THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO 33 OF 2021

1. **MUWANGUZI MOSES**
2. **BARIGYE INNOCENT ::APPLICANTS**

VERSUS

1. **UGANDA WOODBALL FEDERATION**
2. **UGANDA WOODBALL FEDERATION ELECTORAL COMMITTEE:::RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this Application under S.36 of the Judicature (Judicial Review) Rules, 2009, S.I 11 of 2009, rules 2 and 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019 for orders that;

1. The 2nd Respondent reviews its decision of scrapping off the applicants' names from the list of applicants for the different executive positions in the 1st respondent executive committee without a fair hearing.

2. The 2nd respondent be prohibited from conducting the election scheduled 30.01.2021 in which the applicants are supposed to be standing.

3. The decision of the 2nd respondent to remove the names of the applicant's on the contenders' list for the various positions on the list of nominated candidates.

4. The 2nd respondent restores the names of the applicants on the list of nominated candidates.

5. The costs of this application be provided for.

The grounds of this application are specifically set out in the affidavits of Muwanguzi Moses & Barigye Innocent dated 21st January 2021 which briefly states;

1. That the 1st Respondent is a sports federation in Ugandan mandated with the promotion and development of the woodball sport, and is affiliated to the National Council of sports.

2. That the 1st respondent intends to organize an election on 30.01.2021 for the different executive positions.

3. That the 1st respondent through its general secretary known to the applicants as Ssemanda Joseph Collins appointed a committee known as the electoral committee (the 2nd respondent) to conduct the said electoral exercise.

4. That the applicants applied for the positions of Public Relations Officer and General Secretary respectively in the above said elections.

5. That the 2nd respondent did not nominate over 10 aspiring candidates including both applicants for the different executive positions of the 1st respondent without offering all the victims a hearing.

6. That the 2nd respondent nominated only the incumbents of the 1st respondent.

7. That there is a matter of urgency since the said election is to be conducted in just two tomorrow (30.01.2021).

8. That the applicants have henceforth suffered psychological torture, mental anguish, damaged reputation and self-rejection due to the erroneous and incompetent decisions of the respondents, for which the applicants seek both general and exemplary damages.

In opposition to this Application the Respondents through Ssemanda Joseph Collins the Secretary General of the 1st Respondent and Wagoogo George The Chairperson Elections Committee of Uganda Woodball Federation filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought stating that the proper name of the 1st respondent under which it can sue or be sued in the Registered Trustees of Uganda Woodball Federation and not Uganda Woodball Federation and that the said Registered Trustees of Uganda Woodball Federation was registered as a trustee on 7th May, 2016 by the Minister of Lands and Urban Development, therefore the application was brought against the wrong parties for which it should be dismissed with costs. That the Application is premature since the Applicants did not exploit the available appeal procedures within the federation Constitution wherein any person with a grievance or dispute against the federation is required to appeal by submitting the dispute to the Arbitration panel appointed by the congress which was not done by the Applicants.

The applicants represented themselves while the Respondents were represented by *Mujurizi Jamil*

The parties filed written submissions that were considered by this court.

Issues for determination.

1. ***Whether the Respondents are the proper parties to be sued?***
2. ***Whether the Application was premature?***
3. ***Whether the Applicants were given a fair hearing?***
4. ***What are the remedies available?***

<u>Determination</u>

Whether the Respondents are the proper parties to be sued?

Counsel for the Respondent submitted that a suit in a name of a non-existing plaintiff or defendant is bad in law and the same ought to be struck out by court. In the case of *Buganda Land Board vs Wampamba Misc. Cause No. 622 of 2013* citing with approval the case of *Fort Hall Barkey Supply Co. vs Fredick Muigai*

Wangone [1959] 1 EA 474 It was stated that a suit against a non-existing party is a nullity and cannot be amended to replace a party a party that has legal existence since there is no plaint at all. *See Trustees of Rubaga Miracle Centre vs Mulangira Simbwa HCMA No. 516 of 2005, Auto Garage vs Motokov [1971] EA 514.* That the name of the Respondent under which it can sue or be sued is Registered Trustees of Uganda Wood Ball Federation and that the 2nd Respondent was simply an elections' committee of the 1st Respondent that has no legal status to be sued in its own name.

The Applicants submitted that if the applicants sued wrong parties, it was done in good faith since the 1st Respondent is a public office and an affiliate of a government corporation that is the National Council of Sports and suing Uganda Woodball Federation instead of the Registered Trustees of Uganda Woodball Federation is a misnomer which this honorable court can discretionary remedy by substituting the name of the 1st Respondent for the registered Trustees of Uganda Woodball Federation as a way of making the ends of justice meet.

The Applicants further submitted that Article 126 (2) (e) of the 1995 Constitution stipulated that; substantive justice she be administered without undue regard to technicalities.

Analysis

The Applicants sued the wrong parties and in their Affidavit in rejoinder prayed to court to discretionary remedy by substituting the name of the 1st Respondent for the Registered Trustees of Uganda Woodball Federation as a way of making the ends of justice meet. However, I agree with the submissions of the Respondent counsel that a suit in a name of a non-existing plaintiff or defendant is bad in law and the same ought to be struck out by court.

In the case of the *Registered Trustees, Nile Education Society Jinja v The Medical Superintendent Jinja Hospital (Miscellaneous Application-2015/27) [2015]* the Respondents concentrated on the argument that the Plaint is defective and hence the intended adding of parties/amendment is untenable. Their arguments are based on the status of the Respondent who they claim is non-existent. Reference

was made to the cases of ***John Ntambi vs. A.G. & another Civil Suit No. 275/87, Abdurahman Elamin vs. Dhabi Group & 2 others; Civil suit No. 432/2012 and Joseph Mpamya vs. Attorney General; HCCS No. 2/95*.** In all the three authorities the overriding theme is that a Plaint in the names of the wrong Defendant cannot be amended but can only be rejected.

The law is now settled. A suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment. *THE FORT HALL BAKERY SUPPLY CO. vs. FREDERICK MUIGAI WANGOE [1959] EA 474, BENJAMIN SAJJABI T/A NAMATABA vs. TIMBER MANUFACTURERS LIMITED [1978] HCB 202.*

Where the amendment by way of substitution of a party purports to replace a party that has no legal existence, the Plaint must be rejected as it is no Plaint at all: *See High Court Miscellaneous Application Number 503 of 2000. Aristoc Booklex Limited vs. Vienna Academy Limited*, unreported. In the instant application, the Defendants described as Uganda Woodball Federation & Uganda Woodball Federation Electoral Committee, does not exist in law. The prayer to substitute is really an attempt to substitute non-existing respondents. The law does not allow that as in reality there is no valid Application.

Since the decision of the Court is that there is no respondent to the application this application would be dismissed. However for completeness, the court would determine whether this was a proper case for judicial review.

Whether the Application was premature? Or whether this is a proper case for judicial review?

The applicants submitted briefly that prerogative remedies can only be claimed by way of judicial review and that they are only available in public law matters like the case at hand.

The respondent counsel submitted that this application is premature since the applicants did not exploit the available appeal procedures within the federation constitution (article 6) and it is an abuse of court process.

The applicants have not exhausted alternative remedies available for addressing issues for appropriate remedy and nether have they shown that any such remedy as exists is inconvenient, less beneficial or less effective.

Analysis

Rule 7A(1) of the **Judicature (Judicial Review) Rules provides that** the court shall, in considering an application 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 with in the public body or under the law, and

The above rule is premised on the principle that, judicial review is a process by which the courts exercise a supervisory jurisdiction over the activities of public authorities in the field of public law.

The present application is premised on sporting activities in the game of Woodball which is wholly governed by a constitution. The regulation and governance of such activities is governed under private arrangements similar to a contract. Judicial review remedies or prerogative remedies are not available to control the activities of bodies which derive their jurisdiction over individuals solely from contract.

Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract. Decisions of private or domestic tribunals reached in the exercise of contractual jurisdiction remain outside the ambit of judicial review. Applications for judicial review can only be made in respect of matters of public law. Similarly, tribunals who derive their jurisdiction over individuals solely from contract are still regarded as private bodies regulated by private not public law. See ***Law v National Greyhound Racing Club [1983]1 WLR 1302: R v Football Association of Wales, ex p Flint Town Football Club [1991] C.O.D 44: R v Football Association Ltd ex.p Football League Ltd [1993] 2 All E.R 833***

The Woodball Federation acquired its jurisdiction to make the decision in the present case by virtue of the Constitution or agreement to be bound by the rules established thereunder and such decisions taken under the Constitution cannot be challenged by way of judicial review. In the case of ***R v Jockey Club ex p. Massingberd-Mundy [1993] 2 All E.R 207***, court held that judicial review did not lie against a decision of the Jockey Club not to include the applicant's name on the list of people qualified to act as chairmen at race meetings.

The actions of the respondent body-Registered Trustees of Uganda Woodball Federation are private in nature and cannot be subjected to judicial review. This application would fail on this ground alone.

Secondly, the actions of the respondent are regulated by a Constitution of Uganda Wouldball Federation and Judicial review requires exhaustion of existing remedies. Courts have held that the requirement for exhaustion of alternative remedies should not be cited to **limit** the Court's jurisdiction but a party should demonstrate that there are deserving circumstances why the Court should exercise its discretion in its favour in any given situation. *(See **WATER & ENVIRONMENT MEDIA NETWORK -VS- NEMA & ANOTHER H.C. CIVIL DIVISION CONSOLIDATED MISC. CAUSE NOS. 239 & 255 OF 2020**); **MRS. ANNY KATABAAZI-BWENGYE -VS- UGANDA CHRISTIAN UNIVERSITY H.C. CIVIL DIVISION MISC. CAUSE NO. 268 0F 2017**,*

The applicants have available alternative procedures for resolving disputes based on their constitution and there is justifiable reason advanced for ignoring the said process. Since they were seeking to take part in elections governed under the same constitution, they ought to follow the same constitution when challenging actions in order to exhaust the existing remedies available.

In ***Fuelex Uganda Ltd vs AG & 2 Others H.C.Misc. Cause No. 048 of 2014***,Musota J (as he then was) held, *inter alia*, that the Applicant ought to have pleaded that the remedy available was not adequate or shown any other sound reason not to have followed that procedure.

This application would on this ground be dismissed for failure to exhaust the available remedies under the Constitution of Uganda Woodball Federation.

This application fails and is dismissed with costs to the respondents' counsel.

I so Order.

SSEKAANA MUSA
JUDGE
06th/08/2021