

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA**

**HCT-08-CV-MA-0012 OF 2005**

1. **KIARA AMOS WEREBA )**  
2. **EWAMA MOSES )**  
3. **DRIBIRI ELSON ) :::::::::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

1. **ARUA MUNICIPAL COUNCIL)**  
2. **INSPECTOR GENERAL OF  
GOVERNMENT ) :::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON JUSTICE AUGUSTUS KANIA**

**RULING**

This application which is supported by the affidavit of Amos Kiara Wereba dated 2nd September 2005 is for leave to appeal to the court of Appeal against the order of this Court dated 1st September 2005 dismissing the applicant’s application for judicial review and for the stay of the execution in Misc Application No. 109 of 2004. The application is brought under the provisions of Order 40 rule 1(2) (3) and (4) of the Civil Procedure Rules.

The brief background of this application is that the applicants had applied to this court for an order of Certiorari quashing an adverse report made by the second respondent about them and the subsequent steps taken against them by the first respondent. The said application was dismissed hence this application.

The grounds on which this application is based which are listed in greater detail in the affidavit of Kiara Amos Wereba, are briefly that;-

- (a) The Order dismissing the case raises serious legal issues on the circumstances under which the investigative proceedings of the Inspector General of Government may be challenged in a Court of law.
- (b) The dismissal raises other legal issues as to whether the dismissal of civil servants including the Town Clerk can be done without the council of the relevant authority discussing and resolving on the issues raised in the Inspector General of Government's report, thus by passing the provisions of the Local Government Act.
- (c) The dismissal order affects the legal and constitutional right of the applicants which should be allowed to be investigated and to dismiss it at a preliminary objection is to occasion injustice to them and it is just and fair that the dismissal order be appealed against.
- (d) The applicants will suffer irreparable injury and injustice if execution is not stayed and yet their appeal has high chances of success as it raises serious matters of Public importance.

Mr. Oyarmoi, learned counsel for the applicants, submitted that both the Local Government Act and the Inspectorate of Government both of which affect the rights of civil servants are new with few decided cases and as such it is necessary to have the rights of the applicants decided by a higher Court. Because in this regard it is of Public importance to the civil servants, leave ought to be granted for the applicants to appeal to the Court of appeal to determine the matters involved in these two acts of Parliament. Mr.Oyarmoi also argued that if the execution in Misc Application 109 of 2004 is not stayed, the applicants as salary earners and their families, risk incurring irreparable damages. Mr. Oyarmoi contended that the affidavit sworn in reply by Edmund Paul Kalekyezi is irrelevant because any party aggrieved by a decision has a right to appeal. He prayed that the application be allowed with costs.

Mr. Muwolobi, learned Counsel for the 2nd Respondent opposed the application and submitted that matters of Certiorari are not apellable as Section 38(6) of the Judicature Act does not provide for appeal in matters of Certiorari Counsel pointed that the right of appeal has to be specifically provided by statute and that since none is provided under the Judicature statute under which the dismissal order was passed, on right of appeal exists in the instant case. Mr. Muwolobi cited the cases of **Attorney General vs. Shah (4) [1971]**

**EA 50 and The Inspector General of Government vs. Mrs. Gladys Aserua Orochi CACA 90/2000** for this proposition. After arguing that stay of execution in Misc Application No. 109/2004 can not follow because the applicants don't have a right of appeal, counsel prayed that the application should be dismissed with costs.

It is now trite that appellate jurisdiction is a creature of statute.

This position was stated in **Attorney General vs. Shah (No.4)[1971] EA 50** in the following words;-

“It has long been established and we think there is ample authority for saying that appellate jurisdiction springs only from statute. There is no such thing as inherent appellate Jurisdiction.”

Specifically with regard to the appellate jurisdiction of the court of appeal Article 134(2) of the Constitution of Uganda provides;-

(2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law!

Section 10 of the Judicature Act Cap. 13 restates this position in the following terms:-

“An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law”

From the above it is clear that the Court of Appeal has no appellate jurisdiction over a decision of the High Court except as prescribed by the law.

Of all the prerogative remedies of Habeas Corpus, Certiorari, prohibition and mandamus provided for by the Judicature Statute, the only provision for an appeal to the Court of Appeal from the decision of the High Court is in respect of an order of habeas Corpus in Section 35 thereof. There is no provision for an appeal against the orders of the High Court in respect of orders of Certiorari, prohibition and mandamus.

Apart from the fact that no right of appeal is created by statute against the orders of Certiorari, prohibition and mandamus, the instant case originates from the consideration of the Judicature Act and the Inspectorate of Government Act none of which confer no right of Appeal to the Court of Appeal. If the Legislature in its wisdom had intended that there should be an appeal against the decisions of the High Court in respect of certiorari, prohibition and mandamus, it would no doubt made provision for the same. Providing for the right of appeal in matters of Habeas Corpus and omitting to provide the right of appeal

in the case of the other prerogative remedies must have been deliberate. I accordingly find that the applicant have no right of appeal against the orders of this Court. **The Inspector General of Government vs. Mrs. Gladys Aserua Orochi (A Civil Application No. 90 of 2000[Unreported])**

In the instant case the applicants are applying for leave to appeal to the Court of appeal and for stay of execution. Having found that the applicants have no right of appeal to grant leave to the applicants to appeal would be an exercise in futility and waste of Courts time. The application for leave to appeal being unsuccessful, the application for stay of execution also fails.

In the result the application for leave to appeal and for stay of execution is dismissed with costs.

Signed

**JUSTICE .A KANIA**

**JUDGE**

**30/01/2006**

Mr.Oyarmoi - for the applicants.

Mr. Alaka - for the first Respondent also holding brief for Mr. Muwolobi & Betty Namuwoma Counsel for the 2nd Respondent.

Ms. Adezu - Court clerk.

Court - Ruling read in the presence of the above.

Signed