

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL APPLICATION NO. 16 OF 2004
IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW
AND
IN THE MATTER OF APPLICATION BY CHARLES BYAMUGISHA (APPLICANT)
AND
MASINDI TOWN COUNCIL (RESPONDENT)

BEFORE THE HON. MR. JUSTICE GEOFFREY KIRYABWIRE.

RULING:-

This an application by way of a Civil Application (Ex parte) under Order 42(A) rule 2 of the Civil Procedure Rules — The Civil Procedure (Amendment) (Judicial Review) Rules, 2003. It is brought by the Applicant Mr. Charles Byamugisha who is said to be a businessman specialising in passenger transportation in Kampala and Masindi.

The application seeks reliefs for

- a. The nature of the matter in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari.
- b. The nature of the persons and bodies whom relief may be granted by way of such an order, and
- c. All the circumstances of the case.

It would be just and convenient for the declaration or injunction to be granted on an application for judicial review. In this case this provision would apply with regard to the relief of declaration only.

It is trite law that an application such as this for judicial review formerly referred to as prerogative orders are granted through an exercise of judicial discretion by the court.

In this application two general matters came to light the first being the legality of the fees being levied and secondly their imposition on the Applicant.

As to the legal tests to be applied there is no doubt that the fees being levied directly affect the Applicant and in this regard I find that he has sufficient interest in the matter. It is however not clear when it can be said that the grounds of this application first arose to compute the three months requirement. Counsel for the Applicant did not address me on this. However, on the strength of paragraph 14 of the affidavit of Mr. Byamugisha, it can be said to be the 6th August 2004 when the Town Clerk of Masindi Nic Begyira Rukiika issued the Applicant with summons, so it is within the prescribed period.

These type of transportation fees are common place in Uganda. It would appear that from the interim injunction obtained, that the Respondents have been restrained from levying these taxes on the Applicant alone and not other owners.

This action therefore only affects one person but has wider reaching consequences. The action is brought against a Municipal Council, which relies on these fees for its work. A declaration that these fees are illegal will deprive the municipality of this revenue. I need to find whether leave to grant such a declaration would be just and convenient. By just and convenient I take it to mean whether it would be right and fitting given all the circumstances of the case for court to exercise its discretion in favour of the Applicant.

This whole application revolves around the legality of fees being levied. It could have been possible for the Applicant to file a case under Order 2 rule 7 for a similar type of declaration where the more rigorous tests for judicial review would not apply. However, I do agree that there is a threat of eminent action against the Applicant by the Respondent. Secondly being a Local Government the Applicant would have to give a statutory notice of 45 days, which

would restrict his access to justice in a timely fashion to deal with this threat.

On the whole I find that this is a fit application for court to exercise its discretion to grant leave as prayed. However, I feel that it is important given the nature of this application to grant leave with terms within the meaning of Order 42(a) rule 4(9). This is because the effect of the leave would be that only one transporter in Masindi would be allowed not to pay the fees while others are doing so which cannot be just and equitable, in any event the money sought is not much. I therefore order as follows:

1. That leave is granted to the Applicant to apply for an order of Certiorari, Prohibition and a Declaration.
2. That the leave is granted on condition that the Applicant deposits the said outstanding payments of Shs. 339,300/= with the Registrar of this Court within 14 days of the date of this ruling.
3. The Interim Order dated 16 August 2004 is vacated and replaced with a stay under Order 42(A) rule 10(o) to the effect that the Respondent (Masindi Town Council) its employees, servants, tenderers and or agents and any other person acting as such are restrained from taking legal action against the Applicant, demanding any further taxes or duties by whatever name called beyond the Shs. 339,300/= to be deposited in court arising from his transportation of passenger business using public service vehicles (PSV) in Masindi Town Council or stopping any of his vehicles Reg. No. UAA 574 D, UAA 044 K and UAB 629 B, from loading or off loading passengers until the hearing and final disposal of this application for judicial review.
4. That the Applicant shall serve the Respondent with the motion through the Respondents lawyers M/s Mukwatanise & Co. Advocates within 14 days of

this ruling.

5. That the motion shall be heard on the 12th October 2004.

GEOFFREY KIRYABWIRE

Ag. JUDGE

10/09/2004.

10/09/2004

(12.30 .p.m.)

Mr. Kandebe for the Applicant

Rose Emeru Court Clerk

Kandebe: - This is for ruling.

Court Ruling read in open court in the presence of the above persons.

Ag. JUDGE

10/09/2004.