THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA

MISC. APPLN No. 569 OF 2016
(ARISING OUT OF MISC. CAUSE No. 47 OF 2016)

HARRY KASIGWA ========== APPLICANT

VERSUS

1. JINJA MUNICIPAL COUNCIL
2. M/S. RISE AND SHINE UGANDA LTD ========= RESPONDENTS

BEFORE HON. JUSTICE MICHAEL ELUBU

RULING

This is an application for Judicial Review, by HARRY KASIGWA (the applicant) against two respondents namely: 1. JINJA MUNICIPAL COUNCIL and 2. M/S RISE AND SHINE UGANDA LTD.

The Applicant seeks prerogative orders against the first Respondent for a decision taken to grant the 2nd Respondent permission to change the user of PLOT 16 WILSON ROAD in Jinja from residential to commercial, and utilise the premises thereon as a Guest House.

At the commencement of the hearing the first respondent took a preliminary objection challenging the competence of this application.

It was the submission of Mr. Ishaq Dhakaaba, appearing for the first Respondent that the impugned order of the first Respondent is contained in a letter of its Town Clerk dated the 7th March 2016. That the

Applicant then filed this application, challenging that decision, on the 4th of Nov 2016.

It was Counsel's submission that, as a result, the application was time barred. That as it had been filed more than 90 days after the first respondents decision then it was baseless, misconceived and illegal and it ought to be struck out.

He relied on ***Rule 5(1) of The Judicature (Judicial Review) Rules S.I 11/2009*** which stipulates,

> ***"An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made."***

Mr. Ivan Wanume opposed this prayer. He stated that the application was based on a series of events, including several communications between the applicant and a number of Government agencies including the first Respondent, the second Respondent and the office of The Inspector General of Government.

That it was after the IGG's letter of 31/10/2016 that the applicant chose to file this application. Counsel relied on the decision in ***Gen David Sejusa vs A-G M.C.176/2015*** to support his assertion.

I have considered the submissions of Counsel on both sides and carefully reviewed the authorities.

It is true that Rule 5(1) of **The Judicature (Judicial Review) Rules** stipulate a time within which an application for judicial review shall be filed.

Rule 5(2) states that the date when the ground for the application arose shall be the date the decision is delivered to the party.

In this instant case the decision was made by the first Respondent in its letter dated the 4/3/2016. It is not stated when the applicant first became aware of the decision but by 22/3/2016 he had written a statutory notice and an intention to sue the respondents. This court shall take this latter date as that on which the decision was delivered to the applicant.

That said, the applicant did not file the application until the 4/11/2016 with counsel for the applicant submitting from the bar that the delay was caused by several interventions by other bodies ending with the letter of the IGG dated 31/10/16.

The order challenged, which is the ground on which the application was based, has been deemed by this court to have been delivered to the applicant on 22/3/2016. It would prima facie appear that the application was lodged well beyond the 3 months provided by the law.

Regarding the submission that the reasoning in the Sejusa case applies with equal force here, I find that case distinguishable from the facts here. There the court held that considering the order challenged had never been communicated to the applicant, it remained a continuous tort and there was no specific date from which time could be reckoned. That is not the position here where there is a clear point in time by which the applicant had learnt of the First Respondents decision.

For that reason the argument that the reason for the delay in filing was because the applicant was communicating with other agencies cannot hold. Besides it was not pleaded by the applicant as the basis for a prayer to extend time.

This court takes the view that where good cause to extend time has not been shown, the holding in ***Mohammad B. Kasasa Vs Jasphar Sirasi Bwogi U.G.C.A 44/2008*** by the Court of Appeal is relevant. It held:

Statutes of limitations are in their nature strict and inflexible enactments. Their overriding purpose is interest reipublicae ut sit finis litum, meaning that litigation shall be automatically stifled after fixed length of time, irrespective of the merits of the particular case. A good illustration can be found in the following statement of Lord Greene M. R in ***Hilton Vs Sutton Steam Laundry [1946] 1 KB 61*** *at page 81 where he said-*

"But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights."

In my view this holding properly applies to the instant case.

The applicant in this matter filed his application out of time. There was no good reason shown to bring the application late nor was such leave sought. The respondent was well within his rights to insist on the dismissal of the application for being time barred.

In the result I shall dismiss this application with costs to the first Respondent.

MICHAEL ELUBU
JUDGE
20/6/2018