

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

MISC. APPLICATION NO. 364 OF 2015

PAUL MUGOYA WANYOTO ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application by Notice of Motion for Judicial Review of the decision of the Disciplinary Committee of the Law Council in complaint No. **LCD5/2015 Royce Everson & Anor Versus Paul Mugoya Wanyoto** accepting to entertain the complaint against the applicant. The applicant seeks a declaration that the Law Council has no jurisdiction in LCD5/2015 and orders of certiorari, prohibition and costs of the application. The application is brought under Section 36(1) of the Judicature Act and Rules 3 and 6 of the Judicature Judicial Review Rules (2009).

At the hearing of the application, Mr. Peter Allan Musoke and Wambi Andrew appeared for the applicant, while Sandra Mwesigye and Bageya Aaron (SA) appeared for the respondent.

Briefly the background to this application is that the applicant is an advocate of the High Court of Uganda. He was approached by one Royce Iverson with a business proposal of dealing in minerals and money lending as business partners. On the basis of the business relationship, the applicant received 30,000 dollars through his law firm bank account to transact in Gold nagates. The said Royce Everson then introduced the applicant to one Dacostar Mwanzita and one John Nkanda to whom the applicant was to make and he made payment of 30.000 US\$. He also made an additional payment of 16,667.7 US\$ being his own top up as co-investor to clear the taxes. All the money was received by a one John Nkanda. However the transaction never materialized and all the money was lost in the process. Following that course of events, Royce filed a complaint against the applicant with the Disciplinary Committee of the Law Council of Uganda claiming that the applicant was acting as his lawyer and that he was involved in defrauding him. He also accused the applicant of running down the money lending business. He further went ahead to institute criminal proceedings against the applicant in the Chief Magistrates court of Nakawa.

In the preliminary ruling of the Disciplinary Committee of the Law Council, they found that there was a prima facie case of professional misconduct against the applicant and the matter was referred for

further hearing. The applicant took issue with this ruling hence this application challenging the decision on ground that it was illegal and done arbitrarily without jurisdiction.

The grounds of the application are briefly set out in the Notice of Motion and are that:

1. The law council acted arbitrarily in sanctioning the prostitution in LCD5/2015.
2. The law council has no jurisdiction to entertain that dispute.

The grounds are supported by the affidavit of the applicant himself dated 7th September 2015 and filed in this court on 8th September 2015. The respondent filed an affidavit in reply sworn by Margret Apinyi, the Secretary to the Law Council not dated but filed in this court on 23rd October 2015. This court allowed both parties to file written submissions which they did.

The applicant filed the submissions on 28th December 2015 while the respondent on 15th February 2016. The rejoinder was done in court viva voce.

I have considered the submissions of the applicants and the respondents and the affidavits on record and I will go ahead and make my ruling.

Judicial Review is concerned not with the decision per se but with the decision making process. Essentially Judicial Review involves the assessment of the manner in which the 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 with basic standards of legality, fairness and rationality. See: **Koluo Joseph Andrew & 2 Ors Vs Attorney General and 7 ors Misc. Cause No.106 of 2010**. Also in **Semu Construction Company Vs Rukingiri District Administration Local Government Misc. Cause 30 of 2010**.

In their submissions, the respondents seemed to submit that this case does not disclose any proper issue for Judicial Review because the application was filed before the final determination of the complaint by the law council and as such, there is no decision to challenge.

In rejoinder, the applicants submitted that the applicant is not challenging a preliminary ruling of Law Council but rather the jurisdiction of the Disciplinary Committee of the Law Council in the matter before it. That the applicant could not wait for the Law Council to hold a substantive hearing because the hearing would be null and void for lack of jurisdiction.

I agree with the submissions of counsel for the applicant that this is a proper case for Judicial Review because the applicant seeks to challenge the course of events in the Disciplinary Committee of the law council on the ground of illegality for lack of jurisdiction.

There are two issues in this case:

1. Whether the application raises grounds for judicial review?
2. Whether the applicant is entitled to the remedies sought in the application?

Issue 1: Whether the application raises grounds for judicial review?

On this issue, learned counsel for the applicant submitted that the disciplinary committee of the law council is established under Section 18 of the Advocates Act. That its mandate is under Section 21 of the same Act and is to entertain complaints against advocates for professional misconduct. Further that both provisions show that the complaint should first be against an advocate and it must relate to professional conduct or misconduct. That the scope of professional misconduct is stated under the Professional Conduct Regulations SI 267-2 and whereas the applicant is an advocate, the complaint does not fall within the scope of those laws and the applicants' dealings as an advocate. Further learned counsel submitted that there is no evidence to show that the applicant was engaged as an advocate or given any instructions to handle any matter. That on that basis, the actions of the Disciplinary Committee of the Law Council are illegal for lack of jurisdiction. The dealings of the applicant in the disputed transaction were his private ventures because they are without nexus to his obligations as an advocate. That jurisdiction is a creature of statute and therefore the Law Council acted illegally when they allowed the complaint to go for hearing.

In reply, learned counsel for the respondent submitted that the Disciplinary Committee of the Law Council has powers under Section 20 of the Advocates Act to entertain any complaint against advocates of the High Court.

In rejoinder, learned counsel submits that the applicants and Royce were business partners and not advocate-client following which the Disciplinary Committee of the Law Council found a prima facie of professional misconduct. Further that the law council has no jurisdiction to entertain matters of the applicant which fall outside the scope of his life as an advocate. They also stated that the case is outside the purview of cases that the Disciplinary Committee of the Law Council is mandated to inquire into. That the Law Council did not even have the jurisdiction to handle a preliminary hearing to consider a prima facie case. That there can be no proof of professional misconduct where there is no advocate-client relationship between the applicant and complainant.

I agree with the submissions of counsel for the applicant that jurisdiction is a serious matter of law. The Advocates Act Cap.267 is the law that regulates the legal profession in Uganda. In the long title of that act, it states;

“An Act to amend and consolidate the law relating to advocates and make general provisions for purposes connected with the legal profession”.

This means that the purpose of this law was to regulate the legal profession and matters related to the legal profession only.

Under Section 2 of the Act, the Law Council is established. Its functions are stated under Section 3 of the same Act and among them Section 3(d) gives the Law Council the mandate to exercise through the medium of the Disciplinary Committee disciplinary control of advocates and their clerks.

Under Section 16 of the same Act all advocates and all persons entitled to be advocates are subject to the jurisdiction of the disciplinary committee of the law council without exception.

Section 18 of the Advocates Act as amended by Section 15 of the Amendment Act of 2002 establishes the disciplinary committee of the law council. The bone of contention in this application is the scope of jurisdiction of the Disciplinary Committee which is stated under Regulation 31 of the Advocates Professional Conduct Regulations SI 267-2. The regulation states:

“31. offences under the Advocates Act, etc.

(1) Any act or omission of the advocate which is an offense under the advocates Act shall be professional misconduct for the purposes of these regulations.

(2) Any conduct of an advocate which in the opinion of the disciplinary committee, whether the conduct occurs in the practice of the advocates professional or otherwise is unbecoming of an advocate shall be a professional misconduct for the purposes of these regulations.”

On the face of it counsel for the respondent and the Disciplinary Committee of the Law Council interpreted this provision to mean that even if the conduct complained of occurred outside the practice of an advocate's profession, it may be reported to the Law Council and if in the opinion of the Law Council his conduct is deemed to be unbecoming of an advocate shall be taken to be a professional misconduct. It means that anything that an advocate does in his life whether during his practice or while off duty can amount to conduct unbecoming and therefore amounting to professional misconduct.

This interpretation creates an absurdity as it would give the Law Council unlimited powers to create offenses as and when they wish. Further it appears the regulation would depart from the spirit of the Advocates Act in the long title which specifically limits the scope of the Act to the legal profession and matters connected with the legal profession. I therefore find that the Disciplinary Committee of the Law Council has no powers to investigate matters of private business which has no bearing on/or connection to the legal profession.

In the instant case there is no evidence whatsoever to show that the applicant was in any way given instructions to act for the said Mr. Royce as his advocate. There is also no evidence to prove that even during their business dealings he was holding out as an advocate for the business. There was no connection at all between the applicant's profession and the said business. An advocate is free to engage in business like any other person. The act of dealing in Gold nuggets as a

trade by an advocate should never have attracted the attention of the Disciplinary Committee of the Law Council. It is neither a conduct unbecoming nor is it professional misconduct of an advocate.

For the above reasons the application will be allowed. This court grants the applicant the orders in the application.

I so order.

Stephen Musota

Judge

18.04.2016