

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 195 OF 2021

THE REGISTERED TRUSTEES OF
MENGO CENTRAL OLD BOYS CLUB:.....APPLICANT

VERSUS

THE ATTORNEY GENERAL:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed an application for judicial review under Articles 28, 42, and 120(5) of the Constitution of the Republic of Uganda, sections 36, of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules S.I. No. 11 of 2009 as amended wherein he sought prerogative orders for

1. *A declaration that the decision by the Minister of Lands, Housing and Urban Development to revoke the consent to amend the Applicant's constitution and approval of the Applicant's revised constitution by the former Minister was arrived at illegally, irrationally, unreasonably, is ultra vires and in breach of the rules of natural justice.*
2. *An order of Certiorari doth issue quashing the decision of the Minister to revoke the consent to amend and approve the Applicant's revised by the former Minister.*

3. *An order of Prohibition doth issue prohibiting the Minister from revoking the Former Minister's consent to amend the Applicant's Constitution and approve the Applicant's revised constitution/ Trust Deed.*
4. *An Injunction doth issue restraining the Minister, her servants or agents from revoking the consent to amend and approval of the amendment of the Applicant's Constitution by the former Minister.*
5. *An order for general damages to be awarded against the respondent.*
6. *Costs of the application.*

The grounds in support of this application were stated very briefly in the Notice of Motion and in the affidavit of JOHN FRED KAZIBWE The President of the applicant which is detailed but briefly are;

1. On the 7th February 1934, the Applicant was incorporated under the Trustees Incorporation Act, 1939, Cap 165 as the Mengo Central Old Boys Club Kampala.
2. The Applicant is governed by By-Laws which constitute the supreme charter and the constitution of the Applicant that governs all its operations.
3. On the 20th December 2016 in compliance with the Applicant's By-Laws, the Applicant held a Special General Meeting at Mengo Senior School. The agenda of the meeting, inter alia, was to elect members of the Board of Trustees of the Applicant.
4. At the aforementioned Special General Meeting, persons were elected to the Board of Trustees of the Applicant.

5. On 16th March 2017, the Applicant lodged an application before the Former Minister Minister of Lands, Housing, and Urban Development (hereinafter referred to as the former Minister) for written consent to amend its Trust Deed and approval of the amended Constitution of the Applicant.
6. On 8th August 2017, the Former Minister issued an Order consenting the amendment and approving the new Constitution of the Applicant.
7. On 12th March, 2020, a one Dr. Ernest Kirabo Kimbugwe raised a complaint before the successor of the former Minister wherein he was aggrieved by the aforementioned Order of the former Minister issued on 8th August 2016.
8. On 31st March, 202, the successor Minister wrote to the Applicant informing the Applicant that the order issued by the former Minister was made in error and same revoked.
9. The said decision of the Minister is illegal, arbitrary, ultra vires and unreasonable as the former Minister issued the order consenting to and approving the new Constitution of the Applicant and Confirmed the Certificate of Incorporation in accordance with the provisions of the law.
10. The Minister has acted in disregard to the public interest, against the interest of the administration of justice, in abuse of the legal process and hence unconstitutionally and illegally.

The respondent opposed the application and filed an Affidavit in reply deposed by SSEKITTO MOSES who is the Ag. Principal Registrar of Titles in the Ministry of Lands, Housing & Urban Development at the time he deposed the said affidavit which stated as follows;

1. That according to the certified documents available at the Ministry Mengo Central School was established in 1895 and the Old Students Alumni in 1934 vide a certificate instrument No. 67 FILE REF: T.8051 registered as a Trust known as "*The Registered Trustees of Mengo Central Old Boys Club.*"
2. That as a lawyer in the Ministry he knows that under the Trustees Incorporation (Amendment) Act, Trustees or a Trustee shall upon application to the Minister and to the satisfaction of the said responsible minister become a body corporate by the name described in the Certificate.
3. That he knows that where a certificate of incorporation has been granted, vacancies in the number of the trustees shall from time to time be filled so as shall be required by the constitution of the entity.
4. That according to the certified documents available at the Ministry the registered and recognized Constitution of the Applicant school club provides under Article 6 for the appointment of the trustees of the applicant by the Board of Governors of the School and not by an executive committee as alleged by the applicants.
5. That according to the certified documents available at the Ministry the Constitution relied upon by the Applicant in their affidavit in support of the Application to proceed and appoint the new Trustees is not recognized by the responsible ministry and has never been registered as provided under the law to be relied upon as provided under section 4 of the Trustees Incorporation Act.
6. That on the 12th March 2020, the Minister received a complaint raised by Dr. Ernest Kirabo Kimbugwe and Jemba Erisa challenging the

appointment of new trustees of Mengo Central Old Boys Club because all the members of the Club had died making it impracticable to appoint new members.

7. That the Minister wrote to the applicant on 31st March 2021 inviting them for a hearing on 14th April 2021 at 9:00 am to be heard and address the Minister on the complaint raised.
8. That indeed the applicant received the said letter inviting them for a hearing and decided not to attend the said hearing. Thus, the allegations that the applicant was not given a fair hearing or an opportunity to be heard contrary to the rules of Natural justice are unfounded.
9. That instead of the applicants appearing and raising any objections to the applicants did not bother to honour the invitation to be heard on the complaint and their alleged objections if any.
10. That the Minister proceeded with the said hearing on the said date and made a decision exercising her powers under the Trustees Incorporation (Amendment) Act Cap 165 by revoking the amendment of the Constitution and appointment of the applicant.
11. That the reasons for the decision made by the Minister were made known and communicated to the Applicant in a letter dated 28th April 2021 by the Minister.
12. That the Minister is empowered under the Trustees Incorporation Act as the responsible Minister to interrogate, investigate and make a decision concerning the complaint raised by any interested party relating to and regarding the constitution and conduct of the Old Boys

Club as a body corporate created under the Act in regard to its trustees as may seem to him or her proper.

13. That the applicant having refused to be heard and to participate in the hearing challenging their amendments and appointments, cannot belatedly attempt to lament and challenge the same and are thus estopped.

The applicant was represented by *Counsel Patience Akampulira* while the respondent was represented by *Ojambo Bichachi(SA)*

Issues for Determination

1. *Whether the Application raises any grounds for judicial review?*
2. *What remedies are available to the parties?*

At the hearing of this application, the parties were advised to file written submissions only the applicant filed their submissions which I have had the occasion of reading and considered in the determination of this application.

Determination

Whether the impugned decision to revoke the consent of the Former Minister by the successor Minister was illegally made?

The Applicant's counsel submitted that the former Minister of Lands, Housing and Urban Development certified the new trustees of the Applicant and on 4th August 2017 and on 8th August 2017, issued consent to the Applicant's revised Constitution. However, on 31st March 2021, the Minister revoked the former Minister's orders on the ground that it was issued in error.

He relied on Section 15(1) of the Trustees Incorporation Act 1939 which states that the Minister has power to make orders regarding the Constitution and conduct of any corporate body created under the Act or in regard to its trustees. These orders subject to an appeal are conclusive and binding for all

purposes. The provision goes on to list the actions that the Minister is permitted to authorize.

He also cited Section 15(2) of the Act which states that;

“Any person who deems himself or herself aggrieved by any order made by the Minister under subsection (1) may within thirty days of the making of the order appeal to the High Court in accordance with any rules of court made in that behalf.”

Counsel submitted that the Successor Minister’s impugned decision to revoke the former Minister’s order was illegal as she did not have the power or legal authority or jurisdiction to revoke such orders.

Analysis.

The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. It is the courts to determine whether the decision-maker has made an error of law bearing in mind the broad degree of discretion in decision-making. The court should identify the all-important dividing line between decisions that have been reached lawfully and those that have not. There are two questions: (i) was the decision taken within the powers granted? and (ii) if it was, was the manner in which it was reached lawful? *See Citizens Alert Foundation (CAF) Ltd & 4 Others v AG & 2 Others HCMC No. 339 of 2020.*

The Applicant’s counsel submitted that in revoking the orders granted by the former Minister the successor Minister acted beyond her powers and hence ultra vires and this court agrees with this submission.

Section 15 (1) of the Trustees Incorporation Act states that the Minister shall have power, upon the application of any interested party made subject to any rules in that behalf, to make such orders regarding the constitution and conduct of any corporate body created under this Act or in regard to its trustees as may seem to him or her

proper, and those orders shall, subject to appeal, be conclusive and binding for all purposes; in particular and without prejudice to the generality of the foregoing, the Minister may authorize which are;

a) any variation in the composition or constitution of such corporate body or in the rules or other instrument regulating it without prejudice to its due incorporation and perpetual succession;

(b) the amalgamation of two or more corporate bodies created under this Act and the vesting of the property of those bodies in a new corporate body having such constitution as the Minister may approve;

(c) a change of name of any corporate body created under this Act;

(d) the termination of incorporation of any corporate body created under this Act subject to such directions as to its liquidation and the disposal of its assets as may be prescribed or as the Minister sees fit to order.

Section 15(2) goes ahead to stipulate that any person who deems himself or herself aggrieved by any order made by the Minister under subsection (1) may within thirty days of the making of the order appeal to the High Court in accordance with any rules of court made in that behalf.

It is contended by the applicant and not disputed by the respondent that a one Dr. Ernest Kirabo Kimbugwe and Jemba Erisa raised a complaint wherein they were aggrieved by the decision of the former Minister to the Successor who in turn revoked the Former Minister's order.

It is trite that when an administrative body does something, that it has in law no capacity to do or does it without following the proper order, it is said to have acted illegally. *See Clear Channel Independent (U) Ltd v Public Procurement and Disposal of Public Assets Authority Misc Application No. 380 of 2008*

The decision-maker like the Minister in this matter must understand correctly the law that regulates her decision making power and must give effect to it. The initial and everyday interpretation of legislation is by the public bodies rather than the courts. This gives rise to the question: to what extent does a public body have discretion to interpret the legislation enabling and controlling its functions? Any such interpretation of law by a decision-maker must be to give effect to the law and not to confer any power not expressly set out under the law.

From the reading of Section 15 of the Act, once the Minister makes an order, he or she becomes *Functus Officio* and the only way a person who is aggrieved by the decision of the Minister can have it challenged is through lodging an Appeal to the High Court within thirty days from making of the order. Therefore, indeed it was illegal for the Minister to go back and revoke an order already made by that Office.

Having found that indeed the decision of the Minister was illegal, the first issue is found in the affirmative on that ground alone and there is no need for me to go into the resolution of the other grounds of Irrationality and Procedural Impropriety.

Therefore issue one is answered in the affirmative.

What remedies are available to the parties?

Rule 2 of the Judicature (Judicial Review) Rules as Amended provides that a declaration means a pronouncement by court on the legal position of the party after considering the evidence and applying the law and that evidence to the existing legal situation.

After evaluation of the evidence on court record, the Applicant is entitled to a declaration that the decision by the Minister of Lands, Housing, and Urban Development to revoke the consent and amend the Applicant's revised Constitution by the former Minister was arrived at illegally is ultra vires.

Rule 2 of the Judicature (Judicial Review) Rules as Amended defines Certiorari to mean an order by court to quash a decision which is ultra vires.

Certiorari is one of the most powerful public law remedies available to an applicant. It lies to quash a decision of a public authority that is unlawful for one or more reasons. It is mainly designed to prevent abuse of power or unlawful exercise of power by a public authority. *See Public in East Africa by Ssekaana Musa page 229.*

Certiorari is simply concerned with the decision-making process and only issues when the court is convinced that the decision challenged was reached without or in excess of jurisdiction, in breach of rules of natural justice or contrary to the law. The effect of the order of certiorari is to restore status quo ante. Accordingly, when issued, an order of certiorari restores the situation that existed before the decision quashed was made. *See Twed Property Development Limited v National Building Review Board (Misc Cause 274 of 2022) [2023] UGHCCD 209 (7 July 2023).*

The court therefore issue an order of Certiorari quashing the decision of the Minister to revoke the consent to amend and approval of the Applicant's revised Constitution by the former Minister.

The court further grants an Injunction restraining the Minister, her servants or agents from revoking the consent to amend and approval of the amendment of the Applicant's Constitution by the former Minister.

General Damages

Rule 8 of the Judicature (Judicial Review) Rules

- 1) On an application for judicial review the court may, subject to subrule (2), award damages to the applicant if,
 - (a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter to which the

application relates; and

(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages.

In that regard, the position of the law is that the additional cause of action that may be added to an application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. *See: Three Rivers District Council v Bank of England* (3) [2003]2 AC 28 1; *X (Minors) versus Bedfordshire County Council* [1995]2 AC 633; and *Fordham, Reparation for Maladministration: Public Law Final Frontiers* (2003) RR 104 at page 104 - 105.

In the present case, the facts do not disclose a cause of action that would entitle the applicant to general damages and even no evidence has been led to show that the applicant suffered any damages that would warrant compensation. Therefore, the applicant is not entitled to an award of damages.

This Application is allowed with costs to the applicant.

I so Order.

SSEKAANA MUSA

JUDGE

30th November 2023.