

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 0142 OF 2016
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

1. PINE PHARMACY LTD
2. PILLAR LOGISTICS LTD
3. ESCORTS PHARMACEUTICALS LTD
4. BYANSI MEDI CARE LTD
5. SPRING PHARMACEUTICALS LTD ::::::::::: APPLICANTS
6. PHARMA HEALTH LTD
7. GOOD DAY PHARMACY LTD
8. SAFEWAY PHARMACY LTD
9. MEDNET HEALTH CARE LTD
(SUING BY REPRESENTATIVE ACTION ON BEHALF
OF THE 265 PHARMACEUTICAL OPERATORS AND
ON THE OWN BEHALF)

VERSUS

NATIONAL DRUG AUTHORITY ::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is a ruling on preliminary point of law raised by counsel for the respondent Authority in an application for Judicial Review. In that application the applicants seek the following prerogative orders;

1. Certiorari to quash the decision of the respondent authority not to issue licenses to the applicants operating both retail and wholesale business on the same premises based on the purported illegal licensing guidelines for 2016.

2. Prohibition to prohibit the respondent from implementing the decision meted in the circular No. 002/ID/2016 dated 21st April 2016 stopping issuance of licenses to the applicants operating both retail and wholesale business on the same premises effective 1st January 2017.
3. A declaration that the decision by the respondent not to issue to the applicants' licences operating both retail and wholesale business was irrational based on bad faith, malafide and bias without due regard to law.
4. A declaration that the licensing requirements and guidelines for 2016 are illegal and irregular in as far as the same are irregular for having no legal basis.
5. General damages for inconveniences suffered by the applicants, torture, business loss and loss of earnings as a result of the respondent's decision to issue licenses to the applicants operating both retail and wholesale business on the same premises.
6. Costs of the application.

At the hearing of the application Mr. Bosco Okiror appeared for the applicants and Mr. Mark Kamanzi appeared for the respondent.

Counsel for the respondent indicated that he had preliminary points of law which could dispose of the matter and asked to file written submissions and this court allowed him to do so. Both parties filed their written submissions. Counsel for the respondent filed on 28th December 2016 and the applicants replied on 10th January 2017. The respondent filed a rejoinder on 18th January 2017.

Briefly the background of this ruling is that the applicants are pharmaceutical operators regulated by the respondent. They operate on the same premises both retail and wholesale business of drugs in Uganda. The respondent sometime in 2016 issued a circular stopping issuance of licenses to pharmacies operating both retail and wholesale business on the same premises. The applicants were aggrieved by this circular because according to them it effectively cancelled the

applicants' licenses yet this is not one of the conditions for cancellation of a license. They also felt that the circular was not backed by law. The applicants being aggrieved by the decisions of the respondent filed this application for judicial review seeking the orders I have already outlined in this ruling. At the hearing counsel for the respondent raised the following preliminary points of law;

1. The application has become a moot exercise.
2. The applicants' affidavit in support of the application is prolix and incurably defective for offending order 19 rules 3(1) and 6(1) of the Civil Procedure Rules.

The objections raised by counsel bring forward certain issues between the parties which are:

1. *Whether the application has become a moot exercise?*
2. *Whether the applicants' affidavit in support of the application is prolix and incurably defective for offending order 19 rules 3(1) and 6(1) of the Civil Procedure Rules?*

I have considered the submissions by both counsel. I shall deal with the issues in the order in which I identified them.

Issue No. 1 - Whether the application has become a moot exercise?

On this point counsel for the respondent submitted that this court has had occasion to address this same point of law in the case of **Julius Maganda Vs National Resistance Movement HCMA No. 154 of 2010.**

Further counsel submitted that for one to qualify an application as susceptible to mootness, the case of **Joseph Borowski Vs Attorney General of Canada (1989) 1 S.C.R** also provides

guidance. That it is necessary to determine whether the requisite and tangible dispute has disappeared rendering the issue “academic.” That Canadian Court held that:

“The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot.”

Further counsel submitted that the principles in *Administrative Law by H.W.R. Wade 5th Edition published by Clarendon Press Oxford page 580* are very persuasive and a bolster to the moot principle. The learned author cited with approval the case of *Gouriet Vs Union of Post Office Workers (1978) AC 435 at 501* where Lord Diplock said that:

“But the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not of anyone else.”

Further counsel submits that in this case the applicants seek orders of Certiorari to quash the decision not to issue licenses to the applicants who were operating both retail and wholesale business on the same premises but the licenses were issued and are on court record. The applicants also seek Prohibition of the respondent from implementing circular No. 002/ID/2016

but this was overtaken by events by issuing of Professional Guidelines on Licensing of Pharmacies and Drug Shops 2017 which do not prohibit operating retail and wholesale business on the same premises. Further counsel submits that the two declarations sought by the applicants are in regard to the refusal of the respondents to issue licenses but as of today the licenses for retail and wholesale business on the same premises were issued. The declaration on the illegality of the Licensing Requirements and Guidelines 2016 was also overtaken by events by issuing of Professional Guidelines on Licensing of Pharmacies and Drug Shops 2017.

That therefore this application is moot and should accordingly be dismissed with costs.

In reply counsel for the applicants submits that the applicants' claim is not that licenses were not issued. But rather that the respondent took a decision to stop issuing of licenses to businesses operating both retail and wholesale business on the same premises and this was effectively communicated in the Circular No. 2/ID/2016 which is Annexure "C" of the affidavit in support of the motion and basing itself on illegal licensing guidelines. That this application is not moot because the respondent has no authority to issue guidelines since even the alleged guidelines in Annexure "N1" of the respondent additional affidavits are not professional guidelines envisaged under the Act. That the legislation on licensing is clearly laid out in The National Drug Policy and Authority (Licensing Regulations 2014 and The National Drug Policy and Authority (Certificate of Suitability of Premises) Regulations, 2014 and in this regard the guidelines are illegal.

That the ***Maganda Vs National Resistance Movement case*** (supra), is distinguishable from the instant case because it involved an election related matter where the applicant got nominated as an independent after he had filed an application against the respondent and this changed the *locus standi*. But in the instant application the applicants went to court because the respondent made a decision unfounded in law through the circular and that some of the applicants have up to date not been issued with licenses.

That the applicants are aggrieved with the manner in which the decision in the said circular was made whose end effect is cancellation of one of the licenses of the pharmaceutical operators yet the law does not prohibit dual licensing provided the required space/arena as per the law is satisfied by the pharmaceutical operators.

I am inclined to agree with counsel for the respondents on this issue. The applicants seem to suggest that their application was generally on powers of the respondent to make guidelines. But a reading of the remedies sought shows that really what was in issue is the refusal to issue licenses to persons operating retail and wholesale business on the same premises pursuant to the 2016 guidelines and circular. These guidelines and circular which are the basis of the applicant's claim have since ceased to be of any effect. I therefore do not see why this court should deal with them. The application has become moot.

To demonstrate this I shall analyse the application and the affidavits. In paragraph (c) – (h) page 3 of the application the grounds of the application clearly show that the controversy was on the guidelines of 2016 and the circular No. 002/ID/2016 stopping issuance of licenses to operators of both retail and wholesale business on the same premises. Even in the affidavit in support specifically paragraphs 5, 6, 8, 13, 15, 16 and 17 show that the application is really anchored on the refusal of the applicants to issue licenses to the applicants and the persons they represent. So counsel for the applicants would really be redefining the scope of the application if he submits that the application was never about licenses. In Annexure “N2” to the additional affidavit in reply the deponent to the only affidavit in support of the application Mr. David Ekau wrote to the respondent's Secretary in a tone that would rather suggest the disputes are now settled. Page 5 of Annexure “N1” which is the Professional Guidelines on Licensing of Pharmacies and Drug Shops 2017 shows in paragraph 2 of the 2017 guidelines are the only valid guidelines for requirements of licensing. So the argument that the circular is still in force cannot be sustained. To further demonstrate how this application is really moot the remedies sought in the application as quoted at the beginning of this ruling clearly show it was all about licenses.

I agree with the authorities that have been cited by counsel for the respondents on this point of law. I still hold the view I had in *Maganda Vs National Resistance Movement HCMA No. 154 of 2010* where I held that court of law do not decide cases where no live-disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where issues in dispute have been removed or merely no longer exist.

In this case the issues in dispute have been removed and so this application is moot.

2. Issue 2: Whether the applicants' affidavit in support of the application is prolix and incurably defective for offending order 19 rules 3(1) and 6(1) of the Civil Procedure Rules?

I do not find it necessary to go into this issue.

For reasons in this ruling this application is dismissed. However, since the events that have rendered this application moot were created by the respondent it would be unfair for this court to award costs. Therefore each party shall bear their own costs of this application.

I so order.

Stephen Musota

J U D G E

15.02.2017