THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 340 OF 2018

IN THE MATTER OF THE JUDICATURE ACT CAP 13

AND

IN THE MATTER JUDICATURE (JUDICIAL REVIEW) RULES, SI. NO. 11 OF 2009

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

OKULLU RICHARD :: APPLICANT

VERSUS

ATTORNEY GENERAL ::: DEFENDANT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought this application by way of Notice of Motion under Articles 42, 44 and 28 of the Constitution of the Republic of Uganda, Section 36 the Judicature Act Cap 13, Rules 3, 4, 6, 7 & 8 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 for the following reliefs;

a) An Order of Certiorari to set aside, quash and declare invalid and or null the orders, decision and directive of the police disciplinary council's court which heard, determined and disallowed his appeal without his appearance and submission.

b) An order of injunction against the Respondents and its agents, department from effecting any action, policies, directives, instruction and or its recommendations to discipline and or dismiss the Applicant from service of the police force that affects his constitutional rights.

c) An order of mandamus compelling the Respondent and the police force department to re-instate the Applicant to his duties of service of corporal in the police force and payment of his salaries, allowances since 13/12/2016 till completion of the case.
d) An order for general damages.
e) An order for aggravated damages.
f) An order for exemplary damages.
g) An order for costs.

[2] The grounds of the application are set out in the Notice of Motion and in an Affidavit sworn in support of the application by Okullu Richard, the Applicant. Briefly, the facts of the case are that the Applicant was a police officer of the rank of corporal and served in the police force since 2009 up to when he was dismissed sometime in 2018. The Applicant averred that during his service, he was deployed at the Police Force Civil Aviation Department of Entebbe International Airport and that while serving at Interpol, he made a confidential report to the Inspector General of Police accusing and implicating his immediate supervisors of smuggling gold and ivory at the airport. He further averred that the said information contained in the report leaked to his superiors. He stated that as part of his duties, he was instructed to conduct searches on passengers to Dubai, which he diligently and professionally conducted and made clearance of two passengers who travelled. Sometime later on, he was falsely accused by his immediate supervisor called ACP Mwesigwa Caleb for alleged unlawful exercise of authority by aiding human trafficking to Dubai. The Applicant was charged in Police Disciplinary court, tried and sentenced to dismissal. Dissatisfied with the outcome, he appealed to the Police Appeal Court but the appeal was heard without his presence and or knowledge. His appeal was disallowed and, as a result, he was accordingly dismissed from the Police Force. The Applicant averred that the actions of the Uganda Police through its officers were unconstitutional, illegal and biased. He concluded that it is fair, just and equitable that his application be allowed.

[3] The Respondent did not file an affidavit in reply.

Representation and Hearing

[4] At the hearing, the Applicant was represented by Mr. Okumu Dan while the Respondent was represented by Ms. Maureen Ijang, State Attorney. Counsel for the Respondent informed the Court that although they had filed no affidavit in reply, they intended to argue the application on matters of law only. Both Counsel agreed to and filed written submissions, which have been reviewed and adopted by the Court. Counsel for the Respondent raised a preliminary objection in their submissions in reply. I will begin by considering the point of law raised by the Respondent's Counsel.

Submissions on the Preliminary Objection

[5] Counsel for the Respondent raised a preliminary objection to the effect that the present application is barred by law for having been filed out of time. Counsel submitted that the Applicant filed an application seeking for judicial review remedies but the said application was filed out of time. Counsel submitted that the reason the Applicant gave for filing the application out of time was that he (the Applicant) was served with the dismissal letter after two years. Counsel submitted that the law is clear, that time starts running from the date the cause of action arose and not after waiting to be served with the dismissal letter. Counsel further submitted that the Applicant was aware of the proceedings and the final decision of the police appellate court. Counsel added that the Applicant was dismissed, removed from the pay roll and was not deployed. Counsel concluded that these acts were sufficient alerts of the Applicant's dismissal and he should have acted within the time limit but chose to ignore or neglect the same. Counsel relied on Rule 5(1) of the Judicature (Judicial Review) Rules, 2009 and the cases of ***Hyuha Vincent vs Uganda Police Force and Another, Miscellaneous Cause No. 012 of 2017; Picfare Industries Ltd Vs Attorney General & Anor, Miscellaneous Cause No. 258***

of 2013 and James Basiime vs Kabale District Local Government, Miscellaneous Application No. 20 of 2011 to support his arguments.

[6] In reply, the Applicant filed an **Affidavit in Rejoinder** instead of a submission in rejoinder to the Respondent's submissions. This was irregular since an affidavit cannot respond to a submission. Secondly, the filing of pleadings had closed and an affidavit in rejoinder could not be filed at that stage without leave of the Court. Thirdly, the affidavit also contains technical matters of law and legal arguments; matters that ought not be contained in an affidavit going by the provisions of Order 19 rule 3 of the CPR. As such, the affidavit in rejoinder is defective and ought to be struck off the record. I will consider the objection using the facts as they appear in the pleadings on record.

Determination by the Court

[7] **Rule 5 of the Judicature (Judicial Review) Rules, 2009** provides as follows:

"Time for applying for judicial review

(1) An 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 considers that there is good reason for extending the period within which the application shall be made."

[8] The law is that time limitations are substantive provisions of the law and limitation of actions is not concerned with merits of the case. In ***Dawson Kadope vs Uganda Revenue Authority, HC MA. No. 40 of 2019*** while citing the decision in ***I.P Mugumya vs Attorney General, HC M.A No. 116 of 2015***, the court held that from the clear wording of the rule [5 (1)], failure to bring the application within the prescribed time and the failure to seek and obtain the court's order extending the time renders the application for judicial review time barred and therefore not amenable for judicial review. The court added that the

general effect of the expiration of the limitation period is that the remedy is also barred.

[9] The above cited decisions do state the correct position of the law taking into account the long settled position of the law that provisions as to time limitation are usually strict and inflexible; such that litigation is automatically stifled after the fixed time has elapsed, regardless of the merits of a particular case. In ***Hilton vs. Sutton Steam Laundry [1956] 1 KB 73***, **Lord Greene M.R** at P. 81 stated thus:

> ***"But the statute of limitations is not concerned with merits. Once the axe falls, it falls, and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled, of course, to insist on his strict rights."***

[10] In the instant case, the applicable rules (the Judicial Review rules) set a period of three months from the date when the grounds of the application first arose. An application for judicial review is meant to impeach a decision or action of a public body or administrative tribunal on grounds of illegality, irrationality and/or procedural impropriety. As such, any alleged grounds for judicial review are said to have arisen when the impugned decision or action is said to have taken place. The time when the decision or action is brought to the attention of the affected person is not a factor to be considered in the computation of time. Such an explanation is supposed to be used as a ground for seeking the leave of the court to allow the application to be brought outside the set time which is permitted by the same rule. As such, within the terms of Rule 5(1) cited above, such justification, however genuine, cannot constitute an exception to the strict application of the set timeline.

[11] On the facts herein, evidence indicates that the Applicant was subjected to the police disciplinary process which process terminated by dismissal of his appeal to the Police Council Appeals Court. The dismissal of the appeal is said

to have occurred on 8th December 2016 according to a communication dated 13th December 2016 on record as Annexture "D" to the affidavit in support of the application. The Court is not told when Annexture "D" was served onto the Applicant. By letter dated 2nd June 2017 (Annexture "E" to the affidavit in support of the application), the Applicant was informed of his dismissal from the Uganda Police Force. The Applicant informed the Court that he only received the latter letter (Annexture "E") on 21st June 2018 and, according to him, that is when the grounds of judicial review first arose. The Applicant, therefore, brought this application on 7th September 2018, which he claims was within time.

[12] Although it may be true that such is when the Applicant came to learn of his dismissal, it is not true that it is when the grounds for judicial review first arose. The grounds first arose when the decision dismissing the Applicant's appeal was taken since the Applicant's main claim is that his appeal was heard and determined without affording him a fair hearing. The communication of the Applicant's dismissal was consequent to the recommendation of the disciplinary court that had been upheld by the police appeals court. As such, it is not the letter communicating the Applicant's dismissal that occasioned the cause of action but rather the decision of the police appeals court dismissing the Applicant's appeal. If the Applicant was not immediately or within time informed of the decision recommending his dismissal, the option he had upon learning of the decision was to seek for the leave of court to bring the application for judicial review out of time. If the Applicant showed to the court that the reason he did not bring the application in time was because he was not aware of the decision, such would have constituted sufficient cause for the court to extend the time. Bringing the application without following the express requirement of the law makes the application incompetent before the Court.

[13] Let me add that although this application was brought pursuant to a special procedure under the Judicature Act and the Judicial Review Rules, the

provision under Rule 5 of the Rules does not contradict but rather reinforces the provisions under the Limitation Act. Even if this had been an ordinary suit, the requirement under Order 7 rule 6 of the CPR is to the effect when *"a suit is instituted after the expiration of the period prescribed by the law of limitation the plaint shall show grounds upon which exemption from such law is claimed."* As such, even if the Applicant was to rely on any exception to the limitation provision, such reliance would have had to be set out in the application; which was not done. As such, the incompetence of the present application cannot be cured by the application of Section 25 of the Limitation Act Cap 72.

[14] In the circumstances, I agree with the submission of the Respondent's Counsel and I find that this application is incompetent for being barred by law on account of having been filed out of time and without seeking leave of the Court for enlargement of time. The application is therefore struck out. Since the Respondent did not file an affidavit in reply to the application, I will order that each party bears their own costs.

It is so ordered.

Dated, signed and delivered by email this 15th day of August, 2022.

Boniface Wamala
JUDGE