

The motion is accompanied, as required by the rules for judicial review, by a statement of the facts upon which the application is based. It is also accompanied by an affidavit deposed by the applicant, the Honourable Casiano Wadri, verifying the facts contained in the statement. An affidavit in reply was deposed by Hajati Hanifa Rizigala, the speaker of Arua District Local Council.

The background to the presentation of this application is that during the month of July 2005, Parliament approved the creation of a new district to comprise the countries of Maracha and Terego from Arua District. Parliament, however, in its infinite wisdom, did neither name the new district nor choose any place to constitute the headquarters of the new district.

It appears that a lot of concerted efforts were made by Arua District Council and numerous stakeholders to identify and agree upon the name and location of the new district but without success.

Two trading centres were identified in the process. They stood out for choice of one of them. They were Nyadri trading centre in Maracha County and Kubala trading centre in Terego County.

On 25th January, 2007, the Honourable Minister of Local Government, invoking the provisions of section 95 of the Local Governments Act, made a decision choosing Nyadri trading centre to be the district headquarters for the new district. He also named the new district Nyadri district. That decision which was contained in the Minister's letter, OM/460/01, dated 25th January, 2007, and addressed to the District chairperson Arua District reads, in part as below:-

“I gave the leadership of Terego and Maracha counties an opportunity to consider and agree on a suitable site which they have not done to date. This impasse cannot be allowed to continue any longer because it is affecting the service delivery to the people in those two counties.

For the said reasons, in line with section 95 of the Local Governments Act, and after due consideration of the matter, I want to declare Nyadri the headquarters of the new District consisting of Terego and Maracha counties and accordingly, this District will be called Nyadri District and will take effect from 1st July, 2006.”

It is that decision of the Honourable Minister of Local Government that is the subject of this application for judicial review.

The applicant contends that in making the impugned decision, the Minister of Local Governments:

- by invoking section 95 of the Local Governments Act created an error in law of the face of the record which can only be corrected through the supervisory jurisdiction of this court by way of judicial review;
- acted in excess of his jurisdiction as he was not vested with power to make the impugned decision;

At the hearing of the motion, the applicant was represented by learned counsel Mr. Alaka Caleb and Mr. Renato Kania. The respondent was represented by Mr. Bafirawala Erisha, a State Attorney.

The submissions on the motion by Counsel for the applicant were made on 3rd March, 09. The motion was adjourned to the next day at 2.39 p.m. for the submissions by Counsel for the respondent.

At the beginning of his submissions Counsel for the respondent informed court that he had held a discussion with the Solicitor General before coming to court and they had agreed that section 95 of the Local Governments Act did not contain the power which the Minister had stated in the impugned decision to have invoked as enabling him to make

that decision. Counsel for the respondent, therefore, conceded that the Prerogative Order of Certiorari ought to issue to review the excess of jurisdiction and to correct the error of law on the face of the record.

Court duly agreed with both Counsel in that regard. It is the position of the law that the remedy of judicial review in a matter such as this one, aims only at reviewing the manner in which the impugned decision was made. The court is not entitled to consider whether the impugned decision was fair or reasonable in the circumstances under which it was made. **Pius Niwagaba Vs Law Development Centre, Court of Appeal Civil Application No.18 of 2005.**

The Prerogative Order of Certiorari has been used as a suitable remedy for the control of the unlawful administrative determinations of all kinds. The court should intervene where a prejudicial administrative decision has been made in the course of the exercise of statutory authority. Accordingly, in the instant case, Certiorari shall issue.

Certiorari and Prohibition often go hand in hand. The latter intended to prevent the impugned decision from being acted upon. In the instant case, Prohibition shall also issue in order to prevent possible implementation of the impugned decision.

On who should choose the location and name the new district the parties could not agree. Mr. Alaka prayed that the matter be remitted to the councilors from Terego and Maracha counties to take the decision. He also proposed that the Chief Magistrate Arua should preside over the meeting. Mr. Bafirawala opposed that contention. He preferred the Electoral Commission first conducts elections for the chairperson of the district then the Interim Council sits to choose the location of the district and thereby its name. It was his contention that there was no basis in law for the Chief Magistrate of Arua District to preside over the meeting of the Interim Council.

Court agrees partly with either Counsel.

Since Arua District Council did not determine the location of the new district and since Parliament also did not do it, the only logical and legal way to proceed would be to remit the matter to the people concerned or their representatives, the councilors at LC V level. That course of action, court agrees, falls squarely within the spirit of Article 1 of the Constitution.

Court agrees that the choice of the headquarters and name of the new district should be the responsibility of the people concerned whom should not only determine how they should be governed but also from where they should be governed. Since there is already an interim council for the new district which came into being by operating of the law, the matter should be referred to it for decision. Court agrees that the Chief Magistrate would not be appropriate to preside over this matter as it is purely political and there is no provision of Local Governments Act that can back up that position.

Court, therefore, allow this motion and issues the following Orders:-

- a) an order of Certiorari quashing the decision of the Hon. Minister of Local Government declaring Nyadri the name and headquarters of the new district comprising Terego and Maracha counties;
- b) an Order of Prohibition restraining the Ministry of Local Government from implementing the impugned decision of the Minister;
- c) an order remitting the matter of choosing the headquarters and naming the new district to the Councillors at LCV level from Terego and Maracha who now constitute the Interim Council, and requiring them to resolve it within 21 days from today as the Interim Council for the new district.
- d) an Order requiring the Electoral Commission to conduct, not later than 21 days from today, elections for the interim chairperson under section 187(1) of the Local Governments Act, Cap.243.

- e) an Order requiring the Interim Council, for the purpose of effecting the Order, set out in (c) above, to meet at any place within the new district as they may agree to other than Nyadri or Kubala;
- f) an Order requiring the Electoral Commission, immediately before the Interim Council elects the Interim Chairperson of the new district, to conduct a vote for the members of the interim council to choose the headquarters of the district and, therefore, its name; and
- g) an Order awarding the costs for this application to the applicant.

V.F. Musoke Kibuuka

Judge

27.03.09