THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO.301 OF 2016

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.

Four issues were proposed for court's resolution;

1. Whether the respondent acted legally, rationally and properly in issuing General Demand Notes/Certificates of assessment against the applicant excessive licence fees in the amount of UGX. 2,400,000/= per annum contrary to the Trade (Licensing) Amendment of Schedule) Instrument, SI No.2 of 2011

2. Whether the applicant is entitled to the reliefs sought.

The applicant was represented by *Ms Ninsiima Agatha* whereas the respondent was represented by *Mr Kato Ali Hassan.*

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 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 trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

Preliminary Objection

The respondent's counsel has raised an objection without seeking leave of court to apply for judicial review.

This court notes that this objection made in total ignorance of the existing law which amended the earlier *Civil Procedure (Amendment) (Judicial review) Rules, 2003.*

The leave stage was removed from the current legal regime governing judicial review applications in Uganda by the *Judicature (Judicial Review) Rules of 2009*. The cited by the respondent's counsel where revoked by the *Judicature (Judicial Review)(Revocation) Rules 2009*.

Therefore, this preliminary objection was raised out of sheer incompetency or inadvertence or ignorance of the respondent's counsel of the current law applicable and is dismissed with costs.

ISSUE ONE

Whether the respondent acted legally, rationally and properly in issuing General Demand Notes/Certificates of assessment against the applicant

excessive licence fees in the amount of UGX. 2,400,000/= per annum contrary to the Trade (Licensing) Amendment of Schedule) Instrument, SI No.2 of 2011

The applicant's counsel submitted that;Section 1 (h) of the Trade (Licensing) Act, Cap 101 provides that "trade" or "trading" means the selling of goods for which a licence under this Act is required, in any trading premises whether by rental or retail.

Black's Law Dictionary seventh edition defines premises as a house or building, along with its grounds.

Further under section 8 of the same Act, no person is to carry on trade in any goods or carry on any business specified in the schedule to the Act unless they are in possession of a trading licence.

Item 54 of the Trade (Licensing) Amendment of Schedule) (No.2) of 2011 now Trade (Licensing) (Amendment of Schedule) Instrument, SI No.2 of 2017 provides that, "Apartments" in Grade 1 Municipality shall pay UGX. 150,000 for licence fees.
The Applicant carries on the business of Apartments in Entebbe Municipal Council and has 16 units on one building.

In the case of ***Nazarali Punjwani Vs Kampala District Land Board & Anor; HCCS No. 07 of 2005*** Justice Kasule, observed at page 18 that judicial review controls administrative action under three heads; illegality, irrationality and procedural impropriety.

According to the applicant's counsel contends that the present case seeks judicial review to control an Illegality occasioned by the administrative action.
The impugned Notices/assessments issued by the respondent are contrary to the Trade (Licensing) (Amendment of Schedule) (No.2) of 2011 that

stipulates that the amounts to be charged for the business of Apartments at a municipal level nationally is at most UGX. 150,000/=.

The word, "Apartments" is not defined under the Trade Licensing Act. In the Merriam Webster Dictionary, "an apartment" is defined as a room or set of rooms fitted especially with housekeeping facilities and leased as a dwelling.

According to the Trade Licensing Act, a licence is given to a business and the Trade (Licensing) (Amendment of Schedule) (No.2) of 2011 provides the fee that be levied to the business of Apartments. The amount charged for operating such business is UGX. 150,000/=.

The respondent does acknowledge that the business of Apartments is charged UGX. 150,000/= per annum however in paragraph 5 of the same affidavit in reply it is stated that the licence fee levied for each financial year sums up to UGX. 2,400,000 per annum.

The old literal rule of Statutory Interpretation is to the effect that words of the statute are to be given their natural or ordinary meaning. My Lord, Item 54 is plain, clear and unambiguous in terms of referring to Apartments (in plural) and the Respondent cannot therefore modify the Instrument as they deem fit to interprete the word, "Apartments" as used in the Instrument to mean each unit of apartment.
In paragraph 12 of the affidavit in reply sworn by Charles Magumba, he states that;
"***That I have been advised by my lawyers which advise I verily trust to be true that the assessment as per the Trading (Licensing) (Amendment of Schedule) (No.2) SI No. 54 of 2011 is done according to the number of units (Apartments) per each apartment block but not as per apartment block only***"
The interpretation relied upon by the respondent to levy UGX. 2,400,000 per annum is illegal and ultra vires the provisions of the Trade (Licensing) (Amendment of Schedule) (No.2) Instrument, 2011

The applicant's counsel further submitted that the promulgators of the Trade (Licensing) (Amendment of Schedule) (No.2) Instrument, 2011 were clear in distinguishing the various businesses and where there is need to distinguish according to units or rooms, the Instrument is also clear on that. For example in items preceding item 54 that is Item 51 –Item 53 clearly distinguishes the categories of hostels. Item 51 provides for hostels (100 rooms more), Item 52 provides for hostels(less than 50 rooms but less than 100 rooms) and Item 53 provides for hostels (less than 50 rooms). Each of these categories of hostels has a different licensing fee.

Therefore , if the Instrument wanted to distinguish Apartments depending on the number of units, the Instrument would have would have clearly done so like it did for the hostels and other items in the same schedule. In the absence of the different categories according to units, it is illegal for the respondent to now decide to categorise the apartments into units in order to charge more fees.

The Applicant's has 16 units on his premises and the respondent purports to charge UGX. 150,000 on each unit hence a whole UGX. 2,400,000 per year. The alleged assessment of UGX. 2,400,000 per year is illegal and contrary to the provisions of item 54 of the Trade (Licensing) (Amendment of Schedule) (No.2) of 2011.
by the Respondent are ultra vires the governing law.

The applicant prayed that Court finds the impugned assessments excessive and illegal and liable to be quashed by this Honorable Court.

The respondent's counsel submitted that the so called 16 units are apartments and each of the 16 i.e levied as such according to the law. The applicant is mistaken and their interpretation is misconceived as it refers to "apartment block" instead of "apartment/apartments" which was clearly the intention of the promulgators of the said law.

According the respondent's counsel, the true interpretation is that an apartment is supposed to pay licence fee of 150,000/= per annum and the applicant has 16 apartments, only that they are under one block/roof. This does not make it one apartment.

Therefore the respondent contends that they followed the law and procedure for assessment of the licence fees and that there is evidence of illegality, irrationality or procedural impropriety.

Determination

It is important to understand, the purpose of licence fees and why it is levied. It simply applies to permission to carry on business in a given area.

The levying of licence fees is based on the size of the business especially in category of Hotels, Lodges and Guest Houses. The use of apartments was purposely to refer the whole group and not to call them separate units in order to qualify to be apartments.

The categorization of apartments should plainly be appreciated as against the rest of the businesses in the same category for purposes appreciating the intention and spirit of the law.

A hotel like Imperial Resort Hotel which falls in the same category with so many rooms pays 300,000/= per annum, why would a person in the business of apartments pay 2,400,000/=. That would be stretching the interpretation of the regulations in an absurd manner and illegally in order to try and raise revenue in an irrational manner.

Illegality as a ground of review looks at the law and the four corners of the legislation i.e its powers and jurisdiction. When power is not vested in the decision maker then any acts made by such a decision maker are ultra vires.

In the case of ***R v lord President of the Privy Council, ex parte Page [1993] AC 682*** *Lord Browne-Wilkinson* noted;

" The fundamental principle(of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making bodies are exercised lawfully. In all cases…this intervention….is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful."

The interpretation which is being advanced by the respondent is outside the legislation and it totally defeats the intention or purpose of the statutory instrument. This makes actions of assessing the applicant as if each unit is business an illegality and or irrational/unreasonable.

Irrationality/unreasonableness has been defined to mean when there has been such gross unreasonableness in the decision taken or act done, that no reasonable authority addressing itself to the facts and law before it would have made such a decision. Such a decision is said to be in defiance of logic and acceptable moral standards. ***See: Council of Civil Unions vs Minister of the Civil Service [1985] AC 374.***

The question that this court must answer is whether the impugned decision of the respondent was tainted with gross unreasonableness given the circumstances of this case as presented and discussed above.

The interpretation relied upon by the respondent to levy UGX. 2,400,000 per annum is illegal and ultra vires the provisions of the Trade (Licensing) (Amendment of Schedule) (No.2) Instrument, 2011.

This issue is resolved in the negative.

ISSUE THREE

What remedies are available to the parties?.

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 decision of the Municipal council still stands and they continue to demand for the payment of assessed licence fees.

1.) This court issues an order of Certiorari quashing the separate General Demand Notes/Certificates of assessment issued by the respondent; against the applicants whereby the respondent purports to levy excessive licence fees in the amount of UGX. 2,400,000/= per annum contrary to the Trade (Licensing) (Amendment of Schedule)(No.2) of 2011.

2.) The applicant is supposed to pay only 150,000/= per annum in accordance with the Trade (Licensing) (Amendment of Schedule)(No.2) of 2011.

3.) An order of prohibition issues against the respondent prohibiting her from issuing any further General Demand Notes/Certificates of assessment against the applicants which are inconsistent with the Trade (Licensing) (Amendment of Schedule)(No.2) of 2011.

4.) The application is allowed with costs.

I so order

SSEKAANA MUSA
JUDGE
09th/02/2019