

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HCT-00-CV-MC-0105 OF 2002

KAGGWA ANDREW:..... APPLICANTS

BALIKOWA NIXON

MPOLOGOMA KAGIMU

NANZIRI OLIVER

SAANO EFRANCE

KYAGABA PIUS

VERSUS

HONOURABLE MINISTER OF INTERNAL AFFAIRS :.....RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The applicants were members of a Non Governmental Organisation, Caring for Orphans, Widows and the Elderly (COWE), which I shall refer to hereinafter as COWE. It was registered under the Non-Governmental Organisations Statute 1989 on the 27th July 2001. A Certificate of Registration was issued accordingly. On the 4th April 2002 the Secretary to the National Board for Non-Governmental Organisations notified COWE of the revocation of their registration on the ground of “in the public interest”. The applicants were aggrieved by that decision and appealed to the Honourable Minister for Internal Affairs.

2. The Minister of Internal Affairs upheld the decision of the NGO Board in the following words, “I have received your appeal against the decision of the National Non-Governmental Organisations Board to de-register your organisation. I have thoroughly studied the case and have come to the conclusion that the Board’s decision be upheld. If you are still not satisfied with this decision you can seek redress from the Courts of Law.”

3. And to Courts of Law the applicants have come. Hence this ruling. The hearing of this application proceeded ex-parte, in the absence of the respondent or any authorised representative, in spite of service of court process upon the respondent.

4. The applicants seek a declaration that the decision of the National Board to revoke the registration of COWE was null and void on the ground that the Board did not give COWE an opportunity to be heard before the Board made its decision to revoke its registration. Such decision, as was made, was made in breach of the principles of natural justice, the applicants contend. Mr. Mpologoma Kagimu swore an affidavit in support of the application. He states, in part, that COWE was given a hearing by the National Board before the decision to revoke its registration was reached. COWE was just notified of the decision to revoke its registration. This affidavit is not contested. I ordered the Secretary of the National Board to appear before this court and provide to the applicants and this court a record of the proceedings and decision in relation to COWE. The secretary did not appear on the scheduled dates and neither did she provide the record she was ordered to provide. As the applicants declined to pursue the non-appearance of the Secretary, this court took no further step with regard to that matter.

5. The applicants further contend that when they lodged their appeal before the Minister, the Minister did not grant them an oral hearing before deciding their appeal. It is contended that this was in breach of the rules of natural justice.

6. The authority of this court to review ministerial or other decisions of the nature before this court is derived both from the common law and written law. For our purposes it will be sufficient to point to written law only. Section 38 of the Judicature Statute, 1996 as amended by Statute No. 3 of 2002, the Judicature (Amendment) Act. The High Court may upon application for judicial review grant orders for mandamus, prohibition, certiorari, injunction or a declaration. In addition, Article 42 of the Constitution provides, "Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her." Whether the right to apply to a court of law granted under Article 42 is a separate right from the one available under Section 38 of the Judicature Statute or Section 38 could be taken to be implementing Article 42 is not for this court to decide in the matter before it. Both provisions have been cited in support of the present of the application. I may only observe that there is a certain amount of overlap though the constitutional provision may be more extensive with regard to decisions of administrative officials and bodies both in its reach, effect and relief available, than under Section 38 of the Judicature Statute, where the remedies available are creatures of common law, developed in a different constitutional framework than the one in place now in

Uganda. For purposes of the matter before me I am satisfied that this court has the competence to review the decision of the Honourable Minister of Internal Affairs on appeal from a decision of the National Board for NonGovernmental Organisations.

7. Section 7 of the Non-Governmental Organisations Statute, 1989 sets out the powers of the National Board for Non-Governmental Organisations. These powers are, “(a) approve or reject applications for registration; or

(b) grant or revoke certificates of registration; or

(c) do all such things as are incidental or conducive to the proper carrying out of its functions.”

8. Section 8 of the Statute grants a right of appeal to any person aggrieved by the decision of the Board made under Section 7 to the appeal to the Minister, within one month of being notified of the decision. Section 9 sets out the grounds for revoking a certificate of registration. These are, “(a) the Organisation does not operate in accordance with its constitution; (b) the Organisation contravenes any of the conditions or directions inserted in the Certificate; or (c) in the opinion of the Board it is in the public interest.”

9. Both at common law and under Article 42 of the Constitution COWE was entitled to fair and just treatment before the Board in respect of the proceedings that led to the revocation of its registered certificate. Just and fair treatment under Article 42 of the Constitution embodies, among other things, the concept of natural justice, as known under the common law. In particular COWE was entitled to being notified of the grounds upon which it was alleged its certificate was liable to cancellation, and COWE was entitled to be heard by the Board in response to any allegations that were raised against it. The right to be notified of the charges against it and to be heard in response to those allegations is such a fundamental requirement of natural justice that failure to comply with it leaves the decision so made without any force of law whatsoever. Such a decision is null and void.

10. In the instant case it has been shown COWE was never given an opportunity to be heard by the Board before its registration was cancelled. Without any hesitation I am satisfied that Board erred fatally in proceeding to de-register COWE without giving COWE an opportunity to be heard. The decision of the Board was null and void.

11. Learned Counsel for the Applicants submitted that the decision of the Minister on appeal was contrary to the rules of natural justice for the Minister failed to provide to the applicants an oral hearing. I accept that the Minister in considering an appeal from the NGO Board must act fairly

and justly, in compliance with Article 42 of the Constitution, but I am not sure that this must be translated to mean providing an oral hearing to the parties. It maybe sufficient in my view for the Minister to receive, and review the written submissions or appeal presented by the appellants. I would not overturn the Minister's decision on that ground alone.

12. The Minister upheld the decision of the National Board for Non-Governmental Organisations. In his letter to the General Secretary of CO WE he did not assign any reasons for his decisions which I take to mean that he was satisfied with the grounds contained in the decision of NGO Board or at least did not wish to disturb the same. I have already found though that the decision of National Board for NGO was null and void, without force of law. There was therefore no decision that the Honourable Minister could confirm. For that reason the decision on appeal of the Minister is likewise null and void, without force of law.

13. I therefore allow this application and grant a declaration that the decision on appeal by the Minister of Internal Affairs and the decision of the National Board for Non Governmental Organisations revoking the certificate of registration of CO WE are null and void, without force of law.

14. The right to fair and just treatment before an administrative official or body is now, under Article 42 of the Constitution, a fundamental right, infringement of which kicks into play Article 50 of the Constitution that empowers this court to provide redress to anyone whose fundamental rights have been or about to be infringed. Redress, in my view, simply means effective redress. Courts must provide relief that provide redress to the injury caused. In the circumstances of this case effective redress must include a direction to the National Board for Non-Governmental Organisations to re-instate the registration of CO WE as a Non-Government Organisation. Accordingly I so order.

15. I award the applicants costs of these proceedings.

Dated, Signed and Delivered at Kampala this 14th day of October 2002.

Fredrick M.S Egonda-Ntende

Judge