THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE No. 0068 OF 2014

FRED KABAGAMBE – KALIISA ::::::::::::::::::::::::::::: APPLICANT

VERSUS

THE ATTORNEY GENERAL OF UGANDA ::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

On the 21st July 2011, Hon. Muhammad Nsereko moved a motion for the creation of an adhoc Committee on Electricity to investigate the Energy Sector in Uganda. This motion arose during consideration of the report of the standing Committee on the Budget on the request of the executive for Parliament to grant authority to spend shs.1b/= towards thermal power subsidy.

On the 24th August 2011, the Rt. Hon. Speaker of Parliament appointed an Eight member Adhoc Committee on energy to investigate the electricity crisis in Uganda which was said to be characterized by among others persistent power outages, load shedding, high electricity tariffs, faulty billing systems and astronomical subsidies by Government towards thermo power generation.

The Committee commenced investigations on 21st September 2011 and completed its investigations in October 2012, and wrote a report – Annexture “D”.

Several recommendations were made including two recommendations at P789 of Annexture “D” regarding power losses. The two recommendations in issue are that:

> ***“Mr. Kabagambe Kaliisa (PS-MEMD), David Ssebabi (Director, PU_ and Eng. Elias Kiyemba (MD UETCL) should be held jointly and/or severally responsible for abuse of office and exacerbating the loss factor when they irregularly raised the loss fact or capping from 33% to 38%.***

The 2nd recommendation states that:

> ***“The Committee further recommends that Hon. Dr. Kamanda Bataringaya, former minister of state for Energy and currently holding the portfolio of Minister for State for Education be held personally and politically responsible for negligence when he sanctioned the raising of the loss factor capping from 33% to 38% contrary to an earlier position by substantive Minister.”***

The report was laid on the table of Parliament in 2013 and was debated. Recommendations were adopted and forwarded to the Rt. Hon. Prime Minister and leader of Government business per Annexture "G".

On perusal of Annexture "G" the applicant noticed that the said Annexture contains Resolutions No. 68 the legality of which the applicant contests, hence this application. The respondent opposed the application.

At the hearing of this application, the applicant was represented by Dennis Kusasira of ABMAK ASSOCIATES, while the respondent was represented by Ms. Nabakooza.

The following issues were agreed upon for resolution:

1. Whether the application was filed out of time.
2. Whether resolution 68 in annex G was passed/adopted by Parliament.
3. Whether Parliament flouted the rules of parliament of Uganda in passing or adopting the impugned resolution.
4. Whether the committees' procedure violated the applicant's constitutional right to a fair and just treatment when appearing before it.
5. Whether the impugned resolution is irrational.
6. Remedies

The scope of the nature of an application for Judicial Review was well articulated by learned counsel for the respondent. It is trite law that Judicial review is an arm of administrative law which involves an assessment of the manner in which the decision is made. It is not an appeal.

Its Jurisdiction is exercised in a supervisory manner to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. If the High Court finds that anybody holding Public office acted illegally, unfairly and irrationally, it would intervene to put matters right.

For an application for judicial review to succeed, there must be proof of illegality, irrationality and Procedural impropriety. These terms have been defined and expounded in the case of ***JOHN JET TUMWEBAZE Vs MAKERERE UNIVERSITY COUNCIL & ORS CIVIL APPLICATION No. 78 OF 2005.***

Illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultravires or contrary to the provisions of the law or its principles are instances of illegality.

Irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority addressing itself to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.

Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural unfairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

From the above parameters, it is apparent that in deciding a judicial application, the court is not concerned with the merits of the decision in respect of which the application is made. It is more concerned with the lawfulness of the decision making process.

The court is more concerned with whether the decision constituting the subject matter of the application of judicial review was made through error of law, procedural impropriety, irrationality or outright abuse of jurisdiction generally. See ***Republic Vs Secretary of State for Education and Science exparte Avon County (1991) 1 ALLER 282 Ridge Vs Baldwin (1964) A.C 40.***

The applicant has emphasized in his submissions that Parliament can be subjected to judicial review to which I agree. Resolutions, decisions and internal work of Parliament can be subjected to the supervision of court where Parliament flouts its rules of procedure makes errors of law or acts unfairly to a person affected by such decision or resolutions.

In ***Paul K. Semogerere & Another Vs Attorney General, Constitutional Appeal No. 1 of 2000*** where an objection had been taken in the Constitutional Court about this issue, the Supreme Court held that;

> ***"If Parliament is to claim and protect its powers and internal procedures it must act in accordance with the Constitutional provisions which determine its composition and the manner in which it must perform its functions. If it does not do so, then any purported decision made outside those Constitutional provisions is null and void."***

Similarly, in ***Severino Twinobusingye Vs Attorney General, Constitutional Petition No. 47 of 2011 at page 25*** the Constitutional Court said the following in regard to an Adhoc committee of Parliament

"The committee has powers of the High Court and is expected to exercise its powers judiciously and in accordance with the Rules of Natural Justice. On the contrary, if it makes errors of law, any aggrieved party has the right, through appropriate court actions to have the committee subjected to the checks and balances tool of the Judiciary."

With the above background, it is trite to note that an Adhoc Committee of Parliament can be subjected to Judicial Review.

I have perused the documents tendered into this court, I have read the affidavits and submissions of the applicant and that of the respondent and will go ahead to resolve the issues.

I will start by dealing with issue 1, whether this application was filed out of time:

This issue arose from the respondent's initial affidavit in reply paragraph 13 thereof which reads thus:

"That I am further advised by our lawyers from the office of the Attorney General, which advice I verily believe to be true that the application is incompetent and bad in law since it was filed out of time."

The applicant in rejoinder paragraph 11 states that:

> ***" …..In response to paragraph 13 and 14 of the initial affidavit, I state that the evidence therein is hearsay. I further state that my application was filed in time and has merit."***

As rightly submitted by learned counsel for the respondent, the respondent raised and submitted on the issue of time limitation with specific regard to the proposed amendment only, in MA No. 513/2014 (Arising out of MC No. 68/2014). Limitation regarding the said proposed amendment was canvassed in the respondent's affidavit in reply paragraph 6 (c) on court record. The respondent did not submit on time limitation in MC 68/2014 at the time of arguing MA No. 513/2014.

In his submissions on this issue, the learned Attorney General maintains that the instant application MC 68/2014 is incompetent and bad in law since it was filed out of time. That MC 68 of 2014 was filed in court on 27th June 2014.

Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that:

> ***"An application for Judicial Review shall be made promptly and in any event within <u>three months</u>***

from the date when the grounds for the application first arose, unless the court considers that there is a good reason extending the period within which the application shall be made.”

Rule 5 (2) provides that:

“When the relief sought is an order of certiorari in respect of judgment order, conviction or other proceedings, the date when the grounds first arose shall be taken to be the date of that judgment, order, conviction or other proceedings.”

When I read the record, I was unable to agree with learned counsel for the respondent that the cause of action in this matter first arose on 26th March 2014 when the resolution was passed/adopted.

According to the record, the debate on the impugned resolution was closed on 27th March 2014. This can be found on page 1132 of the record where the Clerk to Parliament states:-

“I certify that these resolutions were adopted by Parliament on Wednesday 26th and Thursday 27th March 2014.”

In my considered view therefore, the grounds of this application arose on Thursday 27th March 2014 when Parliament closed the debate and

adopted the resolutions. Therefore by filing this application on 27th June 2014, a period of 92 days since the endorsement of the resolutions by the Clerk to the Parliament, was clearly outside the mandatory three months provided for under Rule 5 (1) of SI No. 11 of 2009. The law is very strict in that even an extra two days like in this case from the mandatory three months is not permitted in law.

I agree with learned counsel for the respondent that the letter to the Rt. Hon. Prime Minister dated 16th April 2014 does not in any way certify resolution 68 as insinuated by the applicant in paragraph 1 of the Amended Notice of Motion. The purpose of the said letter was to notify the Rt. Hon. Prime Minister on the time lines regarding preparation of a progress report on the implementation of the recommendations contained in the report.

Therefore, the applicant who filed the application outside the mandatory three months period of limitation should have applied for extension of time. Since no such application was made, the applicant cannot attempt to do so in these proceedings.

The case of ***MOHAMMAD B. KASASA VS JASPHAR BUYONGA SIRASI BWOGI – CIVIL APPEAL No. 42 OF 2008*** in instructive on the law of limitation. The purpose of the law of limitation is to put an end to litigation. This law is applied by courts strictly.

In Re Mustapha Ramathan for orders of certiorari, prohibition and injunction Civil Appeal No. 25 of 1996 (CA), it was held inter alia per Berko JA (then) thus:

> ***"This application was in fact made on 25th day of April 1996. That was obviously more than six months after the Minister's order or decision. We are not persuaded by learned counsel's argument that the***
>
> ***"Judge ought to have based his calculation on the time the Minister's decision was communicated to the appellant.***
>
> ***Statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is interest reipublicaent sit finis litum, meaning that litigations shall be automatically stifled after fixed length of time, irrespective of the merits of a particular case***.....*"*

Further illustrations of this legal principle can be found in the statement of Lord Greene MR in ***Hilton Vs Sutton Steam Laundry (1946) 1 KB 61*** at page 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."

As clearly stated in this ruling, time began running from the date the decision complained of was made and not when the Clerk to Parliament communicated the said decision to the Prime Minister with copies to other offices.

Consequently, I will find that the present Misc. Cause No. 68 of 2014 is incompetent and bad in law since it was filed out of time. 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.

I will uphold the submission by learned counsel for the respondent and order that this application be struck out with costs for being incompetent.

Having struck out this application, I find it unnecessary to delve into the merits of the remaining issues.

Stephen Musota
J U D G E

21.12.2015.

21.12.2015:-

Ruling delivered in the presence of

(1) Mr. Kusasira Dennis for the applicant.

(2) Mr. Kasibayo Hosia (State Attorney) to the respondent.

(3) Mr. Mutegaya Milton Court Clerk.

Festo Nsenga
AG. DEPUTY REGISTRAR
12.12.2015.