THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 234 OF 2020

IN THE MATTER OF AN APPLICATION TO ENLARGE THE TIME TO LODGE AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

PATRICK MONI OMONY T/A

OMONY CONSULTING CO. LTD :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY :::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Articles 126(e), 41, 42, and 50 of the Constitution, Sections 23 & 36 of the Judicature Act Cap 13, Rules (3) (1) (a), (5), (6) (7) and (8) of the Judicature (Judicial Review) Rules 2009 as amended in 2019, Order (3) (2)(b), (5)(2), (10), (51) (6) and (52) (1) of the Civil Procedure Rules, Section 96 and 98 of the Civil Procedure Act, Access to Information Act 2005, Section 12(f) of the Uganda Public Service Act 2008. The application sought for the following orders;

a) To allow this omnibus application.
b) To enlarge the time within which to lodge an application for judicial review the subject of this Application.
c) General damages.
d) Costs of the suit.

[2] The Applicant further prayed that in the event that orders (a) and (b) above are granted, the following declarations be granted by the Court, namely that;

a) The actions of the Respondent to deny the Applicant information he requested were procedurally wrong and unreasonable.
b) The purported administrative actions of the Respondent on the Applicant's request were unfair and unjust and hence unconstitutional, illegal, null, and void.
c) The information requested for by the Applicant is neither confidential nor private information.
d) The Applicant is entitled to access and be availed all the information he requested from the Applicant.
e) The Respondent has not effected and implemented Section 7 of the Access to Information Act 2005.
f) The Respondent's acts were unreasonably discouraging towards the Applicant's cause and aspiration.
g) The Respondent through his actions violated the government's constitutionally enshrined obligation to national development and support of the growth of the private sector.

[3] The Applicant further prayed for orders that;

a) Prerogative orders of certiorari be issued by this Honorable Court to quash the Respondent's decision that did not follow fair and just administrative procedures to deny the Applicant access to all the information that he requested.
b) Prerogative orders of mandamus be issued compelling the Respondent to;
    (i) Avail the Applicant with all the information he requested for.
    (ii) Implement Section 7 of the Access to Information Act 2005 (Manual of functions and index of records of the public body).
c) Prohibitive orders be issued compelling the Respondent to strictly abide by the Access to Information Act 2005 in matters of access to information

and to refrain from all acts contrary to it in matters of access to information.

d) Consequential orders.
e) Special damages.
f) General damages.
g) Cost of the suit.

[4] The grounds of the application are set out in the Notice of Motion and in the affidavit in support of the application sworn by the Applicant. Briefly, the grounds are that the Applicant is a start-up research-based consulting firm duly registered in Uganda offering management accounting, strategic and corporate advisory services. The Applicant's mission and goal are to introduce and popularize innovative accounting services in the market to offset the negative job impact of technology's advancement and disruptions of such services.

[5] Pursuant to the above goal, on the 4th August 2019, the Applicant wrote to the Respondent requesting for economic data on accounting firms registered in Uganda. The data was requested to be provided in grouped gross total revenues classified as top accounting firms, middle accounting firms, and small accounting firms for three years. The Applicant further requested in the same letter for the breakdown of these groups to reflect the different revenue sector contributions to the firm's gross revenues in the form classified and categorized as amount generated accordingly as from the private sector, public sector, and the non-government organization sectors.

[6] The Respondent appointed an official to handle the Applicant's request and on the 24th September 2019, the Respondent through an email sent to the Applicant information in response to the request made. The Applicant was dissatisfied with the information provided as it did not meet the format and criterion of the information requested by the Applicant. On 12th October 2019,

the Applicant wrote back to the Respondent indicating the dissatisfaction with the information provided to him and amended his request to include the number of employees of firms and Pay as You Earn taxes per each cluster. The Respondent did not reply and on 24th February 2020, the Applicant threatened the Respondent with legal action if his request was not granted. On 25th February 2020, the Respondent wrote back with a total rejection of the Applicant's request citing confidentiality clause 47 in the Tax Procedural Code Act 2014. On 9th March 2020, the Applicant wrote to the Respondent requesting for a re-engagement on this matter through the procedures laid in the Access to Information Act 2005. On 16th March 2020, the Respondent rejected the Applicant's request and reiterated their earlier position on the matter.

[7] The Applicant averred that the Respondent had not fulfilled its statutory obligation mandated under **Sections 7 and 11 of the Access to Information Act 2005** and that the information requested by the Applicant was not private or confidential in any nature or form as alleged by the Respondent. He further averred that the Respondent has unreasonably caused the Applicant unnecessary burden and inconvenience in his quest to obtain this information which he is rightly and lawfully entitled to access from the Respondent. He also averred that the Respondent did not adhere to or abide by administrative procedures in a manner that was fair and just to the Applicant. He stated that the Respondent's actions were punitive, cruel and caused the Applicant mental anguish that he did not deserve. The said actions of the Respondent were thus illegal, procedurally wrong, and unreasonable.

[8] The Applicant averred that he was disabled from lodging the application for judicial review within the stipulated time due to the Covid-19 national lockdown. He stated that the matters brought before the court are issues of great importance that require the court's intervention. He concluded that no

injustice shall be occasioned to the Respondent should the application to enlarge time be granted. He prayed that the Court grants the orders prayed for.

[9] The Respondent opposed the application through an **affidavit in reply** deposed by **Bakashaba Donald**, an advocate in the Legal Services and Board Affairs Department of the Uganda Revenue Authority. In the reply, the deponent indicated that the Respondent would raise a preliminary objection to the effect that the application was time-barred, misconceived, bad in law and an abuse of the court process. The deponent stated that the information requested for by the Applicant was provided on the 24th of September 2019 and, as such, the effective date on which the decision was made was the 24th September 2019. This application was filed on the 28th August 2020 more than three months after the Applicants request for information was acted upon and decided on by the Respondent. This application could therefore not be entertained without leave of court to file the same, which leave has not been sought or granted.

[10] The deponent further stated that he was aware that the Constitution guaranteed the right to privacy and the Tax Procedure Code Act 2014 mandates the information filed by taxpayers to be confidential and as such can only be disclosed if the request falls within the ambit of the aforesaid Act or with the written consent of the taxpayer. He stated that Uganda Revenue Authority does not register and or keep records of professional accounting firms and accountants. Rather it was the Institute of Chartered Public Accountants of Uganda (ICPAU), a body of all accounting individuals and firms in Uganda, who have a mission clearly aligned with the Applicant's interests, that should have that information.

[11] The deponent thus stated that the actions of the Respondent were lawful and did not offend any legal principles and provisions of the law. The Respondent is neither the custodian nor the registrar of the said information

and the Respondent's reasons for rejection are couched in the constitutional right to privacy and statutory obligation of confidentiality to the information of the taxpayer. The deponent also stated that there was no public benefit in the demands made by the Applicant and that the Applicant was handled cordially but instead made unreasonable and misguided demands. The deponent prayed that the court finds that it is only just and equitable that the application is disallowed with costs to the Respondent.

[12] The Applicant filed an **affidavit in rejoinder** whose contents I have also taken into consideration.

Representation and Hearing

[13] At the hearing, the Applicant appeared in person while the Respondent was represented by Mr. Bamwerinde Barnabas. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both sides and were adopted by the court. I have taken the submissions into consideration in the course of determination of this matter.

Issues for determination by the Court

[14] The Court has to determine the following issues:

(a) Whether the application was properly brought as an omnibus application.

(b) Whether the Applicant has established sufficient cause for enlargement of time within which to file an application for judicial review.

(c) Whether the application by the Applicant is amenable for judicial review.

(d) Whether the actions of the Respondent to deny the Applicant information he requested for were illegal, procedurally wrong, and unreasonable.

Resolution by the Court

Issue 1: Whether the application was properly brought as an omnibus application.

[15] In this same application, the Applicant sought to move the Court for enlargement of time within which to file an application for judicial review on the one hand, and also made the very application for judicial review. The Applicant relied on the decision of Justice Hellen Obura (as she then was) in ***Dr. Sheikh Ahmed Kisuule V Greenland Bank Ltd (In Liquidation), HC Miscellaneous Application No. 2 of 2012***, where similar applications were filed omnibus and the court allowed the matter to proceed on grounds that such mitigated the multiplicity of applications, one was a consequence of the other, and that no injustice would be occasioned by handling both applications at the same time. The Respondent herein did not raise a specific objection regarding the omnibus nature of the application.

[16] It is true as submitted by the Applicant that the law allows matters to be brought omnibus where such matters are of the same nature, have the effect of mitigating a multiplicity of suits, one is a consequence of the other or where no injustice would be occasioned by handling both applications at the same time. See ***Dr. Sheik Ahmed Kisuule vs Greenland Bank Ltd HC M.A No. 2 of 2012 [Obura J. as she then was];*** and ***Kapiri vs International Investments Ltd & 5 Ors HC M.A No. 160 of 2014 [Namundi J.]***

[17] In the instant case, I have to note that the rule on time within which to bring an application for judicial review under Rule 5(1) of the Judicature (Judicial Review) Rules 2009 is strict. Where an application is not brought within three months from the date when the grounds for judicial review first arose, there would be no application before the court. A party would have to first seek an order of the court for enlargement of time within which to bring

the application in accordance with the above said rule. In the strict sense, therefore, an application for judicial review that is brought out of time, without first obtaining leave of the court, would be incompetent before the court. This would therefore be a bar to bringing an omnibus application in this category of matters.

[18] Nevertheless, the circumstances of the present case justify a more accommodative approach. The Applicant is unrepresented and it is excusable that he could not have been alive to the above stated strict view of the law. He has put his case before the court and he expects a decision. In these particular circumstances, I am prepared to invoke the constitutional dictate under Article 126(2)(e) of the Constitution and I would treat the strict application of the law as a mere technicality. The Respondent has been in position to respond to both matters (enlargement of time and judicial review). They would therefore not be prejudiced by the court allowing the omnibus nature of the application. In the circumstances, I have allowed to consider the application the way it was brought as an omnibus application.

Issue 2: Whether the Applicant has established sufficient cause for enlargement of time within which to file an application for judicial review.

[19] It was not in dispute that Applicant's application for judicial review was out of time. That was the reason the Applicant, within the same application, first sought for leave of the Court to allow the application albeit presented out of time. It was shown by the Applicant in his affidavit in support of the application and his submissions that he was disabled from lodging the application for judicial review within the stipulated time due to the national lockdown occasioned by the Covid-19 pandemic. The Applicant submitted that the said reason was sufficient to move the Court to grant the order for extension of time. The Applicant relied on the case of ***Kapiri V International Investments Ltd and others, Misc. Application No. 160 of 2014***.

[20] In reply, Counsel for the Respondent submitted that the Applicant's claim was time-barred as the application was filed out of time and there was no just cause to warrant the extension of time. Counsel cited *Rule 5 of the Judicature (Judicial Review) Rules 2009* as strictly applied in the case of ***Pauline Nakabuye V Uganda Revenue Authority, Miscellaneous Application No. 372 Of 2019*** in which it was stated that applications for judicial review such as this one shall be made promptly or within three months from the date when the grounds for the application first arose. Counsel further relied on the case of ***Joseph Initiative Ltd V Akugizibwe Joselyne, Miscellaneous Application No. 51 Of 2018*** where it was held that a party asking for an extension of time has to show that he was prevented by sufficient cause from taking a particular step in time. Counsel further relied on the case of ***Ojara V Okwera Miscellaneous Application No. 023 of 2017 [2018] UGHCCD 42*** where the court expounded on sufficient/just cause to mean that it must relate to the inability or failure to take a particular step.

[21] Counsel for the Respondent pointed out that the Applicant's request was denied by letter dated 25th February 2020 and the Applicant did not file this application until the 28th of August 2020, which was 182 days later. Counsel invited the court to take note of the fact that in as much as hearings were expressly barred during the lockdown, filing of matters in court was not prohibited. Counsel submitted that the Applicant had not led evidence to show that he took any practical steps before and immediately when the lockdown was eased in May 2020. Counsel submitted that the Applicant is seeking to hide behind the lockdown as an excuse yet he sat on his rights. Counsel prayed that the court dismisses this application with costs.

Court Determination

[22] *Rule 5 (1) of the Judicature (Judicial Review) Rules 2009* provides that;

> *"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."

[23] Under the law, good or sufficient reason must relate to the inability or failure to take the particular step in time. See: ***William Odoi Nyandusi vs Jackson Oyuko Kasendi, CA Civil Application No. 32 of 2018*** and ***Rosette Kizito vs Administrator General & Others, SC Civil Application No. 9 of 1986***. The question therefore is whether the present Applicant has established sufficient cause for his failure to bring the application for judicial review within time.

[24] It is not in dispute that during the period between March and August 2020, Uganda, just like the entire World, was under lockdown that was occasioned by the Covid-19 pandemic. Although, as stated by the Respondent's Counsel, the courts remained open for purpose of filing court matters, it needs no emphasis that most aspects of life remained locked. These included a restriction on movement of persons and on office operations. It would, therefore, be expecting too much of the Applicant that he ought to have beaten all odds to ensure that he filed his matter within time. I find it sufficiently excusable that the Applicant was unable to bring the application within time.

[25] In the circumstances, the Applicant has established good or sufficient reason for having failed to bring the application for judicial review within time. I therefore allow the application for enlargement of time within which to bring the application. Since I have already allowed to consider the present application as an omnibus one, the already filed application is accordingly ratified.

Issue 3: Whether the application by the Applicant is amenable for judicial review.

[26] Counsel for the Respondent submitted that for one to succeed under judicial review, it is trite law that he must prove that the decision made was tainted either by illegality, irrationality or procedural impropriety. The Applicant must also show that there was no alternative remedy or that the alternative remedy was ineffective. Counsel cited the cases of ***Kaase v Makerere University & 3 Others, HC Misc. Cause No. 205 of 2018*** and ***Catherine Amal V Equal Opportunities Commission, HC Misc. Cause No. 233 Of 2016***.

[27] The law is that judicial review is concerned not with the decision but with the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. The duty of the court, therefore, is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice. See: ***Attorney General vs Yustus Tinasimiire & Others, Court of Appeal Civil Appeal No. 208 of 2013*** and ***Kuluo Joseph Andrew & Others vs The Attorney General & Others, HC MC No. 106 of 2010***.

[28] The *Judicature (Judicial Review) (Amendment) Rules 2019,* sets out the factors that should be considered by the Court when handling applications for judicial review. *Rule 7A thereof* provides as follows:

(1) The court shall, in considering an application for judicial review, satisfy itself of the following –

(a) That the application is amenable for judicial review;

(b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and

(c) That the matter involves an administrative public body or official.

[29] As such, for a matter to be amenable for judicial review, it must involve a public body in a public law matter. Two requirements, therefore, need to be satisfied; first, the body under challenge must be a public body whose activities can be controlled by judicial review; and secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights. See: **Ssekaana Musa, *Public Law in East Africa*, p. 37 (2009) LawAfrica Publishing, Nairobi**.

[30] The legal requirement, therefore, is that the right sought to be protected under judicial review proceedings is not of a personal and individual nature but a public one enjoyed by the public at large. The "public" nature of the decision challenged is a condition precedent to the exercise of the courts' supervisory function. See: ***Arua Kubala Park Operators and Market Vendors' Cooperative Society Ltd vs Arua Municipal Council, HC MC No. 003 of 2016***.

[31] In the instant case, there is no dispute that the Respondent is a public authority. Although the firm under which the Applicant operates is a private entity, the Applicant clearly showed that he needed the required information for public use. The action was therefore not brought in pursuance of private or personal remedies but one from which the public at large would derive an advantage. There is also no evidence before me that the Applicant had a more effective remedy under the law which he would have taken advantage of before bringing the judicial review application. I am therefore satisfied that the application by the Applicant is amenable for judicial review.

Issue 4: Whether the actions of the Respondent to deny the Applicant information he requested for were illegal, procedurally wrong, and unreasonable.

Submissions

[32] The Applicant submitted that the Respondent did not abide by the statutory provisions in the Access to Information Act 2005 that demanded specific actions to be discharged on the Applicant upon his request for information. According to the Applicant, these included providing the Applicant with a form for the request for information; a duty on the Respondent to assist and expedite the Applicant's request for information; the Applicant's right to third party assistance; the Applicant's right to an internal appeal. The Applicant relied on the case of ***R V Lord President of the Privy Council, Ex parte [1993] AC 682*** where **Lord Browne-Wilkinson** held that;

"The fundamental principle of judicial review is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases…. this intervention ….is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a manner which is not procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawful."

[33] The Applicant submitted that if the court looked at the process through which the Respondent arrived at the impugned decision to deny the Applicant's request, the court would see non-adherence to legislative provisions explicitly laid down and would find it tainted with illegality, procedural impropriety, and irrationality; which was in violation of the Applicant's enjoyment of a just and fair treatment. The Applicant prayed to court to find the impugned decision invalid and of no effect.

[34] In reply, Counsel for the Respondent cited *Section 3 of the Uganda Revenue Authority Act* which lays down the mandate of the Respondent to the effect that the authority is to administer tax laws in Uganda. Counsel submitted that the Tax Procedure Code Act 2014 expressly bars dissemination of information which has come into the Respondent's possession or knowledge in connection with the performance of duties under the tax law except as may be necessary for the purpose of giving effect to the provision of tax law. Counsel submitted that there was no procedure under the Tax Procedure Code Act 2014 that provided for how to access information filed and furnished under the aforementioned act more so since dissemination was barred. Counsel relied on the case of ***Johns V Australian Securities Commission*** where Justice Brennan stated that *"when power to require disclosure of the information is conferred for a particular purpose, the extent of dissemination or use of the information disclosed must itself be limited by the purpose for which the power was conferred."*

[35] Counsel submitted that the Respondent is not the statutory custodian of the information sought by the Applicant and is bound by the aforementioned provisions not to disclose information that comes into her custody. He submitted further that the Respondent's decision was premised on the aforesaid legal provisions and case law and it would be ultra vires to grant the Applicant's request. Counsel invited the Court to find that the Respondent acted lawfully, did not flout any procedure and its decision was reasonable.

Court Determination

[36] In order to establish that a decision of a public body should be impeached by the Court through judicial review, the Applicant has to satisfy the Court on a balance of probabilities that the decision making body or officer subject of his challenge did not follow due process in making the respective decisions or acts and that, as a result, there was unfair and unjust treatment of the Applicant

and/or other members of the public. This is in line with the provision under *Rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019*.

[37] The Court may provide specified remedies under judicial review where it finds that the named authority has acted unlawfully. A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: ***ACP Bakaleke Siraji vs Attorney General, HC MC No. 212 of 2018***.

[38] In the instant case, the applicant seeks to challenge the decision of the Respondent on grounds of illegality, irrationality and procedural impropriety. I will explore each of the alleged grounds separately.

The Ground of Illegality

[39] Illegality has been described as the instance 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 *ultra vires* or contrary to the provisions of the law or its principles are instances of illegality. In the famous case of ***Council of Civil Service Unions v. Minister for the Civil Service (1985) AC 375***, **Lord Diplock** made the following statement, that has often been quoted, on the subject:

> ***"By 'Illegality' as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision-making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised."***

[40] A public authority will be found to have acted unlawfully if it has made a decision or done something without the legal power to do so. Decisions made without the legal power are said to be made *ultra vires*; which is expressed through two requirements: one is that a public authority may not act beyond its statutory power; the second covers abuse of power and defects in its exercise. See: ***Dr. Lam – Lagoro James vs Muni University, HC M.C No. 007 of 2016***.

[41] It is also the position of the law that where discretionary power is conferred upon legal authorities, it is not absolute, even within its apparent boundaries, but is subject to general legal limitations. As such, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise of discretion are usually expressed in different ways, such as the requirement that discretion has to be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, or that the decision must not be arbitrary or capricious. See ***Smart Protus Magara & 138 Others vs Financial Intelligence Authority, HC M.C No. 215 of 2018***.

[42] In the instant case, the particulars of illegality pointed out by the Applicant are that the Respondent did not abide by the statutory provisions under the Access to Information Act 2005 that demanded for specific actions to be discharged upon receiving the Applicant's request for information.

[43] It ought to be made clear from the outset, however, that the Applicant did not initially make his request for information within or pursuant to the provisions of the Access to Information Act 2005. This is clear from the Applicant's own evidence. The Applicant first made the request for information from the Respondent by letter dated 4th August 2019. Pursuant to that request, information was provided to the Applicant which the Applicant, however, found

insufficient. The Applicant by letter dated 24th February 2020 reiterated his request giving the Respondent 7 days within which to comply failure of which he would move "to take legal action for this disenfranchisement of my constitutional rights through the Access to Information Act". In answer to that letter, the Respondent wrote back to the Applicant expressing reasons as to why they could not provide the information.

[44] Upon receipt of the above communication from the Respondent, the Applicant wrote a letter dated 9th March 2020 in the following terms:

> *"RE: REQUEST FOR ACCESS TO INFORMATION FORMS*
>
> *Following the rejection of my request on the above subject … I am unable to move forward due to the informality/illegality of our engagement on this matter. … I hereby formally make the request according to section 5 and 11 of the Access to Information Act and section 3(3) of its Regulation. … It is my request to ask you to comply as stipulated in section 12 of the Access to Information Act …"*

[45] The Respondent replied to the above letter referring the Applicant to their earlier decision communicated by letter dated 25th February 2020.

[46] From the above correspondence, it is clear that the Applicant did not bring the request pursuant to the Access to Information Act initially. The Applicant only noticed this route later on and only invoked the Access to Information Act by his letter of 9th March 2020. The point therefore is that the alleged illegality in the way the Respondent handled the Applicant's request cannot and should not be based on the Respondent's compliance or lack of it with the provisions of the Access to Information Act. Rather it has to be based on the Respondent's compliance or lack of it with the body of law governing access to the kind of information in possession of the Respondent. I have had to make this conclusion first, because the Access to Information Act has a special procedure to be followed when making the request for information and the manner of

handling such a request. These procedures were not followed, simply because the Applicant's request was not based on the Access to Information Act. The Applicant should, therefore, not expect the decision of this Court to revolve around how strictly the Respondent complied with the provisions of the Access to Information Act.

[47] That being the case, the concern of this Court is whether the Respondent had lawful excuse to decline releasing the information asked for by the Applicant and whether the reasons given for the refusal were lawful and or reasonable. The decision of the Respondent is contained in the letter dated 25th February 2020. The letter in part reads;

> *"The purpose hereof is to advise that, legally, you are not entitled to the tax payer's information as you do not and your request does not fall within the purview of Section 47 of the Tax Procedures Code Act …*
>
> *We thus advise you to seek the consent of all the Accounting Firms whose information you wish the URA to provide, or you may conveniently directly obtain such information from the firms whose data you wish to study.*
>
> *Note that the URA is both constitutionally and statutorily bound to respect the privacy of persons, save as otherwise allowed by the laws of Uganda.*
>
> *Given the nature of your request and its likely ramifications if URA were to honor, we are copying in the president of the Institute of Certified Public Accountants of Uganda, if she might wish to be of help to you."*

[48] The above excerpt shows that the Respondent relied on certain provisions of the law to decline granting the request for information made by the Applicant. I will examine these provisions to establish whether they granted the Respondent the legal cover claimed by them.

[49] Article 41 of the Constitution of the Republic of Uganda provides as follows:

> ***"Right of access to information.***

(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State <u>except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person</u>. [Emphasis added]
(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information."

[50] Two things are clear from the above provision of the Constitution. One is that the right of access to information is not absolute. Two is that Parliament was directed to make a law to give effect to the provision under Article 41(1) of the Constitution. Parliament did so by enacting the Access to Information Act 2005. Section 5 of the Access to Information Act restates the provision under Article 41(1) of the Constitution. Part III of the Act provides for exemption from access of certain categories of information. Section 24 of the Act makes access to information subject to certain conditions and provides under sub-section (1) that a *"person is entitled to access information or a record of a public body if that person complies with all the requirements of this Act relating to a request for access to that information or record; and access to that information or record is not prohibited by this Part"*.

[51] Section 26(1) of the Act makes provision for protection of information relating to privacy of the person. It provides that subject to sub-section (2), an information officer may refuse a request for access if its disclosure would involve the unreasonable disclosure of personal information about a person, including a deceased individual. None of the exceptions under sub-section (2) apply to the present case. Section 27(1) on its part makes provision for protection of commercial information of third party. It provides that subject to sub-section (2), the information officer shall refuse a request for access to a record if the record contains - (a) proprietary information as defined in section 4; (b) scientific or technical information, the disclosure of which is likely to

cause harm to the interests or proper functioning of the public body; or (c) information supplied in confidence by a third party, the disclosure of which could reasonably be expected - (i) to put that third party at a disadvantage in contractual or commercial negotiations; or (ii) to prejudice that third party in commercial competition. None of the exceptions under sub-section (2) apply to the present matter. Under Section 28(1)(b) of the Act, the information officer *"may refuse a request for access to a record of the body if the record consists of information that was supplied in confidence by a third party –*
(i) the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source; and
(ii) if it is in the public interest that similar information, or information from the same source, should continue to be supplied".

[52] It was in view of the exemption and protection contained in the above provisions of the Constitution and of the Access to Information Act that the Respondent herein invoked the legal protection afforded to the category of information herein in issue under the Tax Procedures Code Act. Section 47 of the Tax Procedures Code Act 2014 provides for the duty of confidentiality. It states in sub-sections (1) and (2) as follows:

> *(1) A tax officer shall regard as secret and confidential all information and documents received in performance of duties as a tax officer.*
>
> *(2) A person appointed under, or employed in carrying out the provisions of a tax law shall not disclose any information or produce any document which has come into the person's possession or knowledge in connection with the performance of duties under a tax law except as may be necessary for the purpose of giving effect to the provisions of a tax law.*

[53] The exceptions provided for under sub-section (3) of Section 47 do not cover the Applicant's request. It ought to be noted that the provisions under Section 47(1) and (2) above are mandatory and the tax officer has no discretion in the matter. As such, the Respondent was right and within the law in

declining to release the information that was sought for by the Applicant. The Respondent correctly pointed out that the Applicant was not entitled to the tax payer's information requested for as he and his request did not fall within the purview of Section 47 of the Tax Procedures Code Act. The Respondent further pointed out to the Applicant that URA (the Respondent) is both constitutionally and statutorily bound to respect the privacy of persons, save as otherwise allowed by the laws of Uganda.

[54] It is therefore my finding that the Respondent had legal cover that not only protected them but also prohibited them from granting the Applicant's request for the particular information. The claim by the Applicant that the Respondent acted illegally is therefore not made out. In as far as it is based on the ground of illegality, the application by the Applicant fails.

The Ground of Irrationality

[55] In judicial review parlance, irrationality refers to arriving at ***"a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"***; Per **Lord Diplock** in ***Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374***. In ***Dr. Lam – Lagoro James Vs. Muni University (HCMA No. 0007 of 2016)***, Mubiru J. held that "in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law".

[56] On the case before me, given the legality of the decision taken and the reasons advanced by the Respondent to justify their decision, I do not find any irrationality or unreasonableness either of the decision or the process employed by the Respondent before declining to grant the Applicant's request. The

application also fails in as far as it is based on the ground of irrationality or unreasonableness.

The Ground of Procedural Impropriety

[57] According to **Lord Diplock** in ***Council of Civil Service Unions & Others vs. Minister for the Civil Service (supra)***, "procedural impropriety" has been defined to mean ***"the failure to observe basic rules of natural justice or failure to act with procedural fairness toward the person who will be affected by the decision."*** Procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: ***Dr. Lam – Lagoro James Vs. Muni University (HCMC No. 0007 of 2016)***.

[58] On the case before me, there is evidence on record that the Respondent offered appropriate audience to the Applicant. Even when the Applicant did not bring the application in compliance with the provisions of the Access to Information Act, the Respondent promptly supplied the information which they believed was not in conflict with their duty of confidentiality. When the Applicant wrote back indicating the greater details he needed, the Respondent responded communicating the decision declining to grant the request and the reasons. The Applicant also concedes that an officer of the Respondent by name of Jova Mayega was assigned to handle the Applicant's request. In view of such evidence, I do not find any trace of impropriety in the way the Respondent handled the Applicant's request for information. The ground of procedural impropriety also fails.

[59] In light of the above findings, therefore, the Applicant has not established any ground for judicial review on the matter before the Court. The Applicant

has not proved that the action or decision of the Respondent to deny him the information he requested for was illegal, unreasonable and or procedurally improper. The application by the Applicant wholly fails on merit and it is dismissed with costs to the Respondent.

It is so ordered.

Boniface Wamala
JUDGE
07/04/2022