

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA**

**COMMERCIAL COURT DIVISION
HCT-00-CC-OS-0004 OF 2009**

LIONKING INTERNATIONAL (U) LTD PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITYDEFENDANT

Before Hon. Mr. Justice Lameck N. Mukasa

RULING

This is an application for Judicial Review brought by Originating Summons under Order 46A Rule 6 (2) of the Civil Procedure Rules seeking various declarations and an order of certiorari.

The applicant , M/s Lionking International (U) Ltd, was represented by Mr. Enock Barata. The Respondent , Uganda Revenue Authority, was represented by Mr. Habib Arike and Mr. George Okello. In his submission Mr. Okello raised a point of law which I must dispose of. He argued that the application was not served with a statement as required by the law. That there had afterwards been an attempt to serve them with the statement which effort he argued was futile. Counsel for the Applicant did concede that they had served the statement on the Respondent after service of the application. Mr. Okello applied for the application to be struck out.

This is an application for Judicial Review hitherto governed by Order 42A of the Civil Procedure Rules and not Order 46 A . Rule 7 of Order 42 A required copies of the statement in support of any application for leave under rule 4 of the Order to be served with the application for Judicial Review. This application was filed on 26th March 2009. By then Order 42 A and the Civil

Procedure (Amendment) (Judicial Review) Rule 2003 had been revoked by the Judicature (Judicial Review) (Revocation) Rules 2009, published on 5th March 2009. Judicial Review procedure is now provided for by the Judicature (Judicial Review) Rules 2009. The current rules do away with the requirement for a preliminary application for leave and for the statement.

However, this application is still defective in procedure. It is brought by Originating Summons yet Rule 6 of the Judicature (Judicial Review) Rules 2009 provides that an application for Judicial review shall be by notice of motion. The procedure adopted was wrong and on that ground the application cannot stand. See Salume Namukasa Vs Yozefu Bulya (1966) EA 433, Kibuuka Musoke AS Vs Tour Travel Centre Ltd HCT-00-CC-MA-308-2008.

Further Rule 5 of the said Rules requires an application for Judicial review to be made within three months from the date when the grounds of the application first arose. The ruling in TAT No 5 of 2008, which is the subject of this Application, was delivered on 2nd December, 2008. This Application was file on 26th March 2009, after the expire of the limitation period of three months. In Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd (1997) – 2001) UCL 149 Justice Twinomujuni JA stated:

“Time limits set by statutes are matter of substantive law and not mere technicalities and must be strictly complied with”

The Supreme Court in Francis Nansio Michael Vs Nuwa Walakira (1993) VI KLA14 held that clearly if the action is time barred then that is the end of it.

Though the above rule provides for Court’s discretion for good reason to extend the period within which the application shall be made, none has been given. In the circumstances the application should be rejected. See Iga Vs Makerere University (1972) EA 65.

I therefore find that the application was time barred and brought by the wrong procedure. In the premises I do not need to consider the merits of the application. It is struck out and dismissed with costs.

Hon. Mr. Justice Lameck N. Mukasa

JUDGE

21st September, 2009