

right to this Court from all final decision of the High Court in exercise of its original jurisdiction including judicial review. The application is, therefore, incompetent and misconceived.

The background to the application as can be discerned from the affidavit in support and annexures thereto is that the applicant is the Director of Civil Litigation in the Ministry of Justice and Constitutional Affairs. On 8/9/2004 the Solicitor General on the directions of the Minister of Justice and Constitutional Affairs interdicted him from service. Aggrieved by the action of the Solicitor General he petitioned the High Court for judicial review and sought for the prerogative orders of mandamus, certiorari and prohibition. In his ruling dated 14-3-2005, Okumu-Wengi, J. granted him all the orders. On 16/3/2005 the respondent filed a notice of appeal against the learned judge's ruling. In consequence thereof, the applicant filed this application.

Mr. Paul Kiapi, learned counsel for the applicant, contended that no appeal lies to this court when the High Court exercised its powers of judicial review and grants the orders of mandamus, prohibition and certiorari. Counsel submitted that the jurisdiction to review decisions and to grant prerogative orders is vested into the High Court by section 36 of the Judicature Act (Cap. 13). There is no section in the Judicature Act, which gives a right of appeal from the prerogative orders of mandamus, prohibition and certiorari. He argued that this situation is different from the prerogative order of habeas corpus. Section 34 of the Judicature Act empowers the High Court to grant that order and section 35 of the same law gives a right of appeal to an aggrieved party. It was his submission that the omission by Parliament to create a right of appeal was deliberate. The decision of the High Court on orders of mandamus, prohibition and certiorari is, therefore final.

Counsel argued further that appellate jurisdiction is a creature of statute. He relied on the authority of **Attorney General vs Shah (No. 4) [1971] EA 50** for the holding that appellate jurisdiction is solely created by statute and there is no inherent appellate jurisdiction. He urged this court to follow that holding as the Constitutional Court did in **Baku Raphael Obudra and Obiga Kania vs Attorney General in Constitutional Petition No. 4 and 6 of 2006**.

Counsel argued that the jurisdiction of this court is derived from article 10 134(2) of the Constitution. The law, which prescribes the jurisdiction of this Court, is section 10 of The Judicature Act.

Counsel urged us to follow this Court's decision in **Inspector General of is Government vs Orochi** in which it was held that that Court has no appellate jurisdiction over the decision of the High Court in exercise of its prerogative remedy of certiorari. According to counsel, as there is no law allowing an appeal to this Court the application be allowed with costs to the applicant.

Mr. Joseph Matsiko learned Acting Director for Civil Litigation, who appeared for the respondent, did not agree. He submitted that there is a right of appeal from the decisions of the High Court to this Court in matters of judicial review. He argued that section 10 of the Judicature Act provides that an appeal shall lie to this Court from the decision of the High Court. He contended that jurisdiction of this Court is from the Constitution, Judicature Act or any other legislation. He submitted that this Court's jurisdiction to entertain appeals from the High Court when exercising its powers of judicial review is from the Civil Procedure Act (Cap 71) and the Judicature Act.

He contended that according to section 66 of Civil Procedure Act appeals lie from the decision of the High Court to this Court and that when the High Court issues a decree there is an automatic right of appeal to the Court of Appeal. He argued that according to section 2 of the Civil Procedure Act a decree is defined as "the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy

He argued that in the instant case, the High Court issued a decree within the meaning of section 2 of the Civil Procedure Act and conclusively determined the rights of the parties. The respondent, therefore, had a right of appeal to this Court. In support of his submission he relied on **Priamit Enterprises Ltd vs Attorney General Civil of Appeal No. 3 of 1999 C.A.** (unreported).

Counsel further submitted that section 36(3) of the Judicature Act states that subject to any right of appeal the order shall be final. This, according to counsel, indicates that the orders under section 36 of the Judicature Act are appealable. He argued that **Inspector General of**

Government vs. Orochi (supra), is not good law; He submitted further that it is not binding on this court, as it is a decision of a single judge.

In exercise of the right of reply, Mr. Kwarisima, learned counsel for the applicant, contended that the respondent had filed a notice of appeal against an order and not a decree. In his counsel's view, there was no right of appeal and section 66 of the Civil Procedure Act was not applicable to the matter before court. He reiterated Mr. Kiapi submission that **Attorney General vs. Shah (No. 4)** (supra) is good law and should be followed.

We accept the statement of counsel of both parties that appellate jurisdiction is a creature of statute. The dispute between the parties that this court has to resolve is whether there is a right of appeal to this court from the decisions of the High Court, issued under section 36 of the Judicature Act.

Article 134 (2) of the Constitution provides for this court to entertain appeals from the High Court as follows; -

“134 (2) An appeal shall lie to the Court of Appeal from decisions of the High Court as may be prescribed by law.”

Section 10 of the Judicature Act provides for the jurisdiction of the Court of Appeal in the following terms; -

“10. Jurisdiction of the Court of Appeal. An appeal shall lie to the Court of Appeal from decision of the High Court prescribed by the Constitution, this Act or any other law.”

We appreciate Mr. Matsiko's argument that sections 10 of the Judicature Act and 66 of the Civil Procedure Act create a right of appeal from decisions given by virtue of section 36 of the Judicature Act. In our view, Section 10 'if the Judicature Act, means that once any law prescribes that a decision is made by the High Court, then that decision is appealable to this court. Section 36 empowered the High Court to issue orders of mandamus, prohibition and certiorari. In our

view, those are decisions “prescribed” by law within the meaning of section 10 of the Judicature Act.

In his judgment the learned trial judge gave the following orders; -

- 1. Certiorari shall lie to call up and quash the decision of the Solicitor General interdicting the applicant dated 8th September, 2004.**
- 2. A declaration is hereby granted that the Minister of Justice and Constitutional Affairs decision to remove the applicant from office without just cause was null and void.**
- 3. A declaration is also granted that the interdiction of the applicant by the Solicitor General was made contrary to the law, principles of natural justice, Public Service Standing Orders and Regulations.**
- 4. The applicant is free to resume his office and to receive his due emoluments and to recover all the costs relating to this application.**
- 5. IT IS FURTHER ORDERED that the applicant will not also be victimised in a similar manner on the same or similar grounds.**

We have carefully looked at the above orders and we are of the opinion that Mr. Matsiko is right in his submissions that the orders, which the learned judge issued amounted to a decree within the meaning of section 2 of the Civil Procedure Act. The orders exceeded what was expected so from prerogative order of certiorari. It went further and conclusively determined the rights of the parties with regard to all matters that were in controversy. The decree therefore, is appealable to this court as of right, under section 66 of the Civil Procedure Act which provides: -

“66 Appeals from decrees of High Court.

Unless otherwise expressly provided in this Act, an appeal shall lie from the decrees or any part of the decrees and from the orders of the High Court to the Court of Appeal.”

The Court of Appeal in **Makula International Ltd vs His Eminence Cardinal Nsubuga and Another [1982] HCB 11**, held that when an order is made by the High Court on a matter brought before it by some to statutory provision other than the Civil Procedure Act or Rules, it is appealable as of right, unless the appeal is specifically excluded by law. In that case the court was dealing with a preliminary objection against the appeal from the order of the High Court which had dealt with an appeal from the orders of the Taxing Master under the provisions of the Advocates Act. The court held that under section 68 (which is now section 66) of the Civil Procedure Act, an appeal lies as of right from an order of the High Court not made under the Civil Procedure Act to the Court of Appeal. The court held that section 82 (now section 81) of the Civil Procedure Act provided that the provisions of paragraph VII of the Civil Procedure Act relating to appeals from original decrees shall apply to orders of the court made under section 68.

In view of the foregoing, with the greatest respect, we are of the opinion that the case of **Inspector General of Government vs Orochi** (supra), was wrongly decided. The learned judge erred when he distinguished the case of **Makula International Ltd vs His Eminence Cardinal Nsubuga and Another** (supra). The ground for the distinction was that the matter before him dealt with special statutes, namely the Judicature Statute 1996 and the Inspector General of Government Act 1988, which did not create a right of appeal. He concluded, therefore, that the omission by the legislature to create a right of appeal was intentional. The learned judge did not consider the full implications of section 10 of the Judicature Act. He wrongly relied on the holding in **Attorney General vs Shah, (No. 4)** supra, in which the Court of Appeal held that the phrase “subject to any right of appeal the order shall be final” appearing in section 34(3) of the Judicature Act of 1967 did not create a right of appeal. We agree that such a phrase **on** its own **did not** create a right of appeal then. However, the learned judge did not consider that the Court of Appeal had held so because in the Act under interpretation then, there was no provision equivalent to section 10 of the current Judicature Act.

Counsel for the applicant has implored us to follow the case of **Baku Obudra and another vs Attorney General** (supra), because a right of appeal must be clearly provided for and not inferred. We agree with the holding in that case. However, the above authority is very different from the instant application. In the case now before us, the right of appeal is clearly provided for by sections 10 and 66 of the Judicature Act and Civil Procedure Act respectively. Additionally,

The Civil Procedure (Amendment) (Judicial Review) Rules, 2003, S.I. 75 of 2003 indicate that there is an automatic right of appeal from decisions of the High Court made under section 36 of the Judicature Act. Rule 12 only excludes appeals made against orders under rule 4(3). Rule 4(3) deals with applications to a judge for leave to make an application for judicial review. It does not deal with actual application for judicial review. We find that the applicant counsels' submission that the intended appeal is incompetent because it is an order and not a decree is untenable. As we have indicated earlier in this ruling, the learned judge's orders amounted to a decree. The learned judge finally decided all rights between the parties. According to rule 10 (4) of the Civil Procedure (Amendment) (Judicial Review) Rules 2003, if the learned judge was inclined to grant the order of certiorari, he should have done so and sent the matter back to relevant authorities with directions.

We find that this application is devoid of merit. It is accordingly dismissed with costs to the respondent.

Dated at Kampala this 7th day of September 2006.

G.M. Okello

JUSTICE OF APPEAL

C.N.B. Kitumba

JUSTICE OF APPEAL

C.K. Byamugisha

JUSTICE OF APPEAL