REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA SITTING AT KOLOLO

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 514 OF 2012
ARISING FROM MC 89 OF 2009

1. DR. JAMES AKAMPUMUZA
2. EDDIE TUKAMUSHABA KUROBOZA} :::::::::::::: PLAINTIFF/APPLICANT

VERSUS

MAKERERE UNIVERSITY BUSINESS SCHOOL & 02 OTHERS} ::::::::::::DEFENDANT/RESPONDENT

BEFORE: HON. JUSTICE AKIIKI – KIIZA

RULING

This is an application by way of a Notice on Motion and is taken out under the Provisions of S. 98 CPA, S. 33 of the Judicature Act, Cap 33 and O. 50 (1) (2) C.P.R. It is seeking the setting aside of this Court's dismissal Order dated the 17/10/2012 in respect of Civil Application 89/2009. The Court dismissed the matters under O. 17 r. 6 (1) C.P.R. There is no affidavit in reply filed by the respondents.

This application was filed on the 25/10/2012 and came up for hearing on the 18/2/2013. Both sides were represented by Counsel. When the matter was called up for hearing, the learned counsel for respondents (Mr. Kavuma) raised a preliminary matter regarding the competence of the application. He submitted that, as the substantive application (89/09) had been dismissed under O. 17 r 6 of C.P.R., the only remedy open to the applicant is to resort to the provision of O. 17 r 6(2) C.P.R. and file a fresh application but not to proceed under S. 98 CPA, (invoking the Courts inherent jurisdiction). That, where there is an express provision of the law governing certain matters, or procedure, then a party cannot resort to the court's inherent jurisdiction. He cited the case of **MAKULA INTERNATIONAL LTD VS CARDINAL NSUBUGA & ANOR [1982] HCB 11** in support of his stand. He submitted

further that, as the applicant is out of time to bring a fresh application, his fate is sealed and has no remedy.

On the other hand, the Learned Counsel for applicant (Mr. Ntambirweki) submitted to the effect that, he cannot resort to O.17 r 6 (2) C.P.R. as the substantive application which was dismissed was by way of Judicial Review and matters brought to Court through that procedure must be within 3 months from the time the cause of action arose which have since expired. (See Rule 5 (1) of the Judicature (Judicial Review) Rules 2009)

This rule provides as follows:-

> " **5(1) An application for Judicial review shall be promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made."**

It is therefore clear that, actions brought under judicial review have to be filed within 3 months from the cause of action accruing or the grounds of the application first arose. The word used is "**SHALL**" which is mandatory. However, in the same Rule, the Court is given power and for good reason, to extend the period beyond the 3 months. I will return to this matter later on.

The Learned Counsel for the applicant was however of a view that the court can invoke its inherent jurisdiction to readmit the substantive application. He cited and later supplied to the Court the case of **RAWAL VS THE MOMBASA HARDWARE LTD. [1968] EA 392 (BY EACA), the Case of SITENDA SEBALU VS SAM K. NJUBA and ANOR S.C.U. ELECTION PETITION APPEAL NO. 26/2007,** and **ELECTORAL COMMISSION U.C.A, CONSTITUTIONAL PETITION 8/98**, in support of his proposition.

Having carefully listened to the submission of the both Learned Counsel and having carefully reviewed the authorities interpreting both O. 17 r 6 C.P.R. and S. 98 CPA on inherent power of the Court, the following are my considered findings.

The purpose of O. 17 r 6 C.P.R. is to enable the Courts to manage their work load by eliminating all cases which appear rather redundant from its system. This is part of Court Case Management tools applied by the Judiciary. This Order can be invoked by either party or by the court on its own motion. In the case of **NILANI VS PATEL & OTHERS [1969] EA 340** Dickson J held that;

> " **It is trite law to say that as in every Suit, it is the plaintiff who is in pursuit of a remedy, that he should take all the necessary steps at his disposal to achieve an expeditious determination of his claim. He should not be guilty of larches. On the other hand, when he fails to bring his claim to a speedy conclusion it is my view that a defendant ought to invoke the process of the court towards that end as it is convenient by either applying for its dismissal or setting down the Suit for hearing**"

Secondly, where the courts are faced with ordinate delays the court can invoke its inherent power to intervene and have the matter dismissed on its own motion. (See the case of **ABDUL AND ANOR VS HOME AND OVERSEAS INSCE. CO. LTD [1971] EA 564 by EACA.**

Once the matter is dismissed under O.17 r 6 (1) C.P.R., the aggrieved party has a remedy under O.17 r 6 (2) C.P.R. He is given a right to apply for reinstatement of the Suit subject to the law of Limitation. As pointed out herein above, the applicant brought his action by way of Judicial Review which under Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009, it must be brought within 3 months from the time of the grounds of the application first arose. The matter was filed in 2009. This application was dismissed on 17th October 2012. This application was filed on 25/10/2012. Clearly this is more than 3 months allowed by the Rules

governing Judicial Review. It is the applicant's contention that the Court can invoke its inherent powers under S. 98 C.P.R. and reinstates the application but on the other hand the respondent is of a view that, the only option open to the applicant is to file a fresh suit but that is impossible as he is time barred by Rule 5 (1) of the Judicial (Judicial Review) Rules 2009. The Learned Counsel for the respondent submitted further that the Court cannot use its inherent jurisdiction to extend the time fixed by law and cited the famous case of **MAKULA INTERNATIONAL LTD VS. CARDINAL NSUBUGA & ANOR. [1982] HCB 11** in support thereof**.**

I will first of all consider what the provisions of Rule 5 (1) of the Judicature (Judicial Review) Rule 2009. It provides in the following terms:-

> *" 5 (1) An application for Judicial review shall be made promptly and in arrangement within three months from the date when the grounds of the application first arose,* ***unless the court considers that there is good reason for extending the period within which the application shall be made*** *(emphasis supplied).*

My considered interpretation of this proviso (see the high lighted part) is that, the Court can entertain an application to extend the 3 months limit to bring a fresh application for Judicial Review, straight away instead of applying to reinstate the dismissed application as the applicants have done in this case. That application would be taken out under Rule 5 (1) of the Judicature Act (Judicial Review) Rules and it would be decided on its merits as usually is the case in similar applications for the extension of time. In the circumstances therefore, it is my considered view, that there is no need for the applicants to resort to S. 98 CPA for the inherent powers of the Court.

Be it as it may, the question now before the court, is whether the Courts inherent jurisdiction could be invoked to bring this application to reinstate the substantive application of Judicial Review.

In the case cited by the applicants, **SITENDA SEBALU VS SAM K. NJUBA AND THE ELECTORAL COMM. S.C.U. ELECTION PETITION APPEAL NO. 26/2007**, their Lordships held to the effect that inherent powers of the court can be resorted to so as to extend time, even where there is a law of Limitation to an action. Their Lordships in the above case were considering, inter alia, whether the court can extend time fixed by the Parliamentary Elections Act within which to file the petition and serve the Notice thereof.

Their Lordships reviewed various local and International authorities on the subject, and held that, although the intention of Parliament in setting up time limits was to ensure, in the public interest, that disputes concerning election of the peoples' representatives are solved without undue delay, that was not the only purpose and intention of the legislature. Their Lordships went on to say:-

> **" It cannot be gainsaid that the purpose and intention of the legislature in setting up an elaborate system for judicial inquiry with alleged electoral malpractices……was to ensure, equally in the public interest, that such allegations are subjected to a fair trial and determined on merit."**

Their Lordships found that, the court had jurisdiction to hear and determine the application to extend the time, despite the time limits set up by the Statute.

The East African Court of Appeal had earlier considered the equivalent of O. 17 r 6 of C.P.R. This was in a Kenyan case of **RAWAL VS THE MOMBASA HARDWARE LTD. [1968] EA 392.**

The facts in that case are almost on all fours with the instant case. In the Kenya case, the court on its own motion had dismissed the applicants Suit as no step had been taken to dispose of the matter within 3 years contrary to O. 16 r 6 of Civil Procedure (Revised) Rules 1948 (O. 17 r. 6 of the C.P.R). The plaintiff in the above case applied to the court under S. 97 of Kenya CPA (S. 98 CPA Uganda) to have the dismissal set aside and reinstate the suit.

The trial Court held that the court had no jurisdiction to do so as O.16 r 6 provided its own solution and that the applicant had to bring a fresh suit subject to the Law of Limitation. Hence the court cannot resort to its inherent jurisdiction to hear the matter.

On appeal to **EACA**, it was unanimously held that the remedy provided by O. 16 r 6 (17 r 6) of bringing a fresh Suit was not intended to be exhaustive and that the Court can resort to its inherent jurisdiction vested in it by S. 97 CPA (S. 98 CPA). The reason usually given by the Court for resorting to its inherent jurisdiction is to prevent a miscarriage of justice, especially where the defendant (Respondent) is not prejudiced in any way if the Court extended the time. To this end, **LAW, J.A**. had the following to say:-

> ***" The defendant, if the case is restored, is not being deprived of any defence that he originally enjoyed or that he originally pleaded, he is being deprived of what one might call an after acquired defence which has accrued to him solely through action taken by the court of its own motion of which he was not even aware. I personally consider that in the special circumstances of this case, the remedy provided for by r.6 of bringing a fresh suit, was not intended to be exhaustive and that the inherent jurisdiction vested in the Court by S. 97 (S. 98) Civil Procedure Act is for that reason not excluded."*** **Sir CHARLES NEWBOLD, P. added that, even where the order of dismissal is inter parties and was not by the court's own motion, the court still has power to intervene, where necessary. The Learned President of the Court had the following to say:-**
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> > **"We all know that a court has control of its order until it is perfected. Even if the order is made in the presence of the parties and after argument, it is still open to a court, before it is perfected, to recall the order."**

Given the present status of the law as elucidated by the Supreme Court in the **SITENDA SEBALU** and by the EACA in **RAWAL Cases** cited above, I find that the court has inherent

jurisdiction to extend the time within which the applicant can bring the current application to restore the substantive application.

In the premises therefore, the Applicants application to reinstate the dismissed application for Judicial Review was rightly and competently brought under S. 98 C.P.A. However, as pointed out earlier on in my Ruling, the applicant in my view could have also applied for extension of time under the proviso in rule 5 (1) of the Judicature (Judicial Review) Rules 2009.

Costs will follow the outcome of the application to reinstate the dismissed substantive application for Judicial Review.

Order accordingly.

Justice Akiiki – Kiiza
JUDGE.
27/02/2013.