

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 083 OF 2018

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF
CERTIORARI, PROHIBITION, DECLARATION AND INJUNCTION**

1. BWANIKA JULIUS
2. SSERUNJOGI GERALD
3. NATUHWERA BRIGHTON
4. NAKIBINGE JOE
5. TALEMWA HUDSON
6. BWANIKA FELIX
7. NABWANA ISAAC
8. BIKOOMI SAMUEL
9. LUKYAMUZI JAMES.J.
10. NAKASUJJA HARRIET
11. KINTU JONATHAN ALEX
12. CHRISTOPHER BUYONDO
13. LUCKY LORA ATWINE
14. NAMIRIMU JOAN
15. NAMUKOYE BEN LEXUS
16. NAMPALA CLAIRE
17. NABWIISO MATHEW

.....APPLICANTS

- Versus -

1. UGANDA REGISTRATION SERVICES BUREAU
2. UGANDA FEDERATION OF MOVIE INDUSTRY..... RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants filed an application under Articles 21, 40, 41, 42 and 50 of the Constitution, Sections 33, 36, 37 and 38 of the Judicature Act, SI 11/2009 - Judicial Review Rules; Section 69(7), 70, 73, 77(c) and (e) of the Copyright and Neighbouring Rights Act 2006, the Copyright and Neighbouring Rights Regulations SI 1/2010; Section 98 of the Civil Procedure Act and O. 1 rule 10(2) of the Civil Procedure Rules for the following Judicial review orders;

- a) An order of mandamus doth issue directing the 1st respondent to recall, quash and cancellation of Collecting Society Licences issued to the 2nd Respondent under Section 77(1) (b), (c) and (e) of Copyright and Neighbouring Rights Act 2006.
- b) In the alternative an order of mandamus doth issue directing the 1st respondent to perform its statutory functions under Sections 69(7) of the Copyright and Neighbouring Rights Act 2006.
- c) An order compelling the 1st Respondent to furnish the Applicants Audit Reports carried out against the 2nd Respondent in 2015 and 2018.
- d) A declaration that the activities of the 2nd respondent of:
 - i) Issuing copyright licenses to Audio-Visual vendors who are reproducing, distributing or otherwise exposing to the public for sale, hire or rental, pirated audio visual recordings which are infringing Copyright;
 - ii) Operating a Collecting Society without causing for the auditing of accounts for 8(Eight)consecutive years;
 - iii) Operating a Collecting Society without estimates of the income and expenditure;
 - iv) Operating a Collecting Society without establishing, administering a Provident and Benevolent Fund;
 - v) Failure to affix a security device on all audio-visual recordings distributed or otherwise exposed to the public for sale, hire or rental in Uganda contrary to regulation 19 and 20 of the Copyright and Neighbouring Rights Regulations 2010 SI.1/2010.

are all in violation of Sections 47 (6) & (7), 68, 69(7), 70 and 73 respectively of the Copyright and Neighbouring Rights Act 2006 and the Regulations thereunder.

The grounds in support of this application were stated briefly in the Notice of Motion and in the several affidavits in support of the application by the applicants but generally and briefly state that;

1. The 1st Respondent has failed to carry out its statutory duties of controlling, managing, overseeing and regulating the 2nd Respondent as a Collecting Society under the Copyright and Neighbouring Rights Act 2006 and the Regulations thereunder.

2. The 1st Respondent is a statutory corporation established under the laws of Uganda and is the National Intellectual Property Office with power, mandate and authority to, inter alia, register, promote and safeguard Intellectual Property rights and the interests of consumers of its registration services as well as license, regulate, oversee the operations of the licensed Collecting Societies, establish an intelligent network monitoring system to monitor, compliance, collections, distributions and quality of service of Collecting Societies.
3. That the 2nd respondent as a Collecting Society is mandated by law, international treaties and conventions to protect, represent local and international producers of audio visual works by managing their copyright in films and other audio-visual works within this framework as well as to collect royalties for its members and signatories to the various copyright treaties as stated in the Copyright and Neighbouring Rights Act 2006 and the Regulations thereunder.
4. That several film makers and producers have on several occasions sought for information regarding the operations of the 2nd Respondent but to no avail. The 2nd Respondent has even refused to avail us with membership documentation to enable us join the institution and offer ourselves for positions of leadership with hope of creating a better administration regime.
5. That the members have sought information relating to but not limited to audited books of accounts, income and expenditures, executive committee, membership list, operations of the 2nd Respondent and the royalties collection and distribution reports but 2nd respondent did not make any substantive response on the said matters as raised by our legal representative.
6. That as members of our association made up of majorly film makers they have high expectations in the Collecting Society specifically relating to the collection and distribution of royalties to those that largely invest into production of movies. The 2nd Respondent a Collecting Society with similar mandate in Uganda has from the time of its licensing by the 1st Respondent deliberately failed and or neglected to effect any collection/distribution of royalties for its members yet works continue to be exploited world over including Television Stations, Hotels, Bars and YouTube.
7. That the 2nd Respondent has not commenced operations for two (2) consecutive years as it has failed to deliver on any of its principal objectives and mandate and therefore its Collecting Society License should have been cancelled by the 1st Respondent.
8. That on several occasions some of the applicants have carried on raids in search for copyright infringing movies and I have realised that the 2nd Respondent has since

commenced illegal activities which include licensing and issuing Copyright Clearance Licenses to Audio-Visual Vendors who are communicating to the public, reproducing, publishing, offering for sale, rental or hire films without the authorization of the copyright owners, pirated and without a security device.

9. That the 2nd Respondent has never carried out an audit with an approved auditor by the 1st Respondent since it obtained a license to carry on the roles of a Collecting Society since 2011.
10. That the 1st Respondent has the mandate to supervise the activities of the 2nd Respondent with emphasis on principals of Transparency, Accountability and Good Governance (TAG). The failure by the Executive Committee of a Collecting Society to cause the auditing of accounts in accordance with the law, presupposes that the executive committee has relinquished office and the 1st Respondent must convene a meeting to elect a new Executive committee.
11. That the 2nd Respondent's executive committee is mandated to cause estimates of the income and expenditure to be prepared for the coming twelve months at least three months before the end of its financial year and a copy of the estimates shall be sent to the 1st Respondent for an opinion before they are submitted to the general meeting. The 2nd Respondent has failed to deliver on this put continues to operate as a Collecting Society being favoured by the 1st Respondent.
12. That the applicants are dismayed by the fact that the 2nd Respondent as a Collecting Society meant to carry on the role of collecting and distribution of royalties does not have approved licensing tariffs by the 1st Respondent which should be the **"Guiding Bible"** for any society with such a responsibility. This situation has been brought to the knowledge of the 1st Respondent through the various complaints lodged against the 2nd Respondent, however there has never been any effort to clear or rectify this situation by the 1st Respondent.
13. That it's a requirement of the Copyright and Neighbouring Rights Act 2006 and the Regulations thereunder that a security device is affixed by the 2nd Respondent to each and every audio visual recording which is to be distributed or otherwise exposed to the public for sale, hire or rental, within Uganda upon verification that the audio visual recording has been produced or published in Uganda or imported in Uganda without infringing any Copyright granted by the Act. The 2nd Respondent has failed to do the mandated obligations but rather issued Copyright Clearance Licenses to Vendors who are selling pirated movies and without a security device affixed onto them.

14. That the above failures of the 2nd Respondent's to comply with the provision of the Copyright and Neighbouring Rights Act 2006 and the Regulations there under are breaches and an infraction of the law, regulations and quality of service requirement and render the 2nd respondent liable to sanctions imposed by the 1st respondent of cancellation of the Collecting License issued.
15. That further the above said failures of the 2nd respondent are a violation of the applicants' and the general public's rights as stakeholders and consumers of copyright services and render the systems operated by the 2nd respondent as unreliable, insecure, acts of un fair competition, inefficient and ineffective contrary to the legitimate expectations of the applicants and the general public as producers/film makers.
16. That the compilation, assembly, recording, producing, reproducing, translating, distributing, broadcasting, making available to the public, importing and downloading audio visual works by video hall vendors as authorized and licensed by the 2nd Respondents without authorization from the rights holders is an infringement of copyright, an act of piracy and conversion of the copyright holders' property in such audio visual works.
17. That the 1st Respondent is fully aware and has knowledge of the impugned acts of the 2nd Respondent breaching the copyright compliance, administrative mismanagement and quality of services requirement but has neglected and/or failed to take action to enforce compliance. The applicants shall rely on, inter alia, the correspondence between the various film associations and Uganda Registration Services Bureau in respect to the 2nd Respondent activities and mismanagement.
18. That the 1st Respondent has committed statutory breaches in so far as it has:
 - o Allowed the other 2nd Respondent to continue operating without having audited books of accounts for Eight (8) years.
 - o Allowed the 2nd Respondent to illegally operate when it commenced illegal and criminal activities of licensing copyright infringing Video hall vendors without any authorization whatsoever from the rights holders.
 - o Failed to convene a special general meeting for electing a new executive committee for the 2nd Respondent upon realising the issues raised in 22(a) of my affidavit in support
 - o Failed to cancel the Collecting Society License of the 2nd Respondent upon realising the issues in this application

19 The 1st Respondent has failed to carry out its statutory duties of controlling, managing, overseeing and regulating the 2nd Respondent as a Collecting Society under the Copyright and Neighbouring Rights Act 2006 and the Regulations thereunder.

The respondents opposed this application and the 1st respondent filed an affidavit in reply through an Assistant Registrar Copyright at Uganda registration services Bureau a one Ms Rukundo Sarah.

The the 1st Respondent has admitted and acknowledges that it is aware of the mismanagement of the 2nd Respondent by stopping them from implementing their licensing programs after it had received a complaint from the one of the applicants.

The 1st respondent conducted an audit into the affairs of the 2nd respondent and that the said report was yet to be concluded and the interim report was to bring together the different factions and participate in the reforms of the 2nd respondent.

That the 1st respondent believes that it is in public interest to hear all sides and investigate all complaints and deploy tools including facilitating amicable resolution of differences among such factions such that resources and attention be paid to the needs of the members and the users of the products of the film industry.

The 2nd respondent opposed the application and denied breach of Copyright and Neighbouring rights Act and contended through the different affidavits that the organization supports its members in all ways possible to ensure that their objectives are achieved such as recommending them and availing them with information about copyrights and neighbouring rights law.

That they have worked on all documentations required to ease the licensing, collection and distribution of royalties in addition to engaging stakeholders to support the licensing process.

That the organization being in its infancy stage and one of the pioneer audio visual collective management organisations in Africa has faced a number of challenges, most of which are external yet have direct impact on the efficiency of the organization.

That like any growing organization, they cannot have all systems and structures at the same time and that the organization has made strides in establishing the major structures and complying with the Copyright and Neighbouring Rights Act and Regulations made thereunder.

ISSUES

1. Whether the Applicants have a valid cause of action against the 1st and 2nd Respondent.
2. Whether the 1st Respondent neglected its statutory obligation as a Registrar of copy right.

3. Whether there is a conflict of interest pertaining to Norman Mbabazi, the former legal officer of the 2nd Respondent.

It should be noted that this court has decided to resolve this matter in a manner that preserves harmony in the Film industry and the issues that had been raised have been ignored in the determination of this case. This court has been guided by Article 126(2) (d) of the Constitution and the interrogation made through the questions posed by court and the respective answers that had been availed or given.

This court has established that as suggested by the 1st respondent, there is need to address the concerns affecting the industry rather than engaging in legal gymnastics that will not help the different factions. It can indeed be established from the affidavits that the 2nd respondent has not been able to comply with the provisions of the law due to several challenges that have been highlighted by 2nd respondent deponents.

The blame game of the previous office holders will not equally solve the problem but rather finding concrete solutions to the existing challenges that this court has identified.

It would appear that the 2nd respondent upon registration has decided to lock out some members or persons who qualify to be part of the organization by virtue of being copyright owners. The issue of who is a member of the 2nd respondent has been very prominent to the extent that the applicants have been denied membership and yet they claim to have originally been members of the same organization.

The 1st respondent should render guidance to the 2nd respondent on how to make or amend the Constitution that would govern and include all the members. The membership should open to any person who is stakeholder of the Film and Movie Industry. Once a person is admitted as a member of the organization, he/she should always remain a member but is supposed to pay annual subscription fees to activate his or her membership or be able to take part in the affairs of the organization. The election of office bearer should be rotational every after 2-3 years and any member is eligible to hold any position of the organization. The organization should have at least one Annual general meeting called at notice of the members.

In Uganda the Collecting Society License is Issued by URSB which takes in the role as the Copyright office and as such has the power to deregister and register any society if found with the right qualifications as laid down from S. 57 to 73 of the Copyright and Neighbouring rights Act. Among the conditions to deregister are failure to submit audited books of accounts, illegality within the running of the Society. All these have been raised with evidence in the pleadings. The 2nd respondent have conceded to some of the complaints by admitting that these are the challenges of the Federations and collecting society.

In the first place it was wrong to merge a federating body with a collecting Society because these two institutions do totally different works and as such cannot be merged whatsoever. The single

role of a collecting Society is to collect royalties and distribute them on behalf of their members. The membership for a collecting Society of Audio Visual Society in this case should be restricted to either producers or performers.

In Procedure it will hard to separate the Federation from the Collecting Society unless a new and functional Society is set up. It is the responsibility of Uganda Registration Services Bureau to receive applications scrutinize them and then admit those they find credible then issue them with a probation License until satisfied with their works. See section 61 of the Copyright and neighbouring Rights Act.

The 1st respondent should consider separating societies like in some Jurisdictions by having a society for Authors, performers and Producers because the nature of interests from the rights holders is normally different and as such requiring the separation of Copyright holders and related rights holders. This is buttressed by the fact that it is only authors, producers and performers who are entitled to equitable remuneration as provided under section 31 of the Copyright and Neighbouring Rights Act of 2006.

The solution in this case would be that Uganda Registration Services Bureau which is the one that issues Collecting Society Licenses calls on fresh applicants with Knowledge and experience in Copyright management to take on the roles of a Collecting Society for the Film Industry.

A strong and efficient copyright system rests on three pillars; (a) an appropriate legal framework, providing substantive rights to creator; (b) efficient mechanisms for enforcing such rights not just at court level, but also public administration and customs level; and (c) a developed collective management system. Lack or weakness of any of these pillars would lead to the failure of the whole system. The Uganda Registration services Bureau should be guided by these principles and should able to benchmark for best practices around the world.

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558***, ***R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***.

What remedies are available to the parties?

1. An Order of Mandamus issues to the Registrar Copyright to guide the parties or other stakeholders in getting a competent and qualified Collecting Society for the Film sector in accordance with the Copyright and Neighbouring rights Act and the Collecting Societies Guidelines, 2018.
2. The application is allowed with no order as to costs.

I so Order

SSEKAANA MUSA
JUDGE
08th/02/2019