

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 108 OF 2022

- 1. JETHA BROTHERS LTD**
2. ALIYULLAH HUSAINALI JETHA ISMAIL::::::::::::APPLICANTS
- VERSUS**
- 1. ATTORNEY GENERAL::::::::::::RESPONDENTS**
2. DIRECTOR CITIZENSHIP &IMMIGRATION CONTROL
3. HILARY KATEMBEKO

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application for judicial review Miscellaneous Cause under Article 42 of the Constitution of Uganda, 1995; Sections 36 and 38 of the Judicature Act, Cap. 13; Rules 1, 2, 3, 4, 5, 6, 7, and 8 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 (as amended by S.I. No. 32 of 2019). The application seeks the following judicial reliefs by way of Judicial review:

1. A declaration that the respondents' arbitrary decision contained in 2nd respondent's letter dated 12th April 2022 declaring that the applicant the 2nd applicant is illegally in Uganda, has had a number of travels, comes and goes out of the country without a Work Permit, without according him a fair hearing is ultra vires, null and void.
2. A declaration that the 1st and 2nd respondents took an arbitrary decision to proclaim that the did not have a Work Permit and therefore

he and the 1st applicant were staying and doing business in Uganda illegally without first notifying or inquiring from them, which was unfair, discriminatory, denied them a fair hearing, prejudicially and irregularly negated the Certificate of Residence CR Number 3625 issued to him by the 2nd respondent valid from 14th June 2012 for life is ultra vires, null and void.

3. A declaration that the 2nd respondents Police's arbitrary decision contained in the Report dated 12th April 2022 declaring that the applicants are illegally operating business company and other business activities incidental to it in breach of the policies of the country and enforceable in laws of Laws of Uganda without giving the applicants any fair hearing or paying regard to 2nd applicant's Certificate of Residence for life in Uganda is ultra vires, null and void.
4. A declaration that the 2nd respondents' decision contained in her Letter of 12th April 2022 that the 2nd applicant who attained a Certificate of Residence for life in Uganda in 2012 does not have a work permit in the system and the applicants are not permitted to work and conduct any business in Uganda was made in bad faith, breached and failed to correctly interpreted the statutes governing the 1st and 2nd respondents, was illegal, ultra vires, null and void.
5. A declaration that the respondents' decision contained in the Police Report to the 3rd Respondent dated 12th April 2022 concerning the applicants without ever summoning, hearing out or interviewing them about their legal status, stay and conduct of business in Uganda and his proceeding to prejudicially use it as evidence in High Court proceedings vide Miscellaneous Application No. 77 of 2022 was bad faith, denied them a fair hearing, is ultra vires, null and void.

6. A declaration that the respondents' decision to investigate a matter which is pending in court and the dishonest institution of a bad faith complaint contrived to bypass a High Court injunction to usurp the applicants' business and property comprised in Plot 2A Stanley Road, Mbarara City is contempt of court ultra vires and null and void.
7. A declaration that the respondents' decision to turn ongoing court matters concerning 1st applicant's land comprised in Plot 2A Stanley Road, Mbarara City into a parallel criminal investigation of alleged offences of forgery/fraud undermines judicial independence, is bad faith, contempt of court, ultra vires and null and void.
8. An order of Certiorari doth issue calling into court the 2nd respondents' decision contained in her letter of 12th April 2022 that the 2nd applicant who attained a Certificate of Residence for life in Uganda in 2012 does not have a work permit in the system and that the applicants are not permitted to work or conduct any business in Uganda for quashing from public records.
9. An order of Certiorari doth issue calling into court for quashing from public records to the 1st respondents' Police's decision contained in the Police report to 3rd respondent dated 12th April 2022 concerning the applicants made without ever summoning, hearing out or interviewing them about their legal status, stay and conduct of business in Uganda and his prejudicially using it as evidence in High Court proceedings vide Miscellaneous Application No. 77 of 2022.
10. An order of Prohibition doth issue forbidding the respondents from continuing to implement their ultra vires decisions pertaining to the applicant's liberty, business operations and property ownership.

11. An order of injunction doth issue restraining the respondents from proceeding with the illegal decision to cancel the 2nd applicant's residence for life under the guise of not having a work permit which is inapplicable to his case.

12. General damages.

13. Punitive and exemplary damages.

The application was supported by an affidavit by Aliyullah Husainali Jetha Ismail-2nd applicant and Director of the 1st applicant. The grounds for this application were briefly that;

1. The 1st applicant is a limited liability company established and operating under the laws of Uganda, owning properties and conducting business while the 2nd applicant is a holder of a Certificate of Residence for life and a director of the applicant.
2. The 3rd respondent has abused the Criminal Process to sabotage court orders and deprive the applicants their property, deprive the applicants of their legal status using the 1st and 2nd respondent.
3. The respondents treated the applicants unfairly, and without according them any fair hearing reached adverse conclusions against them.
4. The 3rd respondent has continuously acted dishonestly by concocting false complaints to the 1st and 2nd respondents against the applicants over qualification as Director, illegal employment, entering Uganda illegally and working without a work permit.

5. The 2nd applicant's long acquired certificate of residence was a long accrued right which could not be erased by mere stroke of a pen under the disguise that he did not have a working permit in the 2nd respondent's computer system prejudicially based on the limited searches for the years 2020-2022 and without according the applicant a fair hearing.
6. On the 12th April 2022 the 2nd respondent communicated to the 1st respondent's police in Kampala, his arbitrary decision that the 2nd applicant had come and gone out of the country with no work permit in their system.
7. The 1st respondent's police used the above decision to make their own unfair and arbitrary decision contained in their report to the 3rd respondent.
8. That the 3rd respondent falsely claimed ownership of the 1st applicant's land comprised in 2A Stanley Road, Mbarara city in his bad faith complaint to police from which he stood to benefit from, which attests to his bad faith actions.
9. That the 3rd respondent's son Alex Ahimbisibwe who works with Uganda Citizenship and Immigration Office irregularly influenced the 2nd respondent's biased, unfair and irregular action and decision above.
10. That the 2nd respondent upon giving the Certificate of Residence for life to the 2nd applicant completed his part and he was entitled to enter and leave Uganda when need arises.

11. That the 2nd applicant having been previously a Ugandan Citizen before Idi Amin expulsion in 1972, he applied on 14th June 2012 and was granted a Certificate of Residence and has continued to work freely and travel anywhere in Uganda.
12. That the respondents have given the applicants callous treatment, acted in capricious, arbitrary, oppressive, high handed, illegal and unconstitutional manner.
13. That the 2nd applicant continues to live in fear of irregular deportation based on irregular decisions arising from the 3rd respondent's self-engineered false emotive accusations and this will take away his liberty and his livelihood and greatly inconvenience and cause injury that cannot be atoned for by way of damages.

The 1st respondent filed an affidavit in reply deposed by DC Tumwine Keith. The grounds therein were briefly that;

1. The application is bad in law, misconceived, speculative, without merit and an abuse of court process.
2. That a criminal complaint of fraud was lodged against the 2nd applicant by the 3rd respondent on 31st March 2022 vide SD REF 61/31/03/2022 and police carried out criminal investigations into the allegations that the applicant was working illegally in Uganda without a work permit.
3. That the applicant was charged with Forgery and Fraud which are all criminal allegations and call for deeper investigation.
4. That Police wrote a letter to the 2nd respondent to find out about the 2nd applicant's stay and work in Uganda which was responded and confirmed that he was working in Uganda without a work permit.

5. That the police or the directorate of Immigration have not made any decision to warrant judicial review but only provided report status of his stay and work in Uganda. Therefore, the reports are inconclusive about the applicants.

The applicant was represented by Dr. *James Akampumuza* whereas the respondent was represented by *Acellam Emmanuel*-Attorney General's Chambers.

The parties were directed to file final written submissions that were duly considered by this court.

Two issues were framed for determination by this court;

1. *Whether the applicants were denied a fair hearing before the decision made on 12th-04-2022?*
2. *What remedies are available to the parties?*

Preliminary considerations

Whether this a proper case for judicial review?

Analysis

Under rule 7A of the Judicature (Judicial Review) Rules, 2019 it provides for;
Factors to consider in handling applications for judicial review

- (1) *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 within the public body or under the law; and*
 - (c) *That the matter involves an administrative public body or official.*
- (2) *The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment.*

The facts of the case show that the police were investigating an alleged complaint by a one Hillary Katembeko against the 2nd applicants arising out of their dispute of land ownership at Stanley Road, Mbarara City. The police in the course of their investigation wrote to the 2nd respondent to get a report about the applicant status in Uganda.

The 2nd respondent in reply to the Police request responded in a letter dated 12th April 2022 as hereunder;

Criminal Investigations Directorate
Jinja Road Police Station
Nakawa, Kampala

**RE: THE ALLEGED OFFENCES FORGERY/FRAUD VIDE JINJA ROAD
SD REFERENCE 61/31/03/2022**

*Reference is made to the letter CID36/VOLX/20/2022 dated 31st March, 2022 which requested for the status of stay of one **Mr. Aliyullah Hussainali Jetha Ismail** in the country, date hosted and whether he is permitted to conduct any business in Uganda.*

A search was done on the system and a travel history report extracted showing that the subject has had a number of travels in the country, the last being when he arrived into the country using a United Kingdom Passport number 506556798 on 2nd February, 2022 through Entebbe Airport from Dubai.

Subject has no work permit in the system.

Attached is a copy of the detailed above mentioned travel history report.

Director Citizenship and Immigration Control

The above letter is written in clear and simple English which would not cause any confusion in the mind of any right thinking member of society to mean any decision has been made against the applicants.

The letter was written in respect of the 2nd applicant about his status of stay in Uganda, date hosted and whether he is permitted to conduct any business in Uganda. Surprisingly, the application is jointly brought by the 1st applicant-Jetha Brothers Ltd which company is not mentioned anywhere in the letter.

Judicial review according to 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;

Even if a matter falls within the supervisory jurisdiction of the court and is justiciable, there are a number of good reasons why the court may quite properly exercise its discretion to refuse to consider a claim for judicial review. There must be a decision made by the public body which may involve application of the mind of the public officer or body. The court should not consider a claim for judicial review because the public authority has not actually taken any decision amenable to review.

In the present case, there is no decision which has been made by the Directorate of Citizenship and Immigration Control and as set out in the letter to Criminal Investigation Department, it was merely a report as extracted from the system about the immigration status of the 2nd applicant in Uganda. Judicial review is generally concerned with actions or other events which have, or will have, substantive legal consequences: for example, by conferring new legal rights or powers, or by restricting existing legal rights or interests. *See R (on the application of Shrewsbury and Atcham BC) v Secretary of State for Communities and Local Government [2008] EWCA Civ 148; 2008 3 All ER 548*

The court is being invited to review a letter dated 12th April 2022 which contains no decision and has no legal effect. The court should decline to exercise its powers of review because the public authority's action is

characterized as being without legal effect. It is an abuse of court process to file all manner of matters which do not arise out of any decision as matters for judicial review. Easy access to justice should not be abused or misused as a license to file misconceived and frivolous applications for judicial review. This application did not involve any decision being made by a public authority and the applicants counsel had no basis of filing such a matter in judicial review.

Such frivolous and vexatious matters would have been sieved out of the court system through an application for leave before an application for judicial review could be entertained or filed. Unfortunately, the application for leave stage was scrapped from our legal procedure and this has resulted in all manner of applications which are not deserving and are now clogging the court system with judicial review backlog matters.

This application fails on the preliminary considerations and the same stands dismissed with costs to the respondents.

I so Order.

SSEKAANA MUSA
JUDGE
15th September 2023