

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
HCT-00-CV-MC-0120 OF 2008

NAMPOGO ROBERT **APPLICANTS**
TUMWESIGYE MOSES

VERSUS

ATTORNEY GENERAL **RESPONDENT**

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING

This is an application for an order that a writ of mandamus doth issue ordering the Treasury Officer of Accounts to pay the applicants.

When the application came up for hearing, learned counsel for the respondent, Ms. Susan Odong raised an objection. She argued that under rule 5 (1) of S. I. 11/2007, an application for judicial review should be made in a period of **three** months from the time when the decision was made. According to her, the impugned decision was made many years ago, so the application is out of time. Learned Counsel for the applicants, Mr. Rwakafuuzi, does not agree. According to him, the order made in 2004 was for payment to the applicants sums which to-date have not been paid. Hence the application to enforce payment.

Rule 5 (1) of S.I 2009 No. 11 (The Judicature Judicial Review) Rules, 2009 provides:

“(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court

considers that there is good reason for extending the period within which the application shall be made.”

From the pleadings, the Human Rights Commission Tribunal awarded damages to the applicants in its ruling delivered on 13/10/2004. Since then they have been moving up and down for payment to no avail. They have now resorted to a prerogative writ of mandamus. I am unable to hold that court cannot entertain the application.

Under S. 35 of the Civil Procedure Act, limit of time for execution of a decree not being a decree granting an injunction, is set at 12 years from the date of the decree sought to be executed. The application is not barred by that law. Even if court were to accept strict interpretation of Rule 5 (1) in connection with this matter, I would still find that there is allowance under the said rule for court to exercise a discretion in favour of an applicant, where court considers that there is good reason for extending the period within which the application shall be made. The good reason here is the applicants' exploration of other avenues to seek enforcement of the award before resorting to the instant remedy. In the event of upholding the objection, the application would be struck out and the applicants would still be entitled to file yet a fresh application for extension of time under Rule 5 (1), supra. In a case of 2000 such as this, and in a matter involving proven human rights violations, in the absence of a successful appeal to the contrary, such a course would serve to violate the human rights of the applicants further. Given that our Constitution mandates courts to administer justice expeditiously and without undue regard to technicalities, I am inclined to over look the legal impediment, if any, in the greater interests of justice in accordance with Article 126 (2) (e) of the Constitution and Section 98 of the Civil Procedure Act, and allow the applicants to proceed with their application, on the understanding that their claims for payment are continuous and therefore unaffected by the 3 months Limitation period provided for under the said Rules.

In the final result, the objection stands over ruled with costs to the applicants in any event and the application listed for hearing on **31/08/09** at 12 noon.

Orders accordingly.

Yorokamu Bamwine

JUDGE

06/07/2009

06/07/09:

Parties absent

Court:

The date for delivery of Ruling was fixed in the presence of both parties. No reason advanced to court for their absence. The ruling is released to the Registry for typing and transmission to parties thereafter.

Yorokamu Bamwine

JUDGE

06/07/2009