



3. A declaration that the decision of the Respondent by indefinitely cancelling the Applicant's Certificate of Registration is illegal, unlawful, null and void.
4. An order of prohibition does issue prohibiting the Respondent from making any further decision basing on the aforesaid resolution.
5. An order for punitive damages does issue for stress, embarrassment, economic loss and inconvenience suffered by the Applicant as a result of the Respondent's decision.

The grounds upon which this application is based are contained in the affidavits of Mr. Soyekwo Godwin & Mr. Swilikey Henry Arap Ali for the applicants and are as follows;

1. That the applicant is a Non-Government Organization established under the laws of Uganda.
2. That the Respondent issued a Notice Ref: ADM/NGOB/42/40/74 dated 5<sup>th</sup> May 2021 to the Applicant canceling the Certificate of Registration issued to the Applicant without affording it a fair hearing as required by the tenents of justice, following alleged complaints by Hope Africa International (HAI) and faction from the Applicant Organization.
3. That the Applicant was never heard by the Respondent on any of the said allegations raised and letter to show cause dated 16<sup>th</sup> July 2020.
4. The respondent never afforded the applicant an opportunity to be heard before arriving at its decision to indefinitely cancel the certificate of registration of the applicant.
5. The decision of the Respondent was tainted with malice, ill will, malafide and it was illegal as the applicant was never heard before the Respondent took their final decision.

6. That it is just and equitable that the Respondent's decision embodied in the letter Ref: ADM/NGOB/42/40/74 Dated 5<sup>th</sup> May, 2021 be quashed by way of judicial review of Certiorari and prohibition as it is tainted with irrationalities, illegalities and irregularities.

The respondent opposed the application and filed six affidavits in reply, Brenda Oyulu-Senior Inspector for the National Bureau for Non-Governmental Organisations in the Ministry of Internal Affairs, Arthur Bwire Tukahirwa, Chemonges v David Mogosu, Diphas Masai Chepkworia, Francis Cherotwo and Dan Cherop Kapaliwa respectively;

1. The Respondents vehemently in opposition stated that the applicant's are not entitled to orders sought.
2. That the Respondent's decision through her Executive Director on the 5<sup>th</sup> day of May 2021 was valid and that there is no need for this honourable court to quash the decision since it was carrying out its mandate as provided under the NGO Act, 2016.
3. That the respondent received a complaint from Hope Africa International alleging irregularities in the operations of the applicant NGO who were the historical donors of the applicant.
4. That on 30<sup>th</sup> September 2015, a mediation meeting was held between Hope Africa International and Christ Alive Glorious Ministries (CAGMI) and the NGO Bureau to discuss the request for a forensic audit.
5. That both parties agreed mutually to cooperate in a forensic audit to determine the nature of any fiduciary relationship between the two organisations to see if accountability on the use Hope Africa International funds by the applicant was required.
6. That the Inspection was carried out on 14<sup>th</sup> November, 2019 on CAGMI by the respondent and the same was carried out in the presence of the RDC Kapchorwa, Deputy RDC and the faction Board of Directors of the applicant.

7. That four members of the central Management Board who are fellow directors of the applicant were in attendance at the said meeting but Tom Godwin Soyekwo, Tom Maniara and Henry did not attend the meeting, despite several phone calls and messages from the Respondent and the RDC of Kapchorwa.
8. That the meeting held on 14<sup>th</sup> November, 2019 at the RDC's premises, Kapchorwa district with the inspection team and directors of the Ministry for the applicant and it was agreed among others that the NGO Bureau should write to the District NGO Monitoring Committee of Kapchorwa to refrain Ton from conducting any matters related to CAGMI.
9. That on 6<sup>th</sup> March 2020, the NGO Bureau received another complaint from a faction of the pastors of CAGMI complaining about the illegal registration of an amended Constitution of the Organisation.
10. That on 15<sup>th</sup> July 2020, the Executive Director wrote to the applicant to show cause why the certificate of registration should not be cancelled since the permit of operation is expired and the organization had not been updated. The said letter was transmitted by email to Tom, Henry and Chemonges and also a hard copy of the same was picked by Henry Swilikey from the welfare and probation officer- Jimmy Nakitari, Kapchorwa district.
11. That on 5<sup>th</sup> May 2021, Executive Director of the respondent wrote to the Chief Administrative Officer, the Chairperson District NGO Monitoring Committee of Kapchorwa District Local Government cancelling the applicant permit to operate as an NGO.
12. That the respondent through her Executive Director acted without any malice, ill will and this action was within the law as provided for by the NGO Act, 2016 having given the applicant a right to be heard.

The applicants were represented by Ilukor Emmanuel and Ikilai Ben of Ilukor Advocates & Solicitors whereas the Respondents were represented by the Attorney General.

The court directed the parties to file their written submission which were duly filed and I have had a benefit of reading and have considered in the determination of this application.

## ISSUES

- 1. Whether the Applicant was accorded a fair hearing by the Respondent before the decision cancelling her certificate of Registration was issued on 05<sup>th</sup> May 2021.*
- 2. What are the remedies available to the Parties?*

### Determination of issues

*Whether the Applicant was accorded a fair hearing by the Respondent before the decision cancelling her certificate of Registration was issued on 05<sup>th</sup> May 2021.*

The applicant's counsel cited the case of **TWINOMUHANGI VS. KABALE DISTRICT & OTHERS [2006] HCB VOL. 1 Page 130 at Page 131 quoting Kasule, A.G J** as he then was that submitted that in order to succeed in an application for judicial Review, the following should be put into consideration;

- 1. The Applicant has to show that the decision or act complained of is tainted with illegality, irrationality, and procedural impropriety.*
- 2. Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultravires or contrary to the provisions of a law or its principles are instances of illegality.*
- 3. Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the*

*facts and the law before it, would have made such a decision, such a decision is usually in defiance of logic and acceptable moral standards.*

4. *Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in the non-observance of the Rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.'*

The Applicant's Counsel submitted that the Applicant being a Non-Governmental Organization was licenced and issued with a Certificate of Registration to that effect on the 9<sup>th</sup> day of July, 2010 by the Respondent.

Counsel for the Applicant submitted that the Applicant was not given any hearing and or served with any notice prior to cancellation of its certificate of Registration by the Respondent as evidenced in **Paragraphs 3, 4, 5, 6, 7, 8 and 9** of the Affidavit in Support of the Application deponed by **Tom Soyekwo Godwin** and **Paragraph 2** in the supplementary Affidavit in support of the Application deponed by **Swilikey Henry Arap Ali**. And that there is no evidence of receipt adduced to prove that the notice to show cause was served on to the Respondent.

The Applicants Counsel further contended that the Applicant had a right to be notified of the allegations brought against it by the Respondent and afforded a fair hearing thereof as expected under **Art. 28(1) and 42 of the Constitution and S. 33(2) of the Non-Governmental Organizations Act, 2016** and the principles of Natural Justice stated in **Ridge vs Baldwin [1963] 2 WLR 935** which was violated by the Respondent who allegedly dealt with a faction of persons who are not members of the Applicant.

The Applicant's Counsel also refered the honourable court to take Judicial notice of the fact that Chemonges David Mogosu, Diphas Masai

Chepkworia, Francis Cherotwo, and Cherop Kapaliwa who swore affidavits in support of the Respondent's case had previously sworn affidavits in support of the Applicant's case in this same matter but when tasked to produce evidence of their mandate before court, they failed to do so and hence they opted to withdraw all their said affidavits. In effect their affidavits should not be relied upon since they claim to be members of the Applicant which was an issue in the earlier Affidavits, they had earlier sworn on behalf of the Applicant but failed to produce evidence and even in this instant case, they have not done so on behalf of the Respondent.

The Respondent's Counsel in reply submitted that a notice to show cause was sent and the same was received by the Central Management Committee as evidenced in paragraphs 26 and 27 of the Affidavit in Reply of Brenda Oyulu Otyek.

Further still the decision of the Respondent is backed up by paragraphs 7 and 14 of the Affidavits in reply of Arthur Bwire and Chemonges Dabvid Mogosu who confirm that the decision of the Respondent was made after extreme patience.

The Respondent's Counsel further submitted citing Reg 37(1) of the NGO Regulations 2017 S.I. No. 22 that';

Any person or organization alleging that an organization has not complied with the Act or these regulations has a right to complain to the bureau. And Reg 38 states that the bureau shall have jurisdiction to hear and determine all complaints arising from-

- a) Non- compliance with the Act and these regulations.
- b) Complaints arising from the interpretation of or non-compliance the organization governing documents.

And the Reg 39 provides for the procedure the bureau takes to hear and determine the case.

And the Respondents counsel cited the case of *Onyaro John Owiny v Kitgum Municipal Council* where court held that “if the statutory procedures are equivalent to our superior to what natural justice would require, compliance of the statutory procedures will also satisfy the requirements of natural justice”.

Further still Section 7(2) of the NGO Act requires the Bureau to grant an organization a hearing before taking any disciplinary action. And the Respondents contend that they followed the correct procedure when handling the complaint.

Counsel for the Respondent further submitted that the applicant continued to operate without a valid permit to operate and having been issued with a notice to show cause why the certificate of registration should not be cancelled since the permit to operate had expired on 8<sup>th</sup> July, 2015 the applicant ignored the notice and continued with the said operations, which is a requirement under Section 31(1) of the NGO Act.

The respondents still submit that the Applicant and members of the organization were invited on several occasions to attend meetings and were indeed availed with information which formed the basis of the decision.

Therefore it's the Respondents submission that rules of natural justice were adhered to by issuing a notice to show cause why the Certificate of registration should not be cancelled but the applicant failed and refused to the jurisdiction of the respondent as the Regulator and as a result the respondent had to take immediate action since the applicant had refused to appear before the Bureau.

In there submissions in Rejoinder the Applicants emphasized that the Respondent relied on the evidence from the Affidavits deponed by members who are not members of the applicant so as to take a decision against the Applicant which in return turned out to be tainted with illegality, irrationality and procedural impropriety.



## Analysis

In the instant case, the Applicant's counsel argued that they were never informed about the cancellation of their certificate of Registration and thus they were never accorded a fair hearing. However, the Respondent asserts that the Applicants were duly served and thus accorded fair hearing and they adduced sufficient evidence to prove the same.

Whether fairness or the right to be heard is required and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue of whether a person can be heard may also be one for the discretion of the decision-maker. The test is whether no reasonable body would have thought it proper to dispense with a fair hearing. The court is final arbiter of what is fair. However, in limited circumstances the court may give great weight to the decision-makers view of what is fair. See *R v Panel on Takeovers and Mergers Ex p. Guinness* [1990] QB 146. *R v Monopolies and Mergers Commission Ex p. Mathew Brown Plc* [1987] 1 WLR 1235

What is required in any particular case is incapable of definition in abstract terms. As Lord Bridge has put it;

*" the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body , domestic, administrative or judicial, has to make a decision will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates."*

See *Lloyd v Mc Mahon* [1987]AC 625 at 702

The requirement fairness and to follow rules of natural justice must be tailored in a manner that has regard to all circumstances of each case or particular circumstances and varies according to the context. Therefore, what fairness requires is "essentially an intuitive judgment". In order to ascertain what must be done to comply with the principles of natural justice in a particular case, the starting point is the statute creating the power. See *Kioa v Minister of Immigration and Ethnic Affairs* (1985) 65

*ALR 231. Sheridan v Stanley Cole (Wainfleet) Ltd [2003] EWCA Civ 1046 [2003] 4 All ER 1181; Principal Reporter v K [2011] 1 WLR 18; R (on application of Shoemith) v Ofsted [2011] EWCA Civ 642; R v Secretary of State for Home Department, ex parte Doody [1993] 3 All ER 92.*

In this case the statute does provide for hearing; Section 7(2) of the NGO Act requires the Bureau to grant an organization a hearing before taking any disciplinary action.

What the applicant is demanding from the respondent i.e to follow rules of nature justice has to be appreciated in the circumstances of the case and the nature of the decision that was made. In the case of *Maneka Gandhi v Union of India [1978] 1 SCC 248* court noted;

*“The rules of natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a greater extent on the facts and circumstances of that case, framework of the law under which the enquiry is held and constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened the Court must decide whether the observance of that rule was necessary for a just decision on the facts of the case.”*

This court accepts that fairness is variable concept and fairness is not something that can be reduced to a one-size-fit all formula. The respondent contended that they sent emails or letters inviting the applicant’s representatives for a hearing. There is no sufficient and cogent evidence of such invitation of the applicant’s official representatives to show cause why their certificate of registration should not be cancelled.

It is also clear from the facts that there are different factions in the management and leadership of the applicant and this had clouded the decision making process in order to help the streamlining of the operations of the applicant.

The respondent should be an arbiter and the regulator without bias towards any of the warring factions. The respondent as a regulator should ensure that the dispute does not escalate towards killing of the applicant as this would affect the broader public than appeasing a few individuals.

The hearing envisaged under the law should work towards providing a corrective remedy and not merely sending letters as a formality of satisfying a right to fair hearing or natural justice in order to cause a cancellation of the registration of the applicant. The letters were duly received by one of the factions and they have deposed to that effect but the same letters are denied by the other faction which is in charge of managing the applicant.

It is wrong and improper to approach the meaning of fair hearing by placing reliance on any prior assumption as to its technical requirement. The simple approach is to look at the totality of the proceedings before the decision maker and then form an opinion on subjective standards whether or not equal opportunity has been afforded to the parties to fully ventilate their grievances before the decision maker. The principle of fair hearing cannot be applied as if it were a technical rule based on prescribed pre-requisite.

The applicant was not accorded a fair hearing as provided by the law and based on the circumstances of the case.

### **What are the remedies available to the Parties?**

An Order of certiorari issues quashing the decision of the respondent issued on the 5<sup>th</sup> May 2021 through the Executive Director Okello Stephen indefinitely cancelling the Applicant's certificate of Registration.

Each party shall bear its costs

**I so order.**

*SSEKAANA MUSA*

*JUDGE*

*24<sup>th</sup> October 2022*