

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[CIVIL DIVISION]**

**MISCELLANEOUS CAUSE NO. 133 OF 2021**

**NANNOZI ANITA SSERUWAGI ::: APPLICANT**

**VERSUS**

- 1. THE ATTORNEY GENERAL**
- 2. UGANDA REGISTRATION SERVICES BUREAU :::::: RESPONDENTS**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant brought this suit under Article 21, 38, 39,40, 41,42 and 50 of the Constitution as amended, section 33, 36, 37 and 38 of the Judicature Act, section 98 of the Civil Procedure Act and Order 1, Rule 10 (2) of the Civil Procedure Rules, Section 41 (1), (2), (3), 42 (1) and (2) of the Copyright and Neighboring Rights Act and Regulations thereunder seeking for orders that:

- a) A declaration that the 1<sup>st</sup> respondent committed a dereliction of duty when it failed to exercise and perform its statutory mandate to appoint and or employ the Registrar of Copyright as prescribed under the Copyright and Neighboring Rights Act, 2006 (CNRA)
- b) A declaration that the action of the 2<sup>nd</sup> respondent purporting to act as the Registrar of Copyright without an appointment from the minister in charge are illegal, ultra vires, unreasonable, in bad faith, high handed and irrational and in breach of statutory obligations.

- c) An order of mandamus doth issue directing the 1<sup>st</sup> respondent to perform its statutory functions by appointing the Copy right registrar under the Copyright and Neighboring Rights Act, 2006.
- d) An order for prohibition preventing the Registrar General being an officer of the 2<sup>nd</sup> Respondent from operating and holding out as the appointed Registrar of Copyright.
- e) An order directing the 1<sup>st</sup> Respondent to appoint the Registrar of Copyright and operationalizing the National Copyright Information Center as prescribed by the Act.
- f) A permanent injunction doth issue restraining the 2<sup>nd</sup> respondent, his servants and/or agents from occupying/ holding and executing obligations or duties assigned to the Registrar of Copyright and the National Copyright Information Centre.

The grounds of this application were stated briefly in the Notice of Motion and the affidavit in support of the Application by Nannozi Anita Sseruwagi, the Applicant therein who stated that the 1<sup>st</sup> respondent has abnegated its unfettered statutory powers to appoint and employ a person in the position and office of the Registrar of Copyright and that the 2<sup>nd</sup> Respondent's actions of holding the office of the Registrar of Copyright, carrying on the roles of the Registrar of Copyright without any appointment/ authorization from the concerned minister are illegal, out of its jurisdiction and ultra vires thus this application.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent opposed this application and filed an affidavit in reply sworn by its Mercy K Kainobwiso; the Registrar General contending that the application is time barred and not amenable to judicial review and should be dismissed with costs to the 2<sup>nd</sup> respondent. She further stated that the issues raised in the application arose in 2010 when the 2<sup>nd</sup> respondent created by an Act of Parliament; Uganda Registration of Services Bureau Act was operationalized. She noted that upon that Act and operationalization of the 2<sup>nd</sup> respondent as an

autonomous agency of government, the Registrar of Uganda continued the mandate to administer the Copyright and Neighboring Right Act, 2006 and it is now 10 years since the Respondent started administering the same.

The 2<sup>nd</sup> respondent further noted that the applicant was aware of the 2<sup>nd</sup> respondent's implementation of the Copyright and Neighboring Rights Act 2006 and therefore stated that this application is bad in law, misconceived, brought under wrong provisions of law and constitutes an abuse of court process and thereby should be dismissed

The applicant was represented by *Mr. Mbabazi Norman* whereas the 1<sup>st</sup> Respondent was represented by *Mr. Twinomugisha Mugisha* and the 2<sup>nd</sup> Respondent was represented by *Mr. Birungi Denis*.

At the hearing of this application, the parties were directed to file written submissions which I have had the occasion of reading and considered in the determination of this Application.

Three issues were proposed by the parties for this court's resolution as follows;

- 1. Whether the time Registrar General of Uganda of Registrar Services Bureau has the mandate to register Copyright in accordance with the Copyright and Neighboring Rights Act, 2006.*
- 2. Whether the application is properly before this court.*
- 3. Whether the applicant is entitled to the reliefs sought.*

**Determination:**

*Whether this application is properly before this Court.*

The applicant defined judicial review according to the Black's Law Dictionary which is a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Also, the court's review of a lower court's or administrative body's factual or legal findings.

Counsel further noted that Judicial review as per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the High court exercises its supervisory jurisdiction over proceeding and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts or duties.

The applicant submitted that she is seeking that this court controls the respondents' administrative actions under the heads namely; illegality, irrationally and procedural impropriety.

Counsel for the applicant while relying on the case of *Oil Chemical Atomic Workers Union vs Osha 145 F 3d (3rd Cir 1998)* argued that to make the judgement whether or not inaction can be treated as a final decision is a question of fact concerning the significance of the inaction in the particular context of the case.

He submitted that the Copy Rights and Neighboring Act, 2006 has been in existence for the last 16 years and there has been no appointment of the Registrar of the Copy Right and in the absence of the latter, the 2<sup>nd</sup> respondent has illegally taken over the roles of the registrar of copyright without appointment. She stated that this excessive delay when it is statutorily required to act, a court may treat as a decision and find it amenable to judicial review and order government to act.

Counsel also submitted that the 2<sup>nd</sup> respondent has been holding out as the registrar of copy right and carrying on the roles of the office of the National Copyright Information Center the actions being illegal and ultra vires hence a proper case for judicial review.

The applicant therefore submitted that the respondents fall within the description of public bodies under Rule 2 (a) of the Judicature (Judicial Review) (Amendments) Rules, 2019 and has shown that the acts complained of are tainted with illegality, irrationally and procedural impropriety make this application before this court for judicial review.

The 1<sup>st</sup> respondent submitted that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has

been subjected. It noted that the applicant applied to the 2<sup>nd</sup> respondent for the registration of her copyright and the registrar general registered her it after the fulfillment of the conditions. Counsel stated that there was no evidence adduced by the applicant that the process of registration was tainted with unfairness and thus the application is misdirected.

Counsel further submitted that under Rule 7A (1) of the Judicature (Judicial Review) (Administrative) Rules, an application for judicial review must satisfy that it is amenable for judicial review, that the aggrieved person has exhausted the existing remedies available within the public body under the law and that the matter involves an administrative public body or official among others.

It was submitted for the 1<sup>st</sup> respondent that the applicant has no *locus standi* as she did not stand to lose from the actions of the 2<sup>nd</sup> respondent. It was further submitted that the applicant has failed to show that the actions of the respondents infringed in the rights of other persons or groups of persons and that the 2<sup>nd</sup> respondent was merely performing tasks provided by its enabling act.

For the 2<sup>nd</sup> respondent, it was submitted that this application is time barred as it was required to be filed within 3 months from the date the cause of action first arose under Rule 5 of the Judicial Review Rules. Counsel stated that it has been 11 years since the 2<sup>nd</sup> respondent started enforcing the Copyright and Neighboring Rights Act and that the applicant was at all material times aware of the 2<sup>nd</sup> respondent's implementation of the act as it occasionally publishes gazette notices. Counsel noted that the judicial review application filed out of time cannot stand unless court grants leave as was noted in the case of *Dawson Kadope vs URA Misc. Cause No. 0040 of 2019*.

Counsel further submitted that this application is not proper for judicial review since the 2<sup>nd</sup> respondent has never made any decision or taken proceedings affecting the applicant. He submitted that unless there is any decision taken or proceeding made by the 2<sup>nd</sup> respondent against the applicant, she has no locus and no cause of action against the 2<sup>nd</sup> respondent. He stated that the

constitutional foundation under Article 42 envisaged judicial review applications only when decisions or proceedings have been taken against a person which in the instant case no such decision was taken.

Counsel further submitted that the applicant has no sufficient interest as required under Rule 3A of the Judicature (Judicial Review Amendment) Rules. He submitted that the applicant has no direct or sufficient interest to bring this case as no decision has been taken by the 2<sup>nd</sup> respondent affecting her rights as she is not an owner of any registered copyright.

Counsel also stated that the suit is bad in law, filed under the wrong procedure and constitutes an abuse of court process, he noted that this application was brought under Article 50 of the Constitution which deal with violation of human rights but does not show which rights are violated and that in any case, the actions for judicial review and enforcement of human rights cannot be joined.

He also submitted that the application under Article 42 of the Constitution which deals with judicial review without stating the administrative decision taken by the 2<sup>nd</sup> respondent. He therefore submitted that this application is irregularly before this court and does not disclose a cause of action against the 2<sup>nd</sup> respondent as per the case of *Auto Garage & Anor vs Motokov* No. 3 of [1971] EA 514.

The 2<sup>nd</sup> Respondent submitted that Rule 3 (1) of the Judicial (Judicial Review) Rules, 2009 provides that an application for an order of mandamus, prohibition or certiorari or injunctions shall be made by way of an application for judicial review.

### **ANALYSIS:**

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 may fall.

As correctly pointed out in the 2<sup>nd</sup> Respondent's written submissions, the Minister of Justice and Constitutional affairs has the mandate to appoint the Registrar of Copyright which power was exercised rightly by appointing the Registrar General of the 2<sup>nd</sup> Respondent to handle the office and duties that fall thereunder. **Section 41 (1) of the Copy Rights and Neighboring Rights Act**, provides for appointment of the registrar of Copyright by the Minister may on the recommendation of the board of the Uganda Registration Services Bureau.

**Rule 3A of the Judicature (Judicial Review) Rules** provides that any person who has a direct or sufficient interest in a matter may apply for judicial review.

Be as it may, **Rule 5 (1) of the Judicature (Judicial Review) Rules 2009** provides that;

*"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.*

Pursuant to the above provision, the law clearly sets out the mandatory timelines for persons who intend to make an application for judicial review. In the instant application, the 2<sup>nd</sup> respondent submitted that the applicant is time barred in bringing this application as the cause of action arose in 2006 when the Copy Rights and Neighboring Rights Act was operationalized.

This court has on several occasions noted that 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 *Re Application by Mustapha Ramathan for Orders of certiorari, Prohibition and Injunction Court of Appeal Civil*

*Appeal No. 25 of 1996*, Berko, JA as he then was stated; statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is *interest reipublicae ut sit finis litum*, meaning that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of a particular case.

In the case of *IP Mugumya vs Attorney General HCMC No. 116 of 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.*

This court can only exercise its discretion 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 fact that a breach of a public duty is a continuing one does not necessarily make it irrelevant to take into account the date at which the breach began in considering any question of delay. There is no general legislative formula to guide the court on issues of delay.

The applicant did not seek any leave from court within which to file this application. On the premise of the discussion as shown above, the Applicant's time within which to file an application for judicial review cannot be extended and thus, the application for judicial review is time barred.

Importance must also be attached to the fact that judicial review is intended to be an expeditious process and that some decisions taken by public authorities need to be taken quickly. Public authorities must be able to proceed with public works (which are often extremely expensive) without fearing that the entire basis of



their action might be undermined by a successful attack on the legality of the undertaking.

For the reasons above, I find that this application is not properly before this court as it does not satisfy the prerequisites of time under judicial review. This issue is therefore answered in the negative.

This application therefore fails for the above reasons stated herein and is accordingly dismissed with no order as to costs.

I so order

**SSEKAANA MUSA**

**JUDGE**

***22<sup>nd</sup> August 2022***