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Uganda Cotton Klub Ltd Vs Cotton Development Org. HCT-00-CC-MC-0023-2006 [2007]

UGCommC 1 (8th January 2007)

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MC-0023-2006

UGANDA COTTON KLUB LTD. APPLICANT

VERSUS

COTTON DEVELOPMENT ORGNISATION RESPONDENT

8th January 2007

BEFORE: HON MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an exparte application brought under section 36 of the Judicature Act and Order 46 A Rule 4 of the Civil Procedure Rules as amended by the Civil Procedure Rules (Amendment) (Judicial Review) Rules S.I 75/2003 for leave to apply for review of the decision of the Respondent, Cotton Development Organisation, of 17th November 2006. The Applicant, M/S Uganda Cotton Klub Ltd, intends to apply for the following orders:-

- (a) An order of certiorari quashing the decision of the Respondent dated 17th November 2006, canceling the applicant's Cotton dealing, ginning and lint export certificate.
- (b) An order of Certiorari quashing the Respondent's decision of 17th November 2006) on the "wrapping material" for the bales of the duly licensed lint exporter.
- (c) An order of Prohibition against the Respondent from imposing quotas on the Applicants Cotton purchases in a particular zone.
- (d) An Order of Prohibition against the Respondent from imposing a maximum Cotton) purchase price.
- (e) An Order of Prohibition against the Respondent from continuing to bar the Applicant from contracting farmers to plant cotton and / or to purchase the same from the entire country.
- (f) An order of Mandamus against the Respondent to grant/renew the Applicant's Ginning and Lint Export licenses and quality certificates.
- (g) An order that the Respondent pays general and aggravated damages for its said) actions and the lost earning occasioned by the above actions.
- (h) A declaration that the Respondent Order/ zonal restrictions imposed on the) Applicant Company on purchase of cotton in so far as it not relate to maintaining cotton varieties and quality is a restrain on free trade, ultra vires, unlawful and restrains the growth of the Applicant's business by/and or unduly subjects crop farmers to whims of monopolitic zonal licences.

- (i) A declaration that all the decisions complained of were taken and made by and/or with the participation of the Managing Director in the person of Mrs. Jolly K. Sabune whose office tenure in the Respondent is *ultravires*, hence the decisions are null and void *abinitio*.
- (j) An order of costs against the Respondent.

Section 36 of the Judicature Act empowers the High Court upon on application for Judicial review to grant any one or more of the following reliefs:

- (a) An order of mandamus requiring any act to be done;
- (b) An order of prohibition, prohibiting any proceedings or matter;
- (c) An order of certiorari, removing any proceedings or matter into the High Court;
- (d) An injunction to restrain a person from acting in any office in which he or she is not entitled to act;
- (e) A declaration or injunction not being an injunction referred to in (d) above.

As a preliminary stage the applicant is required under Order 46 Rule 4 of the Civil Procedure Rules' to obtain leave of Court before making the application. While considering the application the High Court's duty is to investigate the proceedings of the lower Court, or tribunal or public authority on any of the following grounds apparent on the record:-

- (a) Taking into account, matters, which it ought not to have taken into account.
- (b) Not taking into account matters, which it ought to have taken into account.
- (c) Lack or excess of jurisdiction,
- (d) Conclusion arrived at is so unreasonable that no reasonable authority could ever come to it.
- (e) Rules of natural justice have been violated, or
- (f) Illegality of procedure or decision.

See **Sam Murumbe & Anor Vs Mukere Chacha (1990) TLR 54, Kaye Saul V/S UWA H. C. Misc. App No 35 of 2003.**

The law is that if any of the above factors appear on record to be offended court should grant leave for the full investigation to be conducted. At this preliminary stage the courts only duty is to determine whether the applicant has established a prima facie case to sustain the grounds upon which he relies to seek the judicial review. Leave will be granted when the applicant, has shown that there is a point which merits an investigation on a full hearing. See **Kikanda Butema Farmers Ltd Vs I.G.G. C.A C.A. No 35 of 2002**

This application is supported by a Statement setting out the particulars of the applicant, the relief sought and the grounds upon which it is sought. The facts are verified by an affidavit sworn by Edmund Wakida, the Company Secretary of the Applicant Company. The brief facts, as I have gathered from the statement of fact, the affidavits in support and the annexures thereto are that the Respondent is a government corporation responsible or charged with the regulation of Cotton production, processing, trade, exporting and all related matters established by the Cotton Development Act. The respondent is thus a public authority. The applicant was on 29th March 2005 duly licensed by the Uganda Investment Authority to invest in the Cotton Ginnery in Pallisa. The license was renewed on 30th August 2005 for a period not less than five years from the date of project commissioning. The applicant imported into Uganda a Modern Cotton Ginnery from USA and set it up at Bulangira in Pallisa at a cost of US\$3,200,000. An agreement dated 19th June 2006 was executed between the Applicant and the Respondent wherein certain conditions were agreed to be satisfied by each party. The Applicant contends that it met the conditions and the Respondent

issued to the Applicant a Ginnery Certification Certificate, a Cotton Ginning Registration Certificate and a Lint Cotton Export Certificate all valid for the 29th August 2006 to 30th November 2006 (2005/2006) season.

The applicant then ginned cotton totaling over 4000 bales, of approximately 225 kgs each and wrapped then in polythene. The Respondent issued quality clearance certificates and the applicant entered into a contract to supply the bales to its customer M/s Riftcot Ltd. By its letter dated 3rd October 2006 the Respondent prevented the Applicant from exporting and selling its lint to a willing customer because of the type of polythene bale wrapping material chosen by the buyer. By a letter dated 17th November 2006 the Respondent cancelled the Applicant's certificates below:-

- (i) Ginning Certificate S/N 0046 issued on the 29th August 2006
- (ii) Ginning Certificate S/N 0035 issued on the 29th August 2006
- (iii) Export Certificate S/N 0023 issued on the 29th August 2006
- (iv) Quality Certificates for Lot Number E3368-E3398

The Applicant contends that it has a large quantity of cotton in its store ready for export, that when the export is unreasonably delayed the quality will deteriorate to the detriment of the Applicant. That the applicant has invested in this venture US\$5,000,000 and plans to invest up to US\$20,000,000 in Uganda. There was no wrapping condition disclosed in the various certificates issued by the Respondent. That the Respondent unilaterally cancelled the permits and licenses without giving any hearing to the Applicant thereby breaching the cardinal rule of natural justice. The Applicant further contends that Mrs. Jolly K Sabune's tenure as Managing Director had since expired and submits that the decisions of the Respondent taken and made by and or with her participation were ultra vires hence null and void ab initio.

The Applicant is a foreign investor who was licensed by the Uganda Investment Authority on 30th August 2005 for a period not less than 5 years to invest in the Cotton Ginnery in Palisa. The Applicant set up a Cotton Ginnery at a cost of US\$3,200,000. The Applicant complied with the conditions agreed upon in an agreement between the Applicant and the Respondent dated 19th June 2006. As a result the Respondents issued the Applicant with a Ginnery Certification Certificate and Cotton Ginning Registration Certificate, a Lint Cotton Export Certificate all valid up to 30th November 2006. Armed with the above certificates the Applicant ginned cotton totaling over 4,000 bales for which the Respondent issued the applicant with the Quality Clearance Certificates E3368 – E3398. The applicant got an order from a willing foreign buyer but the Respondent stopped the export due to the type of wrapping material. It is the Applicant's contention that no wrapping conditions were disclosed in the certificates issued by the Respondent. Before the expiry of the certificates the Respondent cancelled all the certificates on 17th November 2006 thereby making it totally impossible for the Applicant to export the cotton it had ginned. The above facts raise an issue whether the Respondent's decision to cancel the Certificates was reasonable in the circumstances of this case. The applicant further contends that the decision was reached without giving it any hearing thereby violating the well known rule of nature justice known as Audi Alteram Partem. It is further contended that the decisions were reached with the participation of Mrs. Jolly Sabune whose tenure as Managing Director of the Respondent had expired. The Applicant contends that such decisions were null and void ab initio, thus illegal.

Considering all the above I find that the Applicant's complaint is serious and needs to be investigated inter parties for a remedy. This is a proper case which warrants the leave sought to be granted and it is accordingly granted.

The order as to costs in the main application shall bind the costs in this application. I so order.

Hon Mr. Lameck N. Mukasa

Judge

8/01/2007