

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. APPLICATION 137 OF 2011

**UGANDA TAXI OPERATORS
AND DRIVERS ASSOCIATION ::::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

1. KAMPALA CAPITAL CITY AUTHORITY
2. THE EXECUTIVE DIRECTOR (KCCA):::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

RULING

This application for Judicial Review was brought under Articles 26, 28(1) and 42 of the Constitution, S. 36 of the Judicature Act and Rules 3(1)(a), 3(2), 6 and 8 of the Judicature (Judicial Review) Rules, 2009 seeking the following reliefs and orders.

- (a)** An order of certiorari quashing the decision of the 2nd respondent that ***“the applicant’s contract expires 31st October 2011 and that the Management of the Taxi Park shall revert to KCCA and that the management is to engage in revenue collection as communicated in the memo of 18th October”***

- (b) An order of Prohibition and or Injunction restraining the respondent and their servants or agents from interfering with the applicants management contract of taxi operations in and around the city expiring 31st October 2014.

- (c) An order awarding general/exemplary damages to the applicant for the loss incurred arising out of the persistent interference with its

performance under the management contract to its detriment by both the respondents.

(d) Costs of the application.

The application is supported by the affidavit of Haji Musa Katongole the Chairman of the Applicant and grounds enumerated in the Notice of Motion as follows:-

1. That the applicant was incorporated in 1990 as a Company limited by guarantee with a primary objective of enhancing the welfare of its members totaling now 20,000 engaged in the business of passenger transportation services but had been in the same business before incorporation as an Association since 1986.
2. That in 1993, the applicant signed an initial contract with the respondents' predecessor in title Kampala City Council for the management of taxi operators and revenue collection there from which has continuously been extended over time.
3. That on the 24th September 2010 an administrative arrangement was agreed on between the applicant and KCC that upon applicant clearing all arrears at the time by the 1st week of December 2010 an extension of the contract for one year would be given to the applicant.
4. That upon the applicant clearing the arrears KCCA through its Contracts Committee extended the applicant's contract to run until 31.10.2011 and the same was communicated to the applicant who thereafter requested for the period to be extended to three given the prevailing circumstances at the time.

5. The Contracts Committee of KCC in its 137th meeting under minute KDCC 22/137/2011 accepted the applicant's request and granted the applicant a further three year extension effective 1st November 2011 to 31st October 2014 which decision was duly communicated to the applicant by the Town Clerk.
6. That following the following extensions by KCCA the applicant has continued to perform its duties under the management contract remitting monthly 390.000.000= and has through its ten year programme expected on projects directly related to execution of its duties and engaged other third parties.
7. The 2nd respondent did vide her report to the Principle Private Secretary to His Excellency the President in reply to his letter of 7th June 2011 Ref: PO/17 recognise without any reservation that the applicant's contract had been extended up to 31st October 2011 and the same had been communicated to the applicant.
8. The 2nd respondent's office vide its memorandum dated 18th October 2011 to among others the Lord Mayor, Honourable Councillors, Division Mayors, KCCA Management team on page 17 erroneously reported that the applicant's contract was expiring on 31st October 2011 and expressed the intention or decision that management of the taxi parks would revert to KCCA who are to manage parks and engage in revenue collection.
9. That following the creation of 1st respondent and the appointment of the 2nd respondent there has been continued contradictory information on applicant's operations and denial of applicant's authority to manage taxi operations in the political and technical heads widely published in the local print and electronic media causing economic loss of over 1.000.000.000= to the applicant a fact the applicant has continuously

communicated to the respondent for redress without any action being taken by them to rectify the situation.

10. The respondent's decision to retake the taxi parks and start collecting the revenue is contrary to the government policy on whose behalf the respondents are managing the city.

11. That the 2nd respondent's decision in the memo of 18th October 2011 that the applicant's contract expires 31st October 2011 and that the management is to engage in revenue collection, is not only illegal, ultra vires, unconstitutional but contrary to rules of natural justices is as far as:-

- (a) The decision is a matter of policy which the 2nd respondent has no mandate to make and is a reserve of the 1st respondent sitting in its Authority meeting.
- (b) The decision is contrary to the policy that is a subject of formulation by the 1st respondent and is still under considerations.
- (c) The decision contravenes the applicant's right to be heard before and in the course of making the same in as far as applicant has never been consulted and/or heard over the same.
- (d) Contravenes the subjudice rule in as far as there is an ongoing case between the 2nd respondent and Lord Mayor vide Miscellaneous Cause No. 116 of 2011 to determine the powers thereto under KCCA Act.

- (e) The decision in effect terminates the applicant's legal contract without any proceedings and/or hearing of the applicant on the same.
- (f) The respondents do not have the mandate to interfere with the applicant's management contract.

12. The respondent's intentions/action and threats have since appeared in the local dailies to the detriments of the applicant's interests and operation and unless Court intervenes to pronounce itself on the matter, the respondents are determined to go ahead with implementation of their plans come 1st November 2011

The affidavit of Haji Musa Katongole provided the evidence in support of the application and in the main only provides details of the grounds of this application enumerated above. Following filing of an affidavit in reply by the 2nd respondent, Haji Musa Katongole filed an affidavit in rejoinder.

The 1st respondent did not file an affidavit in reply.

The second respondent did file an affidavit in reply in which she denies that the applicant has any valid contract with KCCA and therefore has no rights to protect. The affidavit goes into details of how the contract between the applicant and KCCA expired and was not renewed in accordance with the law but as I directed Mr. Charles Ouma counsel for the respondents, this Court cannot for the purpose of these proceedings delve into the details of the expiry of the contract and the legal implications of its renewals as claimed by the applicants. I will in the course of this ruling explain this position because it forms the basis for deciding the issue as to whether or not this case is a proper case for Judicial Review.

The affidavit in rejoinder by Haji Musa Katongole also delves into the defence of the applicant's renewed contract already raised in the applicant's grounds giving rise to this application. As already pointed out this Court is not to delve into the validity of the impugned contract but the affidavit of Jennifer Musisi Semakula in reply to the application and that of Haji Musa Katongole in support of the application and the rejoinder to Jennifer Musisi Semakula's affidavit in reply seem to demonstrate that what faces this Court is well beyond the scope of a Judicial Review process because what underlies this case is whether or not there are any contractual obligations between the parties and whether the protection of the applicant who claims that he is enforcing a valid contract lies in Judicial Review.

At a scheduling conference conducted on 8.12.2011 the applicant raised issues to do with the failure the 1st respondent to file an affidavit in reply, the defects in the 2nd respondent's affidavit in reply and nonpayment of Court fees. These were resolved by Court in its ruling delivered on 22.12.2012.

The substantive issues raised were:-

- (1) Whether the case before this Court was a proper case for Judicial Review.
- (2) Whether the decisions of the second respondent are in accordance with the law.
- (3) Whether the decisions by the 2nd respondent are in breach of the constitution and rules of natural justice.
- (4) Whether the applicant is entitled to the damages sought.
- (5) What other remedies arise out of the application.

When the case was called for hearing on 20.01.2012 it was decided that Court first resolves the issue as to whether or not the application before Court is a proper case for Judicial Review and Mr. Kabega Moses and Mr. Sekaana Musa both counsel for the applicant addresses the Court on this issue as did Mr. Charles Ouma and Mr. Kwanza on behalf of the respondents.

Under Section 36(1) of the Judicature Act (Cap 13) of the Laws of Uganda the High Court may, upon application for judicial review, grant any one or more of the following reliefs in a Civil or Criminal matter.

- a) An order of mandamus, requiring any act to be done;
- b) An order of prohibition, prohibiting any proceedings or matter;
- c) An order of certiorari, removing any proceedings or matter into the High Court;
- d) An injunction to restrain a person from acting in any office or matter.
- e) A declaration or injunction not being an injunction referred to in paragraph (d) of this Sub-section.

The reliefs underlined are the reliefs sought in this application in addition to damages which are provided for under Section 36(2) of the Act.

In the case of **John Jet Tumwebaze vs Makerere University Council and two others (High Court Civil Application No. 78 of 2005)**. The Hon Justice Remmy Kasule Ag. Judge as he then was states that an order of certiorari issues to quash a decision which is ultra vires or vitiated by an error on the face of the record while the order of prohibition goes out to forbid some act or decision which would be ultra vires. He adds that while certiorari looks at the past, prohibition looks at the future.

Mr. Charles Ouma, counsel for the respondents raised the issue as to whether or not there was any decision that would be a subject of an order of certiorari because none is raised in the application. Haji Musa Katongole's affidavit in rejoinder attaches a letter (Annexure "F") from the Ag Executive Director, Kampala City Authority to the Chairman of the Applicant which is instructive on this point. The contents are reproduced hereunder:

"RE: MANAGEMENT OF TAXI OPERATION

Reference is made to the above subjected and your letter dated 3rd October 2011.

Kampala Capital City Authority (KCCA) would like to bring it to your attention that the then Kampala City Council entered into a contract with Uganda Taxi Operators and Drivers Association on the 5th December 2005 which contract was to run effectively from 1st October 2005 to 30th October 2010.

Kampala City Council on the 10th December 2010 extended the contract for a period beginning 1st November 2010 to 31st October 2011.

This is to reiterate that the extended contract still subsists and UTODA is expected to fulfill its obligations there under until the expiry of the said contract.

We do hereby invite you to a meeting with the management of KCCA on the 25th October 2011 at 3.00pm in the Executive Director's Boardroom"

The letter is dated 20th October 2011. This application was filed on 21st October 2011 pre-empting the meeting of 25th October 2011. The invitation extended to the applicant for a meeting on the 25th October 2011 suggests that the subject matter was still under discussion and from the application where in ground 8 it talks about an expressed intention or decision, paragraph 10 which talks of government policy, paragraph 11(d) which talks of contravention of the subjudice rule and 11(d) which states that the decision in effect terminates the applicant's legal contract there is more in the application than the prerogative orders sought. Further, from the pleadings by both parties the controversy is on whether or not there was an extension of the applicant's contract to 30.10.2014 and if whatever the respondents are doing infringes on the applicant's right to run the contract then the solution lies in an ordinary suit where the validity of the contract will be tried and finally resolved and not in the prerogative orders of certiorari and prohibition. I wish to emphasise that this Court is not making a choice for the applicant as to which action they are entitled to take to realize their rights under the alleged contract but it is the Limited nature of Judicial Review that this Court is constrained to find as I have that this case goes well beyond the scope of Judicial Review where jurisdiction is exercised in a supervisory manner and not to vindicate the rights of the party seeking Judicial Review. In their submissions both counsel found it difficult to separate the 'decision' if any, sought to be quashed from the underlying dispute about validity of the contract.

This Court would find the same difficulty granting the orders sought without vindication of the applicant's rights under the contract and for this reason Court resolves the issue as to whether or not this is a proper case for Judicial Review in the negative and for the reasons given hereto this application is dismissed with costs.

Eldad Mwangusya

J U D G E

30.01.2012