

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAKMPALA
CIVIL DIVISION
CIVIL APPEAL NO. 55 OF 2021
(ARISING OUT OF THE CHAMBER OF THE CHIEF REGISTRAR CR/BA.I**

1. NAKIRYOWA AMERIA
(T/A Muliju General Agencies) }
2. WANDERA MOSES } APPELLANTS
(T/A Leaks Associates) }

VERSUS

KIWANUKA EDISONRESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

This is an appeal from the decision of the Chief Registrar brought under Rule 8(1b) of the Judicature (Court Bailiffs) Rules SI 13-16. The appellants are seeking for orders that;

1. The order of the Chief Registrar suspending the appellants from bailiff practice be set aside.
2. The respondent pay costs of this appeal.

The grounds of this appeal are specifically set out in the memorandum of appeal as below;

- a) The learned Chief Registrar erred in law when she suspended the appellants for one year without giving them a chance of fair hearing.
- b) The learned Chief Registrar erred in law and fact when she disregarded the evidence on the procedure which the appellants took while executing the warrant that resulted into the order being appealed against.

c) The learned Chief Registrar erred in law and fact when she declared that the appellants negligently executed a warrant that led to loss of property.

The appellants were licensed court bailiffs whose licenses were suspended by the Chief Registrar effective 16th September 2021 for one year following the complaint of the respondent for erroneous sale of his property/kibanja situate at Kabawo zone, Mutundwe LC1 Rubaga Division Kampala in execution in the matter of Edward Wasswa vs Luzinda George EMA NO. 2937 of 2017. The appellants being dissatisfied with the order of registrar of the Chief Registrar filed this appeal.

The appellants were represented by *Counsel Ssemanda Daniel* while *Counsel Kakande Samuel* appeared for the respondent.

The parties filed written submissions which the court has considered in the determination of this appeal.

The respondent counsel raised two preliminary points of law that the appellants have no locus standi to institute this appeal and secondly the appeal was filed out of time in the event they had locus to bring it.

Counsel for the respondent submitted that the appeal is premised on the law specifically Rule 8 of the Judicature (Court Bailiffs) Rules SI NO. 13-16 which provides for a right of appeal for the appellants.

Rule 8 Cancellation or suspension of license

(1) The appointing authority may, for good cause cancel or suspend the license of a court bailiff; except that,

(a)

(b) Any aggrieved bailiff may appeal to the High court within thirty days of notification of the cancellation.

Counsel for respondent contended that the right of appeal is only exercisable when the license has been cancelled and not suspended. Counsel submitted that it is trite law that for someone to appeal the law must accord that person such a right and that the appellants have no right of appeal before this court over suspension.

Counsel for the appellant submitted that R.8 (1)(a) of the Judicature (Court Bailiffs) Rules from which Rule 8(1)(a) arises provide for cancellation or suspension of court bailiff as one word and the intention of the law maker was giving remedy to the aggrieved bailiff for appeal.

Analysis

A right of appeal is a creature of a statute ***see; Attorney General vs Shah (No. 4) [1971] E.A 50.*** In the instant case whether the appellants have the right of appeal is basically premised on interpretation of Rule 8. The meaning of the rule is plain and clear that appointing authority may for good cause cancel or suspend the license of a court bailiff and any aggrieved bailiff may appeal to the High Court within 30 day of notification of the cancellation. What appears to be in contention is when the aggrieved bailiff may exercise the right of appeal. Counsel for the respondent contended that the right is only exercisable in case of cancellation and does not extend to suspension of a court bailiff's license. Whereas the word suspension was left out in Rule 8(1)(b) I have found nothing to suggest that the omission was deliberate. It appears to be a question of draftsmanship and style.

I agree with counsel for the appellant that the intention of the law maker was giving a remedy to the aggrieved bailiff for appeal. R.8 when construed *Ejusdem generis* would apply to include suspension in the right of appeal, to construe it otherwise would be absurd if the aggrieved bailiff with suspension does not have access to court and the Chief Registrar's power would be exclude from the supervisory powers of the High Court. Counsel for the respondent's preliminary objection is untenable, I make finding that the appellant have locus to institute this appeal and accordingly the preliminary objection is overruled.

The second objection was regarding time within which to appeal. Counsel for the respondent submitted that the right of appeal under Rule 8 should be exercised within 30 days. Counsel further submitted that the appeal was made on 16th September 2021 and the disciplinary decision takes immediate effect. The filing of appeal on 16th day of November without leave the appeal is time barred.

Counsel for the appellant submitted that the appeal was brought within the 30 days as provided for by the Rule. Counsel contended that the decision of Disciplinary Committee was a mere recommendation which are approved by the Chief Registrar and notified the appellants on 9th November 2021. This court has perused the record of proceedings and it is satisfied that the Bailiffs licensing and Disciplinary Committee made recommendations on the 9th day of November 2021 upon which the Chief Registrar acted to suspended the appellants who she notified on the 9th day of November 2021. Rule 8(1)(b) provides that the aggrieved bailiff may appeal within 30 days of notification.

It is evident from the record proceedings that the notification of the decision of the Chief Registrar suspending the appellants was made on 9th November 2021 and the appellant lodged the memorandum of appeal and record of proceedings on 16th November 2021 within time allowed to appeal. Time for lodging memorandum is reckoned after notification of the decision.

It goes with without saying that the appellants filed within the time allowed under Rule 8(1)(b). The preliminary objection of counsel for the respondent is accordingly overruled.

I shall now turn to the merit of the appeal in the order of grounds and submissions of counsel.

Ground 1.

The learned Chief Registrar erred in law when she suspended the appellants for one year without giving them a chance of hair hearing.

The appellant's counsel submitted that the Chief Registrar made a decision basing on the recommendation of the Bailiffs Licensing and Disciplinary Committee and was supposed to call the appellants and give them a chance to hear them under Article 28 of the Constitution but not basing on the recommendation of the committee that is not legally established. Counsel for the appellant contended that the said Bailiff Licensing and Disciplinary Committee does not exist anywhere in the Judicature (Court Bailiff) Rules and it is illegal since there is no law under which the Chief Registrar is mandated to establish it and that what transpired was null and void.

Counsel for the respondent submitted that the Bailiffs Licensing and Disciplinary Committee sat on 16th September 2021 having been satisfied that the 2nd appellant had notice of the hearing date but chose to absent himself and the committee proceeded in the presence of the 1st appellant. Counsel contended in the assertion that the Bailiff Licensing and Disciplinary Committee is not legally constituted is false and was never challenged at the hearing and never raised as a ground of appeal.

Counsel for the appellant submitted in rejoinder that O.5 r 10 CPR provides that service of summons must be in person to the defendant or recognized agent. The affidavit sworn by Busulwa Joseph stated he called Wandera Moses on his telephone number and confirmed he will be attending was not proper service as per O.5 r 5 CPR.

Analysis

The procedure of according fair hearing should be determined in accordance with the institution and taking into circumstances of the case pertaining at the time. Public bodies are obliged to observe principles of natural justice before taking decision that may affect the livelihood of citizenry like cancellation of licenses. There is an increasing feeling that natural justice ought to be given to a licensee as far as possible as licensing is ultimately connected with livelihood or with property rights to practice a profession or carry on trade. ***See ALTX East Africa Ltd vs. Capital Market Authority High Court Misc. Cause No. 426 of 2019.***

This court has perused the record of proceeding and it is satisfied that the 1st appellant was given a fair hearing. She made a response to the complaint and participated in the proceedings. The 2nd appellant was also given an opportunity to be heard, he filed a reply to the complaint and had knowledge or notice of the hearing he cannot turn around to say he was not given a chance to be heard; when he had already taken part in the proceedings; the notification of the hearing date by Busulwa Joseph through a phone call is a justified as proper service the Bailiff Licensing and Disciplinary Committee was sitting as a quasi-body some deviation from the ideal service applicable to courts of law may be permissible.

This court in the matter of ***Dr. Kasozi Charles vs the Attorney General and Health Service Commission Misc. Cause No. 206 of 2018*** cited the case of ***Council of Civil Service Union vs Minister for the Civil Service [1985] AC 374*** where court held that *“It’s a fundamental principle of natural justice that a decision which affects the interest of any individual should not be taken until that individual has been given an opportunity to state his or her case and rebut any allegation made against him or her”*

The 2nd appellant was given the opportunity to be heard what was required was to bring the notice of proceedings/hearing to the 2nd appellant which was done. This ground also fails.

Regarding the Constitution of the Bailiff Licensing and Disciplinary Committee, it was argument for counsel for the appellants that it was not legally established.

The Chief Registrar is an office established by Article 145 of the Constitution which is amplified by the Administration of Judiciary Act 2020 which sets out the functions of the chief Registrar and other law; a case in point the Judicature (Court Bailiffs) Rules for all intent and purpose the functions of the Chief Registrar are administrative and regulatory in the administration of the judiciary. The Chief Registrar is the regulator of Bailiffs.

The appellants are challenging Bailiffs Licensing and Disciplinary committee on ground of legality. The Judicature court bailiff Rules gives the Chief Registrar regulatory powers over the bailiffs as the appointing authority this buttressed with the functions and powers of Chief Registrar. To achieve the purpose of the law there is established the Bailiffs Licensing and Disciplinary Committee. When an authority is clothed with powers to regulate an activity the court looks carefully to ensure that they are within the policy and object. **See *Center for Constitutional Governance (CCG) vs National Bureau for Non-Governmental Organizations*.**

The Chief Registrar as the appointing authority has the mandate to look into the affairs of bailiffs and exercise disciplinary control over bailiffs as a regulator.

The Chief Registrar used the regulatory powers to set up Bailiffs Licencing and Disciplinary Committee to achieve the purpose of licensing and disciplining the bailiff. Whenever the actor pursues two or more purposes where only one is expressly or impliedly permitted, the legality of the act is determined by reference to the dominant purpose. See ***Center for Constitutional Governance (CCG) vs National Bureau for Non-Governmental Organizations***.(supra)

The dominant purpose in this case is to licence bailiffs and ensuring that all comply with professional rules and non-dominant is to discipline which is implied. It would defeat logic if the regulator is not clothed with disciplinary powers over the regulated. Needless to say the appellants whose licences were suspended were issued by the same committee which they never challenged its existence when it came to issuing the licence only sought to challenge its legality when it came to disciplining them.

This court does not accept the argument of counsel for the appellants that the Bailiffs licensing and Disciplinary committee does not exist or exists illegally.

The rest of the grounds of appeal are not subject to consideration in this appeal. This court exercises supervisory powers over administrative decisions. Since the

Bailiffs licencing and Disciplinary committee/Chief Registrar exercise a quasi-judicial function and in execution of their function the proceedings are not exactly judicial in nature to qualify this appeal to be considered as a judicial appeal.

It is trite law that administrative system which employs discretion vests the primary decision making responsibility with the agencies not the courts. As a result the judicial attitude when reviewing an exercise of discretion must be one of restraint rather extreme restraint; the challenges ought to be on decision making and not the decision itself. The jurisdiction to decide the substantive issues is that of the authority and the court does not sit as a Court of Appeal since it has no expertise to correct administrative decision but merely reviews the manner in which the decision is made.

It is said that if a review of administrative decision is permitted, the court will be substituting its own decision without the necessary expertise which itself maybe infallible. **See *Lam-Lagoro v Muni University Misc. Cause No.7 of 2016***. Ground 2 and 3 seek to invite this court to interfere with the merits of the findings of the Bailiffs Licensing and Disciplinary Committee not the decision making process and also invite this court to review the Ruling of Hon. Justice Wolayo in MA 101/2019 regarding the execution in Civil Appeal No.39 of 2009 (Edward Wasswa vs Luzinda George) which is not within the scope of the appeal of this nature.

The decision of the Chief Registrar was premised on orders of Justice Wolayo in Miscellaneous Application No. 101 of 2019 *Kiwanuka Edison v Wasswa Edward, Bemanyisa Adonijah, Luzinda George & Wandera Moses t/a Leaks Associates*: wherein she found that the sale of kibanja belonged to the objector Edison Kiwanuka. This decision was never appealed against.

These grounds of appeal raised by the appellant trying to overturn a decision of court already handed down cannot be determined and would not be within powers of the Chief Registrar as the regulator.

This court finds no merit in this appeal. The decision of the Chief Registrar suspending the appellant is upheld. In the final result the appeal is dismissed with costs to the respondent.

It is so ordered.

SSEKAANA MUSA

JUDGE

9TH MAY 2022