

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMAPALA**  
**[COMMERCIAL DIVISION]**  
**MISC. APPL No. 858 OF 2016**

5 *(Arising From Miscellaneous Cause No. 13 of 2016)*

**UNICARGO FORWARDERS AND AGENTS LIMITED:..... APPLICANT**

**VERSUS**

**1. THE ATTORNEY GENERAL**

**2. GUANGZHOU TIGERHEAD BATTERY GROUP COMPANY LTD**

10 **3. WHITE SHOWMANS LIMITED :..... RESPONDENT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

**RULING**

15 **BRIEF FACTS**

The applicant filed an application seeking for review of the consent order in Misc. Cause No. 13 of 2016. The application is opposed by the respondents on various grounds.

The parties framed two issues for resolution by court. The issues are:-

20 *1. Whether the applicant has locus to bring this application*

2. Whether the applicant has established any grounds to review and set aside the consent judgment/order HCCS Misc. Cause No. 13 of 2016.

Court was addressed in written submissions.

**Issue one:- Whether the applicant has locus standi to bring the application.**

- 5 The respondents contend that the applicant has no *locus standi* to bring the application. The applicant's case is that he was aggrieved by a court order and as such has a right under **Section 82** of the **Civil Procedure Act**. That the section does not stipulate that a person need to have been a party to the suit, he just needs to be aggrieved by the decision.
- 10 He relied on the case of ***Daniel and 16 others Vs Uganda Land Commission and 2 others HCMA No. 1237 of 2013*** where it was held that an applicant is aggrieved by an order of court where the order affects its legal or equitable interest or right of such a person in the subject matter.

The applicant further contends that the nature of the order is for it to operate as a  
15 legislation that binds not only the parties thereto but all importers of Tiger Head Batteries and potential importers of Tiger Head Batteries.

The applicant then demonstrated that part of his business is to import Tiger Head Batteries manufactured by the 1<sup>st</sup> respondent, and that it has a valid license that was granted to it by the Minister of Trade, Industry and Cooperatives without any  
20 limitations or clauses mandating it to import Tiger Head Batteries manufactured by the 2<sup>nd</sup> respondent directly from the 1<sup>st</sup> respondent. Further that the license was granted to the applicant under the External Trade Act (import license) (Tiger Head Brand Batteries) Order 2016, dated 20th may 2016.

In reply, the respondent submitted that **Section 10** of the External Trade Act cap 88 provides that a license granted under the Act shall be in such a form as the Minister may prescribe. That all licenses granted with regard to importation of Tiger Head Batteries under the Act are by way of Statutory Instrument as clearly stated in the  
5 paragraph 4 of Mr. Bob Kabonyero’s affidavit.

The applicant in their submissions in rejoinder assert that even though the license has the title Statutory Instruments, it is by all intents and purposes not a Statutory Instrument.

To resolve this issue, we have to first define for purposes of this case, what a  
10 Statutory Instrument is

The interpretation Act cap 3 provides that;-

*“Where any Act confers on the president, a minister or any other authority, a power to make or a power exercisable by making proclamations, rules, regulations, byelaws, statutory orders or  
15 statutory instruments, any document by which that power is exercised shall be known as a statutory instruments and the provisions of the Act shall apply to it accordingly”.*

Accordingly, a Statutory Instrument is in my view a form of subsidiary legislation which allow the provisions of an Act of Parliament to be subsequently brought into  
20 force or given effect to some provisions of the parent Act. They are also referred to as secondary, delegated or subordinate legislation.

Acts of Parliament confer powers on Ministers to make more detailed orders, rules or regulations by means of statutory instruments. An Act will often contain abroad

framework and statutory instruments are used to provide the necessary detail that would be too complex to include in the Act.

It would be a grave error for me to hold that the impugned External Trade (import License) (Tiger Head Brand Batteries) Order, 2016 is not a Statutory Instrument.

5 It is an order of a Minister in his delegated powers by the External Trade Act; which allows the provisions of the External Trades Act to be brought into effect. I am persuaded that it is indeed a Statutory Instrument.

In any event

Section 10(2) of the External Trade Act Cap 88 provides;-

10 (2) *A license granted under this Act shall be in such form as the Minister may **prescribe** (emphasis mine)*

The term “prescribe” is defined in Black’s Law Dictionary 9<sup>th</sup> Edition to mean;-

*“To dictate, ordain, or direct, to establish authoritatively (as a rule or guideline)*

15 A close look at all the licenses issued under **Section 3 (1)** and **(3)** of the External Trade Act indicates that they were all issued by way of Statutory Instruments.

In my view once that is the route taken by the Minister, then such Statutory Instruments have as of necessity to be gazetted. Indeed the impugned Statutory Instrument was issued with such intent.

20 **Section 16 of the interpretation Act** provides that every Statutory Instrument shall be published in the gazette and shall be judicially noticed. Since the

impugned Statutory Instrument was not published in the gazette as required by law, it cannot be judicially noticed.

**Section 17 of the Interpretation Act** provides that the commencement of Statutory Instrument shall be such a date as is provided in or under the instrument or, where no date is so provided, the date of its publication as notified in the gazated. This particular Statutory Instrument does not provide for the commencement date which therefore means that it was supposed to be the date of its publication as notified in the gazette. Since the instrument was not published in the gazette, it means that there is no commencement date in fact and as such I am inclined to agree with the 1<sup>st</sup> respondent that since the Statutory Instrument was not gazette and since it bears no instrument number, it is indeed not recognized by law. As such, it is not valid, and accordingly the applicant is not dully licensed or authorized to import tiger head batteries and as such, he does not have any legal or equitable rights in the consent judgment he seeks to be reviewed.

Accordingly, it is clear that the applicant has no legal right to commence this application as an authorized importer of restricted goods since the applicant has no legal authority or right to import the goods. This therefore means that the applicant has no *Locus* to commence the application.

In the result this application is dismissed on this ground. Since the decision under this issue sufficiently determines the application, I will not delve into issue 2.

The applicant will pay costs of the respondents.

It is so ordered.

**B. Kainamura**

**Judge**

5 **07.12.2016**