this application fails for the different reasons stated herein and is accordingly dismissed with costs to the respondents.

I so order

SSEKAANA MUSA
JUDGE
16th/04/2021