

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

MISC. APPLICATION NO. 359 OF 2013

**1. KHABUSI BUILDING CONTRACTORS
& FURNITURE CENTRE LTD ::::::::::::::::::::::::::::::::::: APPLICANT**

2. ANDREW KHAYEKI

3. RASHID BUSIKU

VERSUS

**PUBLIC PROCUREMENT & DISPOSAL
OF PUBLIC ASSETS AUTHORITY ::::::::::::::::::::::::::::::::::: RESPONDENT**

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

The applicants Khabusi Building Contractors and Furniture Centre Limited together with Andrew Khayeki and Rashid Busiku filed this application by way of Notice of Motion under S. 98 of the Civil Procedure Act, S. 33 of the Judicature Act and Rule 5(1) of the Judicature (Judicial Review) Rules No.11 of 2009 for extension of time within which to file an application for Judicial Review. The respondent is the Public Procurement and Disposal of Public Assets Authority. The orders sought from this court are that;

- a) Time within which to file an application for Judicial Review against the respondent be extended.
- b) Costs of the application be provided for.

The Notice of Motion is supported by the affidavit of Khayaki Andrew and briefly are that;

1. The applicant was among the five companies which bided for the construction of Kabwangasi Secondary School as advertised by the Ministry of Education.
2. The respondent in an arbitrary act suspended the applicant from Public Procurement and Disposal Proceedings for a period of three years effective from May 2012 on allegations that the applicants had submitted forged bid Securities from DFCU Bank.
3. The decision of the respondent against the applicant was reached when the police was still investigating the alleged forged bid Securities.
4. The findings of police investigations revealed that the applicant did not submit forged bid securities/documents for the construction of Kabwangasi Secondary School.
5. The findings of police investigations in the alleged submissions of forged bid securities/documents were produced after the period in which to apply for judicial review had expired.
6. The applicant was delayed because the police was still carrying out investigations into the matter of alleged forged bid Securities/Bank guarantee.
7. The decision to condemn the applicant unheard was illegal, irregular and contrary to the rules of natural justice and can only be challenged by Judicial Review.

8. As a result of the suspension, the applicant lost business in the Public Procurement and Disposal in which it had many contracts since 2012 to date.
9. The respondent is in breach of the law and authority vested in him.

In the respondent's affidavit in reply deposed to by one Patricia K. Asimwe an Advocate of the High Court, she refuted all the claims by the applicant and emphasized that the applicants were given a hearing before being suspended and that they were not suspended arbitrarily. That the purported investigations by the police did not stop the applicants from seeking Judicial Review within the time allowed. That the instant application is frivolous, misconceived and brought in bad faith and should be dismissed with costs to the respondents because the applicants sat on their rights and unjustifiably failed to bring the application within time allowed by the law.

At the hearing of this application, both Mr. Wamukoota counsel for the applicants and Ms Kusiima learned counsel for the respondent made submissions reiterating the contents of their respective affidavits.

In her submissions, the respondent's counsel submitted that a one Koloto appeared for the first applicant as per annexure P3. That the decision to suspend the applicant was communicated on 28th May 2012. That the applicants have not demonstrated any justifiable reason for extension of time to file a review.

The applicants denied attending any meeting with the respondent prior to the suspension.

I have considered the application as a whole. I have also considered the submissions by respective counsel in support of their respective cases. I must state that much of the submissions especially by learned counsel for the respondent concern the merits of the main application for Judicial Review which has not yet been filed. What is before court now is an application for extension of time within which to file an application for Judicial Review and this is governed by rule 5 of the Judicature (Judicial Review) Rules 2009 which provides that:-

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

Court’s discretion to extend time must be based on good reason having been raised by the applicant. Good reason depends on the circumstances of a given case. According to the respondent the applicant has not given any good reason to warrant extension of time because, it was summoned for hearing vide letter dated 13.02.2012, (annexure P2) and indeed attended the hearing as per the attached list of attendance. Thereafter, the applicant was informed of the decisions to suspend them in a letter addressed to them dated 28th May 2012, (annexure P6).

On the other hand, the applicant denies being summoned and attending the said hearing. It also disowns one W.W. Koloto who signed the record of attendance as director of the respondent.

According to the applicant, it has only two directors i.e. the second and third applicant namely Andrew Khayaki and Rashid Busiku. Therefore W.W Koloto is not one of them.

The divergent positions advanced by the parties need a thorough investigation and this cannot be done in this application for extension of time. It can be done when a substantive application for Judicial Review has been filed. As I have mentioned earlier, it is during the hearing of the substantive application for Judicial Review that the extensive revelations specially made by the respondent can be scrutinized and a finding made once and for all. This is good reason to allow the application and consequently I will allow this application. Let the applicant file their application within two weeks from the date hereof. No order will be made as to costs. Each party to meet its own costs.

Stephen Musota

J U D G E

31.03.2014