THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISC CAUSE NO. 52 OF 2011

AFRIC CO-OPERATIVE SOCIETY LTD :::::::::::::::::::::::::: APPLICANT

VERSUS

1. INSPECTOR GENERAL OF GOVERNMENT

2. ATTORNEY GENERAL :: RESPONDENT

BEFORE: THE HONOURABLE JUSTICE ELDAD MWANGUSYA

RULING

This is an application brought under S. 38(1)(c), (2) and (3) (4) (5) (6) (7) of the Judicature Act, Rules 3(1) and (2) of the Judicature (Judicial Review) Rules, 2009, Section 19(1) (a) and (d) of the Inspectorate of Government Act for Orders of Judicial Review listed in the application as follows:-

a) ***A certiorari to issue against the Inspector General of Government calling for the impugned investigation, decision and report of the Inspector General of Government to halt payments to the Applicant in performance of a Consent Judgment dated 17.07.1989 to be quashed.***
b) ***A declaration that the Inspector General of Government acted ultra vires, and illegally and occasioned a miscarriage of justice against the Applicant when she investigated in a matter that is pending before Court and found that the Applicant's claims are based on forged documents and thus advised the second Respondent not to pay the Applicant her money that was frozen by Government plus accruing interest.***

c) That the Inspector General of Government acted contrary to the Rules of natural Justice when she purported to investigate on a matter and concluded that the Applicant's documents (Consent Judgment) was forged without granting the Applicant a fair hearing or any hearing at all.

d) An order of mandamus requiring the 2nd Respondent to pay the money on the Applicant's accounts that was frozen including accruing interest as computed by a competent entity.

The application is by a Notice of Motion supported by the affidavit of Mr. Arthur Bosco Gidagui, the Chairman of the Applicant on grounds stated as follows:-

a) The Applicant's Society had her assets and money frozen by the Government of the Republic of Uganda in several Bank Accounts in 1978.

b) Being aggrieved, the Applicant filed High Court Civil Suit No. 84 of 1981.

c) In the course of the trial, the Applicant and the 2nd Respondent entered into a Consent Judgment to settle the matter amicably.

d) That the 2nd Respondent indeed compensated the Applicant for the vehicles attached as per the consent judgment except for interest on blocked account balances and vehicles.

e) Since the execution of the Consent Judgment the Applicant negotiated with the 2nd Respondent to pay the money on the frozen accounts and accruing interest which the 2nd Respondent promised to do and undertook to pay.

f) After time had passed, the Applicant pleaded with the relevant authorities to be paid but to no avail.

g) That when the Applicant realized that it had taken too long and the 2nd Respondent's excuses were not yielding any results the Applicant instructed a firm of Advocates to formally demand for payment.

h) That to the Applicant's shock and surprises the 1st Respondent had carried out an investigation way back in 2003 and stopped the Respondent from effecting the payments.

i) That the Applicant was never served with a copy of the Report written by the Inspector General of Government and only got to know about the same when the Respondent informed them that they were not in position to pay them on grounds laid in that Report in April 2011.

j) That as a result of the above the Applicant has gravely been prejudiced and has suffered loss and an opportunity to recover her money owing to the said Report.

k) That the 1st Respondent has no powers to interfere with a matter that is pending in Court.

l) That the said Inspector General of Government's decision cannot in any way overrule that given by the High Court.

m) That the 1st Respondent never gave the Applicant a fair hearing.

n) That the Applicant will suffer irreparable loss if the 1st Respondent's Report is not quashed.

o) That by reason of the foregoing the Applicant is seriously aggrieved and hence this application for Judicial Review as the only remedy open to the Applicant in the premises and in respect to the 2nd Respondent's failure to comply with the terms of the Consent Judgment owing to the 1st Respondent non compliance with the law and principles of natural justice and denial of fair hearing is by quashing the said report.

p) That it is just and equitable that the orders sought be granted to avoid flagrant abuse of the Law.

The affidavit of Mr. Arthur Bosco Gidagui in support of the application expounds on the above grounds. Reference to specific paragraphs of the affidavits will be made whenever it is necessary to do so.

The second respondent filed an affidavit in reply in which Ms Sheila Ampeirwe Lwamafa, a state Attorney in the Attorney General's Chambers acknowledges that the applicant filed a suit against the Attorney General and that the suit was settled on 17th July 1988. A Consent Judgment was entered and the applicant was paid all the sums as agreed in the Consent Judgment. Following the payment of the sums agreed in the consent judgment another consent judgment was presented. This Consent Judgment was in similar terms as the original Consent Judgment except that the latter Consent Judgment included words *"on blocked bank accounts, balances and vehicles"* added to the last word interest. This latter Consent Judgment was investigated by the 1st respondent who made a finding that it was a forgery. All attempts by the applicant to enforce it have been fruitless because of Limitation of time.

The applicants filed an affidavit in rejoinder to clarify some of the issues raised by Ms Sheila Ampeire Lwamafa. I reproduce paragraphs 4 to 16 of Mr. Julius Taitankoko Kirya's affidavit because they are instructive as to the issues for resolution of this Court as I will show in this ruling.

"4. That this application relates to unsettled aspects of the dispute between the Applicant and the 2nd Respondent.

5. That as clearly stipulated in paragraph 5 of the Consent Judgment quoted in paragraph 5 of Ms Sheila's affidavit in

reply the issue of interest remained unsettled. See copies of two letters from President's Office attached hereto and marked as Annexture "A" and "B" respectively.

6. That I know as a fact that the Applicant was compensated for her motor vehicles which were impounded by the agents of the Government of Uganda plus the accruing business loss and this was the subject of the Consent Judgment.

7. That I also know as a fact that the issue of the Applicant's money that was frozen in the bank accounts of the Applicant held with the then Uganda Commercial Bank and the accruing interest were never paid as the same required ascertainment. A copy of a letter from the then Uganda Commercial Bank confirming the freezing of the Applicant's money by the Government of Uganda is attached hereto and marked as Annexture "C".

8. That negotiations continued to ensue between the representatives of the Applicant Society and the Government of Uganda which had M/s P.K Sengendo and Co. Accountants to make the necessary audits and establish the outstanding amount. See Annexture "D" attached hereto.

9. That as clearly pointed out in the above annexture the outstanding amount the Government of Uganda was owing to the applicant which was never compensated was Uganda shillings 68.347.550.541/= as at 20th October 1999.

10. That as at 28th July 2006 the outstanding amount owing to the Applicant from the Government of Uganda confirmed by relevant Department of the Government of Uganda was Uganda shillings 128.825.004.395= which the Government of Uganda has agreed to process and pay to the Applicant see Annexture "E".

11. That it is not in dispute that the Government of Uganda never paid or refunded the Applicant's money that was frozen together with the accruing interest.

12. That the 1st Respondent's alleged forgery of the Consent Judgment, which is denied, has no bearing on the Applicant's claim for the money that was frozen and the accruing interest which remains settled and which has at all material times been a subject of protracted negotiations between the Applicant's officers and the representatives of the Government of Uganda.

13. That the Applicant's contention is that the 2nd Respondent has communicated her refusal to pay the Applicant's money basing on the letter/Report of the 1st Respondent which development was not known to the Applicant until 30th March, 2011 when the second Respondent communicated to her failure to pay basing the 1st Respondent's Report as the only thing that stopped him from paying the Applicant's money.

That the Applicant's contention that the 2nd Respondent being the Chief Legal advisor to the Government cannot be prevented by any other office to proceed with her decision thus cause questioning the legality of the 2nd Respondent's decision.

15. That I have been advised by my advocates M/s Tibeingana & Co. Advocates, whose information I verily believe to be true, that the 1st Respondent's decision is illegal, contrary to the Law and made with so much procedural irregularity that a Court of judicial review ought to investigate.

16. That I have been advised by my Advocates, M/s Tibeingana & Co. Advocates whose information I verily believe to be true, that the 1st Respondent's opinion was made on the premise that the Consent Judgment settled everything between the parties yet it only stopped the Applicant from instituting or prosecuting any further proceedings in that matter except for the interest. The 1st Respondent's Report is thus contrary to Law, illegal, reckless and lacks propriety.

17. ……

18. ……."

It should be noted that the Inspector General of Government did not file any reply to the application. Hearing of the application was scheduled on 17.07.2011 in absence of the 1st Respondent. Only Mr. David Sempala Counsel for the applicant and Ms. Susan Odong counsel for 2nd Respondent attended. The issues framed for resolution by this Court were as follows:-

(1) Whether the 1st Respondent has authority to investigate or intervene in matters pending before Court.

(2) Whether the 2nd Respondent can be prevented by the IGG from carrying out the constitutional mandate

(3) Whether the 1st Respondent followed the rules of natural justice whilst investigating the matter.

(4) Whether the applicant was entitled to the remedies prayed for.

The first issue arises from the provision of Section 19(1) of the Inspector General of Government Act, 2002 which states as follows:-

"The Inspectorate shall not have power to question or shall not have power to question or review any of the following matters;

a) The decision of any Court of Law or any Judicial offices in the exercise of her/her Judicial functions;

b) The decision or any tribunal established by law in exercise of its functions.

c) Any Civil Matter which is before Court at, the commencement of the Inspectorate investigations".

From the wording of this Section the answer to the first issue is that the IGG has no power to investigate matters pending before Court. This Court appreciates the intention of the Legislature to prevent interference in Court matters by an investigative body when the Court would have the capacity to investigate a matter through a trial and conclusively resolve it. In the instant case there was no matter pending before any Court. The heading of the impugned report "HCCS 84/81 – AFRIC CO-OPERATIVE SOCIETY LIMITED – VS-ATTORNEY GENERAL" is grossly misleading. The suit referred to in the heading of the report was resolved when a consent judgment was entered between the plaintiff and the defendant on the 17th July 1989. According to paragraph 5 of Arthur Bosco Gidagui's affidavit and paragraph 6 of Julius Taitankoko Kirya's affidavit cited above the applicant was compensated for

her goods which had been impounded by the 2nd respondent's agents plus the accruing business loss which was the subject of the Consent Judgment.

From the application and the affidavits of both Mr. Arthur Bosco Gidagui and Mr. Julius Taitankoko Kirya after the Court decree arising out of the Consent Judgment had been satisfied, negotiations between the applicant and the 2nd respondent ensued. A number of correspondences including a letter from His Excellency the President of the Republic of Uganda were adduced in this application and all the correspondences are an indication that the negotiations were outside Court. In her affidavit in reply Ms. Sheila Ampeire Lwamafa deponed in paragraph11 that the applicant had filed a Civil Suit No. 167/2000 to recover interest of moneys allegedly blocked/frozen by the defendant and in paragraph 12 that the said suit was dismissed. Both these averments were not controverted by Mr. Julius Taitankoko Kirya's affidavit in rejoinder which strengthens my view that there was no Court process that the 1st Respondent interfered with that would contravene Section 19 of Inspectorate of Government Act.

The second issue is whether the 2nd Respondent can in the circumstances be stopped from carrying out its mandate of advising the Government on legal matters. My view on this matter is that the 2nd Respondent does not work in isolation. The Inspectorate of Government is an investigative arm of the state whose reports may or may not be taken into account when the 2nd Respondent is carrying out his constitutional mandate of advising the Government on legal matters. What the 2nd Respondent relies on to carry out his constitutional mandate is entirely his prerogative and all I can say is that if during the negotiations between the applicant and the 2nd Respondent the 1st Respondent detected a 'fraud' the 1st Respondent was duty bound to point it out and it was up to the 2nd Respondent to rely or not to rely on it. As it is according to the Attorney General's letter to His Excellency the President of the Republic of Uganda (Annexture "E" to Mr. Kirya's affidavit) the

Attorney General chose to rely on it for reasons clearly spelt out in the letter and as I have already stated that was entirely his prerogative. All I can say is that having received a report with allegations of forgery, fraud and uttering false documents I do not see how the 2nd Respondent would have gone ahead to *'carry out his constitutional mandate'* and recommend payment.

The third issue is as to whether the first respondent followed the rules of natural justice whilst investigating the matter. It was in contravention of a fundamental rule of natural justice if a negative report including allegations of forgery, fraud and uttering false documents was presented to the 2nd Respondent without giving an opportunity to the applicant to answer to those allegations and clear her name. But the report by the 1st Respondent was not final. It was still subject of scrutiny by the 2nd Respondent who all along had been negotiating with the applicant about the unpaid claim. The fact that the applicants were not given opportunity to give in an input when the 2nd Respondent was carrying out an investigation is curable because they can still present that side of the story to the 2nd Respondent who can still review the decision as to the payment of the outstanding claim.

Lastly is the issue of the remedies. The orders sought are orders of Judicial Review of certiorari, declaration and mandamus all of which are prerogative orders given at the discretion of the Court. His Lordship Remmy Kasule as he then was defines the above prerogative orders in the case of **JET TUMWEBAZE VERSUS MAKERERE UNIVERSITY COUNCIL & OTHERS CIVIL APPLICATION NO. 78 OF 2005** (Unreported) as follows:-

> ***"Certiorari issues to quash a decision which is ultra vires or vitiated by an error of the face of the record".***
>
> ***A mandamus order is issued in order to compel performance of a statutory duty. It is used to compel public officers having***

responsibilities in public offices and public bodies to perform duties imposed upon them by an Act of Parliament.

A declaration is a pronouncement by Court, after considering the evidence and applying the law to that evidence of an existing legal situation. A declaration enables a party to discover what his/her legal position is about the matter the subject of the declaration, and this open a way to the party concerned to resort to other remedies to give effect for the declared legal situation.

I agree with the above definitions and in my view the prerogative remedies prayed for are not appropriate. The impugned report of the IGG was not a decision as I have already indicated in this judgment but a finding from an investigation carried out by the investigative machinery of government. There is no Act of Parliament cited by the application that this Court would enforce by way of mandamus. All the application states is that, the 2nd Respondent has a constitutional mandate to advise government on legal matters which to me is a statutory duty when a specific statute has not been cited. The prayer for a declaration was based on the ground that the 1st Respondent had investigated in a matter that is pending before Court but as Court has found there is not matter pending before Court that the 1st Respondent can be said to have investigated.

In the circumstances Court finds that none of the prerogative remedies sought are available and for the reasons stated I find no merit in this application which is dismissed with costs to the Respondent.

Eldad Mwangusya
J U D G E

29/11/2011

29/11/2011
David Sempala & Angela Obel for the applicant

Applicant represented by the General Secretary Kirya Julius.

Respondents absent.

Clerk Milton

Ruling read in open Court (Chambers)

Keitirima John Eudes
DEPUTY REGISTRAR