THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC CAUSE NO. 258 OF 2013

PICFARE INDUSTRIES LTD ::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. ATTORNEY GENERAL

2. TREASURY OFFICER OF ACCOUNTS

MINISTRY OF FINANCE ::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

Picfare Industries Limited through M/s Fitzy Patrick Furah & CO Advocates brought this application by way of Notice of Motion under the Judicature (Judicial Review) Rules 2009, S. 3 & 6 and S. 33 and 36 (1) of the Judicature Act Cap 13. The applicant seeks from this court orders that:

a. An order of Mandamus to compel the respondent Attorney General and Treasury Officer of accounts Ministry of Finance, Planning and Economic Development to carry out statutory duty to pay the applicant the sum of UGX 18.692.568.714= (Eighteen Billion sis hundred and sixty eight thousand seven hundred fourteen shillings) being a total of;

i. The amount awarded in the consent judgment dated 20th May 2011 of UGX 13.320.120.224 and
ii. UGX 5.372.448.490= being interest accrued there on as of 31st March 2013.

b. An order for payment of further interest accruing after 31st March 2013 till payment in full.

c. The respondent appear before court to show cause why they should not pay the decree holder/judgment creditor the money due from them or so much there of as may be sufficient to satisfy the decree and the costs of the mandamus proceedings for judicial review.

d. An order for the Treasury Officer of Accounts Ministry of Finance, Planning and Economic Development to show cause why he should not be committed to civil prison for nonpayment of the proceeds of the Consent judgment and failure to implement the certificate of order against Government made by this Court on 14th day July 2011 and served upon him on the 14th day of July 2013.

e. Costs of this application be provided for.

The application is supported by the affidavit of Richard Mubiru Director, Corporate Affairs of the applicant which confirms the consent judgment between the applicant and the Attorney General. That despite repeated demands the respondents have neglected or refused to pay the sum owing. Further that this application was made without undue delay and the respondents have no lawful and/or plausible excuse not to pay the sum owing as there is no appeal against the judgment.

In the affidavit in reply deponed by one Francis Atoke the Accounting Officer I the Ministry of Justice and Constitutional Affairs, the respondent avers that the Government of Uganda is committed to settling its indebtedness arising from court awards made against it. That by the time the applicants made demands for payment, budgetary allocations for court awards from financial year 2013/2014 had already been allocated by Government.

That Government has arrears in claims of court awards totaling three hundred Billion shillings (300.000.000.000). That the respondent is not in control of allocations but when funds are allocated the applicants claim will be paid.

The respondent further depones that nonpayment of the applicant was due to reasons beyond their control and urges the applicant to hold this claim in abeyance while the respondent explores available options to settle the claim.

At the hearing of this application court allowed respective counsel to file written submissions in support of their respective case. I will not reproduce the submissions but suffice to mention that I have considered the same in relation to the application I have considered the law applicable and the authorities cited for my assistance. I will go ahead and decide this application starting with the preliminary points of law raised by Ms Kampire who appeared for the respondent on whether this application is tenable.

According to learned counsel for the respondents, this application is glaringly time barred and it should be dismissed with costs.

From the record, this application was filed on 19th April 2013 seeking to enforce a consent judgment entered into on 20th May 2011. Learned counsel for the respondent argues that by filing this application on 19th April 2013 two years after judgment, the applicant ought to have sought leave to file the application out of time as provided for under Rule (1) of the Judicature (Judicial Review) Rules 2009. Rule 5(1) provides that:

"(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 court considers that there is good reason for extending the period within which the application should be made".

Whereas it is true that an application should be filed three months from the time when the grounds of the application first arose, I do not agree with the submission by learned counsel for the respondent that this arose on the date of the consent judgment. There were repeated demands for payment as shown in the applicant's annextures 'D' and 'E'. It appears the last demand was made on 22nd May 2012 (annex E). By the look of things, and in view of this application, the said demand was not honoured.

In my view therefore, the grounds of the application arose when the demand in annex 'E' was not honoured, that is to say, on 22nd May 2012. This application ought to have been filed within three months of that date.

By filing this application on 30th April 2013 almost one year after the grounds arose, this application is clearly time barred because the filing was clearly done more than three months

from due date. It was held in **<u>Re Mustapha Ramathan for orders of certiorari prohibition and injunction Civil Appeal 25 of 1996 (CA) that:</u>**

"Statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is <u>interest reipublical ut sit finis litum,</u> meaning litigation shall be automatically stifled after a fixed length of time irrespective of the merits of the particular case."

Their lordships illustrated the strictness in statutes of limitation by referring to the statement by Lord Greene MR in **<u>Hilton Sutton Steam Laundry [1946]1 KB 61</u>** at P.81 where he said:

"But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights."

The proper procedure should have been for the applicant to apply for extension of time within which to apply for judicial review under Rule 5(2) of the Judicature (Judicial Review) Rules 2009, which was not done in this case. This application is incompetent and will be struck out.

Even if I had not struck out this application, it would all the same not have succeeded as argued by Ms Kampire because there is no indication in this application that there is any decision complained of which is tainted with any illegality, irrationality and procedural impropriety. **<u>Twinomuhangi Vs Kabale District & others 2006 (1) HCB 130, 131</u>** per Kasule Ag J (as he then was).

The under lying principle in order to proceed in an application for Judicial Review is for the applicant to show that the respondent(s), a public body has taken a decision or done an act which is tainted with illegality, irrationality and procedural impropriety. There is nothing to show that the respondents herein have taken any decision nor done any act to show that the Attorney General will not pay to the applicant the monies owed to them under the consent judgment. Infact from the affidavit in reply and the submissions by learned counsel for the respondent the Attorney General is willing to pay the monies owed. Secondly the applicants are praying for an order that the respondent pays UGX 5.372.448.490= being interest accrued as of 31st March 2013. This amount is not expressly part of the consent judgment and it is not yet ascertained. A writ of mandamus will not issue to enforce doubtful rights or those rights that are the subject of

disputes. **Afro Motors Ltd and Okumu Ringa Patrick Aloysious Misc Cause No. 693 of 2006 Arising from Misc Application 203 of 2006.**

Thirdly, the order sought to compel the respondent to appear before court and show cause why they should not pay the decretal amount to the applicant or so much there of as may be sufficient to satisfy the decree and an order for the Treasury Officer of Accounts Ministry of Finance, Planning and Economic Development to show cause why he should not be committed to civil prison for non-payment of the proceeds of the consent judgment are premature prayers because the mandamus proceedings have not terminated. These payers have been made when these proceedings are pending. It is only after an order for mandamus has been granted that an applicant can properly move court against the respondent to show cause why they have not paid the decretal sum. These prayers are to say the least speculative. Such speculative circumstances produce not an 'aggrieved' "party" nor, indeed, a real dispute that is justifiable in any court of law. **Legal Brain Trust (LBT) Ltd Vs Attorney General Appeal No. 4 of 2012 East African Court of Justice, Appellate Division.** In this case, their lordships declined to adjudicate the appeal because there was no EALA election conducted in the Uganda Parliament nor were there campaigns or contest of such an election and there was no candidate(s) refused or stopped from contesting any such election, on the grounds of any expired term limit. Therefore the appellants lacked a locus standi both under Article 30 and Article 36 of the Treaty.

All in all, I will maintain my order to strike out this application for being filed out of time without leave of court to do so. Since the respondents still owe the applicant money each party shall bear its own costs. I so order.

Stephen Musota

J U D G E

30.09.2013

- High Court

- Add to Significant Recent Additions