

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 292 OF 2021

CHAPTER FOUR UGANDA:.....APPLICANT

VERSUS

NATIONAL BUREAU FOR NON-

GOVERNMENTAL ORGANIZATIONS:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application for judicial review Miscellaneous Cause under Article 42 of the Constitution of Uganda, 1995; Sections 33 and 36 of the Judicature Act, Cap. 13; Rules 3, 4, 5, 6, 7, 7A, 7B and 8 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 (as amended by S.I. No. 32 of 2019). The application seeks prerogative orders, and judicial reliefs that:

1. A declaration be and is hereby issued that:
 - a) The decision of the respondent communicated in a letter dated August 18, 2021 and referenced ADM/NGOB/42/40/40 concluding that the applicant is operating in contravention of the Non-Governmental Organisations Act, 2016 and the Non-Governmental Organisations Regulations, 2017 is irrational, unreasonable, unlawful, and is void.

b) The decision of the respondent communicated in a letter dated August 18, 2021 and referenced ADM/NGOB/42/40/40 indefinitely suspending the applicant's permit to operate as a Non-Governmental Organisation and ordering the applicant to cease operations with immediate effect purportedly to enable the respondent to conduct a comprehensive investigation into the applicant's operations is void.

2. An order of certiorari be and is hereby issued quashing forthwith the entire decision of the respondent communicated in letter dated August 18, 2021 and referenced ADM/NGOB/42/40/40 indefinitely suspending the applicant's permit to operate as a Non-Governmental Organisation and ordering the applicant to cease operations immediately purportedly to enable the respondent to conduct a comprehensive investigation into the applicant's operations.

3. An order of prohibition be and is hereby issued barring and/or prohibiting:

a) The respondent, any government department, any government agency, any government authority, any government official, their respective officers, servants, agents, representatives, or any person, from directly or indirectly or in any other way, implementing, applying, using, or relying on the impugned orders and/or decisions communicated in the respondent's letter dated August 18, 2021 and referenced ADM/NGOB/42/40/40 and from halting the applicant's operations and/or transactions.

b) The respondent from victimising, intimidating and/or harassing the applicant in any way; which victimisation, intimidation, and/or harassment may arise from and/or by reason of and/or related to and/or in respect of this application.

4. An order of mandamus be and is hereby issued ordering the respondent to receive the applicant's application for renewal of a permit to operate as a Non-Governmental Organization and to consider the application for renewal of permit in accordance with the provisions of the law.
5. A permanent injunction be and is hereby issued restraining:
 - a) The respondent, any government department, any government agency, any government authority, any government official, their respective officers, servants, agents, representatives, or any person from implementing, applying, using, or relying on the impugned orders and/or decisions communicated in the respondent's letter dated August 18, 2021 and referenced ADM/NGOB/42/40/40 and from halting the applicant's operations and/or transactions.
 - b) The respondent from victimizing, intimidating and/or harassing the Applicant in any way; which victimization, intimidation, and/or harassment may arise from and/or by reason of and/or related to and/or in respect of this application.
6. An order be and is hereby issued that:
 - a) The respondent pays general damages arising from the matters herein and interest thereon.
 - b) The respondent pays the costs of this application.

The application was supported by two affidavits by Zahara Nampewo and Peter Magelah Gwayaka both deponed on 28th October 2021. The grounds for this application were briefly that;

1. The applicant was issued with a permit to operate as a non-government organization on 25th November 2016 for 60 months.

2. On the 18th day of August 2021, the respondent made and communicated a decision to the effect that the NGO permit of the applicant was indefinitely suspended to enable the respondent to conduct a comprehensive investigation into the operations of the applicant and the applicant should cease operations with immediate effect.
3. The respondent copied the applicant's bankers, the financial intelligence authority, and URSB requesting/ halting all transactions with the applicant.
4. The respondent whilst acting ultra vires barred the applicant as a company limited by guarantee from complying with its requirements to submit filings.
5. The decision to indefinitely suspend the applicant's NGO permit was irrational, procedurally improper, and was reached in total disregard of the applicant's right to be heard.
6. The impugned decision was high-handed, arbitrary, and illegal for being ultra vires the Non-Governmental Organizations Act 2016 and/or the powers of the respondent.
7. It is in the interest of justice that the prerogative powers and judicial reliefs sought in this application are granted to the applicant.

The respondent filed an opposing affidavit in reply deponed by Okello Stephen on 19th November 2021. The grounds therein were briefly that;

1. On the 28th day of December 2020, I wrote to the applicant's Executive Director to show cause why the applicant's permit should not be revoked and the certificate of a registration cancelled.

2. On 6th January 2021 in response to the notice, the founding director of the applicant wrote to the bureau admitting that they had not filed their books of accounts and operations, reports of program activities, balance sheet, and sources of funding for the period November 2016 to January 2021 as mandated by the law.
3. Despite the written undertaking by the applicant to comply and file their annual returns, they neglected to file annual returns for the year 2020.
4. On 18th August 2021 based upon the failure by the applicant to file any annual returns, a report of the audited books of accounts, source of funding, and documents regarding its operations to the district technical planning committee, district NGO monitoring committee, and the sub-county NGO monitoring committee over four years, I wrote to the applicant suspending their permit.
5. I am advised by attorneys in the Attorney General's chambers whose advice I verily believe to be true that the respondent has not acted irrationally, illegally or ultra vires in implementing and carrying out its mandate.

The applicant was represented by AF Mpanga Advocates- *Mr. Daudi Mpanga & Mr. Apollo Katumba* and ALP Advocates *Mr. Francis Gimara (SC)* assisted by *Mr. Lastone Gulume* whereas the respondent was represented by the Attorney General's Chambers-*Ms. Charity Nabaasa (SA)* and *Ms. Maureen Ijang (SSA)*.

The parties were directed to file final written submissions that were duly considered by this court.

Two issues were framed for determination by this court;

1. *Whether the decision of the respondent communicated in the letter dated August 18, 2021 was high-handed, arbitrary, ultra vires, procedurally improper therefore unlawful.*
2. *What remedies are available to the parties?*

Judicial review according to the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

The nature and scope of judicial review was defined in the *Supreme Court Practice 1995 Vol. 1 R v Judicial Service Commission ex parte Stephen Pareno Misc. civil application No. 1025 of 2003 (unrep)*

“...The remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself. It is important to remember that in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which the individual has been subjected...”

In this case, the applicant’s counsel submitted that the impugned decisions of the respondent communicated in the letter dated August 18th, 2021 were unlawful and void on account of illegality (*ultra vires*), irrational, and unreasonable (*high handed and arbitrary*), and procedurally improper.

The impugned decisions were that;

- *The respondent concluded that the applicant “continues” to operate in contravention of the NGO Act, 2016 and the NGO Regulations, 2017 hence a need for comprehensive investigations into their operations to determine whether or not to revoke the applicant’s NGO permit and cancel the registration;*

- The NGO permit of the applicant was indefinitely suspended purportedly to enable the respondent to conduct a comprehensive investigation into the operations of the applicant;
- The applicant was directed to cease operations with immediate effect purportedly to enable the respondent to conduct a comprehensive investigation into the operations of the applicant.
- By copy of the said letter, the applicant's bankers, the Financial Intelligence Authority, and Uganda Registration Services Bureau, among others, were notified of this decision by the respondent and requested to also halt transactions with the applicant.

Counsel submitted that the respondent purportedly exercised its powers by suspending the applicant's NGO permit indefinitely pending investigations into its operations. That the NGO Act, 2016 does not create or give the respondent the aforesaid power.

A perusal of the NGO Act, 2016 reveals that Section 7 of the NGO Act, provides for a "*power to suspend an NGO Permit*" by the respondent. That Section 7(1) (b)(i) – (v) prescribes punishments only handed down by the respondent after subjecting an NGO to a disciplinary hearing. That subjecting an NGO to a disciplinary hearing, through summons and giving it an opportunity to be heard, is a *statutory pre-condition* that attaches to the exercise of the statutory powers conferred upon the respondent wherefore if the same are not complied with, it cannot be said that the statutory powers were exercised legally.

That the applicant herein was not subjected to any "*disciplinary hearing or proceedings*" prior to its indefinite suspension. The respondent did not "*summon*" the applicant to any "*disciplinary hearing or proceedings*" and neither did the respondent give the applicant "*the opportunity to be heard*" as dictated by Section 7(1)(b) and 7(2) of The NGO Act, 2016.

Counsel further submitted that paragraph 21 of the respondent's affidavit in reply stating that the correspondences between the applicant and the respondent were equivalent to according to the applicant an opportunity to be heard were not true. That Annexures "E", "F", and "G" to the affidavit in reply of Okello Stephen were dated after the respondent's decision of August 18, 2021. The right to a fair hearing should have been accorded to the applicant before that decision not after the said decision was handed down.

Counsel concluded that even if this court were to hold contrary to the applicant's case that the respondent accorded the applicant a right to a fair hearing before making the impugned decisions, or that the respondent was not required to; the respondent's decision to indefinitely suspend the applicant for an unknown period of time and the decision to continue with such suspension now beyond is ultra vires its mandate under the NGO Act, 2016.

On ceasing operations with immediate effect, counsel for the applicant submitted that was tantamount to a dissolution of the applicant by and at the hands of respondent itself, which is not permissible under the NGO Act, 2016.

Counsel further submitted that the respondent acted illegally and ultra vires by halting all transactions with the applicant. That respondent did not fix a time period of how long the halt or ban on the applicant's transactions will last. Thus, the reasonable presumption is that the halt or ban is indefinite and is set to last for as long as the respondent wishes and pleases which is illegal and ultra vires.

The basis upon which the respondent made the impugned decisions is stated in *paragraphs 14 and 15 of the Respondent's Affidavit in Reply deponed by Okello Stephen*, to be "the neglect to file annual returns for the year 2020" and the "failure to file annual returns, a report of the audited books of accounts, source of funding and documents regarding its operations to the District

Technical Planning Committee, District NGO Monitoring Committee and the Sub-county NGO Monitoring Committee over a four – year period”.

Counsel cited section 39(1) (b), (2), and (3) of the NGO Act submitting that the conclusion by the respondent on August 18, 2021, that the applicant had “*neglected to file annual returns for the year 2020*”, yet the deadline for filing annual returns was August 31, 2021, and had not yet fallen or expired, was an error of law due to non-application and/or misapplication of Section 39 of The NGO Act, 2016.

Counsel concluded that it was the applicant’s case that the respondent’s impugned decisions were tainted with illegality, and were accordingly unlawful and void.

In response, counsel for the respondent submitted that illegality deals with what an administrative body does which it has no capacity to do or does it without following the proper order. Counsel submitted that in this case the respondent has the capacity to make the decision it made as per section 33 of the NGO Act.

Referring to the NGO Act 2016 and Regulations of 2017, counsel submitted that all NGOs are required to submit annual returns and furnish information on sources of funds, funds received, estimates of income and expenditure to the NGO bureau and the District Technical Planning Committee. Counsel cited Section 33, 39, and Regulation 31 of the NGO regulations 2017.

Counsel submitted that according to the records of the NGO bureau since registration Chapter Four has never submitted to the NGO Bureau its annual returns or furnished information to the NGO Bureau regarding its operation. This was in contravention of the provisions of the NGO Act as well as the internal governing documents of Chapter Four Uganda. It was on that premise that the Bureau wrote to the applicant requiring them to show cause within 30 days from the date of the notice why the permit of

operation should not be revoked in accordance with section 33 of the NGO Act of 2016 and the certificate of registration cancelled in accordance with section 29(4) of the Act.

It was the respondent's submission that section 33 of the Act provides for the procedure of revocation of a permit of an organization and this was followed to the latter by the Bureau.

Counsel submitted that it was the applicant's admission that they had failed to file audited books of account, sources of funding and other information as required by law. The applicant's assertion that they had been filing the above information with URSB was controverted by the applicant's payment slips for annual returns which showed that the payments for the years 2016, 2017, 2018 and 2019 were all made on 8th January 2021. It is the respondent's submission that the books of account and any other information could not have been filed as alleged prior to the payment of the annual return fees.

The letter by the Bureau clearly enumerated the failure of the applicant to file any annual return with the bureau under section 39(3) (a) of the NGO Act and Regulations 30(1) of the NGO Regulations 2017 resulting into revocation of the applicant's permit. This was in compliance with section 33(3) of the NGO Act and therefore the bureau was well within its powers. Counsel for the respondent further submitted that the applicant's submission that their suspension was premised on section 7 of the NGO Act is not supported by the evidence.

The respondent submitted that there was a sharp contrast between the procedure laid out in section 7 and the procedure in section 33 of the NGO Act. That section 7(1) (b) of the Act provided for the power of the Bureau to summon and discipline organizations by suspending the permits of the organizations. Section 7(2) stated that the Bureau shall before taking any action under subsection (1) give the organization an opportunity to be heard. While section 33 of the NGO Act which provides for revocation does

not provide for a hearing prior to the decision to revoke a permit being made. However be that as it may, the letter requesting the applicant to show cause tantamount to a hearing as it afforded the applicant the opportunity to put forth a response/defence to the allegations that it had failed to comply with its own constitution and the provisions of the NGO Act and Regulations thereto.

Counsel for the applicant submitted that the law does not prohibit the respondent from carrying out subsequent investigations after the revocation of an organization's permit.

In respect to the applicant's submission on the illegality of indefinite suspension, it is the respondent's submission that the revocation does not provide for a time frame and in any case nor does suspension under section 7 of the Act. The applicant is free to reapply for a permit under section 33 of the Act. There is no evidence on record to show that the applicant has reapplied for the issuance of a permit.

The respondent also submits that having lawfully revoked the applicant's permit it had the effect of halting/ stopping the operations of the applicant. The applicant should not expect to continue operating upon revocation of a permit. Further the respondent submits it did not dissolve the applicant at all since section 48 of the NGO Act provides for how an organization may be dissolved.

It was the respondent's submission that the actions of the respondent were carried out in accordance with the provisions of the law and are not unlawful and void on account of illegality.

Further to the above but without any prejudice, **Rule 1A of The Judicial Review Rules** provides that one of the objectives of judicial review is the ensure adherence to expeditious hearing as a tenet of the constitutional right to a fair hearing. Expeditious hearing includes expeditious delivery of verdicts or decisions by the decision-maker. Therefore, to the extent that

the respondent's impugned decisions which seek to punish the applicant were delayed for and/or were delivered 8(eight) months after the issue of notice to show cause by the respondent and the response to the notice to show cause by the applicant is an abuse of authority and an infringement on the applicant's constitutional right to a fair and speedy trial which is non-derogable. For this unreasonable delay, the respondent's impugned decisions are irrational and unreasonable and should not be condoned by the court.

That while the applicant holds a permit to operate as an NGO, the applicant is also a company limited by guarantee duly incorporated with the URSB under the Companies Act. That the applicant's legal existence goes beyond holding an NGO Permit. That the applicant does not exist by reason of its NGO permit. Therefore, the respondent's impugned decisions to shut down the applicant and all its transactions as if the applicant's legal existence is exclusively pegged on the NGO permit issued by the respondent are oppressive, arbitrary, high-handed, irrational, and unreasonable.

The other instance of bad faith is that the respondent reached the impugned decisions not out of any lawful ground, but out of other extraneous reasons.

In response counsel for the respondent submitted that irrationality means conduct beyond the range of responses reasonably open to a public body. Counsel submitted that this was subjective test as the reviewing court will consider a decision if it is of the view that such a thing not have been done by a public body confronted with the same circumstances. Failure to appreciate facts properly coupled with unreasonableness or exercise of discretion that does not give due regard to the factual circumstances of the cause in issue render the decision to judicial review. Counsel cited *Oyaro John Owiny vs Kitgum Municipal Council High Court Miscellaneous Application No.8 of 2018*.

Counsel submitted that in the applicant's response to their letter, the applicant indicated that there had been an oversight in filing the required documents with the respondent however they had taken appropriate measures to file returns to the local authorities. That in considering the above response and the accompanying documents the respondent observed that as per 2020 the applicant had never filed any annual returns, a report of the audited books of accounts, source of funding and documents regarding its operation to the District Technical Planning Committee, District NGO Monitoring Committee and the Sub Community NGO Monitoring Committee.

Counsel submitted that the respondent's finding that the Bureau that the applicant continued to operate in contravention of its constitution, the NGO Act and Regulations was reasonable and in furtherance of the pertinent statutory provisions which govern the decision-making process of the Bureau.

In response to the applicant's submission that the impugned decision completely closed and shut down the applicant is false. That Mr. Okello Stephen's affidavit in reply reveals that the Bureau exempted the applicant from total closure by allowing them to pay rent, salaries of employees and other mandatory financial obligations. In addition, the bureau offered the applicant the opportunity to highlight any other areas for exemption.

In response to the applicant's submission that the applicant had until 31st August 2021 to file the annual returns for the year 2020, it is the respondent's submission that the applicant has not attached any evidence on record to show that they complied with the above requirement under law. The applicant action is consistent with the prior conduct of having failed to file annual returns on time and any other information of 2016, 2017, 2018 and 2019 in January 2021 in total disregard of the provisions of their constitution and the NGO Act and Regulations.

The respondent further submitted that the applicant having brought itself under the application of the NGO Act 2016 by registering as an NGO cannot, therefore, exist under a separate legal regime. The applicant submission that it does not exist by reason of its NGO permit and that the respondent's decision to shut down all its transactions as if the applicant's legal existence is exclusively pegged on the NGO permit. However, organization under the Act is defined to mean a legally constitute NGO organization under this Act which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part but for profit or commercial purposes.

It is therefore not true that the applicant can transact any other business other than the business of an NGO which is governed by the NGO Act, 2016.

With regard to the applicant's submission of the respondent's allegedly acted in bad faith, it was the respondent's submission that the applicant did not lead any evidence to show that the decision was rooted in bad faith and not in the reasons in the reasons provided by the Bureau. That the applicant's assertion that the respondent acted in bad faith by making reference to Constitutional Petition No. 7 of 2020; Chapter Four Uganda & Anor vs Attorney General is not true. The respondent from the evidence adduced submits that the applicant shows an aversion to complying with the provisions of the NGO Act hence their challenge on the constitutionality of the Act.

Counsel concluded that the respondent's decisions were therefore not irrational and unreasonable.

Analysis

The purpose of judicial review/administrative law is to identify the excesses of power and endeavours to combat them. Power may be exercised for purposes other than those for which it has been conferred by the Constitution or the law.

The will of the power-holder becomes the sole justification for the exercise of power. This is the essence of arbitrariness. It is clear that if powers are used outside the ambit of statutory purposes, it is not only ultra vires but also one of arbitrariness.

Where a public authority or decision maker has directed itself correctly in law, the court on judicial review will not interfere, unless it considers the decision was irrational. The court will however only quash a decision if the error of law was relevant to the decision making process. This could be ascertained where there is ulterior purpose or motive.

Powers given to a public body for one purpose cannot be used for ulterior purposes which are not contemplated at the time the powers are conferred. If a court finds that powers have been used for unauthorised purposes, or purposes 'not contemplated at the time when the powers were conferred', it will hold that the decision or action is unlawful.

Power or discretion conferred upon a public authority must be exercised reasonably and in accordance with law. An abuse of discretion is wrongful exercise of discretion conferred because it is the exercise of discretion for a power not intended. Accordingly, the courts may control it by use of the *ultra vires doctrine*. The courts task is merely to determine whether the decision made is one which achieves a reasonable equilibrium in the circumstances. See *Minister of Environment Affairs and Tourism v Bato Star Fishing (Pty) Limited* 2004 (7) BCLR 687 (CC); 2004 (4) SA 490 (CC) para 49.

The applicant is challenging the decision dated 18th August 2021 to indefinitely suspend its operations for failure to file returns contending that it was highhanded, arbitrary, ultra vires, procedurally improper and therefore unlawful.

The task for the courts in evaluating whether a decision is illegal or unlawful is essentially one of construing the content and scope of the instrument (law) conferring a duty or power upon a decision maker. The

courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the 'four corners' of their powers or duties. They are also acting as guardians of Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments. There are two major considerations to determine lawfulness of the decision: was the decision taken within the powers granted and if it was, was the manner in which it was reached lawful?

The respondent exercised powers conferred upon it to indefinitely suspend the applicant although in their submissions they seem to change their case to revocation of the permit. This is a complete departure from the case presented and pleaded by the respondent and will not be considered in that line. The exercise of power is premised on interpretation of the law that established the respondent i.e Non-Governmental Organisations Act.

The applicant's case is basically premised on the use of the words '*Indefinite Suspension*' instead of '*Suspension*' which is used in the Act. The respondent appears to submit that the actions are premised on the *Revocation* process and as noted earlier this is a departure from the case presented in their response.

An analysis of lawfulness in administrative law always involves comparing the administrative action to the authorisation for that action in the relevant empowering provision. For every action a decision maker takes there must be valid authorisation in the law empowering it. The law allows the respondent to suspend and as well as to revoke permits for operations under Section 7 of the Non-Governmental Organisations Act which provides as follows;

Powers of the Bureau

- (1) *The Bureau shall have power to-*
 - (a) *co-opt technical officers to deal with specific issues;*
 - (b) *summon and discipline organisations by either-*
 - (i) *warning the organisation;*
 - (ii) *suspending the permit of the organisation;*

(iii) exposing the affected organisation to the public;

(iv) blacklisting the organisation; or

(v) revocation of an organisation's permit; and

(2) The Bureau shall before taking any action against an organisation under subsection (1), give the organisation the opportunity to be heard.

The applicant seems to argue that the respondent acted illegally and ultra vires by halting all transactions with the applicant. That respondent did not fix a time period of how long the halt or ban on the applicant's transactions will last. Thus, the reasonable presumption is that the halt or ban is indefinite and is set to last for as long as the respondent wishes and pleases which is illegal and ultra vires.

The respondent-decision maker seemed to confuse the two processes of the disciplinary and later the revocation process and this led him to use a terminology of 'indefinite suspension' which is not provided for but rather suspension. I think he was being 'reckless' with his words as he tried to move away from what is provided for under the Act. The addition of the word '*Indefinite*' should not be treated as acting outside the four corners but rather it should be read into the Act what the legislation allowed him to do. There are two provisions which could be resorted to in addressing the applicant's breach of the law either section 7 or section 33 of the Non-Government Organisations Act. If there are two sections which overlap but deal with the same matter, one unqualified and one qualified then effect must be given to the section containing the qualification

The powers conferred under the Non-Governmental Organisations Act where never intended to be exercised in such a way that would defeat the entire spirit of the Act of regulating operations of the Non-governmental organisations or civil society sector. The fundamental rule of interpretation of statutes is that legislation is to be expounded "according to the intent of them that made it" In other words the rule of construction is to intend the legislature to have meant what they actually expressed. It matters not what the consequences may be once the meaning is plain. It is not the province

of court to scan its wisdom and policy. See *Maxwell on the Interpretation of Statutes 11th Edition*.

Therefore, the suspension without a timeline attached and the indefinite suspension can be understood to mean the same thing and it is basically the same power that is exercisable. The same could be challenged on the grounds of being unreasonable although they are exercisable by virtue of the powers conferred under the Nongovernmental Organisations Act. The decision maker was cushioned by the law which allows him to suspend operations of any nongovernmental organization which is non-compliant with the law as set out under section 7.

A particularly challenging part of lawfulness relates to the reason, purpose or motive for which the action was taken. This is especially the case where the empowering laws grant a wide discretion to the decision maker/administrator. The power to suspend the permit should be checked with a timeframe within which it must end to check its potential abuse. The action of the respondent in suspending the applicant's permit indefinitely as noted earlier was within the powers given although it was irregular since it lacked a specific time frame and it was not rationally justified. See *Paul Mukiibi v Attorney General High Court Miscellaneous Cause No. 71 of 2020*

The respondent's decision is supported by evidence of the applicant admitting that they had failed to file returns for five years (2016, 2017, 2018, 2019 & 2020) which was contrary to the Nongovernmental Organisations Act and cannot be irrational or unreasonable simply because the applicant believes it does not favour them. The decision is made in accordance with the law and it is objectively based on the facts and it is objectively capable of furthering the purpose for which the power was given and for which the decision was purportedly taken i.e to register, regulate, coordinate and monitor the activities of Nongovernment Organisations in Uganda.

The letter dated 18th August 2021 was therefore not arbitrary, highhanded or ultra vires as contended by the applicant although it was irregular for indefinitely suspending the applicant without any timeframe.

Procedural Impropriety

The applicant further challenges the decision of the respondent for procedural impropriety through non observance of the principle of natural justice and fundamental right to be heard. Therefore, this was a gross violation of the applicant's right to a fair hearing.

Fairness is highly a variable concept. Therefore, courts will readily accept that fairness is not something that can be reduced to one-size-fits-all formula. This therefore means that the courts shall answer questions of fairness on a case by case basis, having regard to factors such as complexity and seriousness of the case.

Essentially, procedural fairness involves elementary principles that ensure that, before a right or privilege is taken away from a person, or any sanction is otherwise applied to him or her, the process takes place in an open and transparent manner. It is also called 'fair play' in action and embraces the means by which a public authority, in dealing with members of the public, should ensure that procedural rules are put in place so that the persons affected will not be disadvantaged and are treated justly and fairly.

Article 42 of the Constitution provides;

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

The applicant seem to confuse the right to just and fair treatment in administrative decisions under Article 42 with the right to a fair hearing

under Article 28 of the Constitution. The two rights are quite different and distinct since the latter is only applicable before an independent and impartial court or tribunal established by law. Therefore, National Bureau for NGOs is not a court or tribunal by any stretch of imagination.

In working out what is fair the courts are wary of over-judicialising administrative process. They recognise that administrative decision-makers are not courts of law, and that they should not have to adopt the strict procedures of such court. The nature of the letters or an exchange between the applicant and the respondent was procedurally sufficient to constitute an opportunity to be heard or a hearing of the applicant in the circumstances of the present case.

In the case of *Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009*. The Court of Appeal delivered itself as follows;

“There is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed”.

The court should look beyond the narrow question of whether the decision was taken in a procedurally improper manner, to a question of whether a decision properly taken would have been any different or would have benefited the applicant. The applicant thought that she should have been given a separate hearing after the notice to be show cause and this was merely a question of perception but not standard procedure which has been applied to all other organisations. The respondent should accord the applicant a due process in order to arrive at a decision which is fair and just as provided under Article 42 of the Constitution. In the case of *R v Chelsea College of Art and Design, ex p Nash [2000] ELR 686*, the court held that *“would a reasonable person, viewing the matter objectively and knowing all the facts which are known to the court, consider that there was a risk that the*

procedure adopted by the tribunal in question resulted in an injustice or unfairness”

In the case before this court, it has been shown that the respondent suspended the applicant indefinitely which was irregular due to lack of any timeframe and yet the said suspension was intended to allow ‘*comprehensive investigations into their operations to enable the bureau determine whether or not to revoke the NGO permit and cancel registration*’. The respondent should accord the applicant a hearing and conclusively deal with issues at hand justly and fairly. The law expects that public functionaries would approach the decision making process with an open mind. Reason and justice and not arbitrariness must inform every exercise of discretion and power conferred by statute. See *Johannesburg Stock Exchange v Witwatersrand Nigel Ltd 1988 (3) SA 132*

A just or correct decision means that the decision-maker must *inter alia* interpret his or her authoritative power correctly, correctly assess the surrounding facts and circumstances, consider relevant factors and disregard irrelevant factors. See *Kotze v Minister of Health [1996] (3) BCLR 417; Van Zyl v New National Party [2003]3 All SA 737*

In the final analysis, I find some merit in this application to the extent that the decision to indefinitely suspend the applicant was irregular because of its indefinite nature and yet it was intended to ‘*allow comprehensive investigations into their operations*’ and the respondent is ordered to hear the applicant within one month. Each party should bear its costs.

I so Order.

SSEKAANA MUSA

JUDGE

9th May 2022