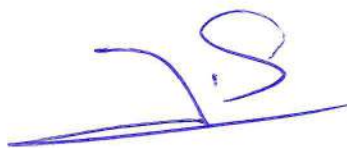


The respondent who was responsible for channeling medical equipment which included a Hematology Analyses, Chemistry analyzer and a Freezer that were donated by the President's Emergency Plan for AIDS Relief (PEPFAR) through Baylor – Uganda to Paidha Health Centre III
5 decided to divert them to Warr Health Centre III contrary to the terms governing the donation. That despite being notified by the applicant to relocate the medical equipment back to Paidha Health Centre III, the respondent did not take heed. That the applicant then filed a complaint over the matter with the office of the Inspectorate of Government that issued a directive to the respondent to return the equipment to Paidha Health Centre III, but the respondent refused to
10 heed to the directive. Based on advice from his lawyers, the applicant deposed that the respondent has no intention to correct his former decision unless compelled to do so by Judicial review. The applicant further deposed that he had exhausted all remedies under the law prior to filing this application.

15 Lastly, the applicant reiterated in his affidavit in rejoinder that the respondent did not consult the relevant stakeholders before reaching the decision to relocate the suit medical equipment.

In opposition to the application, the respondent deposed an affidavit in reply where he stated that the decision to relocate the medical equipment to Warr Health Centre III was reached after
20 holding discussions with the relevant stakeholders who agreed that Warr Health Centre III being a central location would benefit the entire population of Zombo District. The respondent added that his office is in the process of implementing the directives of the Inspectorate of Government which commenced before this application was filed. He referred to a letter to the inspectorate of government dated 10th January 2020 and marked annexure "A", technical guidance from
25 Ministry of Health marked annexure "B", a request for quotation for relocation from service provider marked annexure "C" and a quotation from service provider marked "D".



Lastly, the respondent challenged this application on grounds that the applicant did not disclose in what capacity he lodged the application, and that the application was brought outside the prescribed period of 3 months for filing an application for judicial review.

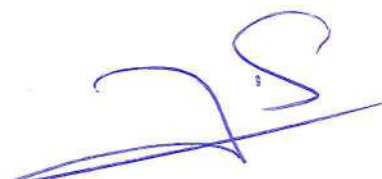
5 *Representation*

At the hearing of the application, Counsel Ndiwa Walukana Gerald of M/s Tumwebaze, Atugonza & Co. Advocates together with Counsel Onencan Ronald of M/s Oketcha Baranyanga & Co. Advocates represented the applicant while Counsel Kirungi Ritah a Senior State Attorney from the Attorney General's Chambers represented the respondent. Both parties filed written
10 submissions, which I have duly considered.

Submissions of the applicant

Learned counsel for the applicant submitted that the respondent had no powers to transfer the medical equipment from Paidha Health Centre III to Warr Health Centre III since it was a
15 donation based on a Memorandum of Understanding between the respondent and donors, partners and the president's emergency plan for Aids Relief through Baylor – Uganda, with clear terms guiding the installation of the equipment. Counsel added that the respondent's decision to divert the medical equipment in total violation of the terms of the Memorandum of Understanding was illegal. He submitted that the applicant filed a complaint to the Inspectorate
20 of Government before filing the application who investigated the issue and directed that the equipment be taken back within 45 working days that the respondent failed to do hence this application.

Secondly, counsel submitted that the respondent admitted the irregularity complained of under
25 paragraph 5 of the affidavit in reply to the application, and promised to rectify the same. The respondent had started the process of relocating the medical equipment. Counsel submitted that an admission may be express or may arise by implication from non-traverse of a material in the statement of claim. To support this submission, counsel referred to Section 17 (1) of the Evidence Act Cap 6 and Order 13 Rule 6 of the Civil Procedure Rules). He further relied on the



case of Jamil Ssenyonjo Vs Jonathan Bunjo; Civil Suit No. 180 of 2020 where it court held that for a judgement to be entered on admission, such admission must be explicit and not open to doubt. In that regard, counsel submitted that since the respondent had admitted the irregularity, was willing to and had already commenced the process of relocating the medical equipment, the applicant prayed to drop the other prayers sought in his application and only seek for an order of mandamus to compel the respondent to return the medical equipment to Paidha Health Centre III.

Counsel sought to define the 'writ of mandamus' drawing from the Black's Law dictionary, 8th Edition, page 3048 – 3049, where mandamus was defined as a writ issued by a superior Court to compel the lower Court or a government officer to perform a mandatory duty or purely ministerial duties correctly. Counsel relied on the case of Stream Aviation vs Civil Aviation Authority [2008] HCB 156, 157 where it was held that mandamus often issues against statutory authorities or public officers who have statutory functions compelling them to carry out the statutory duty required of them. Counsel submitted that the respondent is a public officer whose office and duties are provided for by Article 188 of the Constitution of the Republic of Uganda, 1995, as amended and the Local Government Act, in which capacity the respondent made the impugned decision thereby rendering him subject to judicial review proceedings. Counsel further submitted that the importance of prerogative orders granted under judicial review was stated in Pius Niwagaba Vs Law Development Centre [2006] 1 HCB 76, 78, where it was held that the process of judicial review is to ensure that an individual receives fair treatment by the authority to which he or she has been subjected. In the premises, counsel prayed that this Court be pleased to grant the prerogative order of mandamus to compel the respondent to return the medical equipment to Paidha Health Centre III.

With regard to the respondent's contestation that the applicant did not have capacity to file the application and that the application was filed out of time, counsel reiterated that the application was filed within time, and that the applicant being a resident of Paidha who was directly affected by the irregular and illegal decision of the respondent to transfer the suit medical equipment to



Warr Health Centre III, which indirectly affected his right to good health care and life, had capacity to file the application. Counsel added that once any public officer or authority makes a decision that affects an individual, such person can apply to court for redress as was illustrated in *Sekabira Haruna Vs Makerere University & others* [2006] 1 HCB 143 where court held that to be entitled to an order of mandamus, the applicant must have sufficient interest in the matter to which the application relates. In conclusion, counsel submitted that all requirements for judicial review had been met and prayed that this court grants the orders sought by the applicant.


Submissions of the respondent

Learned counsel for the respondent proposed two issues for determination, namely:

- 1) *Whether the application is properly before Court?*
- 2) *Whether the applicant is entitled to the remedies prayed for?*

On issue one; counsel submitted that whereas judicial review is not concerned with the decision in issue but with the decision-making process, the applicant is concerned with the former as far as he argues that the decision made by the respondent affects his right to good health care and life. Counsel relied on the case of *Rebecca Nassuna v Dr. Diana Atwine & 3 others*; HCCM No. 0322 of 2018 where it was held that judicial review is not concerned with the decision in issue but with the decision-making process.

Secondly, counsel submitted that the respondent, being a Chief Administrative Officer, is not subject to judicial review since judicial review is only available against a public body in a public matter. For this submission, counsel referred to the definition of a public body provided under Rule 2 of the *Judicature (Judicial Review) (Amendment) Rules, 2019* and *Ssekaana Musa*; *Public Law in East Africa*, pg. 37 (2009) Law Africa Publishing, Nairobi, which he contended does not include a Chief Administrative Officer. Further, counsel submitted that there was no decision taken against the applicant by the respondent as to bring his application under the application of the provisions of Article 42 of the Constitution which is only available to a person whose right to a fair and just treatment has been violated by an administrative official or body. Counsel



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submitted that the applicant had not illustrated a direct or sufficient interest in the subject matter of the suit as to entitle him to file this application for judicial review. She relied on *Sekabira Haruna Vs Makerere University & others* [2006] 1 HCB 143 for this submission.

5 Counsel further submitted that this application is time barred having been brought outside the period of 3 months prescribed under Rule 5(1) of the Judicature (Judicial Review) Rules, 2009. She relied on the case of *Nwoya District Local Government Council v John Paul Onyee*; Civil Application No. 031 of 2019, which states three elements, that constitute a cause of action. Counsel invited this court to exercise discretion not to grant the remedy sought on grounds that it would serve
10 no practical purpose having been overtaken by events, as there were ongoing discussion to rehabilitate Paidha Health Centre III laboratory. She relied on the case of *Arap Simon Peter v Amuru District Local Government*; High Court Civil Application No. 0165 of 2018. In conclusion, counsel prayed that the application be dismissed with costs to the respondent.

15 *Applicant's submissions in rejoinder*

In rejoinder, the applicant reiterated that the respondent's decision to transfer the suit medical equipment was tainted with illegality and irrationality. He relied on the case of *Twinomuhanga Vs Kabale District & Another* [2006] HCB 131. Further, counsel reiterated that the respondent is a public officer under Article 188 of the Constitution and therefore subject to judicial review. For
20 this submission, counsel relied on *Pius Niwagaba Vs Law Development Centre* [2006] 1 HCB 76, 78. Counsel also contended in rejoinder that the applicant had *locus standi* to file the application, being a resident of Paidha Health Centre IV where the medical equipment was removed and transferred to Warr Health Centre III. This effectively denied the applicant a right to proper health services, which right is protected under Article 50 of the Constitution. Lastly, counsel
25 submitted in rejoinder that the applicant was not aware of the respondent's wrongful acts until he wrote to the Inspectorate of Government. He submitted that the cause of action arose when the respondent wrote to the Inspectorate of Government indicating his intention to return the medical equipment to Paidha Health Centre III, but later changed his mind. In conclusion, counsel reiterated the applicant's prayer that the application be allowed with orders sought.




Court's analysis

By this application for judicial review, the applicant seeks the prerogative orders of certiorari and mandamus provided under section 36 of the Judicature Act. Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019; S.I No. 32 of 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 are charged with the performance of public acts and duties. (Ref: Clear Channel Independent (U) Ltd v Public Procurement and Disposal of Public Assets Authority; High Court Miscellaneous Application No. 380 of 2008).

The prerogative power of this Court to entertain applications for judicial review derives from Article 42 of the Constitution, Section 36 of the Judicature Act, and provisions of the Judicature (Judicial Review) Rules, 2009 (S.I No. 11 of 2009) as amended by the Judicature (Judicial Review) (Amendment) Rules, 2019 (S.I No. 32 of 2019).

In applications for judicial review, the role of this Court is to ensure that individuals who have been subjected to public bodies or officials receive fair treatment. This was held in the leading authority of John-Jet Tumwebaze v Makerere University & 2 others; Civil Application No. 0353 of 2005 at page 11. The principle has since been codified under rule 1A of the Judicature (Judicial Review) (Amendment) Rules.

When considering applications for judicial review like the instant case, this court is required under rule 7A (1)(a) of the Judicature (Judicial Review) (Amendment) Rules, to satisfy itself that the application brought before it is amenable for judicial review. In doing so, the court must verify whether the applicant has exhausted the existing remedies available within the public body or under the law; whether the matter involves an administrative public body or official, whether the applicant has a direct or sufficient interest in the matter brought before court and seeks any of the prerogative orders of mandamus, prohibition and certiorari; and lastly, whether



the application for judicial review has been made promptly and in any event within three months from the date when the grounds of the application first arose.

5 Of the aforementioned conditions, three appear to be in contention between the parties in the instant case, namely; whether the applicant has a direct or sufficient interest in the matter; whether the respondent is subject to the process of judicial review; and whether the application was brought within the time prescribed for judicial review. I will resolve the three contestations in that order.

10 Firstly, I do not agree with the submission of the respondent's counsel that the applicant has not expressed a direct or sufficient interest in the matter that would entitle him to apply for judicial review under the precincts of rule 3A of the Judicature (Judicial Review) (Amendment) Rules which provides that any person who has a direct or sufficient interest in a matter may apply for judicial review. The applicant deponed under paragraph 1 of the affidavit in support of the
15 application that he is a resident of Paidha, Zombo District. The crux of his application is that the respondent illegally transferred the suit medical equipment from Paidha Heath Centre III to Warr Health Centre III. The applicant's counsel submitted in rejoinder that the said transfer had the effect of depriving the applicant of his right to proper health care services as a resident of Paidha where the equipment was removed. While the applicant may not have been substantially
20 directly affected by the decision of the respondent, I find and hold that the applicant demonstrated a sufficient interest in the matter to entitle him to file this application.

Secondly, the respondent's counsel contended that the office of the respondent is not envisaged in the meaning of a public body provided under rule 2 of the Judicature (Judicial review)
25 (Amendment) Rules. On the contrary, my view is that the office of the respondent as Chief Administrative Officer is envisaged under rule 2(d) of the Judicature (Judicial Review) Rules as amended which defines a public body to include '*District Administration, a District Council, any district committee of a district council, a local council and any committee of a local council.*' The office of the respondent as Chief Administrative Officer of Zombo District is prescribed under

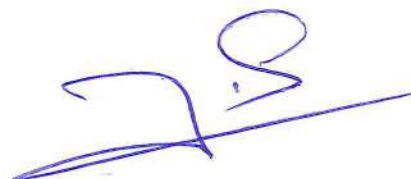


Article 188(1) & (2) of the Constitution and section 63 of the Local Government Act, Cap 243 which provides that there shall be a Chief Administrative Officer for every District who shall be appointed by the District Service Commission and shall be the chief accounting officer for the district. Section 64(1) of the Local Government Act adds that the Chief Administrative Officer shall
5 be the head of the public service in the district and the head of the administration of the district. The same section prescribes the functions of the Chief Administrative Officer to include public administrative duties such as keeping custody of the records of the local government council and assisting in the maintenance of law, order and security in the district, among others. By virtue of his role as head of the administration of the district, the Chief Administrative Officer is placed
10 squarely under the application of rule 2(d) of the Judicature (Judicial Review) Rules as amended which defines a public body to include the district administration. I am fortified in this view by the recent decision of this court in *Tibasiima Gilbert & another v Kasangaki Kaija Dinah & Another; Miscellaneous Cause No. 0020 of 2021 [2022] UGHCLD 114*, where the decision of the Chief Administrative Officer of Buliisa district in appointing and swearing in the 1st respondent in that
15 case as Chairperson of Buliisa District Service Commission was quashed through the mechanism of judicial review. For the above reasons, I find that the respondent is subject to judicial review.

Thirdly, the respondent's counsel contended that the application is time barred having been brought outside the period of 3 months prescribed for judicial review. An application for judicial
20 review must be made within three months from the date when the ground(s) of the application first arose. To this effect, rule 5(1) of the Judicature (Judicial Review) Rules 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
25 shall be made."*

The time is computed from the date when the grounds of the application first arose, and not from the date when the applicant first became aware of the grounds complained of. In *Pauline Nakabuye v Uganda Revenue Authority; Miscellaneous Cause No. 0372 of 2019 [2020] UGHCCD 48*, the applicant in that case sought to challenge the Tax Procedure Code (Tax Stamps)



Regulations, 2018 which came into effect on 2nd October 2018, by way of an application for judicial review filed in September 2019. This court in dismissing her application for being time barred held that the applicant should have sought leave to extend time and stated reasons for extension, namely, that she first became aware of the legislation around July, 2019 when the
5 legislation became publicly available. The court further held that:

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation.

*If the applicants wanted to invoke the jurisdiction of this court they should have come at the
10 earliest reasonably possible opportunity or sought leave of the court to file their application out of time but not to file the same as of right after the expiry of the time set by law.*

The court could have exercised its discretion to extend the time depending on the facts to determine whether to extend the time to file for judicial review depending on the reasons on how the delay arose.

*Inordinate delay in making an application for judicial review will always be a good ground
15 for refusing to exercise such discretionary jurisdiction of this court to entertain the application. The court refuses relief to an applicant on the ground of laches because of several considerations e.g. it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.*

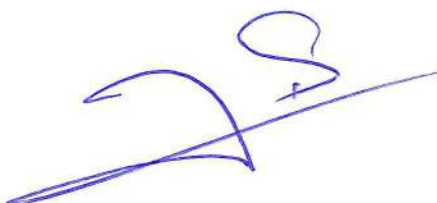
20 Similarly in *IP Mugumya v Attorney General; Miscellaneous Application No. 0116 of 2015 [2016] UGHCCD 43*, this court dismissed an application for judicial review filed by the applicant on 11th August 2015 challenging his interdiction on 6th July 2011 by the Inspector General of Police. The court reaffirmed the position that an application for Judicial Review has to be filed within three
25 months from date when the grounds of the application first arose unless an application is made for extension of time. This court is further guided by the decision of the Court of Appeal in *Uganda Revenue Authority v Uganda Consolidated Properties Limited; Civil Appeal No. 0031 of*



2000 [2000] UGCA 2, where it was held that time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

In the present case, the applicant's claim, as it appears from his pleadings is that the respondent illegally transferred the suit medical equipment from Paidha Health Centre III to Warr Health Centre III and refused to or neglected to heed to the Inspectorate of Government's directive to return the equipment. The time therefore began to run from the date when the medical equipment was illegally transferred from Paidha Health Centre III. I do not agree with the submission of the applicant's counsel that the cause of action first arose when the respondent refused to return the medical equipment to Paidha Health Centre III. If this were the case, the crux of the application should have been that the applicant refused to heed to the Inspectorate of Government's directive to return the medical equipment, and not that the respondent illegally transferred the medical equipment. Further, the applicant's counsel submitted in rejoinder that the decision to transfer the medical equipment to Warr Health Centre III was not communicated to the applicant and that the applicant only got to confirm the illegality through the report of the Inspectorate of Government dated 24th October 2019. As already noted, this contention is untenable in light of the observations of this court in *Pauline Nakabuye v Uganda Revenue Authority (supra)*. The applicant should have applied for extension of time or validation of the application and advanced reasons that he only got to know of the illegality after the Inspectorate of Government's report.

From the applicant's pleadings and annexures thereto, the respondent allegedly illegally transferred the suit medical equipment from Paidha Health Centre III to Warr Health Centre III on 15th April 2016. In the circumstances, the application should have been brought on or before 15th July 2016. However, this application was filed on 21 January 2020 which is over 3 years and 5 months in excess of the prescribed period of three months for judicial review. Finding as I have that the application was brought outside the period prescribed for judicial review, it was incumbent upon the applicant to show '*good reason*' why the period should be extended. The applicant should have lodged a further application for extension of time or validation of the application or, better yet, filed an omnibus application with a prayer to validate the application



supported by good reasons for extension of time or validation. Instead, he chose not to and insisted under paragraph 9 of his affidavit in rejoinder that the application was filed within the period allowed. On this ground alone, the application should fail and I do not find it necessary to delve into the merits of the application. The application is dismissed.

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I take note that the application was brought in public interest and not for the individual interest of the applicant, consequently, I decline to order costs. Each party shall bear its own costs.

I so order.

10

Dated and Delivered on this 31st Day of MARCH 2023.



15 Isah Serunkuma
JUDGE