

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISC APPLICATION NO. 147 OF 2020

ARISING OUT OF MISC CAUSE NO 011 OF 2020

HON RAPHAEL MAGYEZI ::: APPLICANT

VERSUS

1. JUDE MBABALI
2. KISAMBIRA TITUS
3. NAKISEKA JANAT
4. ZZIWA CHARLES
5. HAJJ MIWANDA JAMIL
6. JUMBA QURAIISH
7. MWANJE RESTY
8. NAMYALO SARAH
9. MAYANJA GORDON
10. CEASAR MAWANDA
11. KASIRIVU WINNIE ::: RESPONDENTS

*Before; Hon Justice Victoria Nakintu Nkwanga Katamba*

**RULING**

This is an application brought under Order 9 Rule 27, Order 46 and Order 52 Rules 1 & 3 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act seeking Orders that;

- a) The Ruling in Miscellaneous Cause No. 11 of 2020 dated 21<sup>st</sup> September 2020 be reviewed and or set aside;

- b) The Order extracted and dated the 27<sup>th</sup> October 2020 be set aside;
- c) The Costs of this Application be provided for.

The grounds of the application as contained in the Applicant's affidavit are briefly as follows;

1. The Applicant was a respondent in Miscellaneous Cause No. 11 of 2020 wherein he was erroneously sued and condemned to costs in his individual capacity for acts done in his official capacity as Minister;
2. That the guidelines which are subject of the litigation were issued by the Applicant in his official capacity as the Minister of Local Government;
3. That there is an error apparent on the face of the record which warrants this application;

The background of this application is that the Respondents filed Miscellaneous Cause No. 011 of 2020 for judicial review seeking among other orders, a writ of certiorari quashing the guidelines issued by the Applicant on the 30<sup>th</sup> of June 2020 purportedly guiding the operationalization of the new cities for being contrary to the procedure set out in the Local Government Act Cap 243. The Applicant purportedly issued the guidelines under Section 95 of the Local Government Act. It was however, found by the trial court that the guidelines did not have any force of law since they were not a statutory instrument and were never published in the gazette or laid before Parliament. It was also determined that the application had been overtaken by events and was hence discontinued with 1/2 of the taxed costs to the Applicants.

This application stands uncontested as the Respondents did not file a response despite having been duly served.

Counsel for the Applicant submitted that the judgment of the trial court was passed against the Applicant in his personal names which is an error in law on the face of the record. Counsel cited and relied on the judgments of Hon, Justice Geoffrey Kiryabwire in HCCM No. 12 of 2011, United Reflexologists of Uganda Ltd & Anor vs Hon Stephen Maloya, and

HCMA No. 64 of 2020 by Hon Justice Michael Elubu in Turyamusiima Geoffrey vs Dr. Jane Ruth Achieng. Counsel submitted that the sum of their holdings is that since judicial review is about exercise of Public power. It is erroneous for a private person to be personally sued in an action challenging the exercise of public power, the right party should be the Ministry of the Attorney General.

I have carefully perused the record of this court in Miscellaneous Cause No. 11 of 2020 and the orders issued therein.

The general principle of law is that an application for Judicial Review must be brought in the circumstances where a matter involves an administrative public body. “Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected. Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)(cited in Katabaazi v Uganda Christian University (Miscellaneous Cause-2017/268) [2018] UGHCCD 96 (20 December 2018)

The remedy of judicial review is sought and enforced against a public body/authority challenging a decision and the process followed by that body to reach that decision.

Relying on the decisions cited by Counsel for the Applicant, I am in agreement with Justice Kiryabwire that it is a misnomer to hold a private person liable for actions performed in exercise of their public power. (HCMC No. 12 of 2011 United Reflexologists of Uganda Ltd & another vs Hon Stephen Malinga & the A.G)

From the background of this application, it is not in doubt that the Applicant passed the now annulled guidelines in exercise of his mandate as the Minister responsible for Local Government. Therefore, such guidelines were issued by the public office held by the Applicant and not in his personal capacity. For that reason, he cannot be held liable for such actions of his office especially in an application for judicial review which seeks to challenge decisions of public bodies.

In the result, I find that the Applicant is not personally liable in Miscellaneous Cause No. 011 of 2020 and as such, he is not bound by the orders of the Court arising from the said application.

Section 82 (enlarged by Order 46 of the Civil Procedure Rules) of the Civil Procedure Act establishes this Court`s jurisdiction to review its own decrees or orders. It provides that: -

“Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is hereby allowed and who from the discovery of 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 order was 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 the judgment to the court which passed the decree or made the order.”

Having established that Miscellaneous Case No. 011 of 2020 could not, and cannot be enforced against the Applicant personally, the judgment and order of this court are hereby reviewed and set aside as against the Applicant. The Respondents shall proceed to execute the said order as against the 2<sup>nd</sup> Respondent in Miscellaneous Cause No. 011 of 2020.

This application is therefore allowed, with no order as to costs.

I so order.

Dated at Masaka this 10th day of June, 2021

**Victoria Nakintu Nkwanga Katamba**  
**Judge**