THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISC. APPLICATION NO. 286 OF 2019

ARISING FROM MISC. APPLICATION NO. 618 OF 2018

(ALL ARISING FROM CIVIL SUIT NO. 417 OF 2018)

VALLEY TECHNICAL SERVICES LTD :::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITY :::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This application was brought under sections 82 & 98 of the Civil Procedure Act Cap 71, Order 46 rules 1(b), 8 and Order 52 rule 1 of the Civil Procedure Rules S1 71-1 for orders that:
    i. The order dismissing Misc. application No. 618 of 2018 be reviewed and set aside.
    ii. Misc. application No. 618 of 2018 be allowed.
    iii. Costs of the application be in the cause.

2. The Applicant was represented by Ms. Subira Fiona of M/s. Geoffrey Nangumya & Co. Advocates while the Respondent was represented by Ms. Tusiime Doreen from the Directorate of Legal Affairs of the Respondent.

3. The application was supported by the affidavit Mr. Amon Bahumwire, the Managing Director of the Applicant. The grounds were that; (1) upon hearing of the matter on 30th April

2019, the court made a finding that the framework contract for hire of earth moving equipment for Kitezi landfill contract No. KCCA/NCONS/16-17/00105 had expired on 30th March 2019; (2) the said contract provided for an annexture titled 'Statement of Requirements" which specifically provided for the term of the contract to be two years under clause 2, therefore the contract expires on 1st October 2019; (3) the finding of this court that the contract expired affected the ingredients of a prima facie case and balance of convenience for a temporary injunction; (4) the court ought to review its earlier orders arrived at in error of finding that the contract expired whereas it specifically stated otherwise to wit, ending date being 1st October 2019; (5) mistake of counsel should not be visited on the litigant as it was counsel who mistakenly informed court that the contract was for 18 months ending 30th March 2019 yet the contract states the end date as 1st October 2019; and (6) it is just and equitable that this application is granted.

4. The application was opposed by the Respondent through the affidavit in reply of Mr. Mwesigye Joel Kagina, an officer land fill in the Directorate of public health and environment of the Respondent. He averred that he had been advised by the acting director of legal affairs of the Respondent that the application is incompetent, an abuse of court process and does not fit within the ambit of order 46 of the Civil Procedure Rules. The allegation that counsel for the Respondent did not help or address court to arrive at the correct conclusion is not true. He still maintained that the contract was for 18 months and expired on 30th March 2019. Clause 2 providing that call off orders may be issued at any time during a period of 2 years is not mandatory and is discretionaly subject to the expiry of the contract and good performance by the provider. This application has been overtaken by events as the contract has already been given to someone else and there is no status quo to maintain. There was no mistake of counsel for the Respondent and there is nowhere in the contract where it stated that the contract was ending on 1st October 2019. The contract was for 18 months and it lapsed.

5. Further that the Respondent raised need for the service through issuance of call off orders until 30th September 2018. The aspect of issuing call off orders at any time during a period of two years is not mandatory but at the will of the Respondent. The nature of the frame work

contract requires the procuring entity at its convenience to order for the services subject to the need, resource availability and performance of the service provider.

6. In rejoinder Mr. Bahumwire averred that the application is not an abuse of court process, has a high likelihood of success and fits within the ambits of Order 46 of the Civil Procedure Rules. The contract signed with the Respondent runs from 1st October 2017 to 1st October 2019 and it is still running for a period of two years.

7. Section 82 of the Civil Procedure Act provides that any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.

8. Order 46 rule 1 of the Civil Procedure Rules provides that any person considering himself or herself aggrieved—(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of a new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.

9. Rule 3 provides that; (1) where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application. (2) Where the court is of opinion that the application for review should be granted, it shall grant it; except that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his or her knowledge, or could not be adduced by him or her when the decree or order was passed or made without strict proof of the allegation.

10. In **Meera Investments Ltd v. Andreas Wipfler T/A Wipfler Designers & Co. Ltd HCMA No. 163 of 2009** it was held that in an application for review, an aggrieved person must prove; (1) that

there is a discovery of new and important facts; (2) there is an error apparent on the face of record, or (3) any other sufficient cause.

11. I have considered all the pleadings and submissions of the parties. First, it is not true that I did not consider the Applicant's claim that it had a two year contract. This issue was argued at length by the Applicant in submissions and at the oral hearing. In response thereto KCCA insisted that it only had 18 months.

12. Clause 2 in the contract which the Applicants claims gives it two years is discretional to KCCA and not mandatory for the Applicant to have two years automatically. Moreover, even on reconsideration of this issue, I find that the Applicant still does not have a prima facie case with high chances of success, and will not suffer irreparable loss.

13. Even on a balance of convenience, I find that it is better for KCCA to carry on its services uninterrupted with the new contractor, to avoid inconveniencing the public.

14. All in all, I find the Applicant has wasted court's time by raising the same issues for reconsideration yet I already considered and determined them. Accordingly this application is dismissed with costs for the Respondent.

I so order.

LYDIA MUGAMBE
JUDGE
11TH JULY 2019