

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

**MISCELLANEOUS CAUSE No. 164 OF 2014 & MISCELLANEOUS CAUSE NO. 172
OF 2014 (CONSOLIDATED)**

IN THE MATTER OF APPLICATIONS FOR JUDICIAL REVIEW

1. PRIME MEDIA NETWORKS ::::::::::: APPLICANT IN 164/2014

2. ALLIANCE MEDIA (U) LTD ::::::::::: APPLICANT IN 172/2014

VERSUS

1. UGANDA NATIONAL ROAD AUTHORITY ::::::::::: RESPONDENT

2. PRIMEDIA PTY LTD OF UGANDA :::::::::::2ND RESPONDENT IN 164/2014

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

Both Miscellaneous Application No. 164 of 2014 filed by Prime Media Networks Limited against Primedia Pty Limited of Uganda and Miscellaneous Cause No. 172 of 2014 filed by Alliance Media (U) Limited against Uganda National Roads Authority were consolidated for trial.

Alliance Media is represented by M/s Byenkya, Kihika & Co. Advocates. UNRA (Uganda National Roads Authority) is represented by Kampala Associated Advocates, Prime Media Networks Limited is represented by Kirunda & Wasige Advocates, and PRIMEDIA Pty Limited Uganda is represented by M/S Crane Associated Advocates.

In the Notice of Motion filed by Prime Media Networks Limited in Miscellaneous Application No. 164 of 2014 the applicant sought for orders of Judicial Reliefs as follows:-

1. Declarations that:
 - a) The Respondent's act of removing the Applicant's billboards and signposts along the Kampala – Entebbe highway is unilateral, high handed, arbitrary, unreasonable, clothed with procedural impropriety, discriminatory, erroneous on the face of the record, not in the public interest, *ultravires*, unfair, unjust and therefore unlawful;
 - b) The Respondent's act of awarding exclusive contract to M/s PRIMEDIA Pty Limited Uganda for services for the maintenance and installation of street lighting in exchange for outdoor advertising rights vide Procurement Number UNRA/SERVICES/2011-12/007/01/02 is irrational, clothed with procedural impropriety, illegal, *ultravires*, discriminatory, unconstitutional and therefore unlawful;
2. An order of Certiorari calling the record of proceedings and the decision of the Respondent to remove billboards and signposts along the Kampala – Entebbe highway to be quashed as the same contain errors apparent on the face of the record, are unfair, discriminatory, illegal, clothed with procedural impropriety, unreasonable, high handed, arbitrary, *ultravires*, the Uganda National Roads Authority Act of 2006;
3. An order of Certiorari calling the record of proceedings and the decision of the Respondent to award an exclusive contract to M/s PRIMEDIA Pty Limited Uganda vide Procurement Number UNRA/SERVICES/2011-12/007/01/02 to be quashed as the same contain errors apparent on the face of the record, are unfair, discriminatory, illegal, clothed with procedural impropriety, unreasonable, high handed, arbitrary, *ultravires*, the Uganda National Roads Authority Act of 2006;
4. An order for Prohibition to issue against the 1st Respondent or any of its officers, agents, representatives or employees or any other representative of the Government of Uganda acting in their stead from awarding any exclusive contracts in respect of road side advertising in Uganda;
5. An order directing the 1st Respondent to pay to the Applicant General, Special Damages and costs of this application.

The grounds on which the Application is based are briefly that:

1. The Applicant is entitled to Equality before the law and protection from discrimination under Article 21 of the Constitution of the Republic of Uganda;
2. The Applicant is entitled to just and fair treatment in administrative decisions under Article 42 of the Constitution of the Republic of Uganda;
3. The Applicant is entitled to freedom of speech and expression under Article 29 (1) of the Constitution of the Republic of Uganda;
4. The Respondent's decisions to remove the Applicant's billboards and signposts, and to award exclusive contract to M/S PRIMEDIA Pty Limited, vide Procurement Number UNRA/SERVICES/2011-12/007/01/02 are an abuse of statutory power, arbitrary, errors apparent on the record, fraught with procedural impropriety and without justification;
5. It is just and equitable that this Honourable Court grants the Applicant, the orders sought herein.

In the Notice of Motion filed by Alliance Media (U) Limited in Miscellaneous Cause No. 172 of 2014, the Applicant sought for orders of Judicial Reliefs as follows:

1. Declarations that:
 - a) The Respondent's Public Notice issued in the New Vision of Tuesday 14th October 2014 among other media, requiring the Applicant to remove its billboards and signposts along the Kampala – Entebbe is ultravires the Uganda National Roads Authority Act of 2006 and therefore void;
 - b) The Respondent has no right, function, mandate, duty, power or obligation to manage or collect any dues or fees from the use of billboards places in any road reserves on the Kampala – Entebbe Road or indeed at all;
 - c) The Respondent's "GUIDELINES FOR ERECTION OF SIGNS/BILLBOARDS WITHIN ROAD RESERVE" are ultra vires the Uganda National Roads Authority Act, 2006, are discriminatory and therefore unlawful.
 - d) The Respondent's decision to engage and (or) award a contract for the "maintenance and installation of street lighting" to M/s Primedia Pty Limited along the Kibuye – Zana

Entebbe Road in exchange for “outdoor” exclusive advertising rights” is unjust, unfair, discriminatory, ultra vires, the Uganda National Roads Authority Act, 2006, is unlawful;

e) The Respondent’s act of vandalizing the applicant’s billboard at Lido Beach (Victoria Resort Premises) is unlawful.

2. An order of certiorari calling and quashing the record of proceedings and the decision of the 1st respondent awarding and (or) engaging M/S Primedia Pty Limited for the “maintenance and installation street lighting” along the Kibuye – Zana Entebbe Road in exchange for “outdoor” exclusive advertising rights”;
3. An order of mandamus directing the Respondent at its own cost to reinstall the applicant’s billboards that it vandalized at Lido Beach (Victoria Resort Premises), Entebbe;
4. An order of mandamus directing the Respondent to pay to the Applicant General, Special, Exemplary and Punitive Damages as well as costs of this application.

The grounds on which this application is based as contained in the affidavit of Mr. Graham Nyakairu, Operations Manager of the Applicant are briefly that:

1. The Applicant is entitled to Equality before the law and protection from discrimination under Article 21 of The Constitution of The Republic of Uganda;
2. The Applicant is entitled to just and fair treatment in administrative decisions under Article 42 of The Constitution of The Republic of Uganda;
3. The Applicant has a right to practice its profession and (or) lawful occupation, trade business under Article 40 (2) The Constitution of The Republic of Uganda;
4. The Respondent has no right or mandate to create monopolies in Uganda;
5. The Respondent has no right, function, mandate, duty, power or obligation to manage any road reserves on the Kampala – Entebbe Road or indeed at all;
6. The Respondent’s decision and act of awarding and (or) engaging M/s Primedia Pty Limited contract for the “maintenance and installation of street lighting” to along the Kibuye – Zana Entebbe Road in exchange for “outdoor” exclusive advertising rights” is; an abuse of statutory power, arbitrary and without lawful justification, is anti-competition and unjustifiable in a free and democratic society;

7. The Respondent's Public Notice issued in the New Vision of Tuesday 14th October 2014 among other media, requiring the Applicant to remove its billboards and signposts along the Kampala – Entebbe Road; an abuse of statutory power, arbitrary and without lawful justification
8. The Respondent's above notice was in breach of the Applicant's right to the principles of Natural Justice.
9. The Applicant's billboard at Lido Beach (Victoria Resort Premises) is located in private land and not within the road reserve.
10. It is just and equitable that this Honourable Court grants the Applicant, the orders sought herein.

In the joint scheduling memorandum, the facts constituting the causes of action were outlined as follows:-

1. The 1st and 2nd Applicants are Limited Liability Companies duly incorporated in Uganda to carry out Outdoor Advertising among other objectives.
2. Sometime in November 2011, the 1st Applicant successfully lodged an Application to Wakiso District Council for rights to erect and maintain a billboard along Kampala – Entebbe Highway and pursuant to the award of the contractual rights, the 1st Applicant went ahead to pay the licensing fees to Wakiso District Town Council.
3. On 20th March 2012, the 1st Applicant successfully applied for and obtained contractual rights for erection of signs and billboards along Kampala – Entebbe Highway and pursuant to those contractual rights, the 1st Applicant went ahead to pay the Respondent license fees for five (5) years in respect of the said contractual advertising rights.
4. In line with their business, the 2nd Applicant installed Nine (9) billboards along Kampala – Entebbe Highway with permission, supervision and authority of the Kampala City Council Authority, the Entebbe Municipal Council and Wakiso District Local Government whereupon they assess and demand fees/rates and or rent from the 2nd Applicant in respect of its billboards which the 2nd Applicant continues to dutifully pay as assessed.
5. On the 6th November 2012, without any colour of right, the 1st Respondent invited bids allegedly under the open international bidding process, seeking a service provider for the

development and maintenance of an efficient street lighting system on four selected roads in exchange for exclusive “Outdoor advertising rights”

6. On October 14th 2012 the 1st Respondent issued a “warning” through the local media to various billboards and signposts owners within the road reserve along Kampala – Entebbe Highway advising them to remove their “illegal” billboards and signposts within 48 hours from publication of the notice. The 2nd Respondent proceeded to list the Applicants among owners of the said “illegal” billboards and signposts to be removed immediately.
7. The Applicants were not informed of the award and subsequent execution of the “exclusive” contract between the Respondents until Applicants learned through the media that the 1st Respondent had awarded an “exclusive” contract to M/s Primedia Pty Limited Uganda to provide street lighting” in exchange for outdoor exclusive advertising rights” along Kibuye – Zana Entebbe Highway for a period of five years on an exclusive basis.
8. The applicants’ billboards were erroneously classified as illegal since;
 - (i) Some of the Applicants’ billboards are on privately owned land on which the 1st Respondent has not control or claim whatsoever;
 - (ii) The Applicants have subsisting contractual rights with the said private land owners;
 - (iii) The Applicants obtained advertising rights from the Local Government Authorities legally mandated to license roadside advertising;
 - (iv) The 1st Respondent has no legal right/mandate/function to engage in Roadside advertising and (or) the management of road reserves in Uganda.
9. Subsequent to their complaints in the respect and through the 1st Respondent’s pleadings, the Applicants learnt that on the 8th August 2014, so as to give full effect to its impugned designs of granting “exclusive Outdoor advertising rights” to Primedia Pty Limited, the 1st Respondent wrote to the District Chairman of Wakiso District requiring that all persons, including the Applicants, who at the time had Outdoor advertising installations along Entebbe Highway to remove them.
10. Subsequently, the Applicants also learned of a series of letter describing the party to whom “exclusive contract for Outdoor advertising was awarded as Primedia Pty Limited Uganda. Further, that the said tender was botched and stopped by the Public Procurement and Disposal of Public Assets Authority through a letter from its Executive Director, Mr. Cornelia K. Sabiti of the 1st October.

11. Consequently, the award of “exclusive contract rights” to Primedia Pty Limited Uganda was done contrary to the procurement process, was done in a highhanded manner, is illegal and unconstitutional.
12. On the 21st October 2014, the 1st Respondent took it upon itself through its employees and or its agents and vandalized/defaced/de-flighted the Applicants’ billboards and signposts causing commercial loss to the Applicants who had running advertising contracts with their clients.
13. The Respondents treated the Applicants unfairly and discriminated against them in the process of making and enforcing the impugned decisions since they were not afforded an opportunity to be heard.
14. This Honourable Court should direct the Respondents to deliver its records of proceedings relating to the decisions to award “exclusive contractual rights” to PRIMEDIA Pty Limited Uganda.

FACTS PECULIAR TO THE 2ND APPLICANT ARE THAT:

1. The 2nd Applicant had running contracts in respect of billboards of which the Respondents’ actions have occasioned the 2nd Applicant losses in revenue and breaches of contract in the sum of USD \$18,351 per month.
2. The 2nd Applicant had a contract with South African Airways running up to July 2015 at a rate of USD \$1,239 per month representing an expected cash flow of USD \$12,3940 per 10 months.
3. The 2nd Applicant had a contract with Freight in time up to January 2015 at a rate of USD\$743.40 per month representing an expected cash flow of USD \$2,973 per 4 months.
4. The 2nd Applicant had a contract with Fireworks Advertising Ltd for 2 months at an agreed rate of Ug. Shs.16,000,000/= in respect of one and for 4 months at an agreed rate of Ug. Shs.9,200,000/= in respect of another.
5. The 2nd Applicant had a contract with SCANAD in respect of Coke-Uganda worth USD\$7,197.98 per month.
6. The 2nd Applicant had a contract with Guaranty Trust Bank was USD \$1,298 per month.

7. The Respondents' illegal acts amount to the infringement of the Applicants' right to practice its lawful trade or profession, creation of or attempt to create an unlawful monopoly to the exclusion of all other persons in the outdoor advertising industry.

1ST RESPONDENT'S FACTS ARE THAT:

- (a) The 1st Respondent is a statutory body that was established for the purpose of managing the provision and maintenance of the National Roads Network in a more efficient and effective manner and to render advisory services to Government.
- (b) The 1st Respondent required by law to manage its affairs in a businesslike and cost effective manner. The 1st Respondent invited bids for the provision of services for the maintenance of street lighting in exchange for outdoor advertising rights. According to the terms of the contract, the general public that uses or accesses the Kampala – Zana – Entebbe Road would obtain street lighting at no extra cost for the first 5 years at the same time the 1st respondent would also generate revenue as stipulated in the contract.
- (c) The 1st Respondent has in the past issued licenses to different persons to erect, construct or maintain billboards or signposts along Kampala – Entebbe Highway (which road/highway is maintained by the 1st respondent). However, the license or the alleged “contractual rights” granted were subject to terms and conditions which the Applicants agreed to comply with.
- (d) One of the express terms of the license issued to the Applicants required the Applicants to completely remove, shift or re-erect the advert when and if the location offered was need for road development or any other unforeseen public uses.
- (e) In accordance with the terms of the license above-mentioned and in execution of its statutory duty and mandate, the Respondent sent out a letter dated 08th August, 2014, addressed to the LC V Chairman of Wakiso District and copied to the various licensees (including the Applicants), that the Applicants were required to remove any and all advertising instruments or billboards along Kibuye – Zana – Entebbe Airport Road.
- (f) On or around 1st November 212, the 1st Respondent advertised in the Monitor and New Vision newspapers a bid Notice under Open International Bidding for the provision of services for the Maintenance and installation of street lighting in exchange for outdoor

advertising rights Lots 1-3, Procurement reference No. **UNRA/SERVICES/2011-12/007/01/02** (the bid).

- (g) On 23rd November, 2012, a pre-bid meeting was held at the 1st Respondent's offices where the various bidders put forward any and all questions or clarifications sought in relation to the bid. The Minutes of the pre-bid meeting where the above said question or clarifications were addressed in a letter dated 24th December 2012.
- (h) The Applicants neither attended the meeting nor did they submit any bid in relation to the Bid and the Applicants had no right to be informed of the outcome of the bid process, and had not right, locus or any standing to challenge the award of the contract to the 2nd Respondent.
- (i) Accordingly, only the 2nd Respondent submitted its Bid and the 1st Respondent awarded the Contract (in accordance with the applicable laws) to Primedia Pty Limited, an entity duly registered under the laws of Uganda.
- (j) The 1st Respondent is/was not under any obligation to inform the Applicants when it awarded the 2nd Respondent the said contract to provide services for the maintenance and installation of street lighting in exchange for outdoor advertising rights. Not information the Applicant of the award and subsequent execution of the said contract is/was not illegal.
- (k) The contract was duly awarded to Primedia Pty Limited in compliance with the laws being complained of by the Applicant.
- (l) The 1st Respondent did not remove any Billboards or signposts on the date indicated in the notice. Any Billboard and/or signpost belonging to the Applicant was removed or demolished subsequent to the expiry of a minimum of 7 (seven) working days in accordance with the Guidelines for erection of signs of billboards within road reserves.
- (m) It was an express term of the license issued to the applicant that the Applicant would be required to completely remove its billboards when and if the location offered was needed for road development or any other unforeseen public uses.
- (n) The 1st Respondent is required by law to manage its affairs in a businesslike and cost effective manner, accordingly, the 1st Respondent opted to invite bids for the provisions of services for the installation and maintenance of street lighting in exchange for outdoor advertising rights. According to the terms of the Contract, the general public that uses

or accesses the Kampala – Zana – Entebbe Road would obtain street lighting at no extra cost for the first 5 years as well as generate revenue.

- (o) The 1st Respondent denies having ever removed any Billboards that was not in or on the above-mentioned road reserve.
- (p) That if the Applicant was interested in rendering the services advertised on 1st November 2012, it would have submitted its bid in accordance with the invitation for bids. It is denied that the 1st Respondent treated the Applicant unfairly or violated the Constitution of Uganda as far as the Applicants and this Application are concerned.
- (q) The 1st Respondent did not breach any law as alleged by the applicants.

2ND RESPONDENT'S FACTS:

1. **PRIMEDIA PTY LIMITED (“PRIMEDIA”)** was served with the Notice of Motion in Miscellaneous Cause No. 164 of 2014 and the supporting affidavit of Brutus Kagingo sworn on the **4th day of November, 2014.**
2. the Application is incompetent and misconceived and ought to be dismissed with costs on account of the following:
 - i) It does not disclose a cause of action against **PRIMEDIA;**
 - ii) It is barred by time so far as it relates to the proceedings and decision to award the exclusive contract to provide street lighting in exchange for outdoor advertising rights along Kibuye – Zana – Entebbe Road [the contract] to **PRIMEDIA;**
3. The contract was awarded to **PRIMEDIA** on the **10th day of April, 2014** and the proceedings leading to the award were conducted much earlier.
4. The company to which, the Contract was awarded is **PREMEDIA PTY LIMITED** and the same duly exists.
5. **PRIMEDIA** participated in a lawful and competitive bidding process leading to the award to it of the contract.

The agreed several documents relied upon by each of the parties were filed.

Issues that arise from facts are:

1. Whether the suit as against **PRIMEDIA** is incompetent?
2. Whether the Applicants had contractual rights with the 1st Respondent and Wakiso District Town Council relating to the billboards along Entebbe road?
3. Whether the 1st Respondent acted lawfully when it awarded an “exclusive” contract to the 2nd Respondent and whether the process was lawful?
4. Whether the classification of the Applicants’ Billboards as being illegal, ordering their removal and their subsequent destruction was lawful?
5. Whether the 1st Respondent has any right, function or statutory mandate in Uganda to Manage Road Reserves in Uganda?
6. Whether the parties are entitled to the remedies sought.

At the hearing of the application, court allowed respective counsel to file written submissions in support of their respective cases. Several case authorities were also filed by either side for my assistance.

I have considered the application as a whole and studied all the documentation and the submissions by respective counsel. I will go ahead and resolve the issues as framed in the joint scheduling memorandum starting with Issue 1:

(i) Whether the suit against PRIMEDIA is incompetent.

In its submissions, the 2nd respondent, PRIMEDIA PROPERTY LIMITED argued that the claim against it is incompetent and misconceived because;

1. It does not disclose a cause of action against PRIMEDIA.
2. It is barred by time so far as it relates to the proceedings and decision to award the exclusive contract to provide street lighting in exchange for outdoor advertising rights along Kibuye-Zana Entebbe Road to PRIMEDIA.

In its submission regarding the competency of the suit against PRIMEDIA, the 2nd respondent's learned counsel argued that save for semantics the 2nd respondent sued by the applicant in Misc. 164/2014 is PRIMEDIA because the latter was served with pleadings in this matter. That by doing so the applicant in 164 had no doubt that PRIMEDIA Pty Ltd they were referring to is indeed PRIMEDIA. That if they were referring to another company they would have served that different company. That even the 1st respondent (UNRA) confirmed in its pleadings that it awarded the contract to PRIMEDIA. It is further submitted in annexure "C" to the 164 applicant's supporting affidavit sworn by Brutus Kajingo which is the 1st respondent's letter in paragraph 2 thereof the 1st respondent clearly referred to the company it awarded a contract as "Primedia Pty Ltd". Further that PRIMEDIA confirms that it was the company that was awarded a contract and no other because no other company has come to say that it was awarded that contract. That it is only PRIMEDIA that exists as a company with that name and it changed its name from Strategic Media Limited, the company that submitted the bid leading to the award of the contract being challenged in these proceedings. That variously referring to PRIMEDIA as Primedia Pty Limited of Uganda or Primedia Pty Ltd does not change its legal name or the fact that it was awarded the contract the subject of which is the current action.

Learned counsel referred to the case of *Ongole James Michael Vs Electoral Commission & Ebukarim Sam Electoral petition 008 of 2006* where it was held *inter alia* that:

"..... the discrepancy in names used by the 2nd respondent creates a lot of suspicion that alone cannot be basis for saying the names refer to somebody else who has not been availed by the petitioner".

Learned counsel for the 2nd respondent contended further that the claim set out in the Notice of Motion and supporting affidavit of Brutus Kajingo does not therefore disclose a cause of action against PRIMEDIA because the applicant in 164 has not pleaded an enforceable legal rights that has been violated by PRIMEDIA leading to loss. That all declarations, orders and injunctions sought have nothing to do with PRIMEDIA. That PRIMEDIA never removed any billboards nor did it award any contract. Further that PRIMEDIA never conducted any proceedings or made

any decision to remove billboards on Entebbe Road. That the costs sought are not against PRIMEDIA.

Learned counsel further submitted that it is not alleged anywhere that Premedia in the 164 application violated the applicant's right to equal treatment before the law or that it made any administrative decision in which it would have ensured the applicant in 164's right to a fair and just consideration. That is not alleged that PRIMEDIA infringed the applicant's right to free speech and made any decision to remove the applicant's billboards. Finally that there is no decision, action or omission or even proceedings on the part of PRIMEDIA alleged anywhere in the application that is amenable to Judicial Review.

Learned counsel for the 1st respondent associated with the above submissions by the 2nd respondent, and the applicants submitted to the contrary and maintained that the 2nd respondent is a proper party to these proceedings, that the 2nd respondent's objections are misconceived in law and fact and without merit.

I am in agreement with learned counsel for the applicants regarding the naming of the 2nd respondent.

As rightly submitted, the application names the 2nd respondent as PRIMEDIA Pty Ltd of Uganda. From the admission by the 2nd respondent and on the basis of the evidence on record, the 2nd respondent is PRIMEDIA Pty Ltd. The 1st respondent's evidence by Engineer Godfrey Sambwa discloses that it awarded an exclusive contract to PRIMEDIA Pty Ltd Uganda. This is reflected in the various correspondences attached to the affidavit. The variance in names of the beneficiary of the contract is the genesis of confusion which cannot be treated lightly especially if it related to companies.

The Company's Act 2012 specifically regulates the styling of company names. Section 36(3) of the Company's Act 2012 provides that:

“3. upon registration, a limited liability company shall add the initials “LTD” or the word “Limited” at the end of its name.”

Therefore for the 1st respondent to represent to the 3rd parties and indeed to the rest of the world that the contract had been awarded to PRIMEDIA Pty Ltd Uganda would be to mislead the world and such parties. It implies that the 1st respondent would have illegally awarded a contract to a non-existent party - PRIMEDIA Pty Ltd Uganda because such a party is different from PRIMEDIA Pty Ltd as by law.

In its pleadings the 1st applicant indicates that it conducted a search and was advised by return as deponed in paragraph 4 of Brutus Kajingo's affidavit in rejoinder filed on 11th May 2015 that there is no such a personality as PRIMEDIA Pty Ltd Uganda. The 2nd respondent cannot be allowed to simply explain this away as an error in the description of its name. The consequences of styling names and its effect on suits has been severally considered by court. The authority of ***Ongole James Michael*** (supra) is distinguishable from the facts of this case because whereas in that case the issue concerned a human being, in the instant case it involved a company whose style of names is regulated by legislation in the Companies Act. There is no specific law on the misdescription of names of individuals. The situation is different with companies because in the latter case, a misdescription has consequences. However, as was held in the case of ***Kilembe Gold Mines Ltd Vs Uganda Gold Mines Limited Misc. Application 312 of 2012***, per Kiryabwire J. (as he then was) a suit is not defeated merely because a party is misnamed. It was held by the learned judge as follows;

“In the past a misjoinder of plaintiffs was a ground for a non-suit while a misjoinder of the defendant was the subject of a plea of abatement. (See Odgers Principles of pleading and practice 22 edition page 20).

Today the position has been relaxed and Order 1 r 9 of Civil Procedure Rules provides that no suit shall be defeated by reason of the misjoinder or non-joinder of parties. That of course does not mean that the party to a suit should not be identifiable because serious consequences flow from litigation and care should be taken to identify the correct parties so that the consequences of litigation do not fall on the wrong party. Conversely the benefits of litigation should accrue to the correct part as well.

In the instant case, whatever the intended party's name, what is clear is that the contract was awarded since the 1st respondent communicated to the world that a contract was awarded to a party who is non-existent, that person may be named in the suit but a third party (in this case PRIMEDIA Pty Ltd cannot be allowed to take benefit of that contract or the fruits of litigation or suffer the consequences of litigation.

In the instant case, the 1st applicant has proved that the party described as being beneficiary to the contract that was awarded pursuant to the procurement process at the heart of these proceedings Primedia Pty Ltd Uganda, does not exist. Since the 1st respondent has denied the existence of Primedia Pty Ltd Uganda, there could not have been a contract awarded to a non-existent party. Therefore, the party described in the letters to Wakiso District Town Council is non-existent implying that the award of the contract is illegal.

As rightly submitted by learned counsel for the applicant, this is not a mere misnomer or misdescription of Primedia Pty Ltd.

In cases of misnomer, both parties ought to be in existence. It is this which makes the mistake as to description excusable.

Therefore the confusion caused by the 1st respondent description of the person it awarded the contract leads to the conclusion that the said party does not exist and any contract awarded to

such a beneficiary is illegal and void *ab initio*. The confusion created by the manner in which the 1st respondent describes the party it awarded the contract is central to this matter.

(ii) Whether the application discloses a cause of action against the 2nd respondent

After considering the submissions on this issue by both parties, I am in agreement with learned counsel for the 2nd respondent that the motion presented does not disclose any act or omission or proceedings on the part of Primedia that are subject to Judicial Review. The argument by learned counsel for the applicant that in so far as Primedia may be affected by this court's decision in these proceedings, the motion discloses a cause of action is erroneous. It is trite law that Judicial Review proceedings are genre of proceedings in which it must be shown that there is an act or omission, decision, proceedings etc. by the respondent in the process of which the applicant has been unfairly treated and the respondent had acted illegally, irrationally, unreasonably, with bias and without following the rules of natural justice. In the instant application, there is no allegation along those lines against Primedia.

As rightly submitted by learned counsel for the 2nd respondent, the decision in ***Proline Soccer Academy Limited Vs Lawrence Mulindwa & others*** is distinguishable from the instant case. The said decision is inapplicable to the facts of the case before me. In ***Proline Soccer*** (case) the question of determination was whether the applicant and not the respondents had locus-standi to present that action and/or whether the applicant has a cause of action against the respondents.

In the instant case the issue is not whether the 164 applicant has sufficient interest in this matter. Rather that despite that interest, there is nothing that Primedia has or been alleged against it that comes within the ambit of Judicial Review.

Furthermore the decision in ***Gordon Sentiba Vs Uganda Revenue Authority*** is also distinguishable from the present facts. The passage relied upon by learned counsel for the

applicants was in respect of declaratory judgments that may be sought and obtained under Order 2 rule 9 of the Civil Procedure Rules which rules do not apply to proceedings in Judicial Review. There is no provision in the Judicial Review rules similar to Order 2 rule 9 of the Civil Procedure Rules.

Where Judicial Review remedies are sought, the applicant has to demonstrate that it has a cause of action against the respondent.

As rightly submitted by learned counsel for the 2nd respondent, there is not a single allegation made or order sought against Primedia that is subject to Judicial Review. Therefore I am satisfied that no cause of action is disclosed against Primedia for Judicial Review.

(iii) Whether the action is time barred?

It was submitted for the 2nd respondent that the proceedings leading to the award of the contract took place late 2012 and through 2013. the contract was awarded on 1st April 2014. Learned counsel further states that this application was filed on 4th November 2014, more than eight months after the proceedings were terminated and the decision to award the contract was made. That the cause of action therefore arose on 1st April 2014.

On the other hand, the applicant in 164 maintains that the application is not time barred. That there is no evidence that the contractual award was communicated to the applicants before the media notices. The preliminary objection is in respect of the proceedings and the decision to award the exclusive contract to Primedia to install and maintain street lighting in exchange for outdoor advertising rights along Kampala-Entebbe Highway. The contract in this regard was awarded on 1st April 2014 implying that the proceedings leading to the award were obviously conducted much earlier. Therefore for purposes of filing for Judicial Review, time started

running on the date of the award of the contract and that is 1st April 2014, when the grounds of the application first arose.

Clearly the application against the 2nd respondent was brought outside the mandatory three months from the time the grounds first arose. As rightly submitted by learned counsel for the 2nd respondent the process of awarding the contract was independent of the decision to classify as illegal and order for removal of the billboard. The law and proceedings leading to the award of the contract and removal of billboards are different. The act of awarding the contract is not a continuous act.

Consequently I will uphold the objections and strike out the application against PRIMEDIA with costs.

Issue 2: Whether applicants had contractual rights with the 1st respondent and Wakiso district town council relating to billboards along Entebbe road?

It is trite law that Judicial Review is not concerned with the decision in issue per se but with the decision making process. It involves assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is exercised in supervisory manner not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness, and rationality. This was the decision in the often quoted case of ***Kampala University Vs National Council for Higher Education Misc. Cause 53 of 2014***. It is not intended to ensure that the authority after according a fair treatment reaches on a matter it is authorized or enjoined by law to decide by itself to a conclusion which is correct in the eyes of the court.

It is my considered view therefore that the issue whether the applicants had contractual rights with the first respondent and Wakiso district council relating to billboards along Entebbe road

cannot be resolved through an application for Judicial Review. The issue can best be resolved through a normal suit.

Issues 3, 4 and 5

- (i) whether the first respondent acted lawfully when it awarded an “exclusive” contract to the 2nd respondent and whether the process was lawful.
- (ii) Whether the classification of the applicant’s billboard as being illegal ordering their removal and their subsequent destruction was lawful.
- (iii) Whether the 1st respondent has any power to manage road reserves in Uganda.

In their submissions the applicants maintained that the 1st respondent’s acts giving rise to the above issues were illegal. That awarding an exclusive contract to the 2nd respondent infringes on peoples freedom of expression and violated the applicant’s rights and interests. That it violated the Articles 20 (2) Article 29 (1) Article 42 and 43 of the Constitution and the Rules of natural justice thus making it unlawful.

The 1st respondent denies any wrong doing and insists that the award of an exclusive contract by the 1st respondent was done in accordance with the procurement law.

I will partly agree with the 1st respondent that a Bid Notice under Open International Bidding was issued inviting eligible bidders for the provision of services for maintenance and installation of security lighting in exchange for outdoor advertising rights along Kampala- Entebbe Highway. The Bid Notice provided its scope which involved maintaining the existing lighting locations in addition to the installation of new ones without compromising the established laws, road safety standards and operations.

In consideration, the provider would have exclusive outdoor advertising rights. Clearly the applicants were put on notice and were invited to participate in the process. However none of them participated in the process. Thereafter the contract was awarded through due process. Therefore it is not true as argued by the applicant that the 1st respondent denied them the right to be heard when they did not choose to participate in the bid process.

That notwithstanding, I agree with the applicants that by the applicant deciding to award an exclusive contract to one player it was in effect taking away the rights of not only the applicants but even those other players in the advertising trade which is contrary to fair trading. Moreover the 1st respondent was aware that there were players such as the applicants who had active advertisement installations when they took the impugned decision for exclusivity. This decision is discriminatory against the applicants. I agree with the applicants that by acting this way, the 1st respondent acted illegally when it awarded an exclusive advertising contract to anybody. Article 29(1) of the Constitution protects freedom of free speech and expression which includes freedom of press and other media as was decided by Egonda J. (as he then was) in ***Digitek Advertising Ltd Vs Corporate Dimensions Ltd, Misc. Application 424 of 2005.*** Limitations to freedom of speech and expression must not be beyond what is acceptable and demonstratively justifiable in a free and democratic society. Outdoor advertising is a form of free speech which is protected by the right to freedom of speech and expression. Lightened electronic display signs and motion picture billboards are included in the other media and as such constitutionally protected. If the right of one person is to be limited or if the enjoyment of this right is to be exclusive to one person and denied to the rest of other people interested in enjoying this right in Kampala then the justification for this limitation must pass the constitutional muster i.e that the enjoyment of the right curtails or prejudices the enjoyment of other fundamental rights and freedoms by other persons or that it is in public interest that such limitation be imposed. This limitation has not been shown by the 1st respondent. The exclusive contract only seems to serve purely private interests to profit only one company. Consequently I will declare the exclusive contract illegal.

Regarding whether the billboards are on private land is not a matter for judicial review and I will not make a finding on that issue.

The issue of whether the 1st respondent has legal power to manage and contract in respect of road reserves arises from grounds 5 and 7 pleaded in application 172 of 2014 and ground 4 pleaded in application 164 of 2014. After analyzing the submissions by respective counsel in this application, I am unable to agree with the conclusion by learned counsel for the applicants that the 1st respondent has no right, function, mandate, duty, power or obligation to manage any road reserve on the Kampala - Entebbe road and/or at all. It is not true that this is a function reserved for the Minister. I agree with the 1st respondent that Kampala Entebbe road has a road reserve which was determined by the Minister under Statutory Instrument No.358-1. All that the 1st respondent has done, albeit illegally by awarding an exclusive contract in respect of this particular case, is to manage and maintain the same in accordance with Section 6 of the UNRA Act 2006 which provides as follows:

“ (I) The functions of the authority are –

g(ii) the establishment and maintenance of road reserves in accordance with the Roads Act”. And;

(h) to perform any other function incidental or consequential to its functions in this act or as may be conferred on it under this Act

As rightly submitted by learned counsel for the 1st respondent under section 6 of the UNRA Act the 1st respondent has power to enter into lawful contract in respect of road reserves because road reserves form part of the national road network which the 1st respondent is mandated to manage. It does not make interpretation sense to argue that while the 1st respondent is mandated to manage the national road network, it has no power to manage the road reserves. The power or authority to manage road reserves and the national road network lies with the 1st respondent and not the Minister. The Minister’s power is limited to establishment and maintenance of road

reserves as enacted in Section 6 of the UNRA Act. He does this however, in conjunction with UNRA.

Regarding whether the classification of the applicant's billboards as being illegal, ordering their removal and their subsequent destruction was lawful, having held that the 1st respondent has authority and the mandate to manage the National Road Network and its road reserves, it follows that it can regulate its use especially in respect of advertising and erecting billboards provided it does this within the law.

In the instant case however, since the classification of the applicant's billboards as illegal which had to be removed was based on an impugned illegal contract which gave exclusive authority to only one player which took away the rights of the applicants and other players, this decision was illegal and unreasonable in the circumstances.

Issue 6. Whether guidelines for erection of Signs/Billboards and road reserves are ultra vires

According to the applicants, UNRA has no authority to make guidelines for its operations because they do not cite any legal basis under which they are made. Learned counsel for the applicant cites Section 37 of the Act which provides for making regulations generally for better carrying into effect of the provisions of the Act. That only the Minister has authority to make the Regulation.

Learned counsel for the 1st respondent submitted to the contrary. He submitted that Section 37 of the UNRA Act refers to regulations and not guidelines and therefore does not apply to the facts

of this case. That the argument by the applicant is flawed because UNRA Act does not bar making of guidelines.

Section 37 enacts thus:

“(1) The Minister may on the recommendation of the Board by Statutory Instrument make regulations generally for the better carrying into effect of the provisions of the Act.

(2) Notwithstanding the generality of subsection (1), regulations made under this section may provide for –

(a) use, safety and maintenance of national roads;

(b) the erection of structures on or near, over or under national road;

(c) the fees to be charged under this Act.

The above provision is concerned with the making of regulations and not guidelines. The authority to make Regulations as rightly submitted by learned counsel for the applicants lies with the Minister. I however agree with learned counsel for the 1st respondent that guidelines are different from Regulations. Whereas regulations have a force of law, guidelines do not. Institutions make guidelines for their own internal standards and guidance on how to function internally and carry out their different mandates, provided they do not conflict with the Regulations.

In the instant case therefore the guidelines made by the 1st respondent were meant for its internal standards on how the function of managing road reserves is carried out. Guidelines are management tools only and their making need not have a law under which they are made. I am unable to find that the 1st respondent’s guidelines are illegal for being ultravires to the UNRA Act 2006.

Issue 7:

For the reasons outlined in this ruling, I will allow this application in part and order that:

- (1) The application against the 2nd respondent is struck out with costs for disclosing no cause of action and being filed out of time.
- (2) The contract purportedly awarded to PRIMEDIA Pty Limited Uganda a company which does not exist was an illegality and void *ab initio*.
- (3) UNRA's decision to engage and/or award an exclusive contract for services for maintenance and installation of street lighting to M/S PRIMEDIA Pty Limited along the Kibuye - Zana - Entebbe Road in exchange for outdoor exclusive advertising rights vide procurement number UNRA/services/ 2011-12/007/01/02 is illegal, unjust, discriminatory, ultravires the UNRA Act 2006, unlawful and therefore void.
- (4) UNRA's act of removing/vandalizing the applicants' billboards along Entebbe Kampala Highway basing on the impugned contract was unlawful.
- (5) An order of certiorari calling and quashing the record of proceedings and decision of the 1st respondent awarding the exclusive contract to M/s Primedia Pty Limited is granted.
- (6) An order of prohibition against UNRA or any of its agents, representatives or employees awarding any exclusive contract in respect of road advertising in Uganda is hereby granted.
- (7) Regarding general damages, I find this a proper case for award of the same. I accordingly award UGX 200,000,000= for general damages to be shared equally by the applicants.
- (8) Regarding exemplary damages, I am not satisfied that this is a proper case to award exemplary damages. I therefore decline to award the same.
- (9) The applicants will get the taxed costs of this application.

I so order.

Stephen Musota

J U D G E

26.11.2015