

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 377 OF 2008

(Arising from Misc. Cause No. 175 of 2008)

IN THE MATTER OF SECTION 36(1) (A) OF THE JUDICATURE ACT AND ORDER 42A,
RULE 4(2) OF THE CPRs.

AND

IN THE MATTER OF JUDICIAL REVIEW

STREAM AVIATION LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

THE CIVIL AVIATION AUTHORITY ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE HON. JUSTICE V. F. MUSOKE KIBUUKA

RULING:

INTRODUCTION:

The applicant through this motion, seeks the prerogative writ of certiorari, and the prerogative orders of prohibition and mandamus. It also seeks a permanent injunction to issue against the respondent. Lastly, it seeks an order awarding damages and the costs of this application to the applicant.

The motion was presented to the registrar of this Court, on 11th August, 08. That was subsequent to the obtaining of the prerequisite leave to make the application which was granted on 8th August, 08.

The motion was accompanied by a statement of facts and an affidavit deponed by one Manoj Ramnani, a director of the applicant, verifying the facts set out in the statement. An affidavit in reply was deponed by one Matsiko Ssenyonga, who stated that he was the Deputy Chief Security Officer of the respondent. Mr. Manoj Ramnan deponed an affidavit in rejoinder to the one of Mr. Matsiko.

FACTS AND PLEADINGS:

In brief, the background, as set out in the averments accepted by court, appears to be that the applicant company, STREAM AVIATION LTD, is a company duly incorporated in France. It was carrying on civil aviation business in Uganda. It had an office at Entebbe Airport and had a running contract for Cargo transportation for the UPDF.

In Uganda the applicant operates one Antinov aircraft, AN.12BK, registration, 4L-ELE, serial number 5342802. The aircraft is leased by the applicant from its owner, VARTY PACIFIC INC., a company incorporated in the British Virgin Islands, but with its registered office in Shargah, United Arab Emirates. The Lease Agreement is annexed to the affidavit in rejoinder.

The allegation in the statement of facts was that on 5th July, 08, the aviation Police of Entebbe Airport grounded the applicant's aircraft which was undergoing routine repairs. Since that time, the applicant has not been allowed access to it or completing the routine repairs or using the aircraft. That decision of the respondent, according to the applicant, has led to it suffering loss of business earnings amounting to US\$700,000, by the time of filing the application, but which has since continued to escalate.

The affidavit in reply by Mr. Matsiko Ssenyonga does not deny the allegation that the applicant's plane was grounded by the respondent on 5th July 08. it states, instead, that on 1st August, 08, the respondent received a complaint from one Anatoliy Lovin, director of Styron Trading Incorporation in the United Arab Emirates. The complaint was to the effect that the applicant's aircraft was suspected of being fitted or about to be fitted with stolen aviation engines belonging to an airplane of S9-DBQ belonging to Styron Trading Incorporation registered in the Democratic Republic of Sao Tome but which was, at the time at the airfield of Berbera in Somalia. Mr. Matsiko avers that the Aviation Security in liaison with the military agreed to ground the aircraft until the complaint was resolved. The Managing Director of the respondent had directed Mr. Matsiko to deal with the matter as he seemed appropriate. Mr. Matsiko also averred that the applicant did not own the aircraft as it had no lease agreement.

THE REMEDIES SOUGHT:

Certiorari and Prohibition:

Both Certiorari and Prohibition are prerogative orders designed to control inferior courts, tribunals and administrative and statutory authorities. In their application to administrative decisions, they would only issue against statutory authorities. See **R.Vs Inland Revenue Commissioners, Exparte National Federation of Self Employed And Small Businesses Ltd. 1962 AC 617 and R. Vs. National Council For Dental Technicians, Exparte Meatre (1935) 1 QB 704.**

The Prerogative Order of Certiorari is designed to prevent the excess of, or the outright abuse of power by public authorities. The primary object of both Prerogative orders is to make the machinery of government operate properly (according to law and in the public interest). However, private interests too often attract Certiorari and Prohibition. **The King Vs. Electricity Commissioners, Exparte London Electricity Joint Committee 1924 I KB 171.**

Both the Prerogative orders of Certiorari and Prohibition must often go hand in hand. They issue against lower courts or persons or bodies exercising judicial or quasi-judicial functions or to statutory bodies making administrative decisions which affect the rights of citizens. Certiorari issues to quash decisions which are ultra vires or which are vitiated by error on the face of the record or are arbitrary and oppressive. Prohibition serves to prohibit the happening of some act or the taking of some decision which would be ultra vires. Thus while Certiorari looks at the past as a corrective remedy, prohibition looks at the future as a prohibitive remedy. Both, however, are discretionary remedies which a court will grant only judicially. **In Re An Application by Bukoba Gymkhana Club (1963) E.A. 473.**

In the instant case, Court does not agree with the respondent that the decision to ground the applicant's aircraft was prompted by the so called complaint, contained in annexure A to the affidavit in reply. While court believes the averment of Mr. Manoj Ramnani in the affidavit in support (para.3) that the applicant's aircraft was grounded as far back as 5th July, 08, it rejects the averment by Mr. Matsiko that the decision to impound the aircraft was based upon annexure A to his affidavit which was clearly received by the respondent on 1st August, 08, some twenty six days after the plane had already been impounded. But even then, there is nothing to show that

the contents of the so called complaint had any substance in them that would necessitate the action or the prolonged denial of the operations of the applicant's aircraft by the respondent.

It appears to be clear to court that annexure A to the affidavit in reply is the result of some kind of efforts to fish for some evidence to justify an action that was based upon no grounds whatever and was clearly arbitrary and oppressive to the applicant who was even given no opportunity to offer an explanation to anyone. The respondent does not deny taking the decision. It owns it.

Similarly, court rejects the contention by the respondent that the applicant does not have a lease agreement. The applicant has produced a lease agreement before this court. It is valid and on going. It appears to be quite regrettable that the respondent lacks knowledge of such an important fact relating, to its regulatory functions.

In those circumstances, therefore, Court agrees that the Prerogative Orders of Certiorari and Prohibition would issue quashing the arbitrary decision of the respondent to ground the applicant's aircraft and denying it clearance to operate and carryout its operation at Entebbe Airport and to prevent the respondent from continuing to deny the applicant its right to have access to and to utilise its aircraft and carry out its contractual business obligations.

Mandamus:

The applicant also sought the Prerogative Order of Mandamus aiming at compelling the Civil Aviation Authority, the respondent to this motion, to unconditionally release the aircraft to the applicant.

Now, Mandamus is certainly a drastic remedy. It often issues against statutory authorities or public officers who have statutory functions compelling them to carry out the statutory duty required of them. The case of **Shah Vs. Attorney General (No.3) (1970) E.A. 543**, is quite classic on this Prerogative remedy. It considered the nature of Mandamus and its applicability in Uganda. The Court held, among others, that the Commissioner/Treasury Officer of Accounts (as the Government Accountant General was then called) had a statutory duty under section 20 (3) of the Government Proceedings Act to pay moneys awarded by a Court as damages. Mandamus

issued to compel him to pay the money that had been awarded in order to fulfil his statutory duty. In the instant case, although the respondent bears general regulatory duties under the Civil Aviation Act, Cap. 354, there is no specific statutory duty as such requiring it to release the aircraft in question.

Secondly Mandamus would ordinarily issue in situations where the applicant has no alternative remedy. It would compel the person against whom it is issued to fulfil his or her statutory obligations. That too is not the case in this matter. The applicant has already obtained the prerogative writ of Certiorari. It has also received the Prerogative order of Prohibition. Mandamus would serve the same purpose as Certiorari would, in effect, serve in this case.

Court would therefore, decline to exercise its discretion to grant mandamus in this case. That prayer is refused.

Damages:

The applicant sought an order granting general and special damages for the inconveniencing suffered and the financial losses incurred. Court acknowledges the fact that there must have been plenty of inconveniences as well as financial losses involved in this matter. Court however, would not award any damages through this motion because it feels that full justice might not be appropriately done if it did so. Court would advise the applicant to seek those remedies through an ordinary civil suit where full evidence of the damage and loss would be better proved and considered.

Lastly, the applicant sought costs for this motion as well as the chamber summons during which leave was sought. Court duly grants that prayer. The respondent shall pay these costs to the applicant.

V.F. Musoke Kibuuka

Judge

12.9.08