

**REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 05 OF 2008**

**IN THE MATTER OF THE DECISION OF THE TOWN CLERK OF IGANGA
TOWN COUNCIL TO SUSPEND THE OPERATION LICENCE OF EASTERN
TOURS AND TRANSPORT**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW SEEKING THE PREROGATIVE ORDERS OF
CERTIORARI, PROHIBITION AND MANDAMUS AND DAMAGES**

1. **MARIA NANSUBUGA**
2. **YOANA IRUNGU**
3. **GODFREY WALUMBE**
4. **GRACE MWASE :::APPLICANTS**

VERSUS

IGANGA TOWN COUNCIL::: RESPONDENT

RULING

The applicants who are the operators of a transport business in Iganga brought this application under s. 36 of the Judicature Act and the Civil Procedure (Amendment) (Judicial Review) Rules, 2003, SI. No. 75 of 2003, now order 46A of the Civil Procedure Rules. They sought for leave to file an application for judicial review of a decision made

against them by Iganga Town Council, the respondent. The application was supported by a statement and the affidavit of the 1st applicant both dated the 15th of April 2008.

The facts on which the application is based are contained in the affidavit in support and are briefly laid out here. In November 2007, the applicants registered a business name with the registrar of Companies to carry out business as transport managers named Eastern Tours and Transport. They obtained a licence to carry on business from Iganga Town Council, Annexure B to the affidavit in support. The applicants carried on the business of transporting passengers and goods, and hire of motor vehicles in Iganga Town.

On the 16th January 2008, Iganga Town Council officials served a notice on the applicants suspending their operation licence, Annexure "C" to the affidavit in support of the application. It was alleged in the suspension letter that the applicants were reported by unspecified persons to be engaged in touting, loading and off loading of passengers along the streets of Iganga town contrary to their mandate which was to handle tourists travelling to predestined destinations and not passengers travelling on fixed routes. It was also alleged that the applicants were in their business jeopardising the collection of revenues by the council and that their activities were illegal. The business was suspended pending investigations by council into whether or not their activities were *ultra vires* their mandate as licensed.

The 1st applicant averred that the Council had deliberately set the wrong law, regulations and conditions to govern their licence and that these had been used to suspend the applicants' business which they had always known to have been licensed as general transport business. The 1st applicant also denied that they were engaged in touting along the streets of Iganga, and averred that the vehicles alleged to have been engaged in the stated activities did not belong to the applicants. Further that the parties had paid the required fees for their licences and they were not in anyway prejudicing collection of revenues by the Council. It was therefore the contention of the applicants that the

punishment of suspension imposed by the council was unfair and intended to create an illegal monopoly for Taxi Park tenderers, in effect forcing all other operators to merge with them. As a result of this the applicant's 13 motor vehicles which were earning shs 910,000/= a day had to stop operating causing the applicants financial loss from the 16/01/08 to date.

The applicants contend that these actions of the council had caused them suffering, inconvenience and embarrassment and the suspension is a denial of their right to earn a living, and that they have not pursued damages against the respondent because they would not be adequate to compensate them for their loss. They thus seek leave to apply for the prerogative writ of certiorari, prohibition to restrain the Town Clerk from rescinding their license, and mandamus to have the Town Clerk issue a license under the proper law or rules applying to the applicant's business, as well as damages against the respondent.

In order for this court to consider such an application the applicant must present facts that would satisfy court that a prima facie case exists for leave to be granted. This test was established in the case of **Kikonda Butema Farmers Ltd. v. Inspector General of Government, Uganda Court of Appeal Civil Appeal No. 35 of 2002** (Unreported). In the case of **Professor Francis Omaswa & Dr. Catherine Omaswa, Msc Application No. 179 of 2006**, this court held that further consideration of the court is the magnitude of seriousness of the complaint raised by the applicant; the more serious the complaint the greater the necessity that the same be investigated by the court by way of judicial review. Having stated the law, I shall now turn to the case made out by the applicants and examine whether it is deserving of an application before this court for judicial review.

The applicants have a business which is duly registered under the laws of Uganda and was licensed by the respondent Council to carry on business in Iganga town. Without any notice, the respondent suspended their operations and without giving them a hearing to establish whether they were guilty of the alleged offences or not. This is clearly against

the rules of natural justice enshrined in Article 28 of the Constitution of the Republic of Uganda. The right to be heard in a civil dispute is an inalienable right that should be observed by the courts and civil authorities while exercising their discretion in matters that touch upon other important rights of citizens.

The applicants have also convinced this court that they have unjustly been prevented from carrying out their business by the respondent and they have suffered loss which cannot be atoned for by damages. The applicants are entitled to earning a living in the manner that they have chosen if it does not contravene any law. Article 40 (2) of the Constitution of Uganda provides that every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business. The respondent did not give the applicants an opportunity to be heard and unilaterally suspended their license.

The applicants further contend that the suspension of their license was effected in order to promote other transport operators favoured by the respondent. This needs to be investigated because Article 42 of the Constitution of Uganda provides that any person appearing before any administrative official 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.

In conclusion, I find that the applicants have made out a prima facie case against the respondent. They are therefore hereby granted leave to bring an application for judicial review for the reliefs claimed in their application. Such application shall be filed within 30 days from the date of this order and the costs of this application shall abide the main application for judicial review.

Irene Mulyagonja Kakooza

JUDGE

3/10/08