THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-OS-0003 OF 2009

SPEKE HOTEL (1996) LTD …… PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY ……..……DEFENDANT

Before Hon. Mr. Justice Lameck N. Mukasa

RULING

This is an application for Judicial Review brought by way of Originating Summons under Order 46 A rule 6 (2) of the Civil Procedure Rules. The Applicant, Speke Hotel (1996) Ltd is seeking several declarations and an order of Certiorari against the Respondent, Uganda Revenue Authority.

Representation was Mr. Enoch Barata for the Applicant. For the Respondent it was Mr. Habib Arike and Mr. George Okello.

In their submissions Counsel for the Respondent raised two points of law, which I intend to dispose of first. First that the affidavit in support of the Originating Summons contained falsehood and should be struck off. The Originating Summons was supported by an affidavit sworn by Jimmy Nsibambi. He therein avers that the Applicant imported a consignment of tiles

and sanitary ware and that the dispute between the parties revolved around the valuation of the tiles and ceramics. In the Respondent's affidavit in reply the deponent Mr. Kazibwe Moses Kawumi states that the consignment was of marquee tents. The TAT ruling in TAT Application No 1 of 2007 shows that the goods imported and subject of the application were Marquee tents and accessories.

Further the deponent to the affidavit in support stated that the members who constituted the Tribunal and passed the Ruling in Miscellaneous Application No. TAT 06 of 2008 were not the same members who constituted the Tribunal in hearing TAT Application No. 01 of 2007. The record in TAT Application No. 1 of 2007 shows that the **coram** was B.N. Kamugasha – Chairman

P.A. Namugowa - Member

G.W. Mugerwa - Member

The record in TAT Application No. 06 of 2008 shows the **Corams** as: -

A. Mugenyi - Chairman

Pius Bahemuka - Member

George W. Mugerwa- Member

Save for G. W. Mugerwa who was a member to both **corams**, the membership was different. I therefore find the averment as to membership truthful. The averment with regard to the consignment was false but the attachment to the affidavit clearly shows what the consignment was. It is trite that attachments referred to in pleadings and attached thereto are thereby made part and partial of the pleadings. The reference to the consignment which was false in the body of the affidavit was corrected or made clear in the attachments to the affidavit. Therefore the Respondent could not be misled by the false averment in the body of the affidavit. Further no injustice could be caused to the Respondent since the issue before this court does not relate to the consignment or its taxability but to the instructions fees as taxed by the Taxing Master.

Secondly that the applicant did not comply with the requirements of Order 46(A) rule 7 of the Civil Procedure Rules in that it was not served with a statement in support thereof. The application was strangely indicated both as an Application for Judicial Review and also as an Originating Summons. Originating Summons are governed by Order 37 of the Civil Procedure

Rules. While Judicial Review was hitherto governed by Order 42 A of the Civil Procedure Rules. From the body of the application and the Orders sought it is clear that the Applicant was seeking for Judicial Review and the right Order should have been Order 42A CPR. Rule 7 of Order 42A CPR stated:

> "Copies of the statement in support of any application for leave under rule 4 of this order shall be served with the notice of motion or summons and subject to sub-rule (2) of rule 4, no grounds shall be relied upon, or any relief sought at the hearing except the grounds and relief set out in the statement."

Mr. Okello argued that the statement in support of the application for leave was not served with summons. He submitted that the requirement is mandatory and non compliance rendered the application incompetent. He prayed for the application to be struck out.

This application was filed on 26th March 2009. By that date order 42 A of the Civil Procedure Rules and the Civil Procedure (Amendment) (Judicial Review) Rules 2003 (S.I No 75 of 2003) had been revoked by the Judicature (Judicial Review) (Revocation) Rules 2009 (S. I) No 12 of 2009) published on 6th March 2009. Judicial Review is now governed by the Judicature (Judicial Review) Rules 2009 (S I No. 11 of 2009).

SI No 11 of 2009 does not provide for preliminary application for leave and does not provide for any requirement for a statement in support of the application. Rule 6 provides:

> "In any criminal or civil cause or matter an application for judicial review shall be made by notice of motion in the form specified in the schedule to these Rules."

The schedule, which is in the format of a Notice of Motion, in part states:

> "----------

> And take notice on the hearing of this motion, the applicant will use the affidavit and exhibits, copies of which accompany this motion.
> -----"

By implication the motion must be accompanied by an affidavit and as such should be served together with it to the apposite party. The instant application is supported by an affidavit deponed to by Jimmy Nsibambi. In the Respondent's affidavit in reply, the deponent , Kazibwe Moses Kawuma, states:

> "(2) That I have read ---- the affidavit of JIMMY NSIBAMBI in support of the Application ----"

This clearly shows that the affidavit in support was served together with the application and accordingly responded to.

However, Rule 6 above provides that an application for Judicial Review shall be by notice of motion. The instant application was by Originating Summons. The procedure adopted was wrong. In *Salume Namukasa Vs Yosefu Bulya (1966) EA 433* Sir Udo Udoma CJ stated:

> "--- having regard to the provisions of section 101 of the Civil Procedure Ordinance (now section 98 CPA). It seems to me that before the provisions of the Ordinance can be invoked the matter or the proceedings concerned must have been brought to the court, the proper way in terms of the procedure prescribed by the rules of this court. In the present case the application has not been brought before this court in the manner prescribed by law."

In *Kibuuka Musoke AS Vs Tour Travel Centre Ltd HCT-00.CC-MA-308-2008* the application was brought by Chamber Summons. This court found that the application should have been brought by Notice of Motion. It held that the application was brought by wrong procedure and dismissed the application.

Secondly Rule 5 provides:

> "(I) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.
>
> (2) Where the relief sought is an order of Certiorari in respect of any judgment, order, conviction or other proceedings, the date when the grounds of the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings if that decision is delivered in open court, but where the judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by registered post.
>
> (3) This rule shall apply without prejudice, to any statutory provision which has the effect of limiting the time within which an application for Judicial review may be made."

The revoked S.I No 75 of 2003 had similar provisions. The provision is mandatory. The Tax Appeal Tribunal ruling in Misc. App No TAT 06 of 2008, the subject of this application, was delivered on 9th December 2008. This application was filed on 26th March 2009, after the expiry of the three months statutory limitation period.

In the premises I find that this application was filed out of time. In *Uganda Revenue Authority Vs Uganda Consolidated Properties Ltd (1997 – 2001) UCL 149* Justice Twinomujuni JA stated:

> "Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with."

In *Francis Nansio Michael Vs Nuwa Walakira (1993) VI KALR 14* the Supreme Court held that clearly if the action is time barred then that is the end of it.

The rule grants this court the discretion for good reason to extend the period within the application shall be made. But where a party wishes to reply on any exemption to the periods of limitation it must be specifically stated in the pleadings. If it is not the plaint or application should be rejected. See *Iga Vs Makerere University (1972) EA 65*. In the instant application no reason is at all given for the delay in filing the application.

This application was brought by the wrong procedure. It was filed out time. I need not consider the merits of the application. It is struck out and dismissed with costs to the Respondent.

Hon. Mr. Justice Lameck N. Mukasa

Judge

Commercial Court Division

21st September, 2009