THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE No. 205 OF 2017

DR. WENCESLAUS RAMA MAKUZA ::::::::::::::::::::::: APPLICANT

Versus

1. **CIVIL AVIATION AUTHORITY**
2. **ATTORNEY GENERAL**   **::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for Judicial Review challenging the decision by the Minister of Works and Transport terminating the contract of service of the applicant as the Managing Director of the 1st respondent as illegal, ultravires, null and void.

Several other declarations are sought by the applicant in his Notice of Motion and he wants to be paid general damages, aggravated damages and the costs of the application.

At the commencement of the hearing of this application, Mr. Walukaga learned counsel for the 1st respondent and Mr. Mwaka for the 2nd respondent intimated to court that they had preliminary objections to raise against the application. Respective counsel were allowed to file written submissions.

In his submissions, Mr. Walukaga raised two issues:

    (i)   *Whether the applicant has a cause of action against the 1st respondent?*

(ii)   *If not, whether the application against the 1st respondent should be struck out with costs.*

On the issue, learned counsel submitted that the 1st respondent had no mandate to terminate the applicant's contract. That that mandate is the preserve of the Minister and not the 1st respondent as an entity. That the 1st respondent is being dragged into the suit unjustifiably and therefore the applicant has no cause of action against the 1st respondent. As such the application be struck out as against the 1st with costs.

In reply, learned counsel for the applicant submitted that the termination was based on section 146 (6) of the Civil Aviation Authority Act which states that the Minister may, after consultation with the board, terminate the appointment the Managing Director. That therefore the decision was joint decision.

The 2nd respondent's counsel also raised a preliminary objection on whether this is a proper case for Judicial Review. He submits that the circumstances of this application indicate that this is an employment dispute making it not amenable to Judicial Review. That it should be dismissed with costs.

In reply, learned counsel for the applicant submitted that none of the reliefs sought by the applicant falls outside the law governing Judicial Review and are supported by the evidence in the affidavit of the applicant and annextures thereto. That the authorities relied on by counsel for the 2nd respondent of ***Catherine Amal Vs Equal Opportunities Commission MC 233/2016*** and ***Machacha Livingstone & Anor Vs Law Development Centre*** are not applicable to the instant application.

Resolution of the objection:

1. On the 1st respondent's objection, I agree with the submission by learned counsel for the 2nd respondent that this application disclosed no cause of action against the 1st respondent. This is because the 1st respondent did not make the impugned decision. It was made by the Minister as mandated.

The applicant's complaint ought to have been made against the decision maker who was the Minister who in legal proceedings is represented by the Attorney General.

I agree that consultation of the board perse does not create a cause of action against someone if the decision sought to be quashed was taken by someone else. To decide otherwise would open up flood gates in that whoever the Minister consulted prior to making the decision in question is liable.

Consequently, in the present application as it stands now, I will uphold the 1st respondent's objection that the applicant has no cause of action against the 1st respondent. Accordingly the application as against the 1st respondent is struck out with costs.

Regarding the objection by the 2nd respondent and after a careful perusal of the pleadings, I am as well inclined to agree with Mr. Mwaka learned counsel for the 2nd respondent that this matter does not fall under the ambit of Judicial Review. The applicant has essentially presented an employment dispute and the claim is of the character of an employment suit. The grounds raised by the applicant are essentially for alleged breach of an employment contract and the remedies sought are essentially remedies for alleged breach of contract and/or determination of rights under an employment contract.

Litigation of the matters raised by the applicant would require extensive evidence. For example the compensatory remedies sought would require extensive proof.

In the instant application, the applicant claims that he would be entitled to up to UGX.600,000,00/= (six hundred million), with terminal benefits and allowances. That claim is subject to special pleading and proof thereof under an ordinary suit.

I am satisfied that this matter does not fall under the ambit of Judicial Review because what the applicant is seeking requires to be proved by evidence. The applicant ought to have brought this matter under the Employment Act and by ordinary plaint. The concern for Judicial Review is only the decision making process in administration. It is a remedy of last resort. Where alternative remedies exist, the court has to be satisfied that Judicial Review is more convenient, beneficial and an efficacious remedy available.

In the final result I will as well uphold the preliminary of objection raised by learned counsel for the 2nd respondent.

I will consequently strike out this application with no order as to costs.

Stephen Musota
JUDGE
21.12.2017

21.12.2017:-

Mr. Baku Raphael for the applicant holding brief for Mr. Rwaganika.

Applicant is in court.

Respondent is not in court.

Advocate for the 1st respondent is in court.

Counsel for the 2nd respondent is not in court.

Mr. Baku:-

It is for a ruling.

Court:-

Ruling delivered in open Court in the presence of:

Mr. Mr. Baku Raphael for the applicant.

Mr. Walukaga for the 1st respondent.

Mr. Madete Geoffrey for the 2nd respondent.

Jolly Court clerk.

Right of Appeal explained.

Joy Bahinguza Kabagye
ASSISTANT REGISTRAR

21.12.2017