

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC CAUSE NO. 014 OF 2012**

**ISSA SEKITTO ===== APPLICANT**

**VERSUS**

**ATTORNEY GENERAL ===== RESPONDENT**

**BEFORE: HON JUSTICE ELDAD MWANGUSYA**

**RULING**

The brief background to this application as stated by the applicant is that on November 2011 Honourable Amelia Kyambadde, Minister of Trade Industry and Co-operatives appointed only nine members of the National Standards Council instead of fifteen members and of the nine members two members are not qualified because they lack experience in Commerce. The application which is brought under Sections 41 of the Judicature Act (Cap 13) Laws of Uganda, Rules 3, 4 and 6 of the Judicature (Judicial Review) Rules 2009, S.I 11 of 2009 and Order 51 Rules 1 and 3 of the Civil Procedure Rules seeks orders of certiorari, prohibition and mandamus on the terms and grounds set out in the Notice of Motion as follows:-

1. That an order of certiorari issues to quash the appointments of the members made by Honourable Amelia Kyambadde, Minister of Trade, Industry and Co-operatives to the National Standards Council, Uganda National Bureau of Standards, (UNBS) on 1<sup>st</sup> November 2011.
2. That an order of prohibition issues to stop the members of the National Standards Council from serving on the Council of Uganda National Bureau of Standards.
3. That an order of mandamus issues to direct Hon. Amelia Kyambadde, Minister of Trade, Industry and Co-operatives, to follow the provisions of Section 4, Uganda National Bureau of Standards Act in the appointment of National Standards Council, Uganda National Bureau of Standards.

The grounds of the application as stated in the Notice of Motion are as follows:-

- a) That the appointment of the National Standards Council, National Bureau of Standards by the Minister of Trade, Industry and Co-operatives is Ultra Vires and inconsistent with the provisions of Section 4, Uganda National Bureau of Standards Act (Cap 327), Laws of Uganda and is therefore null and void.
- b) That it is fair and just that the Minister of Trade, Industry and Co-operatives should abide by the provisions of Sections 4 and 5 of the Uganda National Bureau of Standards Act.

In support of the Notice of Motions the applicant who is a businessman and spokesman of Kampala City Traders Association depones that as a prominent importer and trader of electronic goods he is a victim of counterfeit goods being sold on the market and this has been compounded by the failure by the Minister to fully constitute the board as provided for under S. 4 of the Uganda National Bureau and appointment of persons with no experience in Commerce and Industry who cannot safeguard and protect against the counterfeit products that have invaded the Ugandan market. Of the people not qualified for the appointments he singles out Sarah Babirye Lubega and Dr. Eriabu Lugojo whom he claims are not public officers in the Uganda Public Service, a requirement under the Act.

In opposition to the application ambassador Julius Onen a Permanent Secretary in the Ministry of Trade Industry depones that all the nine appointments made by the Minister on 1.11.2011 were in strict compliance with Section 4 of the Uganda National Bureau of Standards (Cap 327) Laws of Uganda and in specific reference to Professor Eriabu Lugojo and Ms Sarah Babirye Lubega, he depones that they have the requisite credentials for appointment to the Council.

The other affidavit in reply to the Notice of Motion was filed by Dr. Ben Manyindo Ag. Executive Director of Uganda National Bureau of Standards, who too defends the Minister's appointment of the nine members and deponed that since their appointment they have declared and approved 317 standards to protect the public from consuming sub standard goods.

There are three issues framed for resolution by this Court.

- 1) Whether the appointment by the Minister of Trade, Industry and Co-operatives is in accordance with Section 4 of the Uganda National Bureau of Standards Act, (Cap 327) Laws of Uganda.
- 2) Whether the Judicial Orders of certiorari, prohibition and mandamus should issue against the Respondent.
- 3) Provision of costs.

On the first issue I will deal with the appointment of Dr, Eriabu Lugujo and Ms Sarah Babirye Lubega who are alleged not to be Public Officers in the Uganda Public Service. The view of this Court is that unless these two appointees are given an opportunity to defend their status in this Court it would not be fair for this Court to impeach their appointment. They should have been joined to the application even if it appeared obvious that they were not Public Officers. In fact the Permanent Secretary Ministry of Trade Industry and Co-operatives defends their appointment because according to him they have the requisite qualifications. The two appointees should have been involved in this debate before Court can order the Minister to terminate their appointment.

This leaves us with the none appointees who are six appointments less than those provided for under S. 4 of the Uganda National Bureau of Standards Act. Section 4 provides as follows:-

***“National Standards Council.***

- (1) The governing body of the bureau shall be a council to be known as the National Standards Council.***
- (2) The Council shall consist of -***
  - (a) a chairperson appointed by the Minister;***
  - (b) the director***
  - (c) six officio members, appointed by the Minister from among Public Officers,***
  - (d) seven person to be appointed by the Minister on the recommendation of the director; and when appointing persons under this paragraph the Minister shall have regard to the desirability of appointing persons with experience in commerce, industry or with technical experience or qualification***
- (3) The director shall act as the secretary to the council.***
- (4) The council may invite any person, whose assistance or advice it may require to attend its meetings; any such person shall not have a right to vote.***
- (5) The council may appoint committees comprising wholly of its own members or partly others, to assist it in the performance of its functions under this Act”.***

In his affidavit in reply Ambassador Julius Onen acknowledges that there are vacancies in the membership and appointments of the National Standards Board. The fact that the board is not fully constituted only means that there are vacancies to be filled and it is only after these vacancies have been filled that the applicant can raise the issue of whether or not all the interest of the Traders have been addressed. In the meantime if the applicant has knowledge of the counterfeit goods that have hit the market he as an interested trader would bring to the attention of the Bureau and he would have cause to question the competence of the bureau if no action is taken. The remedy does not lie in an order of certiorari quashing the appointment of the members already appointed. The remedy lies in filling the remaining vacancies so that this council is fully constituted. We should build rather than prohibiting those already appointed from fulfilling their mandate. To me this disposes of the second issue regarding remedies.

In the circumstances the judicial review remedies are not available to the applicant and his application is dismissed with costs.

**Eldad Mwangusya**

**J U D G E**

**20.04.2012**

**20/04/2012**

Tom Magezi for the applicant

Applicant in Court

Batanda Gerald for the respondent in Court

Clerk - Milton

**Court:**

Ruling read in open chambers

**Keitirima John Eudes**

**DEPUTY REGISTRAR**

20/4/2012