

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION**

MISCELLANEOUS CAUSE NO. 362 OF 2019

**BWENGYE DEUSDEDIT===== APPLICANT
VERSUS**

1.LAW COUNCIL

2. LAW DEVELOPMENT CENTRE=====RESPONDENTS

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

RULING

Introduction

[1] The Applicant filed this application by Notice of Motion under Section 33 & 38 of the Judicature Act, Cap 13; Section 98 of the Civil Procedure Act, Cap 71; and Rules 2, 3, 3A, 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009, challenging the decision of 1st Respondent to suspend the mandatory pre – entry examinations for admission to the 2nd Respondent for Post Graduate Bar Course. The Applicant seeks several judicial review remedies.

Applicants case:

[2] The Applicant's case, as can be discerned from the Notice of Motion, the affidavit in support of the application, the additional affidavit, and the affidavit in rejoinder, all sworn by the Applicant, is that he is a lawyer; a student of Post Graduate Bar Course 2018/2019 at the 1st Respondent; a dedicated advocate of the rule of law, human rights and democracy; and a public spirited citizen with interest in due observance of the rule of law in Uganda. On the 14th August, 2019, the 1st Respondent resolved/ agreed to suspend the operation of the mandatory pre – entry examinations for admission to the 2nd Respondent for the Post Graduate Bar Course which is provided for in paragraph 3(c) of the *Advocates (Professional Requirements for Admission to Post – Graduate Bar Course), Legal Notice No. 17 of 2007 as amended by Legal Notice No. 12 of 2010* on the ground that it lacks the funds to administer the examination. The Applicant contends that the decision is illegal, irrational and procedurally improper.



Respondents case:

[3] The 1st Respondent did not file any affidavit in Reply. Mr. Lukyamuzi Hamis Ddunu, the Acting Secretary of the 2nd Respondent swore an affidavit in reply in which he contended that the application does not disclose any cause of action against 2nd Respondent because, the 2nd Respondent does not play any role in the admission and the pre – entry examination; it is not responsible for the supervision and control over professional legal education in Uganda; it does not prescribe the professional requirements for admission to the Post – Graduate Bar Course; and it is not responsible for the approval or conduct of qualifying examination for purposes of the entry to the legal profession. He further contended that the Applicant has no locus standi to bring this application because he does not have direct or sufficient interest in the matter and he is not aggrieved by the decision. In addition, he deponed that the Applicant has not exhausted the available remedies within the public body or under the law. He further contended that the application is incompetent because it extends to 3rd parties who are not party to this application who may be condemned unheard.

Legal representation and submissions:

[4] At the hearing, the Applicant was self-represented. The 2nd Respondent was represented by Mr. John Musiime of Kyagaba & Otatiina Advocates. Before the matter could proceed on merit, counsel for the 2nd respondent raised 3 preliminary objections. The 1st objection was that the application does not disclose any cause of action against the 2nd Respondent and that the Applicant does not have any locus standi to institute this application. The 2nd objection was that this application is moot since there is no live dispute between the Applicant and the Respondents. The 3rd preliminary objection is that the application is incompetent because it seeks orders that will negatively affect the rights of 3rd parties who have not been joined to or served with this application. Counsel relied on the case **Carolyn Turyatamba and others versus Uganda Land Commission, Constitutional Petition No. 15 of 2006.**

[5] In reply to the 1st preliminary objection, the Applicant submitted that he is a public spirited individual with interest in protecting the rule of law and he has sufficient

interest in the matter therefore he has locus standi in the matter. On the 2nd preliminary objection, the Applicant submitted that the application is not moot since the 2nd Respondent admitted that there are several students at Law Development Centre. On the 3rd preliminary objection, the Applicant submitted that he was only required to sue and serve the 2nd Respondent and not any other party.

Consideration and determination of the court:

[6] On the 1st preliminary objection, the law is that as long as the party being joined is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter, that party may be joined as a party to the suit without necessarily disclosing any cause of action against that party. In *Departed Asians Property Custodian Board versus Jaffer Brothers Ltd SCCA No. 9 of 1998* Kanyeihamba JSC held that:

“...a party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.”

[7] Rule 6(2) of the Judicature (Judicial Review) Rules, 2009 also provides that the notice of motion must be served on all persons directly affected. However, in the instant case, the Applicant has not demonstrated how the presence the 2nd Respondent is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. The fact that the 2nd Respondent is the institution which organizes and conducts the Post Graduate Bar Course is irrelevant since the issue before the court is whether the decision of 1st Respondent to suspend the mandatory pre – entry examinations for admission to the 2nd Respondent for the Post Graduate Bar Course is illegal, irrational and procedurally improper. I therefore find that the joining of the 2nd Respondent in this application was improper.

[8] On whether the Applicant has locus standi to file this application, in **Hon. Sekikubo Theodore and 2 others versus Attorney General, HCMC No. 092 of 2015**, Musota J. (as he then was) held that;

“It is trite law that locus standi is the way in which the courts determine who may be an applicant for Judicial Review. It is only those with locus standi that can be permitted to have their request heard.... A person found to have no locus standi will ordinarily not have standing to bring an action and the courts cannot hear his/her complaint.” (Underlined for emphasis).

[9] Rule 3A of the **Judicature (Judicial Review) Rules, 2009 (as amended by S.I. 32 of 2019)** provides that;

“Any person who has a direct or sufficient interest in the matter may apply for judicial review.” (Underlined for emphasis).

[10] In addition to the above rule, Rule 7A (b) of the same rules make reference to an aggrieved person as the person to institute judicial review applications. It states that;

“The court shall in determining an application for judicial review, satisfy itself of the following-

(a)...

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

(c)...” (Underlined for emphasis).

[11] In the case of **Dickens Kagarura Versus Minister of Works and Transport and 3 others HCMC No.149 of 2012**, Mwangusya J (as he then was), held that;

*“...for one to succeed in an application for Judicial Review that party must be a ‘person aggrieved’ which according to the case of **Liverpool Corporation**,*

ex parte Liverpool Taxi Fleet Operators Association [1872] OB 299, [1972]2 All 589 ...includes any person whose interest may be prejudicially affected by what is taking place. This is what Denning J states: -

“...the writ of prohibition and certiorari lie on behalf of any person whose interest may be prejudicially affected by what is taking place. It does not include a mere busy body who is interfering in things which do not concern him: but it does include any person who has a genuine grievance because something has been done or may be done which affects him.””

[12] In the instant case, the Applicant has not demonstrated whether he has been or is likely to be affected by the decision. The mere fact that he is concerned with the legality of governmental action is not regarded as an interest that is worth protecting by judicial review (See: **Muhumuza Ben versus Attorney General and 2 others HCMC No. 212 of 2020**) I therefore find that the Applicant has no locus standi in this matter.

[13] Having found that that the Applicant has no locus standi to institute this application, he cannot therefore be permitted to have his request heard by the court. I will thus adopt the procedure in the case of **Hon. Sekikubo Theodore and 2 others** (supra) by not delving into the other preliminary objections. This application is accordingly dismissed with costs to the Respondents.

I so order.

Dated and delivered by email this 8th day of December 2023



Phillip Odoki

JUDGE.

