

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO 223 OF 2016
(Formerly Nakawa High Court Misc Cause No. 65 of 2014)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BASHASHA ALEX T/A

M/S BASHASHA & Co. ADVOCATES ::::::::::::::: APPLICANTS

Versus

1. ATTORNEY GENERAL

2. GRACE AKULLO, DIRECTOR CRIMINAL

INTELLIGENCE & INVESTIGATIONS :::::: RESPONDENTS

3. KANALO STEPHEN

4. PATRICK OBURU

BEFORE: HON JUSTICE STEPHEN MUSOTA

RULING

This application is brought by Notice of Motion under Sections 33, 36 and 38 of the Judicature Act, Section 98 of the Civil Procedure Act rules 3 and 6 of the Judicature Review rules SI No.11 of 2009. It is for orders that;

- a) A declaration be made that the respondent's investigations into payments made under Orders of court and/or in execution of orders of court to the applicant and/or actions of the 2nd, 3rd and 4th defendants as agents of the 1st respondent are ultravires, illegal and an affront of the independence of the Judiciary.
- b) An order of prohibition doth issue prohibiting the respondents, their agents and/or any person under their authority from investigating and/or interfering in

any way whatsoever with the payments made under orders of court and/or in execution of court.

- c) An injunction doth issue restraining the respondents, their agents and/or any person under their authority from investigating and/or interfering in any way whatsoever with the payments made through the applicant under orders of court and/or in execution of court orders.
- d) Costs of this application be provided for.

The grounds of this application as set out in the affidavit of **HABUMUGISHA INNOCENT** are briefly as follows:

- i) That M/s Bashasha & Co. Advocates represents various clients in several suits against Government including; **H.C.C.S No. 16 of 2009, Ocip Moses & Others Vs Attorney General, HCCS No. 98 of 2008, Kananura Joseph & others Vs Attorney, HCCS No. 138 of 2008, Kyambadde Henry & Others Vs Attorney General & Others, HCCS No. 109 of 2011 Annet Zimbiha Vs Attorney General.**
- ii) That all suits were concluded, decrees and orders for payment issued by court and part payment has been made in the matters through the applicants for onward transmission to the clients.
- iii) That the respondents are conducting investigations into payments made under orders of courts or interfering with the execution of the various orders of court.
- iv) That by his training as a lawyer the deponent knows that investigations of the respondents exceed their constitutional mandate and are ultra vires, illegal and an affront of the independence of the Judiciary.
- v) It is further deponed by Annet Zimbiha in her additional affidavit that she has discovered that officials of Uganda Police force have continued to investigate

payments under a decree of court and correspondences to that effect are attached to the affidavit and marked annexure “B” and “C”.

- vi) That earlier in 2014 when the police engaged in the said impugned investigations, a Cabinet Minister, Ministry of Justice advised the police to restrain from investigations of court orders but they have continued to conduct the same.

In their submissions, counsel for the applicant reiterated the averments in the affidavit in support by Annet Zimbiha one of the plaintiffs that she discovered that officials of Uganda Police force have continued to investigate payments under a decree of court and correspondences.

That in 2014, the police engaged in the said impugned investigations, a Cabinet Minister, Ministry of Justice and Constitutional Affairs advised the police to restrain from investigations of court orders but they have continued to conduct the same.

That a one Barnabas B. Taremwa, using a money lending Company known as Image Finance LTD obtained an illegal Power of Attorney from unauthorised persons and is using the same to influence police to interfere in execution of orders of court.

That it should be noted that all the respondents who are all represented by the Attorney General in court did not file affidavits in reply and have not rebutted the facts as contained in the applicant’s affidavits in any way whatsoever and as such the applicants invite this Honourable court to treat the facts as true as was held in the case of **Samwiri Massa Vs Rose Achen (1978) HCB 297.**

I have considered the application and the affidavits as well as the submissions of counsel for the applicant. I note that the respondent did not file any reply to the application which was served onto them arguing that it concerned questions of law only. Although the respondent

Attorney General filed late submissions, the same substantially agreed with the position of the applicants.

I will adopt the issues to be resolved by this court as raised by counsel for the applicant as follows:

1. Whether the mandate of the police force extends to investigating payments made under orders of court and or execution of orders of court?
2. What remedies are available to the applicant?

RESOLUTION OF ISSUES.

ISSUE ONE: Whether the mandate of the police force extends to investigating payments made under orders of court and/or execution of orders of court.

This is an application for Judicial Review:

“Judicial review is a process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior courts, tribunals and other public bodies or persons.

In deciding a Judicial Review 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 for judicial review was made through error of law, procedural impropriety, irrationality or outright abuse of Jurisdiction generally.”

The grounds upon which a grievance for Judicial Review is based are illegality, irrationality and procedural impropriety. For an applicant to succeed in an application for Judicial review the applicant must prove that the decision or the act complained of is illegal, irrational or procedurally improper.

Using this wide Interpretation of Judicial review, it can be observed that the High court exercises its supervisory powers on decisions of inferior courts or tribunals and it is concerned with the lawfulness of the decision making process.

It is important to first highlight the provisions of the constitution which provide Judicial Powers and at the same time the mandate of the police in order to dispose of this matter.

Under Article 126 (1) of the Constitution, Judicial Review shall be exercised by the Courts of Law established under the Constitution.

According to Article 128 (1) of the Constitution of the Republic of Uganda it is stated that;

“No person or authority shall interfere with the Courts or Judicial Officers in the exercise of their Judicial functions”

Article 212 of the Constitution provides that;

“the mandate of the police is to protect life and property, preserve law and order, prevent and detect crime and cooperate with the civilian authority.”

“Section 4(1) of the police Act Cap 303 provides that the key mandate of the police is to enforce the laws of Uganda”.

In this case, all suits that are purportedly being investigated by Police were tried and concluded by Court of Law. Decrees and orders for payment were issued by court and part

payment has been made in the matters through the applicants for onward transmission to the clients.

However, the respondents are conducting investigations into payments made under orders of courts or interfering with the execution of the various orders of court. This is evidenced by Annexure “D” to the affidavit titled ***“Alleged fraudulent transfer of Government funds by officials from the Ministry of Finance..”*** a letter dated 15th October 2014 from the Directorate of Criminal Investigations and Intelligence showing that the police is investigating the payments made by Bank of Uganda to the applicant’s clients.

Furthermore, annexures “B” and “C” to the additional affidavit deponed by Annet Zimbiha are letters by the same Criminal Investigations Directorate dated 25th August 2016 addressed to the Solicitor General and Permanent Secretary to the Treasury, Ministry of Finance Planning and Economic Development seeking for information regarding compensation in HCCS No. 109 of 2011 even after the Minister had directed the police to restrain from the same.

The police have been restrained from conducting from the above investigations but in vain despite Annexure “D” to the affidavit deponed by Annet Zimbiha, a letter dated 30th October 2014 by the Minister of Justice and Constitutional Affairs directing the police to restrain from interfering with court orders.

In one of the cases complained of in this matter ***HCMA No. 60 of 2013 Ocip Moses & Others Vs Attorney General & Auditor General*** per Justice Byabakama Mugenyi at page 24 held that;

“I have discussed at length and come to the finding that any recommended investigations into the circumstances/facts of the consent Judgment amounts to interference with the decision of court and consequently the execution of the decree of court. To do so without

following the due process of challenging such consent judgment would be out rightly illegal.”

The learned Judge relied on and quoted the decision in ***Amrit Goyal Vs Harichand Goyal & Others Civil Application No. 109/2004***. Where the court of Appeal held that;

“A court order is a court order, it must be obeyed as ordered unless set aside or varied... if we allowed court orders to be ignored with impunity this would destroy the authority of Judicial orders which is the heart of all judicial systems.....”

Because of the above authorities, it is my finding that the actions complained of in this application against the police are in direct interference of the execution of court order and undermine Judicial powers. They are illegal and ultravires.

The applicants have also raised a question of law which they sought this court to resolve. That whether the police force have a mandate to investigate matters of administration of an estate of a deceased or mismanagement of the same where court has issued and/or granted letters of administration.

Counsel for the applicant has endeavoured to state the relevant sections which are core in disposing off this issue.

Section 235 of the Succession act Cap 162 provides that the Jurisdiction to grant Letters of Administration is vested in the High Court and Magistrates Courts for small estates. Section 264 of the Act also provides that only the grantee of the Letters of Administration can pursue any claim or sue or otherwise act as a representative of the deceased until the Letters of Administration are revoked or recalled.

Further section 278 of the Act provides that the Administrator is only accountable to court where he or she files an account and it is only High Court to revoke the Letters of Administration for just cause.

In this case, it is stated that a one Barnabas B. Taremwa, using a money lending Image Finance LTD obtained an illegal Power of Attorney from unauthorised persons and is using the same to influence police to interfere in execution of orders of court. That the beneficiaries of the estate of the late Erieza Zimbiha seek to grant powers to Image Finance Ltd to pursue interests in the estate yet there is an Administrator of the estate by grant of the Letters of Administration.

Since under Sections 180 and 192 of the Succession Act all rights of an intestate are vested in the Administrator and only a grantee of Letters of Administration is mandated to sue, prosecute or otherwise act as a representative of the deceased until the Letters of Administration are revoked, (see also section 264 of the Act), it is my finding that the Power of Attorney dated 13th day of July 2016 in respect of the estate of the late Erieza Zimbiha is illegal and the police should refrain from interfering with the Letters of Administration.

ISSUE 2: What remedies are available to the applicant?

Having found that the acts of the Police continuously interfering with the execution of orders of court is illegal, this court makes the following orders which should be obliged with. These are;

- a) A declaration that the respondent's investigations into payments made under Orders of Court and/or in execution of orders of Court to the applicant as an advocate and/or actions of the 2nd, 3rd and 4th respondents as agents of the 1st respondent are ultravires, illegal and an affront of the independence of the Judiciary.

- b) An order of prohibition doth issue prohibiting the respondents, their agents and any person from investigating or interfering with decisions made by Court or Orders of Court or execution of Orders of Court without following due process.
- c) An injunction doth issue restraining the respondents, their agents or any person under their authority from investigating or interfering in any way whatsoever with subsisting orders of Court and the payments there from.
- d) Costs of this application be provided for.

Stephen Musota

J U D G E

20.02.2017

20/02/2017:-

Mr. Abraham Mpumwire for the applicants.

Mr. Madette for the Respondents.

Milton Court Clerk.

Mr. Abraham Mpumwire:-

We are for a Ruling.

Court:-

Ruling read and delivered in the Applicant's Co. Presence of the Applicants and in the absence of the Respondents.

**AJIJI ALEX MACKAY
DEPUTY REGISTRAR**

20/02/2017