

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.108 OF 2018**

**HEBRON EVANGELICAL PENTECOSTAL MINISTRIES =====APPLICANT
VERSUS**

THE NATIONAL BUREAU FOR NGO =====RESPONDENT

BEFORE HON. MR. JUSTICE SSEKAANA MUSA

RULING

The Applicant brings this application for judicial review against the Respondent, the National Bureau for NGO under section 33, 36(1) (b) (c) of the Judicature Act Cap 3, Section 98 of the CPA Rule 6 & 7 of the Judicature (Judicial Review) Rules of 2009. The Applicant seeks among others for declaratory orders for;

- 1) Certiorari to quash the decision passed by the respondent on 4th May 2018 receiving and counseling the registration and NGO permit.
- 2) Prohibition order issues to stop the Respondent from enforcing to taking any further action premised on the Respondent's decision.
- 3) The decision made by the Respondent be declared null and void.
- 4) Costs of the application.

The grounds of the application are briefly as follows;

- a) The applicant was never summoned by the Respondent to defend or give its side of the story before reaching its decision to recall and cancel the applicant's certificate of registration and NGO permit with the respondent.
- b) The applicant upon perusing a copy of the decision dated 4th of May 2018, came to learn that the respondent without giving the applicant any hearing

had already arrived at a conclusion and issued an order against the applicant recalling and seeking to cancel the applicant's registration and NGO permit.

- c) The said decision and or order by the respondent is unconstitutional, illegal and ultra vires the power, authority and mandate of the respondent.
- d) The decision is unreasonable and irrational as it was made without considering as it was made without considering the effect on the applicant's work to over 1000 followers.
- e) That it is just fair and equitable that this application be granted.

The application is supported by the affidavit and the affidavit in rejoinder deposed by John Ndimbira which were relied on to prove that decision taken by the respondent was unlawful, null and void.

The respondent on the other hand filed affidavit in reply and supplementary affidavit in reply deposed by Okello Stephen, which shall be analyzed in courts analysis.

ISSUES

- 1) *Whether the impugned decision of the Respondent was irrational, illegal and ultra vires as alleged by the Applicant.*
- 2) *Whether the decision was procedurally improper and violated the principles of Natural Justice.*
- 3) *What remedies are available to the parties*

Both parties filed submissions that are considered by this court and I will handle all the issues at once in my determination.

Counsel for the applicant submitted it is settled law that; *“judicial review is concerned with prerogative orders which are basically remedies for the control of the exercise of powers by those in public offices. They are not aimed at providing final determination of private rights which is done in normal civil suits. The said orders are discretionary in nature and court is at liberty to refuse to grant any of them if it thinks fit to do so even depending on the circumstances of the case where there had been clear violation of the principle of natural justice.”* The case in point is ***John Jet Tumwebaze v Makerere University Council & 2 others Misc. Cause No.353 of 2005***

It was the applicant's counsel's submission that the Respondent did not act in manner expected of government body empowered with authority to regulate the operations of the Applicant. The Respondent acted in manner which was unreasonable and unfair.

The Respondent did not accord the Applicant the opportunity to be heard which is in total violation of the rules of natural justice which require an individual to be heard before he or she can be condemned.

The Applicant in its affidavit in support of the Application categorically averred that the Respondent's decision to recall and cancel the Applicant's certificate of registration and NGO permit was reached without hearing the Applicant. This is supported by the affidavit evidence in paragraphs 7, 8 and 9. This evidence was never rebutted by the respondent in its affidavit in reply.

Furthermore, the Respondent acted in unreasonable manner when it publically declared to the other faction of members of the Applicant that it would cancel the applicant's registration. This is evidenced in the video recording annexure SEKI6 under paragraph 8 of the Affidavit in Rejoinder sworn and deposed by John Ndimbira.

Under ***Section 7 of the Non-Governmental Organisation Act 2016***, provides for powers of the respondent which among others provided for revocation of the organisation's permit. Similarly, Section 7 (2) of the Non-Governmental Organisation Act 2016 provides that; *before the Bureau takes any action against an organization, the organization must be given an opportunity to be heard.*

The respondent did not comply with the above provisions of the act. The applicant's right to be treated justly and fairly under Article 42 of the 1995 Constitution and the right to be heard had been violated by the Respondent. It was therefore the submission of the applicant that the decision reached by the Respondent was null and void and in contravention of the rules of natural justice.

Counsel for the respondent submitted that the instant case the impugned decision is contained in the letter dated 4th May 2018 recalling the Applicants Certificate of Registration and NGO permit.

The Respondent in its affidavit in Reply in paragraph 6 and 7 does not deny that the Applicant was registered on the basis of the certificate issue by URSB. The affidavit in reply further explains in paragraph 18 that URSB had recalled the applicant's documentation.

The Respondent further states that it had no option since it follows that the NGO Bureau applies URSB documentation in its Registration process. In reply the respondent further relies on paragraph 19 of the Affidavit in reply that they followed section 30 (1)(c) of the NGO Act 2016 since they had given false and misleading information on a material particular and therefore should not have been registered.

The NGO Board on 4th May 2018, wrote to Kabayiza Stephen and Ndimbira John informing them that in accordance with section 29 (4)(a), the certificate of Registration had been cancelled and should be deposited at the NGO Board not later than 11th May 2018 for cancellation. The Applicants at the time never deposited the Certificate at the NGO Board as deposed in paragraph 23 of the Respondents Affidavit in Reply. The status quo was that the certificate was not operational.

Respondent's counsel further submitted that its decision cannot be assailed the ground of illegality as it acted within the law, taking into account that URSB had also cancelled the Applicant's documents.

Counsel submitted that a careful evaluation of the evidence as contained in paragraphs 18 to 23 of the Respondent's affidavit in reply clearly reveals why the

respondent recalled the Certificate and permit of the Applicant. It is the respondent's submission that there was no irrationality on its part.

Respondent's counsel submitted that in analyzing the evidence the Respondent shall rely on paragraphs 14 to 24 of the affidavit in reply. The Applicant's documents had been recalled by URSB in a letter dated 14th March 2018.

The supplementary affidavit in reply deposed by Pr. Bizimungu Emmanuel who is also a Director of the Applicant states in paragraph 10 that they petitioned the Director of the NGO Board seeking the cancellation of the Certificate of Registration. The NGO Board decision to recall was for the applicants to show cause why the certificate should not be cancelled. However, the Applicant did not take back the certificate and permit. Further the supplementary affidavit of Pr. Bizimungu Emmanuel does not contest a fair hearing and thus it is the respondent's submission that the Applicant on receiving the letter dated 4th May 2018 was to show cause why they should not be cancelled which they did not and they did not forward the permit to the Respondent.

Finally counsel for the respondent submitted on issue 3 that the applicant is not entitled to any of the reliefs sought and prays that this Honorable Court holds that the decision in a letter dated 4th May 2018 is not null and void, that the order of certiorari does not issue that the Applicant is not entitled to the reliefs sought and that the application is dismissed with costs to the Respondent.

Determination

According to the *Black's Law Dictionary at page 1013 Black's Law Dictionary 11th Edition Thomson Reuters, 2019* Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

The power of Judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The court has power in a judicial review application, to declare as unconstitutional, law or governmental action which is inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of administrative law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into

arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

This court agrees with the authorities cited by the applicant on the principles of natural justice and its general application. However, it is also well settled that the concept of 'natural justice' is not a fixed one. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within a strait jacket formula.

In order to sustain a complaint of non-compliance with principles of natural justice, one must establish that one has been prejudiced thereby for non-compliance with principles of natural justice.

The question whether the principles of natural justice have to be applied or not, is considered bearing in mind the express language and basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of the power. It is only upon a consideration of all these matters that the question of application of the principles of natural justice can properly be determined. See *Sahara India(Firm), Lucknow v Commissioner of Income Tax, Central-1, [2008] 14 SCC 151*

In the present case, the respondent had to take immediate action since the two parties (directors) involved in the applicant had disagreements and the same had resulted in the Uganda Registration Services Bureau to have their registration cancelled. Hearing may be excluded if action needs to be taken by the administration in the interest of public safety, public health, or public morality, or broadly in public interest.

It is also true that natural justice cannot be sacrificed in the name of urgency unless the clearest case of public injury flowing from the least delay is self-evident. The sum effect of the cancellation of the certificate of Incorporation of the applicant by Uganda Registration Services Bureau was to deprive the applicant any legal status under the Companies Act which is usually a condition precedent before an NGO is registered. It definitely had far reaching consequences and it would automatically affect the operations of the applicant with the public at large.

The applicant's documents had been recalled by URSB in a letter dated 14th March 2018. The supplementary affidavit in reply deposed by Pr. Bizimungu Emmanuel who is also a Director of the applicant states in his affidavit NGO Board seeking the cancellation of the Certificate of Registration. The NGO Board decision to recall was for the Applicant to show cause why the Certificate of registration should not be cancelled. However, the applicant did not take back the certificate and permit.

Respondent's contended that the Applicant on receiving the letter dated 4th May 2018 to show cause why they should not be cancelled which they did not and they did not forward the permit to the Respondent.

It is clear the respondent attempted to follow rules of natural justice by issuing a notice to show cause why the Certificate/permit should not be cancelled but the applicant failed and refused to submit to the jurisdiction of the respondent as the regulator. Under such circumstances, the respondent had to take immediate action since the applicant had refused to appear before the NGO Board.

When an opportunity to be heard is offered and the party does not respond then the decision maker is at liberty to proceed and take a decision. There was no need for adjournment since it would be an idle formality. See *Glynn v Keele University* [1971] 1 W.L.R 487; *Pine v Law Society* [2001]EWCA Civ 1574

The decision of the respondent was legally and rationally made within the powers of the NGO Board. The principles of natural justice were not violated in the circumstances of the case.

This application fails in the circumstances and is dismissed with costs

I so order

Dated, signed and delivered by email at Kampala this 23rd day of April 2020

SSEKAANA MUSA
JUDGE