

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, AT KAMPALA
MISCELLANEOUS CAUSE NO.220 OF 2008
IN THE MATTER OF AN APPLICATION FOR LEAVE
TO APPLY FOR PREROGATIVE ORDERS OF CERTIORARI
AND PROHIBITION BY WAY OF JUDICIAL REVIEW

AND

IN THE MATTER OF

1. HON. WINFRED K. MASIKO
2. PEREZ TUMWINE RWABUSH/ }
3. BOAZ TUMUHIMBISE }APPLICANTS
4. ANDREW MUSIIME }
VERSUS

1. THE DIRECTOR OF PUBLIC }
PROSECUTIONS }
2. THE DIRECTOR OF CID }RESPONDENTS
3. ATTORNEY GENERAL }

BEFORE: HON. JUSTICE V.F. MUSOKE – KIBUUKA

RULING:

Honourable Winfred K. Masiko, the Woman Member of Parliament for Rukungiri District, and the three other applicants brought this motion seeking leave of this honourable court to apply for the Prerogative Orders of Certiorari and Prohibition.

The motion is based upon section 36 of the Judicature Act and rules 4, 5(2) 6(1) and 6(4), of the Civil Procedure (Amendment) (Judicial Review) Rules, Statutory Instrument No.75 of 2003.

The reliefs the applicants intend to seek, if leave is granted include:

- a) an order of Certiorari to quash the decision of the first and second respondents, preferring or approving charges of embezzlement and 33 other Courts as set out in a charge sheet dated 21st October, 2008, against the applicants, in case CR 1287/08, at Buganda Road Chief Magistrate's Court in Kampala;
- b) an order of Certiorari to quash an order issued by a Magistrate Grade I, Buganda Road Chief Magistrate's Court, under which a Criminal Summons was issued against the first applicant requiring her to appear and take a plea before that Court in relation to the 34 charges contained in the charge sheet;
- c) an order of Certiorari to quash orders of the Magistrate Grade I, at Buganda Road Chief Magistrate's Court, sending the second, third and fourth applicants to remand at Luzira Prison under the impugned charge sheet;
- d) a declaration that the relationship and dealings between Messrs Rugada A Ltd, a company limited by guarantee) and the Ministry of Health's Global Fund Project, of the Government of Uganda, as represented by the 3rd respondent, was Civil and contractual and was governed by written contracts to which the applicants were and are not parties;
- e) an Order of Prohibition, prohibiting the respondents from prosecuting and persecuting the applicants on all matters popularly known as Global Fund Project, relating to and arising out of contracts between Messrs Rugada Ltd. and the Ministry of health of the Government of Uganda;
- f) a declaration that the trial and charges laid against the applicants vide Criminal Case No. CR 1287/08, at Buganda Road Chief Magistrate's Court, are invalid and null and void for lack of jurisdiction;
- g) an order that the third respondent pays general, exemplary and punitive damages to the applicants; and
- h) an order awarding costs in respect of this application, to the applicants.

The grounds and facts, are set out in the motion, the statement of facts and the affidavit verifying the statement and deponed by the first applicant. Briefly, they appear to be as below:

The applicants were either members or employees of Rugada LTD, a Company that was incorporated by guarantee in the year 2001. In 2004, Rugada LTD, entered into contracts with the Government of Uganda whereby it was to act as a lead agency in the fight against HIV/AIDS, Tuberculosis and Malaria in the districts of Rukungiri, Kanungu, Kabale and Kisoro.

In August 2008, the 1st respondent was summoned to the CID headquarters where she was interrogated for hours. Earlier, agents of the second respondent had raided the offices of RUGADA at Rukungiri and taken away all vital documents including copies of the agreements relating to the company's relationship with the Global Fund Project.

Subsequently, on 29th October, 2008, the second, third, and 4th applicants were charged at Buganda Road Court and sent on remand. The first applicant has yet to be charged in court against the 34 charges in the charge sheet. The respondents claim that the court at Buganda Road in Kampala has no jurisdiction to entertain the charges against the applicants as the charges were allegedly committed at Rukungiri. The claim that charging them in Kampala was not only illegal and amounting to abuse of Court Process but was also maliciously calculated to deny them access to their relatives, friends and associates in Rukungiri.

They further claim that the decisions of the first and 2nd respondents to prefer charges of embezzlement of the alleged Rugada Ltd funds amounting to shs.130,000,000/= was made without any complaint from Rugada Ltd, the alleged owner of the funds in question. They aver that the decision of the first and second respondents to prefer the charges of embezzlement against the applicants in the absence of any complaint from the owner of the funds, is unreasonable and amounts to abuse of the discretionary powers vested in the second respondent to prefer and conduct Criminal Prosecutions.

Finally, it is averred, in respect of the first respondent, in particular, that the charges are merely calculated to annoy, demean, humiliate and embarrass her and damage her image as a Member of Parliament. On the other hand, it is the position of the applicants that the charge, are calculated create a false public perception that the first and second respondents are working hard to fight corruption whereas not.

The test to be applied in deciding whether or not to grant leave to an applicant seeking leave to file an application for judicial review was set out by the Court of Appeal of Uganda in **Kikonda Butema Farms Ltd. Vs. The Inspector General of Government, Civil Appeal No.35 of 2002** (unreported).

It is that the Court must be satisfied that the applicant has provided to the court that in the opinion of the Court, Prima Facie, entitles that applicant to be granted leave to file an application for judicial review.

Similarly, the Court of Appeal for Kenya, in **Major M. L. Musyona And 4 others Vs. The Chief of Staff, Armed Forces of Kenya and 2 Others, Civil Appeal No.84 of 2000** (unreported) also set out the test of the nature and seriousness of the complaint raised by the applicant in the application for leave.

Considering both tests against the facts as set out in the motion, the statement and the affidavit of the first respondent in support Court finds that the facts presented by the applicants in this application would Prima Facie entitle them to the grant of leave to apply for judicial review. One of the Primary purposes of the Prerogative Orders of Certiorari and Prohibition, for instance is the preservation of Order in the legal system by preventing excesses and outright abuse of power. The applicants are alleging abuse of Court process. They are alleging illegality on the part of the court and the first and second respondents. There are allegations of acting in bad faith and acting upon the direction of some other authority on the part of the DPP. All those allegations or facts appear to Court to constitute substantial matters that ought to be investigated by Court through the process of judicial review.

Court must also observe that that this application appears to be seeking leave for an application for judicial review which will cover issues which, in our law, may be regarded as novel and of very significant importance. Those include the right to challenge the exercise of the DPP's discretion to prosecute a suspect in a Criminal Court and the decision of the police to prefer charges against a suspect. These are issues that do not appear to have been subject of judicial review since the promulgation of the 1995 constitution or the amendment of the Judicature Act,

in 2002. In that regard, court finds that the nature and seriousness of the complaints raised would compel the granting of leave.

In the circumstances, therefore, this motion succeeds. The applicants are granted leave to apply for judicial review and seek the prerogative orders of certiorari, prohibition and any other appropriate reliefs that might be granted through the process of judicial review.

As is provided by Rule 4 (10)(a) of the Civil Procedure (Amendment) (Judicial Review) Rules, S.I. No.75 of 2003, this leave is to act as a stay of all actions and processes relating to this matter, until the substantive application for judicial review is heard and determined finally.

The applicants are to file the application for judicial review not later than 14 days from today. The costs of this application are to abide by the outcome of the substantive application.

V.F Musoke-Kibuuka

Judge

07.01.09

07.01.09

Mr. Caleb Mwesigwa – for Applicants

Applicants in Court

Mr. Wakulira – Court Clerk

Court: Ruling is read.

V.F. Musoke- Kibuuka

Judge

07.01.09