

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

**MISC. CAUSE NO. 321 OF 2013**

**1. ATTORNEY GENERAL**

**2. HON. NYOMBI PETER ::::::::::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

**UGANDA LAW SOCIETY :::::::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**RULING:**

This is an application for judicial review brought by Notice of Motion under rules 3, 4 and 6 of the Judicature (Judicial Review) Rules 2009 filed jointly by M/s Kampala Associated Advocates and the Attorney General's chambers, Ministry of Justice and Constitutional Affairs. The applicants are

- (1) The Attorney General
- (2) Hon. Peter Nyombi.

The respondent is Uganda Law Society represented by M/s Nyanzi Kiboneka & Mbabazi Advocates.

At the commencement of the hearing of this application, the respondent raised a preliminary objection premised on the need for this court to resolve the following issues;

- (a) What is the effect of Kampala Associated Advocates joint representation of the Attorney General as co-accused with the Attorney General's chambers?
- (b) Whether the Attorney General can retain and instruct Kampala Associated Advocates, a private legal firm to represent it and perform legal services without complying with the Public Procurement Laws and Regulations?
- (c) Whether the Attorney General can delegate and/or outsource his mandate under Article 119 and 250 (2) of the Constitution to a private law firm that is Kampala Associated Advocates?

The brief background to the above objections is that;

- (i) The applicants herein are the Attorney General and Hon. Peter Nyombi whose action against the respondent is for Judicial Review Orders of certiorari, prohibition, declarations and injunction.
- (ii) The Notice of Motion and affidavit dated 20<sup>th</sup> September 2013 representing the pleadings of the applicants were jointly drawn and filed by M/s Kampala Associated Advocates and the Attorney General's chambers as joint counsel for the applicants.
- (iii) The respondent in its defence challenged the representation of the first applicant by Kampala Associated Advocates as being illegal and contrary to the 1995 Constitution of the

Republic of Uganda and the PPDA Act and regulations as amended.

- (iv) The applicant in his rejoinder dated 14<sup>th</sup> November 2013, mentioned that he is legally permitted to engage lawyers to represent government and exercised his exclusive mandate to appoint Kampala Associated Advocates.

Court allowed learned counsel for the respondent to file a written submission of their preliminary objection and the supporting arguments and learned counsel for the applicants to reply in writing.

I have considered the preliminary points raised by learned counsel for the respondents and the supporting arguments. I have also considered the submission in reply. I have considered the law relied upon in these arguments. I will now go ahead and determine the objections as argued.

1. What is the effect of Kampala Associated Advocates representation of the Attorney General as co-counsel with the Attorney General's chambers?

In his submissions, learned counsel for the applicants denied that M/S Kampala Associated Advocates are co-counsel with the Attorney General's Lawyers for the Attorney General. They however concede that the pleadings were jointly filed because the cause of action

against the respondent affects and has an impact on both applicants and arose out of similar acts or transaction and therefore there would not be a need for different suits because if separate suits were raised any common question of law or fact would arise and eventually an application for consolidation of the same could be made. That this could be wastage of court's time and resources. Further that it was incumbent upon the respondent to prove that the payment to be made to Kampala Associated Advocates in this matter is from the consolidated fund which they have not done. That the second applicant in his own writing instructed private counsel to pursue this case on his behalf as an individual. Therefore this objection is inconsequential and should be overruled.

A perusal of the record shows that the pleadings of the applicants were jointly drawn and filed by M/S Kampala Associated Advocates and the Attorney General's chambers as joint counsel for the applicants. When the respondent in its defence challenged the representation of the first applicant by Kampala Associated Advocates as being illegal and contrary to the 1995 constitution of the republic of Uganda, the PPDA Act and PPDA Regulations, the first applicant in rejoinder dated 14<sup>th</sup> November 2013, mentioned that he is legally permitted to engage lawyers to represent the government and had exercised his exclusive mandate to appoint Kampala Associated Advocates.

I agree with learned counsel for the respondents that this averment shows that Kampala Associated Advocates are Co-counsel and did draft and prepare the pleadings on behalf of the Attorney General which the Attorney General acknowledged and justified that he is permitted to

instruct private lawyers to represent him. Indeed Kampala Associated Advocates appeared in court and represented the Attorney General thus acting as duly appointed advocates of the Attorney General. An advocate appears on behalf of a client upon instructions and as such is entitled to remuneration under the Advocates (Remuneration and Taxation of Costs) Regulations.

By appointing Kampala Associated Advocates as counsel for the first applicant, the effect is that they were vested with the authority of duly appointed advocates for the Attorney General with full instructions to act on behalf and for the Attorney General and entitling them to remuneration by the Attorney General which comes from public coffers or the consolidated fund. In case the respondent lost the case, then the latter would be liable for costs on a party to party basis.

2. Whether the Attorney General can retain and instruct Kampala Associated Advocates, a private Legal firm to represent him and perform legal services without complying with the public procurement laws and regulations.

In their submissions learned counsel for the respondent stated that the Attorney General retained and instructed Kampala Associated Advocates illegally and contrary to PPDA Act and PPDA Regulations which infringed the principles of the Rule of law and good governance which cannot be condoned by this court. That the pleadings by Kampala Associated advocates ought to be struck out from court record.

In reply learned counsel for the applicant submitted that whereas the above submissions by learned counsel for the respondent could be plausible, the involvement of Kampala Associated Advocates is based upon the instruction from Hon. Peter Nyombi, the second applicant. That there was therefore no need to follow the PPDA Act. That there is nothing illegal for Kampala Associated Advocates to represent Hon. Peter Nyombi in his personal capacity. That that notwithstanding, since Kampala Associated Advocates is approved by the law counsel, the pleadings are legal. That even where the firm is disqualified, it would not affect the validity of the pleadings under S. 14A of the Advocates' (Amendment) Act 2002.

Learned counsel for the applicants urged this court to administer substantive justice under S. 33 of the Judicature Act. That the rule of law demands that the applicant be heard. Further that the PPDA Act does not apply to the procurement of legal services since lawyers are prohibited from competing with each other or undercutting each other or offering to do legal services below the price/ remuneration levels that are set by the law relating to remuneration of advocates. Therefore the respondent should be over ruled on this issue.

I agree with the submission by learned counsel for the respondent that the Attorney General's office is a constitutional office established under Article 119 of the Constitution and with a constitutional mandate. Indeed the Attorney General is a member of cabinet and his chambers

are what is called the Ministry of Justice and Constitutional Affairs employing staff in the category of civil servants. Accordingly for one to provide services to the Attorney General, the public procurement laws and regulations under the PPDA Act have to be applied.

According to S. 2 of the PPDA Act, it is enacted thus:

*“ S.2 Application of the Act*

**(1) “ This Act shall apply to all public procurement and disposal activities and in particular shall apply to-**

**(a) All public finances-**

**(i) Originating from the Consolidated Fund and related special finances expended through the capital or recurrent budgets, whatever these may take;**

**(ii) That may be earmarked for external obligation purposes, except those resources that may be earmarked for payments of membership subscriptions and contributions; and**

**(iii) of a procuring and disposing entity;**

**(b) resources in the form of counterpart transfers or co-financing or any finances of a similar nature within the context of development co-operation agreements for the implementation of national programmes;**

**(c) procurement or disposal of works, services, supplies or any combination classified by-**

**(i) entities of Government within and outside Uganda; and**

**(ii) entities, not of government, but which benefit from any type of specific public funds specified in paragraph (a) of this sub-section.**

**(2) Any dispute arising from the application of this Act shall be referred to the Authority for its decision following procedures to be prescribed by regulations made under this Act."**

*Interpretation of the following words under S.3*

**a) "Procurement" means acquisition by purchase, rental, lease, hire purchase, licence, tenancy, franchise, or any other contractual means, of any type of works, services or supplies or any combination;**



- b) “Procurement process” means the successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of those offers, award contract, and contract management;**
- c) “Public funds” means monetary resources appropriated to procuring and disposing entities through budgetary process, including the Consolidated Fund, grants and credits put at the disposal of the procuring and disposing entities by foreign donors; and revenues generated by the procuring and disposing entities;**
- d) “Services” means any object or procurement or disposal other than works and supplies, and includes professional, non professional and commercial types of services as well as supplies and works which are incidental to, but not exceeding the value of those services;**
- e) “Procuring and disposing entity” means a statutory body, department of the central government, local government and any other body or unit established and mandated by government to carry out public functions;”**

The import of the above provisions is that:

- (a) The Attorney General as a public office and government ministry is a public entity within the meaning of the PPDA Act as amended.
- (b) Instructions to advocates by the Attorney General is a public procurement activity that has to be acquired through a procurement process as prescribed under the PPDA Act and Regulations as amended since it is a procurement of a professional service.
- (c) Legal services rendered by private advocates to the Attorney General including representation in court are professional services within the meaning of services under the PPDA Act as amended and quoted above.

In the instant case, the Attorney General acknowledged having authority to procure services of private lawyers to represent him in courts of law and he indeed instructed Kampala Associated Advocates to represent him in this Judicial Review. He has however led no evidence to show to court the procurement method used in procuring the said legal services and Kampala Associated Advocates being co-counsel in the matter.

In his affidavit in rejoinder paragraphs 3, 4, 5 and 6), the Attorney General who happens to be the second applicant stated as follows:

***“3. I also know that the attorney general in the performance of his function is legally permitted to***

***engage lawyers to represent him and/or Government in legal proceedings.***

***4. That I also know that under the Ugandan law, lawyers don't compete or tout for legal services and appointment of lawyers to represent government is the exclusive mandate of the Attorney General.***

***5. That in any case, I appointed M/S Kampala Associated Advocates to represent me personally in my own right as an applicant.***

***6. That this application was not filed by M/S Kampala Associated Advocates alone as falsely misrepresented by Ruth Sebatindira. It was drawn jointly by the said firm and the Attorney General's Chambers."***

With the above averments in mind, I am in agreement with the submission by learned counsel for the respondent that it was contrary to the PPDA Act and Regulations as amended for the Attorney General to retain Kampala Associated Advocates to represent him as a person in his own right and then the office of the Attorney General without following the PPDA Act and Regulations. The illegality in instructing Kampala Associated Advocates contrary to the law renders all resultant acts done by the said advocates in relation to the first applicant

irregular. The submission by the applicant that complying with the PPDA act was not necessary is therefore misplaced.

In his rejoinder, the learned Attorney General states that under Ugandan law, lawyers are not allowed to compete or taut for provision of legal services. I don't agree that what the PPDA Act and Regulations require to be done is tantamount to touting. As rightly submitted by learned counsel for the respondent there is no law that forbids competing for provision of legal services because competition is not the same as touting. Even the PPDA Act forbids touting. What the law requires was rightly put by the respondent as follows:

***“I want legal services, can you prove to me as the potential client your capability and capacity so that I can assess whether you are competent and affordable in terms of value for money and costs. The client then looks at your submission in compulsion to others and decides to retain you by giving you instructions or not to retain you.*”**

In fact the Attorney General ought to have a list of several prequalified legal service providers after due process from which it can choose when occasion demands. If this method is not used then S. 79 (3) of the PPDA Act may be invoked so that the procuring entity can use any other method than the one set out in the Act. Section 79 (3) provides that:

**“A procuring and disposing entity shall first obtain the consent of the Authority before it uses any other method than the one set out in this part of the Act.”**

Consequently, I will find that it was irregular for the learned Attorney General to have retained the Kampala Associated Advocates as lawyers to provide professional services to the Attorney General without following the PPDA Act and Regulations as amended.

3. Whether the attorney General can delegate and or outsource his mandate under article 119 and 252 (2) of the constitution to a private firm and in this case, Kampala Associated Advocates.

I should note that this court is not mandated to interpret the Constitution or the East African Community Treaty. But cautiously answering this issue, I am in agreement with learned counsel for the applicants that when the learned Attorney General instructs a private lawyer (after due process) to represent the government in legal proceedings, it cannot be argued that he thereby would have breached the principle of *delegatus non - potest delegare*. The instructions given do not go with the official capacity of the principle. Instructions are a specific assignment to go to court and do not make lawyers instructed to become Attorney Generals thereby.

Having substantially agreed with the respondent on the preliminary objections, I will go ahead and decide on what remedies are available.

#### 4. Remedies:

The right to a hearing is sacrosanct. The second applicant is suing in person challenging his suspension as an individual member of the respondent. He cannot practice law since only the members of the respondent are the ones who are allowed to practice law. He is therefore entitled to challenge the resolution of the respondent. I agree that the representation of the Attorney General by Kampala Associated Advocates does not affect the legality of the pleadings because under S. 14A of the Advocates (Amendment) Act:

***“No pleadings, contract, or other document made or actions taken on behalf of a client shall be invalidated by disqualification of an advocate from representing a client for any reason.”***

Disqualification of an advocate, for example without a valid practicing certificate, or an advocate whose conduct violates the law including client confidentiality and conflict of interest or any other legal matter does not invalidate the proceedings. The courts are empowered to hear and determine the disputes between parties because an applicant who believes he has been wronged comes to court to seek relief. The administration of justice requires that the substance of disputes be

investigated and decided on merits and lapses should not necessarily bar the litigant from pursuing his or her rights. See: **Wanendeya Vs Gaboi & another [2002] 2 EA 662, (CAU)**.

Under O. 1 r 2 of the civil procedure rules.

***“where it appears to court that any joinder of plaintiffs may embarrass or delay the trial of the suit the court may put the plaintiff to their election or order separate trials or make such other order as may be expedient.***

In the instant case, I am inclined to order that Kampala Associated Advocates be disqualified from representing the Attorney General instead of ordering separate trials. The instruction to Kampala Associated Advocates will only remain valid for the second applicant Mr. Peter Nyombi in his personal capacity. The Attorney General shall continue to be represented by his legal team of attorneys as presented on record. Subject to this order, the objections by the respondents are upheld and with costs.

**Stephen Musota**

**J U D G E**

**18.08.2014**