

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. CAUSE NO. 0056 OF 2011

ADINANI KAWOOYA ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

JINJA MUNICIPAL COUNCIL ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This was an Application for Judicial Review made under s. 36 and 33 of the Judicature Act and section 98 C.P.A and Rules 3, 4, 6, 7, and 8 of the Judicature (Judicial Review) Rules 2009.

The applicant sought orders of this court:

- (a) ***Declaring him the duly appointed Deputy Mayor of Jinja Municipal Council.***
- (b) ***In the alternative, an order of mandamus against the Respondent recognizing the Applicant as the duly appointed and approved Deputy Mayor of the Respondent Council.***
- (c) ***A Declaratory Order that the Respondent's acts were illegal, biased and unfair.***
- (d) ***General damages for the torture and inconvenience suffered.***
- (e) ***Costs of the Application.***

The Application was supported by the affidavit of the applicant and of the Mayor of Jinja Municipal Council.

The grounds for the Application were alleged bias against the Applicant who belongs to a different political party than the majority Council members, the voting whereby the Applicant was rejected as Deputy Mayor was illegal and ultra vires; denial of a right to be heard before being condemned by the Respondent, and the alleged illegality of discussing the issue whether to approve the Applicant or not when the law only provides for approval.

From the record the Application was filed on 22/12/2011, yet the decision complained of was made on 08/06/2011.

On 14/05/12 when the Application was called for hearing, Counsel for the Respondent raised a preliminary objection on the ground that the Application was time barred by virtue of rule 5 (1) of the Judicature (Judicial Review) Rules, 2009.

Under the provisions of the said rule, an Application for Judicial Review has to be made promptly within 3 months from the date when the grounds of the Application first arose.

It was pointed out by counsel for the Respondent that the voting rejecting the Applicant as Deputy Mayor was done on 08/06/2011. The Application therefore ought to have been filed by 08/09/2011. However, the application was filed in December, 2011, three months out of time.

Counsel submitted that the question of time is mandatory and relied upon the case of **Speke Hotel (1996) Ltd. Vs. Uganda Revenue Authority [2008]2 EA 353** – where it was held that the question of time of filing for Judicial Review is mandatory.

The other case relied upon was that **Bank of Uganda vs. Nsereko Joseph [2001-2005]3 HCB 53** where the Court of Appeal held that “**a Judge is barred from granting a relief or remedy for an action barred by law.**”

The Court was urged to look at the documents filed by both parties in the present case, and take them as the true reflection of the proceedings being challenged.

The documents, asserted Counsel, show that the proceedings being challenged are of 08/06/2011. The case of **Twinomuhangi vs. Kabale District Local Government Council and Others [2006]1 HCB 130** was relied upon for the holding that **“in an Application affidavits constitute the record with regard to the decision or act complained of and the subject of the review.”**

Counsel then concluded stating that the actions complained of having occurred on 08/06/2011, the filing of the Application in December, 2011, was out of time and therefore the Application was incompetent and should be struck out with costs. That the Applicant has the alternative remedy of filing a suit if he is still interested in the matter.

Counsel for the Applicant prayed in response that the objection be over ruled as it was misconceived.

While acknowledging that Rule 5 Judicature (Judicial Review) Rules was as stated, Counsel argued that it had not been related to the entire facts of the present case.

Referring to paragraph 9 of the Affidavits in rejoinder and the Speaker's reply of 23/01/2012, Counsel argued that the process continued after 08/06/2011. He pointed out that the Minutes of the meeting of June, 2011 complained of were reviewed on 27/10/2011-Annexure C and that therefore, there were no Minutes of Council between June-October, 2011.

The signature of the Clerk was appended on 24/01/2011 as the Minutes could only be signed after approval-Annexure B.

Further that, the debate as to whether the Applicant should be made Deputy Mayor continued and the Speaker asked the Committee to consider the proposals. In the meantime, the Speaker was also to consult on the legal position and update the next Council meeting. The Minutes were signed on 14/11/2011 but still the matter continued.

Annexure F was relied upon to show the guidance the Speaker sought to obtain. And that on 14/11/2011 the Minister of Local Government wrote to the Speaker rejecting the appointment of the Applicant pointing out that he could not be nominated again.

In the circumstances therefore, argued Counsel for the Applicant, the cause of action arose on 14/11/2011 and the Application filed on 22/12/2011 was within time. And that even if the date of rejection was to be taken as 27/10/2011 when the Minutes were approved, the Application would still be within time.

Counsel also stated that Judicial Review reviews a decision and it depends on the law and the decision. The term “**matter first arose or occurred**” should therefore be given Judicial meaning and should not be interpreted mechanically. He emphasised that the Applicant could not move Court without the Minutes.

Further that, even if it were to be conceded that the matter was filed out of time, since the Applicant was pleading illegality in voting, bias and unfairness throughout the proceedings, this superceded all matters of form.

The case of **Joseph Kulou & 2 Others vs. AG & 6 Others Misc. Cause No. 106/2010** was relied upon to support those arguments. In that case, a similar objection based on Rule 5 (1) of the Judicature Review Rules was made and was over ruled by Justice Y. Bamwine P.J. The case of **Sitenda Sebalu vs. Kalega Njuba SCU** was also referred to.

Counsel then submitted that, the Application must be read as a whole. And that in the present case, the documents indicate that the grievance of the Applicant began in June-November, 2011, when he was rejected.

The Application is therefore competently before Court and the objection ought to be overruled as frivolous and costs should be in the cause.

The contention of Counsel for the Respondent in rejoinder was that **Kuluo's case** was not binding on the Court and that the facts were totally different from those of the present case. The decision in the present case was made in the presence of the Applicant and yet he took months to take any action. That each case should be decided on its own facts.

Counsel insisted that the time of filing is limited unless it is extended. And that though the minutes were signed in October, 2011, the decision was made on 08/06/2011, in the presence of the Applicant. The announcement was made on that date under section 25 Local Government Act, and time begun running then, when the Applicant got to know of his rejection.

Referring to the voting by secret ballot whereupon the Applicant failed to get the simple majority, Counsel stated that the attendant consultation by the Speaker was a by the way since the law provides for when the matter **"first arose."**

Commenting about the alleged illegalities the Applicant was complaining about, the contention of Counsel was that those were issues to be determined upon hearing the Application on merit and could not be taken into consideration at this point. He maintained his earlier prayers.

The issue for Court to determine is whether the Application was filed out of time without leave of Court.

It is not disputed that under rule 5 (1) of the Judicature (Judicial Review) Rules 2009, it is mandatory that an Application for Judicial Review be made promptly and in any event within 3 months from the date when the grounds of the Application **“first arose,”** unless Court considers that there is good reason for extending the period within which the Application shall be made.

From the submissions of both Counsel and the pleadings on record, it is apparent that the decision of Jinja Municipal Council out of which this Application arose was made on 08/06/2011, in a Council meeting in the presence of the Applicant-Annexure B to the Application.

True the Applicant had been proposed as Deputy Mayor but his confirmation was conditioned on approval by the members of the Council.

On the above said date, when the proposal was put to the members of the Council, they stated their reasons for refusal to approve the Applicant. When the matter was finally put to vote as per the provisions of section 25 Local Governments Act, the Applicant did not get the simple majority of members present, necessary for his approval. It was then resolved that he was not approved for the post.

I therefore find that, for all intents and purposes, that was the date when the grounds for the Application **“first arose.”**

The word **“first”** given its ordinary meaning is **“preceding all others, foremost, ...earliest in time or succession or foremost in position, in front of or in advance of others” – Blacks Law Dictionary page 635.**

Despite the attendant events that followed the rejection of the Applicant e.g. the consultation of the Minister by the Speaker and confirmation of the Minutes, the date when the cause of action arose was 08/06/2011. That is when time began to run.

The Application ought to have been filed within 3 months from 08/06/2011. By filing it on 22/12/2011, the Application was filed 3 months out of time.

The time limit set by the Judicial Review Rules prescribes the time within which the proceedings must be brought. The provisions limit the time within which Court's jurisdiction may be invoked. That is, the provisions set a time frame for commencing Court action to challenge a wrongful or unlawful act. They exclude Judicial Review proceedings brought after the lapse of time permitted for Court challenge.

Kuluo's case (supra) is good law for aiding Court in exercising its discretion in extending time within which the Application should be made as provided under Rule 5 (1) of the Judicial Review Rules. However, such discretion must be exercised on the basis that there is a good reason for extending the period.

In the present case, it was argued for the Applicant that the Application could not have been filed when the Minutes of the meeting where the decision was made had not been approved and when the advice of the Minister was still pending.

I am not persuaded by those arguments. And find that the lack of Minutes and the advice of the Minister were matters of evidence not relevant to the actual filing of the Application.

The Application could have been filed with a supporting affidavit as was the case eventually, and the Minutes that were not in the Applicant's power to provide availed later.

Regarding the alleged illegalities in voting, the alleged bias and unfairness throughout the proceedings the Applicant seeks to challenge, I still find that they do not amount to sufficient grounds for failure to bring the action within the prescribed time.

Even while agreeing that justice requires that the substance of disputes should be heard and decided on their merits, I would hold that the time within which to challenge the decisions by way of Judicial Review had elapsed. However, all is not lost for the Applicant. He has a remedy by way of a normal civil suit, where all the issues regarding the alleged illegalities, bias or unfairness can be fully inquired into and finally determined by Court.

Although the existence of an alternative remedy is not by itself a bar to Judicial Review, it is a relevant factor to consider in view of the finding that the Application was not filed within the prescribed time limits and there are no sufficient grounds for extension of time.

The Application is accordingly dismissed for those reasons. Costs of the Application are granted to the Respondent.

But before I take leave of this Ruling, I wish to observe that, considering the orders sought by this Application this was not a proper case for Judicial Review. The approval of the Applicant as Deputy Mayor was subject to the approval of the Council members. The approval was sought but the Applicant was rejected by majority vote. Judicial Review proceedings were not meant to be used as a way to force people to accept leaders they may not like. Voting is meant to give people a chance to express their will, preference or choice. It cannot be dependent on force.

Flavia Senoga Anglin

JUDGE

26/09/12