

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CAUSE NO. 164 OF 2017

SANYWA TWAHA:.....:APPLICANT

VERSUS

1. KAMPALA CAPITAL CITY AUTHORITY

2. THE EXECUTIVE DIRECTOR,

KAMPALA CAPITAL CITY AUTHORITY :.....:RESPONDENTS

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This is an Application brought by way of Notice of Motion by Sanywa Twaha herein after called the Applicant against Kampala City Council Authority and the Executive Director of KCCA collectively referred to as the Respondents. The Applicant seeks the following declarations;

- a) That the act of collecting a monthly park fee of UGX.120,000 is ultravires and contrary to the Government policy which is recommended as UGX.80,000,
- b) That it is in breach and violation of Article 21, 26 and 45 of the Constitution of the Republic of Uganda.

The Applicant also seeks orders;

- a) That the Respondents shall desist from charging more than UGX 80,000 and all money so far collected above that figure should be refunded.

The Applicant also seeks punitive and exemplary damages. This Application is supported by the affidavit of the Applicant who deposed that the UGX 120,000 collected every month from every public service vehicle was excessive and unfair assessment. He also deposes that the acts of the Respondents are in violation of a Ministry of Local Government Revised Policy Guidelines and Management levying of parking fees. He attached a copy of the guidelines. He further deposed that the acts of the Respondents were fraudulent in as far as they led to unfair gain and breach of rule of law against the social and economic rights of public service vehicle operators.

Through an affidavit in reply Mugangaizi Robert the manager Commercial Road User Fees deposed that the 1st Respondent established under the Kampala Capital City Act is empowered by the said legislation to among other things levy, charge, collect fees and taxes, rent, rates, royalties, stamp duties and others.

That the collection of the impugned UGX 120,000 was provided for in the Kampala Capital City (Commercial Road Users) Regulations SI- No. 3 of 2015 and that there was therefore no fraud, impunity or high handedness. Section 3 of the Kampala Capital City Authority Act 2010 declares Kampala as a capital city of Uganda.

Section 5 therefore provides that there shall be an authority to be known as Kampala Capital City Authority. This Authority shall be a body corporate with perpetual/succession and may sue or be sued in its corporate name. Its functions are provided for in section 7 and they include among others; to initiate and formulate policy that is 7(1) (a), to determine taxation levels section 7(1) (c), to enact legislation for the proper management of the capital city, section 7(1) (e) to monitor the delivery of services within its jurisdiction section 7 (1) (c) and others.

Section 82 empowers the ministry to make regulation through statutory instruments for the better carrying into effect of provisions of the Act.

From the foregoing, it is quite clear that the 1st Respondent is empowered under the law not only to collect taxes but even to enact legislation for the assessment and collection of the same. A regulation made by a statutory instrument enjoys a presumption of constitutionality; **Ministry for Agriculture vs Brennann 1999 HC 3 IR 228.**

Such statutory instruments would be legislations related to detailed day to day matters arising from the operation of the Kampala Capital City Authority's Act. The regulations would be used

for example the assessment and collection of taxes as a way of implementing the functions of the 1st Respondent as provided for in section 7 aforementioned. Those regulations therefore once made were part of the law of Kampala City and anybody enforcing them unless amended or revoked would be doing so well within the law and cannot be said to act contrary to the Revised policy Guidelines on the Management and levying parking fees in the local governments' public service vehicle parking areas.

Pursuant to section 82 of the Kampala Capital City Act 2010 the Minister in charge of Kampala made the Kampala Capital City (Commercial Road User) Regulations 2015. Regulation 4(1) made it mandatory for commercial vehicles operating within or transiting through the capital city area to pay a user fee. Regulation 4(2) provides that the fees payable is in the second Schedule of the Regulations. This fee may be paid monthly, quarterly or annually. Under Schedule 2 a taxi/van 9-18 seater is supposed to pay UGX 120,000 per month or UGX 324,000 quarterly or UGX 1,152,000.

By the foregoing Regulations embodied in Statutory Instrument No. 3 of 2015 it is my finding that the 1st Respondent fully acted within the law when she levied UGX 120,000 as the fee to be paid by the specified commercial road users.

The sum total is that I find no merit whatsoever in the Application and objections of the Applicant the result of which this Application is dismissed with costs.

Dated at Kampala this 28th day of September 2017.

Hon. Justice David Wangutusi

JUDGE

