THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 109 OF 2022

SILVER KAYONDO::APPLICANT

VERSUS

BANK OF UGANDA::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under Section 33 and 36 of the Judicature Act Cap 13 and rules 3(1)(a), 6(1) and (2) and 7 of the Judicature judicial review Rules of 2009 for judicial review seeking the following orders that;

1. *A declaration that Cryptoassets and Cryptocurrencies are legitimate digital assets tradable in the digital economy and can be liquidated/cashed out via Mobile Money and other payment systems in settlement for Uganda Shillings (UGX) which is the legally recognized legal tender of the Republic of Uganda at the prevailing free-floating exchange rates established by the global and national market forces of demand and supply.*

2. *An order of certiorari doth issue quashing circular reference number NPSD. 306 dated 29th April 2022 issued by the respondent barring all entities licensed under the National Payment Systems Act 2020 from facilitating cryptocurrency transactions.*

3. *An order of prohibition doth issue restraining the respondent from enforcing and implementing circular reference number NPSD. 306 dated 29th April 2022.*

4. *A declaration that the respondent's actions of issuing circular reference number NPSD. 306 dated 29th April 2022 barring all entities licensed under the National Payment Systems Act 2020 from facilitating cryptocurrency*

transactions without consultation of the industry players/ licensees was procedurally wrong, discriminatory, arbitrary, irrational, unfair, unjust and unlawful.

5. *An order directing the respondent to pay the applicant damages for loss occasioned by the knock-on effects stemming from disruptions of the market as a result of the respondent's arbitrary, irrational, unfair, unjust and unlawful circular.*

6. *The costs of this application be provided for.*

The application was supported by the affidavit of the applicant whose grounds were briefly that;

1. The applicant is an advocate of the High Court and a peer-to-peer retail investor in crypto and other digital assets including cryptocurrencies, stablecoins, and non-fungible tokens (NFTs) which are all legitimately tradeable assets in the global financial markets and in Uganda.

2. The applicant is aware of the fact that the purchase and sale of cryptocurrencies in Uganda is a lawful and unregulated activity pursuant to several public notices from the respondent stating that cryptocurrency transactions in Uganda are not illegal.

3. On the 29th of April 2022 the applicant became aware of a circular issued by the respondent addressed to all licensees under the National Payment Systems Act 2020 unilaterally prohibiting the conversion of crypto assets/ currencies transactions to mobile money after receiving a customer notice from Yellow Card application that exchange of cryptocurrencies through mobile money had been halted pursuant to a Directive/ circular from the respondent.

4. The respondent's actions were illegal, unreasonable, procedurally flawed and ultra vires their statutory powers.

5. The directive places an illegal and undue burden on the applicant in transacting in cryptocurrencies in Uganda without any lawful justification and as such the applicant has a direct and sufficient legal interest in this matter.

6. The applicant has exhausted the available remedies by issuing a notice of intention to sue, which the respondent has not satisfactorily addressed.

7. It is in the interest of justice that this application is granted by the court.

The respondent opposed the application through an affidavit in reply sworn by Albert Ntege the Acting Division Head Payment Systems Oversight and Policy in the National Payment Systems Department of the respondent which briefly stated that;

1. The application is misconceived, frivolous, vexatious and unsustainable under the law and ought to be struck out and/or dismissed with costs on account of the fact that the matter is not based on a judicially reviewable decision taken by the respondent and instead is based on a judicially reviewable decision taken by the respondent and addressed to licensees governed by the National Payment Systems Act 2020.

2. The respondent in line with its mandate noted that the trade in cryptocurrency poses a significant risk to consumers, the monetary stability of the country, and the safety of the payment systems and therefore issued a circular to all its licensees under the National Payment Systems Act 2020 wherein it clarified and advised that it had not licensed any institution to sell cryptocurrencies or to facilitate the trade in cryptocurrencies and warned against processing cryptocurrency transactions.

3. The issuance of the above circular was in accordance with the respondent's regulatory and supervisory mandate over payment system providers and operators under the National Payment Systems Act 2022.

4. The respondent acted with legal propriety in issuing its circular and the same was issued in good faith and based on rational considerations to ensure safety, efficiency and security of the payment systems in Uganda while maintaining economic and monetary stability and protecting consumers.

5. That it is not in the interest of justice for the court to issue the prerogative orders sought especially where the effect would be to have the court

substitute itself for the statutory regulatory body and as such they should not be granted.

When the matter came up for hearing on 26th September 2022, the following issues were framed for determination:

ISSUES

1. ***Whether the matter is amenable to judicial review?***
2. ***Whether the Respondent's Circular issued on 29th April 2022 is tainted with illegality, irrationality, and procedural impropriety?***
3. ***What remedies are available to the parties?***

The applicant was represented by *William Muhumuza and Felius Karibwije* while the respondent by *Richard Bibagamba and Peter Kauma*

Whether the matter is amenable to judicial review?

The respondent opposed this application on grounds that it was not amenable to judicial review on the grounds that the orders the applicant sought to be granted could not be granted by way of judicial review.

Counsel for the applicant argued that any regulatory directive was amenable to judicial review because Rule 2 of the **Judicature (Judicial Review) Rules, 2009 (as amended in 2019)** defines judicial review as the process by which the High Court exercises its supervisory jurisdiction over the 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. Counsel submitted that there is no doubt that the Bank of Uganda as a creature of the Constitution and statute is a body charged with the performance of public acts and duties. Counsel cited the case ***Mpiima David vs Uganda Cancer Institute and Attorney General High Court Miscellaneous Cause No 182 of 2020*** in support of his argument.

For the respondent, counsel argued that for an application to be amenable to judicial review, the orders sought in the application must be those within the powers of the court to make. Counsel argued that the gist of what was being sought in the application was for a declaration that crypto assets were not illegal in Uganda, should be legalized by the parliament and damages paid to the applicant for loss allegedly incurred on account of the respondent's failure to

recognize such assets as legal. Counsel submitted that this was not a matter within the ambits of judicial review.

Counsel cited ***Touch Media T/A Touch Media FM Ltd v Uganda Communications Commission*** **High Court Miscellaneous Cause No.13 of 2021** which clarified instances when it would be appropriate for a matter to proceed by way of judicial review and specifically emphasized that when a claim largely involves both public and private law issues it was preferable that the matter be pursued by way of an ordinary claim.

Counsel further submitted that the applicant was neither challenging the decision-making process as required under judicial review nor attacking the respondent's actual decision to its licensees not to facilitate the trade of crypto assets/currencies without a license. That the applicant was instead pursuing an agenda of the legitimacy of crypto assets/ currencies which clearly fell outside the scope of judicial review. Counsel cited ***Kuluo Joseph and 2 others Vs Attorney General and 6 others High Court Misc. Cause No. 106 of 2010*** in support of his argument.

Counsel for the respondent also submitted that the applicant had misrepresented the decision of the respondent as being a prohibition against crypto assets/currencies in Uganda whereas it was a directive to licensees to stop facilitating trade in cryptocurrencies. Counsel submitted that what the applicant had misrepresented was still not amenable to judicial review.

Counsel for the respondent submitted that the applicant had also not exhausted all the available remedies before filing this application as required under **Rule 7A (1)(b) of the Judicature (Judicial Review) Rules as amended.** Counsel submitted that the applicant had brought this judicial review application without attempting to bring an application under the National Payment Systems (Sandbox) Regulations for temporary experimentation of any innovative financial product and solution that he may have had.

Lastly, counsel submitted that the applicant had made outlandish and unjustified claims of loss that in their form had no place for consideration under judicial review. Counsel submitted that the applicant claimed to have suffered a loss to the tune of UGX. 50,325,000/= resulting from "panic withdrawals from customers, frozen/illiquid funds, suspension of Uganda bound crypto trading by global crypto dealers with the total loss accumulating to UGX 132,307,436/- worsened by the respondent's transactional ban.

Counsel concluded that the application before the court was not amenable to judicial review as it sought declarations that were outside the scope of a judicial review application, and prayed that it be dismissed with costs to the respondent.

In rejoinder, counsel for the applicant contended that the complaint was not that the respondent had exercised its powers, but rather that in the exercise of those powers, it had exceeded its mandate and arrogated itself more powers than those donated by the statute.

Analysis

The court now operates on the assumption that if the source of power is a statute or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. The role of judicial review is to ensure that decisions are taken lawfully and in accordance with the statutory power and purpose. Wherever a body is a creature of statute, all powers are derived from an Act of Parliament.

It is trite that judicial review is concerned not with the decision in issue per se, but with the decision-making process. Essentially, judicial review involves the assessment of the manner in which the 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 basic standards of legality, fairness, and rationality. **See *Koluo Joseph Andres & 2 Ors vs Attorney General Misc. Cause No. 106 of 2010***

Rule 7A of the Judicature (Judicial Review) Rules requires this court to satisfy itself that an application is amenable to judicial review.

A surface reading of this application and affidavit thereto shows that the applicant seeks to challenge the circumstances surrounding the issuance of the respondent's directive to all licensees under the National Payment Systems Act, 2020 facilitating the trade in crypto assets. The respondent in that circular warned all the licensed entities under the National Payment Systems Act 2020, to **desist** from facilitating cryptocurrency transactions. The entities were also warned that the respondent would not hesitate to invoke its powers if they were found in breach of the directive.

It is my considered view that this was a decision whose processes can be reviewed by this court. The applicant contends that the respondent acted ultra vires in reaching this decision which is opposed by the respondent. The viability of

the orders sought by the applicant can be delved into while determining the merits of the application.

It is therefore my view that the application is amenable to judicial review.

Whether the respondent's circular issued on 29th April 2022 is tainted with illegality, irrationality, and procedural impropriety.

Counsel submitted that the respondent acted with illegality and in an ultra vires manner by purporting to ban the liquidation of an asset class that is not the exercise of regulatory power.

Counsel submitted that their contention was that cryptoassets were outside the regulatory purview of the respondent since there was no law expressly banning them. Therefore, issuing a circular that contained a desist notice to mobile money payment companies to stop liquidating crypto assets with a threat of suspension or revocation of their licenses could not fall within the four corners of the statute for what is not expressly forbidden by the law is treated as permitted. Counsel argued that the respondent's actions amounted to an abuse of regulatory powers and should be annulled by the court.

On irrationality, counsel argued that the respondent acted with irrationality by purporting to ban transactions with licensed mobile money payment providers thus exposing crypto asset customers/dealers to unregulated and unlicensed operators.

The applicant's contention was that the impugned circular drove away crypto assets into the arms of unregulated/unlicensed entities such as Ponzi schemes and scams. Counsel submitted that it should be a welcome development that crypto assets transactions are migrating from unregulated/unlicensed platforms to regulated/licensed payment systems which will encourage KYC/AML compliance and more financial innovation in terms of products, services, platforms, compliance, et cetera. It was counsel's argument that the failure of the respondent to put this aspect into consideration rendered the circular irrational/unfair.

Counsel submitted that had the respondent consulted adequately and rationalized all these considerations before issuing a rushed circular, the decision would have been more rational and better informed by actual reality on the ground. Counsel prayed that the court rule in favor of the applicant on the ground of irrationality.

The applicant also contended that the respondent acted with procedural impropriety by attempting to "legislate" through a circular and without adequate engagement/ consultation of the relevant stakeholders in the cryptoassets industry in to inform the regulatory process.

Counsel submitted that the respondent could not ban the liquidation of crypto assets by way of a circular because there was no legal framework outlawing these assets in Uganda. That the National Payment Systems Act, 2020 under which the respondent's circular was purportedly issued did not outlaw or ban crypto assets in Uganda.

Further that similarly, the annexed statement from MoFPED did not forbid crypto transactions in Uganda, but was merely advisory in nature on the risks pertaining to these assets. Counsel concluded that it was therefore incongruent that the respondent sought to rely on a framework and "legislate" what neither the Parliament nor the Executive intended.

Counsel for the respondent disagreed with the applicant's submissions stating that the same was fallacious and wrong on several counts.

Counsel submitted that the respondent in issuing the circular was acting under its powers and mandate derived from *Article 162 of the Constitution and Sections 3, 4, 19 and 20 of the National Payment Systems Act, 2009*. Counsel submitted that these provisions gave the respondent a broad mandate in ensuring economic stability in Uganda through regulation of the currency systems and payment systems in Uganda. Counsel concluded that the circular was therefore legal.

Counsel further submitted that the respondent had the mandate to clarify the scope of licenses granted to their licensees and could, for the purposes of ensuring the safety of payment systems in Uganda, issue a Circular clarifying the scope of the licenses issued to its licensees under the s.19(2) of the National Payment Systems Act. That the respondent by virtue of its mandate listed above was empowered to forbid its licensees under the Act from any activity that it considers a threat or risk to the economic stability. Counsel cited the case of ***Internet and Mobile Association of India v Reserve Bank of India Writ Petition No 528 of 2018.***

Counsel also clarified that the respondent had not made a directive on the trading in cryptocurrencies in general but specifically addressed its licensees to desist from the trade in cryptocurrencies under their payment systems in accordance with the National Payment Systems Act 2020.

Counsel prayed that the court finds that the issuance of the circular by the respondent was within its powers and as such was legal.

Furthermore, counsel submitted that the respondent's circular advising its licensees on the scope of their licenses was not irrational as alleged by the applicant. Counsel submitted that the basis upon which the circular was issued was well documented in paragraphs 6e) and 6f) of the respondent's affidavit in reply by Mr. Albert Ntege. That the respondent issued the Circular to its licensees in a bid to protect the safety of the payment systems under its purview and to protect consumers using payment systems. It was issued after a consideration of the risks posed by crypto-currency transactions to consumers, the monetary stability of the country at large, and the safety of payment systems therefore same was rational.

Counsel submitted that the justification for the respondent's decision could be found in the fact that the respondent offered the opportunity to licensees and any other entity intending to operate a payment system facilitating cryptocurrency transactions to proceed under the National Payment Systems (Sandbox) Regulations.

Counsel argued that the applicant's contention that the circular was irrational because it allegedly drove customers/dealers in crypto assets (which the applicant insisted were unregulated) into the arms of the equally unregulated/unlicensed payment operators was a purely speculative assertion that was unsupported by evidence. Counsel submitted that this argument suggested that the court should make a finding of irrationality against the respondent simply because the decision it arrived at could result in an undesired outcome for the applicant. Counsel prayed that the court rejects this argument.

Counsel lastly submitted that the applicant's argument that the respondent's option to utilize the regulatory sandbox was inapplicable since it catered only to entities and not individuals as well as because a live test could not be conducted when integration with mobile money operators had been cut off and an afterthought was without merit.

Counsel submitted that the applicant was duly informed about the possibility to utilize the regulatory sandbox before he preferred a judicial review application. Counsel submitted that the operation of a regulatory sandbox, just like the operation of a payment system was contemplated by the lawmaker to cover entities as opposed to individuals which stipulation could not be challenged by

way of judicial review. Counsel submitted that it was contemplated that in order to carry out live tests under the regulatory sandbox, an applicant would possess a valid payment system that would facilitate the suggested cryptocurrency transactions.

In rejoinder, counsel for the applicant submitted that whereas the respondent is tasked with maintaining economic stability, the same must conform to the law. Counsel submitted that Uganda was a free market economy which meant the promotion of enterprise and business that was capitalist and private sector led.

With regard to procedural impropriety, counsel for the respondent submitted that the respondent had acted with procedural propriety in issuing its Circular as it had the legal mandate to do so and the assertion that there was no legal framework for it to issue such a circular was without basis. Counsel argued that, unlike the applicant's assertions, the respondent had issued the impugned circular was rooted in statute that is; sections 4(f), 19, and 20 of the National Payment Systems Act.

Further, the respondent was not required under the law to consult with the applicant prior to the issuance of its circular as per section 4(f), section 19, and section 20 of the National Payment Systems Act, 2020. That the respondent was guaranteed autonomy under Article 62 of the Constitution in executing its functions and therefore it would be absurd to suggest that before issuing a circular the respondent was to consult every person that may be affected by such a circular.

Counsel for the applicant rejoined that although the respondent enjoys regulatory independence and autonomy in its mandate, it did not have immunity against judicial review. Counsel submitted that courts had jurisdiction to inquire into the respondent's exercise of its regulatory powers and mandate to enforce corrective action.

Counsel for the applicant also raised the issue of legitimate expectation. Counsel submitted that the statement by the Minister of Finance, Planning and Economic Development (MoFPED) created a legitimate expectation that crypto assets were not illegal in Uganda, and therefore tradeable upon the intending traders/dealers exercising caution such as conducting business with licensed and regulated entities such as payments service providers regulated by Bank of Uganda. Counsel cited ***Andrew Kilama-Lajul v Uganda Coffee Development Authority & Anor (Miscellaneous Cause 270 of 2019).***

Counsel submitted that legitimate expectation arose from what a person had been permitted to enjoy and which he could legitimately expect to be permitted to continue to enjoy. That the same could only be changed on rational grounds after giving an opportunity to the affected person to comment on the changes, which opportunity was not given by the respondent before triggering this regulatory/policy reversal.

Counsel for the respondent dismissed this argument and submitted that no legitimate expectation regarding the legality of crypto-assets matured from the statement issued by the Ministry of Finance, Planning and Economic Development. Counsel cited ***United Policyholders Group and Others v The Attorney General of Trinidad & Tobago*** **Privy Council Appeal No.0017 of 2015**, where the United Kingdom Privy Council set out the elements required to show that a legitimate expectation had materialized. Counsel submitted that the statement did not comprise an unequivocal promise that crypto-assets were legal in Uganda. That the Ministry merely stated that the government of Uganda did not recognize cryptocurrency as legal tender in Uganda nor had it licensed any entity or person to sell cryptocurrencies or to facilitate the trade of cryptocurrencies in Uganda

Counsel further submitted that the court allowing the applicant's argument of legitimate expectation would interfere with the respondent's mandate as a regulator and prayed that the court finds that legitimate expectation had matured in this case.

Counsel for the applicant rejoined that the statement from MoFPED was very clear that trading and transactional activities could continue by those involved taking precautionary measures.

Analysis

Broadly speaking, judicial review is the power of courts to keep public authorities within proper bounds and legality. The court has the power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution. Judicial review as an arm of Administrative Law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its

actions. See *Uganda Clearing Industry and Forwarding Association v Kampala Capital City Authority & Anor (Miscellaneous Cause 439 of 2017) [2020]*

In ***Pastoli vs Kabale District Local Government Council and Others [2008] 2 EA 300*** it was held while citing ***Council of Civil Unions vs Minister for the Civil Service [1985] AC 2;***

"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety ...

Illegality is when the decision -making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission ….

"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....

Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in 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 [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

The task of the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The courts when exercising such power of construction are enforcing the rule of law, by requiring public bodies to act within the 'four corners' of the powers and 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.

The applicant's contention is that crypto assets are outside the regulatory purview of the respondent which made the respondent's circular directing licensees to desist from liquidating crypto assets ultra vires and illegal. Counsel argued that this circular was also irrational and arrived at with procedural impropriety. The respondent opposed these claims and contended that the respondent had the regulatory mandate to issue said circular.

The National Payment Systems Act, 2020 was enacted to regulate payment systems in Uganda. They were enacted to provide for the safety and efficiency of payment systems as well as provide for the functions of the central bank in relation to payment systems.

According to *section 4 (1) of the Act*, the central bank was mandated to regulate, supervise and oversee the operations of payment systems in order to ensure their safety and efficiency. The Bank was mandated to issue directives, standards, guidelines, orders and circulars regulating the manner in which the objectives of this Act may be achieved. *See section 4 (2) (f)*

The bank is also mandated to modify the licensees issued when it deems it necessary to achieve the object of this Act, or is in the public interest, taking into account the justified interests of Payment service providers, Payment System Operators and the principles of fair competition and equality of treatment.

The dividing line between decision that have been reached lawfully and those that have not is about interpretation and construction of the Act. There are two questions: (i) was the decision taken within the powers granted? and (ii) if it was, was the manner in which it was reached lawful?

The respondent is lawfully mandated under the Constitution to execute the following functions; *(a) promote and maintain stability of the value of currency of Uganda; (b) regulate the currency system in the interest of the economic progress of Uganda; (c) encourage and promote economic development and efficient utilization of the resources of Uganda through effective and efficient operation of a banking and credit system; (d) do all such other things not inconsistent with this article as may be prescribed by law.*

The above provisions under the Constitution and the enabling laws must be understood in the context of the purpose and mandate given to the respondent as whole. It regulates the currency system in the interest of the economic progress of Uganda.

The argument of the applicant's counsel that cryptocurrencies are unregulated under the law or Uganda's legal regime and should be allowed to operate freely is fallacious, totally misleading and baseless. Being unregulated does not mean that the applicant can operate without sanction or contrary to the present and existing currency system. The respondent should not look on as the applicant contends without ensuring stability of the currency by admitting every undefined system as a legal tender as this would risk and bypass the regulated payment system of the central bank.

It is clear that the applicant intended to legitimize digital assets as being tradable in the digital economy so that they are legalized via the national payment system. The crypto currencies are indeed digital assets that are designed to effect electronic payments without participation of the central authority or intermediary as a Central Bank or a licensed financial institution. Crypto-Currencies under the current National Payment System is illegal or unlawful and they are not accepted as a general payment instrument.

The respondent, therefore, had the mandate to issue directives to the licensees under the National Payment System Act hence the circular was neither illegal nor irrational.

Secondly, whether the circular was issued with procedural propriety. Counsel for the applicant argued that the respondent ought to have conducted stakeholder consultations before issuing the circular that banned crypto assets. In response counsel for the respondent argued that the respondent was granted autonomy in executing its functions and was not required under the law to consult with the applicant prior to the issuance of its circular as per section 4(f), section 19, and section 20 of the National Payment Systems Act, 2020.

The respondent has duty to the whole public generally and the court should allow great flexibility to such public authorities to achieve the duty and would allow such a body greater latitude to protect the general public from such unregulated schemes which are yet to be recognized in our national payment system.

The discretionary powers conferred on the respondent in Constitution and other statutes without express reference to purpose, must be exercised in accordance with the implied purposes as the courts attribute to the legislation. The applicant contended that he ought to have been consulted as a stakeholder before such a circular was issued out to the public. This would not have been possible and the exercise of such power is an exercise of discretion for which the respondent can

only be blamed for procedural impropriety if there is clear provision imposing such a duty.

I concur with the submissions of the respondent's counsel. *Section 4 (4) of the Act* states that the central bank may, in the performance of its functions under this section consult with such stakeholders as the central bank shall consider appropriate. This leaves the respondent with the discretion on when to conduct stakeholder consultations in the exercise of its functions.

The respondent was not aware that the applicant is a trader of crypto assets and crypto currency since they have no regulatory framework in Uganda. Any person who claims to be an affected party in the area cannot claim to be lawfully operating a system which is not recognized by our legal system. The respondent has a duty to warn the public about the attendant risks associated with cryptocurrencies or cryptoassets before the public fall prey schemes disguised as digital economy where there is anonymity of the real players, money-laundering or other illegal activities thrive.

The applicant who is unrecognized by the legal system cannot demand to be heard before a directive or a guideline is issued. Cryptocurrency transactions by consumers or investors are not protected by government regulations or oversight. The current regulatory framework was not designed with cryptocurrencies in mind and the respondent was only advising the public generally without any specific stakeholders in mind who may be operating in Uganda illegally. The respondent could not give recognition to the applicant and other stakeholders whose trade is quite unclear to the legal and economic system of the country through consultation.

The requirement of fair hearing will not apply to all situations of perceived or actual detriment. There are clearly situations where the interest affected is too insignificant, or too speculative, or too remote to qualify for a fair hearing like in the present case. ***See Save Britain's Heritage v Number One Poultry Ltd [1991] 153***

The respondent did not find it appropriate to consult an undefined group of stakeholders who actually thrive on anonymity in our economic system like the applicant. Similarly, the number of stakeholders that would have likely been affected by circular and required consultation would big and it would manifestly been impossible to conduct any consultations. By not consulting with the

applicant a trader in crypto assets, the respondent did not act procedurally improperly but rather did not find it appropriate to consult them.

The applicant also raised the issue of legitimate expectation contending that the public statement by the Ministry of Finance Planning and Economic Development (MoFPED) that did not declare cryptocurrency illegal but merely cautioned traders to be careful in this trade raised the applicant's expectation that it was legal to trade in crypto assets. I have read the entire statement and there is no statement that was made that matures a claim of legitimate expectation by the applicant. The MoFPED was cautioning the general public of the risks involved in dealing in cryptocurrency. There was no legitimatizing of crypto trade that would warrant the applicant's claim.

The applicant cannot make a claim for legitimate expectation merely because the public statement did not outlaw the same. The said statement did not make any promise to the applicant or other stakeholders that cryptocurrencies will be allowed in Uganda or will never be regulated. Legitimate expectation relates to a promise in relation to an existing situation which will continue, or to a future benefit, advantage or course of action which the authority will follow. ***See Preston v Inland revenue Commissioner [1985] AC 835.***

The Ministry merely stated that the government of Uganda did not recognize cryptocurrency as legal tender in Uganda nor had it licensed any entity or person to sell cryptocurrencies or to facilitate the trade of cryptocurrencies in Uganda. The circular was clear and unequivocal on the position of cryptocurrencies in Uganda and the context cannot be distorted to infer any benefit or promise on legality.

The context of the alleged representation is important in order to infer any legitimate expectation. Such representation must be clear, unambiguous and devoid of relevant qualification. Whether or not the representation fulfills these qualities is a matter of construction as to which intention of the promissor and the understanding of the promissee may be relevant. The public statement in my view by Ministry of Finance Planning and Economic Development (MoFPED) did not create any legitimate expectation to the applicant. ***See R v Ministry of Agriculture Fisheries and Food Ex p Hamble Fisheries (Offshore) Ltd [1995] 2 All ER; Paponette v Attorney General of Trinidad & Tobago [2012] 1 AC 1***

The applicant also contended that the respondent breached his right to property by banning cryptocurrency. The respondent did not ban cryptocurrency but rather

directed licensees under the National Payment System Act to desist from liquidating cryptocurrency. This directive did not infringe the applicant's property rights in anyway. This was merely a regulatory directive to avoid legalizing the undefined system as a payment instrument in Uganda. It would be wrong and illegal for the applicant to try imposing the unrecognized cryptocurrency or cryptoassets system into the regulated framework of the payment system under National Payment System.

The application fails on all the grounds raised and is dismissed. Each party shall bear its own costs.

I so order.

SSEKAANA MUSA
JUDGE
24th April 2023