THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 58 OF 2021

1. **KINTU SAMUEL**
2. **SSEMWEZI CHRISTOPHER ::APPLICANTS**

VERSUS

1. **REGISTRAR OF COMPANIES**
2. **NAKINTU EDITH SARAH**
3. **LUYIRIKA KAVUMA DAVID:: RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The application is brought under section 36 (7) of the Judicature Act, section 96 and 98 of the Civil Procedure Act and Rule 5 (1) of the Judicature (Judicial review) Rules 2009. On the 20th April 2019, the Assistant Registrar of Companies, Denis Birungi in exercise of the registrar's quasi-judicial functions under the Companies Act, 2012 and the Companies (Power of Registrar) Regulations 2016, heard and determined a dispute concerning illegal alteration of the register on the company file of Nsangi High School Ltd brought by the 2nd and 3rd respondents against the applicants. A ruling was delivered on the 20th day of September 2019 from which an order was extracted.

The applicant's sought orders that the time within which to file an application for judicial review against the 1st respondent's decision/ruling be extended as well as costs of this application.

The applicants were represented by *Mr. Akaijuka Dennis*, the 1st respondent represented by *Mr. Birungi Dennis* and the 2nd & 3rd respondents represented by *Nansukusa Rebecca*.

Submissions

Counsel for the applicant cited Section 36 (7) of the Judicature Act Cap 13 as amended and Rule 5 (1) of the Judicature (Judicial review) Rules 2009 are to the effect that the 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 has good reason for extending the period within which the application shall be made. Counsel further cited Section 96 and 98 of the Civil Procedure Act, that the High Court has inherent powers to enlarge/extend the time within which to file any matter before court.

Counsel submitted that the application for judicial review is premised on the following principles: illegality, irrationality and procedural impropriety. The applicants submit that they were not given a fair hearing by the 1st respondent in the process of arriving to the decision that they are dissatisfied with.

Counsel further submits that the delay to apply for judicial review was caused by their then lawyer whom they instructed within the time but the lawyers did not take any steps. Counsel cited the case of **Byamukama Edson v. Makerere University [2008] UGHC 36**, where the application for extension of time within which to apply for judicial review was granted by **Justice JPM Tabaro** (as he then was).

Counsel also submitted that they already pointed out the issues of irrationality and procedure impropriety. This was the position in the case of **Wasswa Primo v. Molders Ltd MA 999 of 2014** and **Mathias Konde v. Byarugaba Moses and Grace Nampijja HCCS No. 66 of 2007,** court held *that a court of justice will not allow a person to take advantage of what was obtained in bad faith.* Similarly, in **Makula International v. H.E Cardinal Nsubuga and another 1982 (HCB) 11,** court clearly *stated that a court of law cannot sanction what is illegal and further held that an illegality once brought to the attention of court overrides all questions of pleadings including admission made thereon.*

Counsel for the 1st respondent submitted that the Registrar of Companies cannot be sued for his or her quasi-judicial decision. The Registrar while discharging quasi-judicial functions is immune from any civil or criminal suits brought against either the individual registrar or the institution (Uganda Registration Services Bureau). This position has been affirmed by this honourable court in **Money**

Lenders Association of Uganda and MK Financies v. Uganda Registration of Services Bureau Company cause No. 11 of 2019, where his Lordship Justice Richard Wejuli Wabwire noted at page 9 and 10 that: "*In exercising their discretion, the registrar or anybody exercising the discretion enjoys a level of immunity less of which would affect decision making"*

Counsel submitted that it is pertinent to note that the registrar's role in hearing company disputes is similar to the Labour Officer's role in mediating labour disputes. Both officers exercise quasi-judicial powers and enjoy immunity from any subsequent proceedings, whether appeal or review by a superior court.

Counsel further submitted that it is immaterial that the applicants are seeking for extension of time to file an application for judicial review, the quasi-judicial maker of the decision is not party to any proceedings relating to a decision made in exercise of its quasi-judicial power coffered on it by statute.

Counsel submitted that in exercise of quasi-judicial power by the 1st respondent in company application No. 10 of 2019, the Registrar of companies cannot be party to an appeal or review. In company cause No. 11 of 2019, in the matter of **Money Lenders Association of Uganda and MK Financiers v. Uganda Registration of Services Bureau,** (Supra) His Lordship Justice Wabwire further held that *"… an appeal cannot be commenced against a presiding officer of a quasi-judicial body…"*

Counsel submitted that the applicants are guilty of inordinate delay, therefore cannot seek extension of time within which they can file an application for judicial review. The applicants filed the present application one (1) year and three months after the order was issued on 3rd October, 2019. No sufficient grounds have been adduced by the applicant to warrant the court's discretion to extend time within which they can file their judicial reviews application. The alleged mistake of counsel is not sufficient a reason to warrant this application to extend time.

Counsel cited **Section 5(1) of the Judicature (Judicial Review) Rules**, *provide that an application for judicial review shall be made promptly and in any event within three months from the date when the grounds 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.

Counsel prayed that the applicant's application be dismissed with costs to the 1st respondent or be struck off with costs.

Counsel for the 2nd and 3rd respondents submitted that the applicants filed this application claiming that some time back through a Board resolution dated 6th December, 2014, the 1st respondent was appointed director of Nsangi High school limited to hold 70% shares in the company, the same resolution appointed him a signatory to the company bank account held with Centenary Bank. The said resolution was nullified by the 1st respondent's ruling in Company reference no. 10 of 2019.

Counsel submitted that the 1st and 2nd respondents filed their affidavit in reply opposing the application where they stated that the applicants always were aware of the proceedings and decision of the registrar of companies, they participated until they stopped despite being served with hearing notices. The applicants were informed of the position of the company as per the ruling and order of the registrar of companies (see annexures A, B and C attached to the 1st and 2nd respondent affidavit) but they insisted that they are the rightful shareholders and directors of Nsangi High School.

Counsel further submitted that the alleged resolution of 6th December 2014 is a forged document, and it is the evidence of the 2nd respondent that the said resolution is not known to her, she nor Kakumba Nathan have ever signed it. (attached as D and E to the 1st and 2nd respondent's affidavit in reply). In addition, it is also evidence of the 2nd respondent that said resolution is not known to her and she has never given the 2nd applicant any shares, or as a company appointed him director or signatory to the company's account, all the applicant's claims are fraudulent supported by their forged documents.

Counsel submitted that the 2nd respondent is the majority shareholder of Nsangi High School with 85% shareholding and the managing director. While the 3rd respondent is the company secretary, positions they held before the applicants fraudulently changed the company's position by their forged resolution of 6th December 2014. A position which was reinstated by the registrar of companies on

the 3rd of October 2019 as per the ruling and order attached to the 2nd and 3rd respondents' affidavit in reply as annexure B and C (attached as annexure F)

Counsel argued that the applicant's affidavit in support of the application is full of lies how a decision of 3rd October 2019 be brought to their attention on the 29th of August 2017 as per paragraphs 1 and 7 of their application and affidavit in support. It's the evidence of the applicant that when they learnt of the decision of the company registrar they immediately instructed their lawyers Lubega Matovu & Co. Advocates to challenge the order; however no evidence of such instructions was brought to court.

Counsel submitted that in the applicant's affidavit in support they have resolved to apply for judicial review and attached a draft of an application for judicial review to the affidavit filed in court on the 18th day of February 2021, 14 months after the ruling they have always been aware of this. This only proves one thing that this application and the intended judicial review application are an afterthought of the applicants intend to abuse court process. This means that there are no serious issues to be resolved in the intended application for judicial review and the same does not have any likelihood of success depending on all the evidence in relation to the applicants' fraudulent actions and forgeries properly investigated by police and the registrar of companies and ruling was made to that effect.

Counsel cited **Rule 5 (1) of the judicial review rules** an application for judicial review shall be made promptly and in any event within three months from the date that there is good reason for extending the period within which the application shall be made. **Rule 5 (3) of the judicial review rules as amended**, this rule shall apply, without prejudice, to any statutory provisions which has effect of limiting the time within which an application for judicial review may be made.

The fact that the applicants immediately instructed their lawyer to file the appeal in the high court is evidence enough that they were aware of the ruling and order of the registrar of companies but choose to do nothing. As such the applicants are guilty of dilatory conduct in the matter and failure/neglect to take steps in filing the application without any clear justification whatsoever.

Counsel further submitted that the time in which to file that application for judicial review has long passed and the applicants have not shown any justifications for their future to file on time since they were all along aware of the order and even instructed their lawyers immediately file the appeal. The applicants intend to raise under judicial review as per their draft attached to the application were properly investigated and determined by the registrar of companies and a ruling was made. We do not submit that the applicants are not entitled to the orders sought in this application as they have not shown any sufficient reason as to why they did not file the application in the specified time or follow up the instructions given to their lawyers as they allege.

Counsel submitted that the applicants are guilty of latches and/or unreasonable delay are deliberately prolonging litigation with a view of circumventing the orders of the registrar of companies against them so that they can continue with their fraudulent illegal acts supported by their forgeries against the company or those the company dealt with. Looking at the law, there is good reason for extending the period within which the application for judicial review shall be made. From the applicant's application and affidavit in support no such good reason has been given for the delay apart from alleging mistake of counsel where there were even no proof of the alleged instructions or payment of fees to prove that indeed the applicants instructed the lawyers was provided.

Counsel cited the case **Steve O'riodan v. An Board Pleanala No. 806**, in which the application for extension of time was denied. The applicant failed to give good reasons for extending the time. Thus the applicants have not made out any case to justify the extension of time in which to file the application for judicial review as the applicants' allegations of mistake of counsel are un justified as they have not proved instructions to the said lawyers nor given reasons as to why ever since they gave instructions in 2019 they never checked on their case. The applicant's application is an abuse of court process intended to maintain their forgeries at the companies' registry.

Analysis

The applicants have erroneously brought court proceedings against the 1st respondent and there is no justification for instituting these proceedings against a

quasi-judicial body. This court entirely agrees with the submission of counsel for the 1st respondent that they were wrongly joined to the proceedings.

The Registrar while discharging quasi-judicial functions is immune from any civil or criminal suits brought against either the individual registrar or the institution (Uganda Registration Services Bureau). This position has been affirmed by this honourable court in **Money Lenders Association of Uganda and MK Financiers v. Uganda Registration of Services Bureau Company cause No. 11 of 2019,** where his Lordship Justice Richard Wejuli Wabwire noted at page 9 and 10 that: "*In exercising their discretion, the registrar or anybody exercising the discretion enjoys a level of immunity less of which would affect decision making"*

This court concurs with the decision of my brother Judge Wabwire Wejuli In company cause No. 11 of 2019, in the matter of **Money Lenders Association of Uganda and MK Financies v. Uganda Registration of Services Bureau,** where he held held that *"… an appeal cannot be commenced against a presiding officer of a quasi-judicial body…"*

The 1st respondent on this point of law is struck off with costs.

The applicants are seeking extension of time within which to file an application for judicial review. Counsel for the applicants filed the present application one (1) year and three months after the order was issued on 3rd October, 2019.

An order for enlargement of time to file an application should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the court, has nor presented a reasonable explanation of his failure to file the appeal within the time prescribed by the Act, or where the extension will be prejudicial to the respondent or the court is otherwise satisfied that the intended application is not an arguable one. It would be wrong to shut an applicant out of court and deny him or her a right to be heard unless his or her actions inexcusable and his or her opponent was prejudiced by it.

Therefore when an application is made for enlargement of time, it should not be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of "good cause" showing that the justice of the matter warrants such an extension. The court is required to carefully scrutinize the application to

determine whether its presents proper grounds justifying the grant of such enlargement. The evidence in support of the application ought to be very carefully scrutinized, and if that evidence does not make it quite clear that the applicant comes within the terms of the established considerations, then the order ought to be refused.

It is only if that evidence makes it absolutely plain that the applicant is entitled to leave that the application should be granted and the order made, for such an order may have the effect of depriving the respondent of a very valuable right to finality of litigation. **(See Ojara v. Okwera (Miscellaneous Application-2017/23) [2018])**

This requirement was re-echoed in **Tight security Ltd v. Chartis Uganda insurance company limited and another H.C Misc Application No. 8 of 2014,** where it was held *that for an application of this kind to be allowed, the applicant must show good cause. "Good cause" that justifies the grant of applications of this nature has been the subject of several decisions of courts.* In **Roussos v. Gulam Hussein Habib Virani, Nasmudin Habib Virani, S.C. Civil Appeal No. 9 of 1993,** in which it was decided *that a mistake by an advocate, though negligent, may be accepted as sufficient cause, ignorance of procedure by an unrepresented defendant may amount to sufficient cause, illness by party may also constitute sufficient cause, but failure to instruct an advocate is not sufficient cause,* which principle was further stated in **Andrew Bamanya v. Shamsherali Zaver, C.A Civil Application No. 70 of 2001** *that mistakes, faults, lapses and dilatory conduct of counsel should not be visited on the litigant; and further that where there are serious issues to be tried, the court ought to grant the application* (**see *Sango Bay Estates Ltd v. Dresdner Bank [1971] EA 17* and *G M Combined (U) Limited v. A. K. Detergents (U) Limited S.C Civil Appeal No. 34 of 1995*).** However, the application will not be granted if there is inordinate delay in filing it **(see for example *Rossette Kizito v. Administrator General and others, S.C. Civil Application No. 9 of 1986 [1993]5 KALR 4*).** What constitutes "sufficient reason" will naturally depend on the circumstances of each case. **(See *Shanti v. Hindocha and others [1973] EA 207)*** which I do not see.

For the case of instructing a lawyer, it is not about talk, **Regulation 2(1) of the Advocates (Professional Conduct) Regulations** provides "*No advocate shall act for any person unless he/she has received instructions from that person or his/her*

authorized agent." In the case of **Okodoi & Anor v Okello (HCT-04-CV- MA-2016/143) [2017, Justice Henry I Kawesa** (as he then was) in his opinion stated that *"the onus is on the Advocate so instructed to take steps to make it known to all concerned that he/she has been duly instructed. The prudent Advocate, in practice takes out a notice of instruction informing the court and opposite counsel of such instructions. Where, there is a change in the instructions again a prudent Advocates files a "Notice of change of Advocates."* All this is aimed at avoiding a scenario like the current one, where instructions were not received and acted upon by the other party.

No sufficient grounds have been adduced by the applicant to warrant the court's discretion to extend time within which they can file their judicial review application. However, their, defence is that it was mistake of counsel is not supported by cogent evidence and no evidence has been presented to confirm the said mistake of counsel. The fact that the applicants immediately instructed their lawyer to file the appeal in the high court is evidence enough that they were aware of the ruling and order of the registrar of companies but choose to do nothing.

As per the case before court, counsel for the applicant's argument that it was mistake of counsel does not hold water in such a regard. As the matter was heard and submissions filed, no proof of instructions was availed to court for the claim of failure to file in time. If so, counsel failed to hold his part of the bargain, we have the Law council where the applicant can report a case of profession misconduct or negligence.

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation.

Inordinate delay in making an application for judicial review will always be a good ground for refusing to exercise such discretionary jurisdiction of this court to entertain the application. The court refuses relief to an applicant on ground of laches because of several consideration e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

Therefore this application fails and the same is dismissed with costs to the respondents.

I so order.

SSEKAANA MUSA
JUDGE
30th June 2021