

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

MISCELLANEOUS APPLICATION NO. 266 OF 2013

CECIL DAVID EDWARD HUGH.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

RULING

BEFORE: THE HON LADY JUSTICE LYDIA MUGAMBE

a) Introduction and Background

1. This is a ruling on an application under Article 42 of the Constitution, S. 38 of the Judicature Act and the Judicial Review Rules 2009 for judicial review. The Applicant seeks:
 - a) A Declaration that the deportation order issued against the Applicant by the Minister of Internal Affairs was arbitrary and illegal:
 - b) An order of certiorari quashing the said deportation order:
 - c) General damages for the illegal detention and deportation:
 - d) Any other reliefs that the Court deems fit.
2. The application is supported by the affidavits of the Applicant and Florence Kebirungi, the partner and mother of the Applicant's two children of tender years.
3. The Respondent did not file any reply to the application inspite of the application and several hearing notices being served and proof of service returned. From January 2014 when this application was first fixed for hearing till the time of this ruling, there have been eight adjournments to enable the Attorney General appear for the hearing. The record has proof of service of the application on the Attorney General on 21 August 2013 and proof of service of hearing notices on the Attorney General on 24 January 2014, 23 June 2014, 1 December 2014, and 5

February 2015. All of these have copies of the different hearing notices stamped and signed by the Attorney General's office in acknowledgement of receipt.

4. The Applicant also served its written submissions on the Respondent and the Respondent received and acknowledged receipt thereon on 3 March 2015. Proof of service of the written submissions was returned to Court on 18 March 2015.
5. Even when the Court decided to proceed *ex parte* on 17 February 2015, I gave timelines for the Attorney General to file its reply submissions by 11 March 2015 if he wished to be heard. Still the Attorney General filed none to date.
6. In such circumstances, I take it that the Attorney General has indulged in dilatory conduct and chosen to sit on his right to be heard in this application. I'll now proceed to consider the same *ex parte*.
7. The application is properly brought against the Attorney General under S. 10 of the Government Proceedings Act, Cap 77 for the actions of the Minister who was acting in his official capacity as a government official.
8. The background of this case is largely plain. From the affidavits in support of the application and as fleshed out in the Applicant submissions, the Applicant, a British citizen, resident for six years in Bunga at the material time is the partner of Florence Kebirungi and father of Solomon Cecil and Eleanor Cecil. The Applicant was picked up from Tilapia Cultural Centre in Bunga on 6 February 2013 by a group of five people. The group took the Applicant to the Ministry of Internal Affairs. At the Ministry of Internal Affairs, an officer called Benjamin informed the Applicant that the Minister of Internal Affairs had declared the Applicant an undesirable person and ordered his deportation.
9. The Applicant avers that he indicated to the said Benjamin that he wished to appeal the Minister's decision but he was ignored. The Applicant was detained temporarily at the Immigration offices till 5:00 pm when he was transferred to Jinja road police station. The Applicant remained at Jinja road police station in squalid conditions till 11 February 2013 when he was abruptly driven to the airport in Entebbe. The Applicant was detained in Entebbe for about three hours before he was led to a plane and deported back to the United Kingdom. The Applicant left behind his partner and two children aged 2 & 3 years at the time of his deportation.
10. The Applicant contends that his deportation was illegal, irrational and against the rules of natural justice for he was not given an opportunity to be heard before, during or after his deportation order was made by the Minister of Internal Affairs. He argues it was arbitrary and high handed and denied him the right to visit his

children and partner or be involved in the upbringing of the children and taking care of them.

b) Judicial review standard

11. The law on judicial review is well established. In **Kuluo Joseph Andrew & Ors v. Attorney General & Ors, Misc. Cause No. 106 of 2010**, Court held that “judicial review is concerned not with the decision *per se* but the decision making process. It involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality.” See also **Hilary Delany in his book “Judicial Review of Administrative Action” 2001, Sweet and Maxwell** at pages 5 and 6 and **Clear Channel Independent Uganda Ltd v. Public Procurement and Disposal of Public Assets Authority, Misc. Cause No. 380 of 2008**.

12. In **Owor Arthur and 8 Others v. Gulu University, High Court Misc. Cause No. 18 of 2007**, Court emphasized that;

“.. .The overriding purpose of judicial review is to ensure that the individual concerned receives fair treatment. If that lawful authority is not abused by unfair treatment, it is not for the Court to take over the authority and the person entrusted to that authority by subsisting its own decision on the merits of what has to be decided....Implicit in the concept of fair treatment are the two cardinal rules that constitute natural justice; no one shall be a judge in one’s own cause and that no one shall be condemned unheard....”.

13. The remedy of judicial review is discretionary in nature and can only be granted on three grounds namely:- illegality, irrationality and procedural impropriety with guiding principles like:-

- Common sense and justice
- Whether the application is meritorious
- Whether there is reasonableness
- Vigilance and not any waiver of rights by the Applicant. See: **Aggrey Bwire v. Judicial Service Commission & A.G, C.A.C.A No. 9 of 2009; John Jet Tumwebaze v. Makerere University Council & Ors H.C Civil Application No. 353 of 2005**.

14. 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 *ultra vires* or contrary to the provisions of the law or its

principles are instances of illegality. In the *locus clascus* case of **Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 375** (cited with approval in **Mugabi Edward v. Kampala District Land Board & Wilson Kashaya, Misc. Cause No. 18 of 2012**), Lord Diplock had this to say on illegality: “Illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided in the event of dispute by those persons the judge, by whom the judicial power of the state is exercised..

15. Micheal Allen, Braun Thompson and Bernadette Walsh in their book, **Cases and Materials on Constitutional and Administrative Law**, also explain that 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.

16. **In Twinomuhangi v. Kabale District & Others (2006) HCB Vol. 1 page 130**, Justice Kasule (as he then was) explained at page 131 that:

“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”.

c) **Certiorari**

17. **In the case of John Jet Tumwebaze v. Makerere University Council and ors (Civil Application No. 78 of 2005)**, Ag. Justice Remmy Kasule (as he then was) gave the definition of *Certiorari* as a prerogative writ issued to quash a decision which is *ultra vires* or vitiated by an error on the face of the record. *Certiorari* is a prerogative order designed to control inferior Courts, tribunals, administrative and statutory authorities.

18. **In John Jet Tumwebaze v. Makerere University Council and 3 Ors, Civil Application No. 353 of 2005; Re: Mustafa Ramathan (1996) KALR 86 at p.87; Owor Arthur & 8 Ors v. Gulu University H.C.M.A No. 0018 of 2007**, it was explained that no order of *certiorari* can issue unless it is premised on a

decision of a body that was mandated to determine a dispute.

19. **In Stream Aviation Ltd v. The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)** Justice V. F. Musoke Kibuuka held that the prerogative order of *certiorari* is designed to prevent the access of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.

20. In **Re - An Application by Bukoba Gymkhana Club**, it was explained that *certiorari* issues to quash decisions which are *ultra vires* or which are vitiated by error on the face of the record or are arbitrary and oppressive. Thus *certiorari* looks at the past as a corrective remedy.

d) Resolution

21.1 wish to point out that the detailed issues of the conditions of the Applicant's detention as raised in the affidavits in support of the application can be remedied through an ordinary suit and will not be addressed in this application for judicial review which cannot concern itself with vindication of rights. I'll concentrate on the process of reaching the deportation decision.

22. With Annexure 'A' - the deportation order in issue, I have no reason to disbelieve the Applicant averments in affidavit on oath that he was actually deported to the United Kingdom on 11 February for being an undesirable immigrant under S. 52 (g) of the Uganda Citizenship and Immigration Control Act, Cap 66. The deportation order demonstrates that the Minister declared the Applicant a prohibited immigrant by virtue of the powers vested in him under S. 60 (1) of the Act. From a look at these two provisions of this Act, it is not disputed that the Minister had such powers so to deport a person.¹

23. What is in question for resolution is the manner in which such deportation decision was reached by the Minister in the circumstances before me. So I'll address the issue whether this is a proper case for judicial review by determining whether the Minister's decision was not marred in illegality, irrationality or procedural impropriety within the legal standards set out above.

¹ S. 52 (g) The following persons are prohibited immigrants and their entry into or presence within Uganda is unlawful except in the accordance with the provisions of this Act - a person who as a consequence of information received from the government of any State, or any other source considered reliable by the Minister or the commissioner, is declared by the Minister or by the commissioner to be an undesirable

24. It is clear that the deportation decision in issue affected the Applicant materially; it concerned his personal liberties and other rights. However I have no evidence to demonstrate to my satisfaction that the Minister made any effort to hear the Applicant at any stage in reaching this decision or even after. Instead, the Applicant's affidavit evidence demonstrates that in addition to not being accorded a hearing, he was also detained without an order of Court in violation of Article 23 (1) (a) of the Constitution which prohibits the deprivation of personal liberty except in execution of a sentence or order of Court whether established for Uganda or another country or of an international Court or tribunal in respect of a criminal offence of which that person has been convicted or of an order of a Court punishing the person for contempt of Court.¹¹
25. The blatant failure to accord the Applicant a hearing at all was in violation of Articles 28 and 44 (c) of the Constitution. It was also in violation of Article 42 which entitles any person appearing before any administrative official or body to be treated justly and fairly. The failure of the said Benjamin to allow the Applicant to exercise his right to appeal as averred by the Applicant forms part of these violations.
26. Because of these violations of the Constitution in reaching the deportation decision by the Minister, the said deportation order is illegal.
27. By not according the Applicant the said hearing, he was condemned unheard and the decision was therefore reached in violation of the rules of natural justice and the Minister acted without fairness. The decision was therefore marred in procedural impropriety.
28. The deportation decision and order was irrational because it has not been demonstrated that it had a reasonable basis and it is in defiance of logic and acceptable moral standards. For how can one explain its effect of abruptly separating the Applicant from his partner and children of tender years?
29. Based on the above, the Minister, with all due respect, acted arbitrarily in the exercise of his power under the Uganda Citizenship and Immigration Control Act. This therefore is a proper case for judicial review.

¹¹immigrant; but every declaration of the commissioner under this paragraph shall be subject to confirmation or otherwise by the Minister.

S. 60 (1) The Minister may, in writing signed by him or her, order any prohibited immigrant or person whose presence in Uganda is unlawful to be deported out of Uganda, either indefinitely or for such period of time as may be specified in the order.

30. The above errors in reaching the deportation decision are errors making it vitiated on the face of the record because they make it arbitrary and oppressive to the Applicant within the standard above for grant of certiorari. As a result the deportation decision / order of the Minister is hereby quashed because it is embedded in illegality, irrationality and procedural impropriety.
31. In my discretion, I hereby grant general damages of 35, 000,000/= only for the violations of the Applicant's rights and liberties in the process of reaching the decision.
32. Costs for the Applicant are also awarded.

I so order.

LYDIA MUGAMBE
JUDGE - CIVIL DIVISION

12 MAY 2015