

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 031 OF 2023**

- 1. ABUBAKER LUBOWA**
- 2. ZAMBALI BULASIO MUKASA**
- 3. EMMANUEL NKATA**
- 4. HASIFU SEKIWUNGA**
- 5. MARTIN KIMBOWA:.....: APPLICANT**

VERSUS

- 1. UGANDA JOURNALIST ASSOCIATION (UJA)**
- 2. MATHIAS RUKUNDO**
- 3. EMMANUEL KIRUNDA:.....:: RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application was brought under Article 28, 42 and 44 of the Constitution, Section 33, 36, 38 & 39 of the Judicature Act Cap 13, and Rules 3(1) & (2), 5, 6 and 8 of the Judicature (Judicial Review) Rules, 2009 for reliefs and orders that;

- a) The process leading to the decision and/or directive, and the decision itself of the respondents communicated to the applicants on the 3rd day of February 2023, barring; stopping; eliminating and ejecting the applicants from standing as candidates for elective positions in the 1st respondent Association is illegal, ultra vires, irrational, unreasonable, unfair and an abuse of the respondent's powers.
- b) That the decision of the respondent in rendering the applicants not able to pass through the stages of nomination/vetting/screening as

candidates to go for final election during the AGM slated for 25th February, 2023 was made in violation of the applicants' right to a fair hearing guaranteed under Articles 28, 42 and 44 of the Constitution of the republic of Uganda.

- c) That the actions of the 2nd and 3rd respondents in organizing the election process of the 1st respondent association, including the nomination process and subsequent vetting, in which they are also candidates are illegal, biased and irrational.
- d) A declaration that the decision of the respondents in refusing to pass the applicants to go for final election during the AGM despite their clearance of the Constitution and guidelines is a nullity as it is tainted with illegality, irrationality, bias and procedural impropriety.
- e) An injunction restraining, preventing and/or stopping the respondents from denying the applicants their right to participate in the final election without any justifiable reason.
- f) An order of prohibition restraining, stopping and preventing the respondent from enforcing its decision of refusing the applicants to participate in the final election.
- g) An order of Certiorari quashing the decision of the respondent contained in the email dated 3rd February 2023, that they did not meet the requirement of regulation no.2 which requires any journalist who wishes to stand for the position must have been a full member for atleast two (2) years before the AGM, thereby rendering them not able to pass through the stages of nomination/vetting/screening as a candidate to go for final election during the AGM slated for 25th February, 2023 yet they had cleared all the requirements.
- h) A Declaration that the acts of the respondents by refusing the applicants to participate in final election without according them a fair hearing is illegal, ultra vires, irrational and unreasonable.

- i) An order directing the respondents to organize elections in compliance with the 1st respondent's constitution.
- j) An order for the award of general damages and exemplary damages for the psychological torture, mental anguish and emotional stress suffered by the applicants for the flagrant violation of their rights.
- k) Costs of this application.

The application was supported by the affidavits of the applicants herein and the grounds therein were briefly;

1. That the applicants are journalists and fully paid-up member of Uganda Journalists Association (UJA).
2. That sometime in December, 2022 the members of the Association, received a notice dated 12th December, 2022 from the 1st respondent setting out guidelines for the new election bearers.
3. That most of the requirements listed in that notice were done outside the constitution of the Association, and had never been agreed upon, or communicated to the membership.
4. That the applicants expressed interest in standing for the different positions; picked nomination forms and duly paid the nomination fees and submitted the required documents.
5. That the applicants received a communication on email on the 3rd day of February, from the 2nd and 3rd respondents notifying them that their nomination did not satisfy the vetting committee.
6. That the applicants have never appeared before any committee, and neither is the vetting committee known to them nor the members of the association.

7. That the applicants had a right to a hearing before a neutral committee, which was never accorded.
8. That also the 2nd respondent is running for President and 3rd respondent is running for Secretary General and duly nominated as candidates in the same process that they are organising, something that is unfair and as thus biased.
9. That the 2nd respondent is incumbent President of the 1st respondent and the 3rd respondent is the Secretary General of the said association; but are not mandated to organise the elections.
10. That the association constitution provides for a neutral returning Officer to organise the elections, who has never been appointed.
11. That the actions of the said 2nd respondent and 3rd respondent were thus biased, unfair, and illegal, meant to deny the applicants a chance of fully participating in the electoral process, as envisaged in the Constitution.
12. That no membership and/or voters' register has ever been availed by the said respondents since 2018.
13. That the electoral process is flawed with illegalities, bias, unfairness, prejudice and thus court should stop it.
14. That the applicants are further aggrieved by the decision to kick them out of the nomination process and would like this court to reverse it.
15. That the applicant would like this court to make orders directing the respondents to conduct the electoral process as per their Constitution and laws of Uganda.
16. That further, as a result of the acts of the respondents, the applicants have been subjected to psychological torture, mental anguish and emotional stress for which the respondents are liable.

17. The decision by the respondents of refusing to render the applicants able to pass through stages of nomination/vetting/screening as candidates to go for final election during the AGM slated for 25th February, 2023 permit was reached in breach of the *Audi Alteram Partem Rule* and as such is void absolutely and of no legal consequence.

The respondents opposed this application and filed affidavits in reply which have been summarised as follows;

1. The 1st respondent is a legally registered private company, limited by guarantee and not having a share capital. It was registered on 8th November 1983 under Companies Act, cap 110.
2. The 2nd and 3rd respondents are officers of the 1st respondent. The 2nd respondent is a director and the current President of the 1st respondent, while the 3rd respondent is also a director and the current Secretary General of the 1st respondent.
3. The affairs of the 1st respondent are governed by the Memorandum and Articles of Association, The Constitution, the law and guidelines passed by the AGM.
4. That on the 21st September 2020, the 1st respondent's then leadership generated guidelines which were subsequently adopted by the AGM on the 12th day of December 2020.
5. That these guidelines inter alia require that any person who wishes to stand for any elective position in the 1st respondent should have been a fully paid up member for at least 2 (two) years to/before the AGM.
6. That the applicants were free to express interest in vying for any of the elective positions in the 1st respondent, as long as they met the requirements set for those positions in the aforementioned guidelines.

7. That on 12th December 2022, the 1st respondent issued a communication setting out a road map for the upcoming elections. The intending candidates picked nomination forms, paid nomination fees and submitted the requisite documents for vetting.
8. That on 3rd February 2023, the 1st respondent sent emails to the aspiring candidates notifying them whether they gone through the vetting process successfully or otherwise.
9. That the applicants were sent emails setting out reasons clearly set out therein that they did successfully go through the vetting process.
10. The applicants being dissatisfied by the outcome of the vetting process, opted to file this application for judicial review challenging various aspects of the above mentioned process.
11. The respondents object to this application for reasons set out and contend that the entire mentioned process was in line with the law, the 1st respondent's memorandum of Association, Articles of Association, the Constitution and the guidelines passed by the AGM.
12. That the applicants have no justifiable reason to bring this application before this court and it is in the interest of justice that this application is dismissed with costs.

The following issues were framed for determination.

1. *Whether the matter is amenable for judicial review?*
2. *Whether the applicants have locus standi to bring the matter before court?*
3. *Whether the impugned actions are tainted with illegality, procedural impropriety, bias or unfairness?*
4. *Whether the applicants are entitled to remedies sought?*

Counsel George Musisi (PACE Advocates) appeared for the applicants while *Counsel Kaganzi Lester and Muwanga Isaac Ernest* for the respondents.

The applicants filed an application for temporary injunction in which they sought to stop restrain the respondent, his agents representatives and employees and any other claiming under him from enforcing their decision of refusing the applicants to participate in the final election until determination of the main cause.

The court issued a temporary injunction stopping the electoral process of the 1st respondent until the determination of the main cause.

The parties filed written submissions which I have ably considered in this ruling.

DETERMINATION

Whether the matter is amenable for judicial review?

The applicants' counsel submitted that the 2nd and 3rd respondent took an administrative decision while in direct control of a public body; therefore the actions are questionable under judicial review.

It was further submitted that the 1st respondent while is registered as a company limited by guarantee, is also an association, which bring together all journalists practising in Uganda, through subscription. Its governance documents are both the memorandum and articles of association, and also the constitution of the association. It is therefore for all intents and purposes a public body and a private entity of only directors of the company.

The respondents' counsel submitted that the 1st respondent is a private company limited by guarantee and not having share capital. Further, the 2nd and 3rd respondents are sued in their personal/individual capacity and nothing in the application shows that they are sued in their official capacities as principal officers of the 1st respondent. In addition they are not public officials since the 1st respondent is a private company.

The respondents' counsel further submitted that a public body is defined within rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019. A public official is not defined in the Judicature (Judicial Review) (Amendment) Rules 2019, but the Interpretation Act provides that public office, public officer and public service have the same meaning as in the Constitution Article 175(a).

Counsel contended that the respondents do not fall under any of the above descriptions of a public body or public official.

Analysis

According to the *Black's Law Dictionary* at page 1013 **11th Edition Thomson Reuters, 2019** Judicial review is defined as 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. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

The power of judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings 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 and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which is inconsistent with the Constitution. This involves reviewing

governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review. *See Dr. Wilberforce Wandera Kifudde v National Animal Genetic Resources Centre and Data Bank (NAGRC & DB) & 2 Others HCMC No. 82 of 2020*

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the public administration. This is the only way to instil responsibility and accountability in the public administration and make it law abiding. Judicial review as an arm of Administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the public administration when a person's legal right or interest is infringed by any of its actions.

The effectiveness of a system of judicial review under Administrative law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the public administration but generally for the maintenance of regime of Rule of Law in the country.

The weakness of the "remedial and redressal" aspect of administrative law will directly contribute to administrative lawlessness and arbitrariness. According to *WADE & FORSYTH Administrative Law, 34, 8th Edition 2000*, "Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law.

In Uganda, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration within the confines of the law. It has been felt that the courts and public administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in public administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of public administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision-makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals' grievances against the administration, give relief to the

aggrieved person in suitable case and in the process control the administration.

In the present case, the applicants are suing a private company limited by guarantee since 1983 and whose membership is by subscription. This company is regulated by the Companies Act of 2012 in all its operations and their guidelines as passed by the general assembly.

It is not only surprising but also incredible that the applicants counsel has chosen to 'baptize' this private entity (1st respondent) a public body simply because it brings all journalists together through subscription. A public body is a question of law and is not premised on personal whims or erroneous application of the law.

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019 defines a "Public body" include

- (a) The Government, any department, services or undertaking of the Government;*
- (b) The East African Community, its institutions and corporations;*
- (c) The Cabinet, Parliament, any court.*
- (d) District Administration, a District Council, any district committee of a district council, a local council and any committee of a local council;*
- (e) Any corporation, committee, board, commission or similar body whether corporate or incorporate established by an Act of Parliament for purposes of any written relating to the public health or public undertakings of public utility, education or for promotion of sports, literature, science, arts or any other purpose for the benefit of the public or any section of the public or any section of the public to administer funds or property belonging to or granted by the Government or the East African Community, its institutions or its corporations or money raised by public subscriptions or its corporations or money raised by public subscriptions, rates, taxes, cess or charges in pursuance of any written law;*

(f) Political party, a trade union, a society registered under a Cooperative Societies Act and any council, board, committee or society established by an Act of Parliament for the benefit, regulation and control of any profession and non-governmental organisation.

The characteristics of a public function are derived specifically from the law as can be deduced from the above definition. The only essential elements are what can be described as a public element, which can take many different forms, and exclusion from jurisdiction of bodies where the sole source of power is the consensual submission to its jurisdiction. The 1st respondent is a private body with no power to regulate the profession of journalism but rather the membership is by subscription and voluntary.

The court has duty to establish whether the matter brought before it involves a public body. Section 7A *Judicature (Judicial Review) (Amendment) Rules 2019* provides for factors to consider in handling applications for judicial review; The court shall, in considering an application for judicial review, satisfy itself: that the matter involves an administrative public body of official.

The 1st respondent is not a public body and does not derive their powers from any written law apart from the incorporation under the companies Act. The court cannot open the doors for all manner of bodies to make applications for judicial review as this will increase the case load and yet the judges are few. The court should be mindful of the judicial review case load in deciding whether a class of body is susceptible to judicial review, otherwise it would be a misapplication of scarce judicial resources. *See Ex p. Football League Ltd [1993] 2 All ER 833 at 849.*

In the circumstances, the 1st respondent is not a public body and cannot be susceptible to judicial review. The application would fail on this ground alone. It is dismissed with costs to the respondents.

The applicants erroneously obtained a temporary injunction against the respondents in conducting their affairs or electing office bearers in accordance with their constitution. They should compensate the respondents under section 65 of the Civil procedure Act.

I so order.

SSEKAANA MUSA

JUDGE

14th July 2023