

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
MISCELLANEOUS CAUSE NO. 167 OF 2017

DAN ALINANGE ::: APPLICANT

Versus

DIRECTOR OF PUBLIC PROSECUTIONS ::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for Judicial Review. The applicant Dan Alinange was formerly employed by the Uganda National Roads Authority (UNRA) as a Corporate Communications Manager from 1st July 2008 to the 30th June 2015. During the time, the applicant was assigned to make preparations for ground breaking ceremonies for several roads that had been successfully constructed by various contractors. According to the applicant, UNRA sanctioned fundraisings to raise money to accomplish this task which the applicant did. He received money from *inter alia* MOTA ENGIL to the tune of UGX. 32,670,000/=. MOTA ENGIL was a contractor for the Kampala Northern By Pass. These funds were channelled through a company called AK Communications Ltd in which the Applicant is a Director and hold shares. That because of this connection as a shareholder in AK Communications Ltd, the Applicant was charged after he was investigated for the offences of corruption, abuse of office and conflict of interest contrary to the provisions of the Anti Corruption Act 2009.

The respondent denied authorising the fundraising or existence of any legal justification. They also aver that these actions by the applicant were executed without the knowledge of UNRA Management.

According to the Applicant, these Judicial Review proceedings are against the decision to prosecute the Applicant on 11th January 2017. On the other hand, the respondent's counsel avers that the decision to prosecute the Applicant was made on 9th September 2016 and a charge sheet to that effect was preferred on 5th September 2016. The Anti Corruption Division received the charge sheet on 9th September 2016.

Both parties were allowed to file written submissions in support of the respective cases.

In their submissions, the respondent raised two preliminary objections on the propriety of the application before Court namely;

- (a) *The application is time barred.*
- (b) *The DPP has no capacity to be sued in his own right.*

I will start by resolving the objections starting with:

(1) Whether this application is time barred?

When I perused the pleadings, and the attached documents as well as the submissions, I noted that the decision to prosecute the applicant was taken by the respondent on 8th September 2016. This fact is acknowledged by the Applicant in his affidavit in support of the Notice of Motion paragraph 13 thereof. It is averred that:

“13. That sometime in 2016 UNRA revisited ground breaking events mentioned above and interrogated the applicant leading to the charges against him as stated above.”

This application was filed on 11th April 2017, seven months after the charges were consented to by the respondent as per annexure “C” to the submissions. Under rule 5 (1) of the Judicature (Judicial Review) Rules 2009, an application for Judicial Review ought to be filed promptly and in any event within three months from the date when the grounds of the application first arose unless this period is extended by the Court if it considers that there is good reason for doing so. In the instant case, the applicant ought to have sought extension of time before filing this application out of time. The argument by the Applicant that this application is made against the amended charges against the applicant as is canvassed in the amended charge sheet is a transparent cover being used to avoid the inflexible provision of limitation in the rules. The time of amendment of the charge sheet does not change the date on which the cause of action arose. The amendment becomes part of the original charge sheet and not the other way round.

The Applicant argued that the contention that the application is time barred based on an alleged charge sheet that is not part of the evidence on court record is unfounded. That the respondent did not file a reply in the application. That therefore this Court should disregard the contention and find that the application was brought within three months from the date of the amended charge sheet.

I do not agree with the above submissions by learned counsel for the Applicant. This court’s attention has been drawn concerning the illegality of the application before it. The Court cannot sanction such an illegality based on technicalities. Once an illegality is

brought to the attention of Court, it overrides all questions of pleading including admissions if made. On this ground alone, this application would fail.

The above notwithstanding, after thorough perusal of the pleadings, I have noted that the Applicant is seeking orders from this Court to prevent his investigations and prosecution by the Anti Corruption Division of the High Court. To grant the orders sought would be to defeat the constitutional obligation of the state to prosecute Criminal matters. This Court being a Civil Court cannot properly determine the Criminal liability of the Applicant in relation to the offences he is charged with. The orders sought such as prohibition and injunction if issued would be illegal because they would strip the DPP and a sister competent Court of its jurisdiction and constitutional obligations to determine cases before it. The applicant should face prosecution and the time for taking out any suit for wrongful and malicious prosecution is after conclusion of the prosecution, when a decision could be taken whether the prosecution was wrongful or malicious. **Charles Harry Twagira Vs AG & 2 Ors SCCA 4 of 2007.**

This Court is being asked to bar investigations and prosecution bodies like the DPP from fulfilling their mandate to investigate and prosecute cases where the evidence warrants. This Court cannot determine that the arrest is unlawful or that a prosecution is false unless the criminal culpability of the applicant is being determined by this Court which would not be the case. I also wonder whether the decision of this Court would discharge the applicant of any criminal liability. The only pleas that would prevent a person from being prosecuted are pleas of *autre fois* convict and acquit and not an order arising out of a Civil Suit: **Hussein Badda Vs Iganga District Land Board & 4 Ors MA 479 of 2011.**

Whether the charge is proper or evidence is sufficient or not is not a subject for Judicial Review.

2. Whether the DPP can be sued in his own capacity?

I agree with the submissions by learned counsel for the respondent that this application is procedurally flawed in as far as the application has been brought against the DPP in his own capacity. Article 120 of the Constitution which provides for appointment and functions of the DPP does not establish it as a body Corporate.

This is supported by the Supreme Court decision in the case of **Charles Harry Twagira Vs Attorney General & Anor SCCA 4 of 2007** where it was held *inter alia* that the appellant should have proceeded only against the Attorney General and the 3rd respondent since the Director of Public Prosecutions is a government department but it is not a body corporate with powers to sue or be sued.

For the reasons I have given in this ruling I will find that this application is incompetent and not fit for Judicial Review. It was filed out of time and against a non-existent legal entity. The same is dismissed with costs.

Stephen Musota

J U D G E

10.07.2017

10/7/2017:-

Mr. Titus Kanya for respondent.

Mr. Muwonge Kasita for applicant.

Applicant present.

Respondent absent.

Mr. Egetu Court Clerk.

Counsel for the Applicant:-

The matter is coming up for ruling and we are ready to receive the ruling.

Counsel for the respondent:-

We are ready to receive the ruling.

Court:-

Ruling read and delivered in open chambers.

Sarah Langa Siu

DEPUTY REGISTRAR

10.07.2017