

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

MISC. APPLICATION NO.536 OF 2014

(Arising from Misc Cause No. 147 of 2014)

INSPECTORATE OF GOVERNMENT :::::::::::::::::::::APPLICANT

VERSUS

1. UVETISO ASSOCIATION LIMITED

2. JEFF LAWRENCE KIWANUKA

3. JAMAL KITANDWE

4. KAMUGISHA BENARD

:::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by the Inspector General of Government (IGG) by way of Notice of Motion under O.1 r 10(2), O. 1 r 13, O. 52 r 3 Civil Procedure Rules and S. 33 of the Judicature Act Cap 13 as well as S. 98 of the Civil Procedure Act for orders that:-

1. The applicant be joined as a respondent to Misc. Cause No. 147 of 2014
2. Costs of the application be provided for.

The application is supported by affidavit of Justice Irene Mulyagonja the inspector General of Government wherein she deponed that:-

1. “.....
.....
2. That after getting complaints about the receipt of UGX 10 billion by the respondents on behalf of former employees of the Internal Security Organisation (ISO), the applicant made preliminary in inquiries about the matter.
3. That it was established that indeed the said amount had been paid to the respondents by Government on account of terminal benefits for the former employees of ISO following a settlement reached between the respondent and the Government of Uganda but the manner in which it was disbursed by the respondents was suspect.
4. That as result I stopped the Permanent Secretary/Secretary to the Treasury, Ministry of Finance from making any further payment and he subsequently promised not to make any additional payments. A copy of his response is attached hereto as **Annixture “A”**.
5. That through an affidavit dated 14th October 2014 which I swore, a number of waste cheques and bank statement from Crane Bank were retrieved in preparation for further investigation.

6. That it was established from the documents above that the 2nd to 4th respondents withdrew large amounts of money from the account of the 1st respondent after payment was made to them by the Ministry of Finance, as was alleged in the complaints lodged with the applicant. A copy of the Bank Statement of the 1st Respondent retrieved by the applicant is attached hereto as **Annexure “B”**.
7. That it was also established that while the monies had been disbursed in a suspicious manner as alleged by the complainants, efforts were being made by the respondent's lawyers to have government disburse a further UGX29 billion to the 1st respondent.
8. That it was for those reasons that the Inspectorate of Government stopped the Permanent Secretary, Secretary to the Treasury from paying any more monies to the respondents.
9. That the 2nd to 3rd respondents were summoned to give information about the payment received by them from Government and how it had been disbursed as is practice in investigations carried out by the applicant.
10. That the respondent requested for more time within which to attend the Inspectorate in answer to the summons, which was granted to them, but instead of so attending as they had proposed they filed Misc. Cause No. 147/2014 against the

Attorney General in which they prayed for orders to stop the investigation.

11. That the investigations have since been halted by an interim order which was issued by this court.
12. That at the first hearing of **Misc Cause No. 147/2014** counsel for the applicants proposed to raise preliminary objections about the manner in which responses were filed in the application and about the powers of the Inspectorate of Government to investigate the matter at hand.
13. That I am informed by Mr. Vincent Kasujja, counsel for the Inspector, who was in court on 20th October 2014 to hold a brief for the Inspectorate that although he tried to request counsel from the Attorney General's Chambers to be introduced for court record and to make an oral application to be joined as parties, the request was not granted.
14. That officers of the Inspectorate held one meeting with an officer from the Attorney General's Chambers with a view to plan how to defend the application and it was to be followed up by another meeting at which a strategy to respondent would be decided upon but that meeting did not happen.
15. That the Inspectorate of Government has since then established from the Permanent Secretary to the Treasury, Mr. Keith Muhakanizi that through their lawyers, Matovu & Matovu Advocates he requested the respondents to account for the

UGX 10 billion disbursed to them. A copy of the letter dated 14th October 2014 is attached as **Annexure “C”**.

- 16.** That I am further informed by the Secretary to the Treasury that the said Advocates response was that the Secretary to the Treasury has no right to demand for an account from the respondents. A copy of the lawyer’s response is attached as **Annexure “D”**.
- 17.** That in view of the contents of paragraph 16 there is still great need to investigate the matter at hand and so it is crucial that **Misc. Cause No. 147/2014** be defended vigorously and in good faith.
- 18.** That on the 27th October 2014 a report was published in the New Vision newspaper where it was stated that the inspector General of Government and the Attorney General had disagreed on whether the Inspectorate of Government has the powers to carry out an investigation such as the one in issue in this application or not. A copy of the Newspaper is attached hereto as **Annexure “E”**.
- 19.** That it was clear from the comments attributed to the Attorney General’s Chambers in the news report that the lawyer who prepared the brief to the Attorney General on the matter has an opinion that is contrary to that of the Inspector General of Government about the possibility of sustaining the contested investigation.

20. That despite the denial by Attorney General of the contents of the New Vision article aforesaid, no clarification has been published retracting the earlier comments. A copy of the letter of Attorney General is attached as **Annexure "F"**.
21. That it was also reported that according to officers from the Attorney General's Chambers that the Inspector General of Government usurped the powers of the Attorney General when Inspectorate Officers drafted and filed affidavits in response to **Misc Cause No. 147/2014**.
22. That the complaints filed with the Inspectorate of Government make reference to a syndicate of crooks which is alleged to involve the respondents and civil servants and the applicant is interested in defending its discretion to investigate the allegations and put a final conclusion to the matter.
23. That it is clear from the comments about the investigation attributed to the Attorney General of officers in his Chambers in the news report referred to above that officers from Attorney General's Chambers are placed in a position where they cannot properly represent the interests of the Inspectorate of Government in this matter.
24. That this affidavit is deposed in support of an application to be joined as a party to the proceedings to enable court to effectively adjudicate upon all the issues in controversy between the parties and the same will not occasion any injustice to the respondents.

25. That save for the contents of paragraphs which are true to the best of my information from the sources disclosed therein, the rest of the contents of this affidavit are true to the best of my knowledge and belief.”

When the main application came up for hearing, court’s attention was drawn to the existence of an application to join the proceedings by the IGG. It was ordered that the application to be joined would be heard first and parties were allowed to file submissions in support of their respective positions.

The applicant submitted that it is within court’s discretion to strike out or add parties to proceedings. That it is trite law that a person not a party to a suit can apply under O. 1 r 10(2) of the Civil Procedure Rules to be joined if she/he can show sufficient interest in the case. Learned counsel relied on the case of **Naluvugo Vs Hategyirikimana [1977] HCB 72.** He reiterated that the interest of the applicant to be joined is a government interest and that justification is contained in the affidavit of the IGG and the annexures thereto. That the rationale to join parties is to enable court to effectively and completely adjudicate all the issues in the case as was decided in **Golkaldas Laximads Tanna Vs Sister Rose Muyinza HCCS 707/87 [1990-91] KALR 24.**

In reply, learned counsel for the respondents submitted that the applicant does not have corporate status or legal capacity to bring this application. That this issue was exhaustively handled by the Supreme

Court in **SCCA of 2008 Gordon Sentiba Vs The Inspectorate of Government** which held *inter alia* that there was nothing in Article 227 of the Constitution and S. 10 of the IGG Act that confers corporate status or legal capacity to sue or be sued onto the IGG.

I have considered the application as a whole and the respective submission by both learned counsel. I have also considered the law applicable and the authorities relied upon by both sides.

Circumstances under which a party may be joined to any proceedings was extensively discussed in **MA 665 of 2003 Major Roland Kakooza Mutale Vs Attorney General** (Bamwine J as he then was)

The principles under which an application of this kind could be allowed are that:-

- (a) The plaintiff is at liberty to sue anybody he thinks he has a claim against and cannot be forced to sue anybody. Accordingly should he sue a wrong party, he has to shoulder the blame.
- (b) Court has no justification under O. 1 r 10(2) Civil Procedure Rules to order the addition of parties as defendants where the matter is not liable to be defeated by non-joinder; when they were not persons who ought to have been sued in the first place; and when their presence as a party is not necessary to enable the court effectively to adjudicate on all the questions involved.

- (c) A defendant will not generally be added against the plaintiff's wish.

Having taken into account the above considerations, I am inclined to agree with learned counsel for the respondent that this is not a matter that would be liable to be defeated by non-joinder of another party or the applicant. The respondent knows who wronged it i.e the Government which has been brought to court. The applicant as an institution is immune to prosecution and suits. However if it so elected, the IGG could testify in the matter by way of affidavit or cross-examination. There is no legal justification to add the IGG as a party to the proceedings in view of the fact that the Attorney General is legally mandated to carry the IGG' cross.

In the instant case the applicant has elected to take out an action against the Attorney General because that is the law under Article 119, 250(1) & (2) of the Constitution and S. 10 of the Government Proceedings Act. It has not been argued that in the proceedings against the Attorney General in the main cause the respondent had gone against a wrong party. I am of the considered view that the IGG is not necessary party in the adjudication of the matter. The IGG could testify if it is willing to do so. That way the IGG will have the opportunity of presenting its version of events through evidence through the office of the Attorney General.

In reaching this finding, I am fortified by the Supreme Court decision in **SSCA 6 of 2008 decided in 2010 - Gordon Sentiba & others Vs**

The Inspectorate of Government which considered the decision in **Kikondwa Butema Farm Ltd Vs Attorney General Constitutional Appeal No. 14 of 2007** and held that the decision in Kikondwa case regarding the legal capacity of the respondent (IGG) was arrived at in error and the Supreme Court declined to follow it. Justice B.J Odoki CJ (as he then was) in his lead judgment held *inter alia* that:-

“There is nothing in Article 227 of the Constitution and S. 10 of the Inspectorate of Government Act that confers corporate status or legal capacity to sue or be sued. The constitutional court merely inferred corporate status by holding that parliament vested the status on the respondent (IGG) without saying so. If parliament had wanted to confer corporate status on the respondent nothing could have stopped it from doing so, but it did not in its wisdom do so.”

It would be wrong for courts to confer corporate status upon the applicant when parliament in its wisdom did not find it necessary to do so. It is not the function of court to confer corporate status or legal capacity or similar powers on public institutions or bodies when the same is not specified in the parent or enabling laws. Conferring a special status does not amount to giving a corporate status. The applicant has argued that it has appeared in court in several cases as a party to bolster its argument that it has a corporate status. While that may be true, the issue of its legal capacity or *locus standi* was not raised and therefore the issue was not determined in those cases.

It was argued by learned counsel for the applicant that the above Supreme Court decision was set aside by the constitutional Court in the Constitutional Petition between the **IGG and Kikondwa Farm Ltd 10/2012.**

Much as the court of Appeal sitting as a Constitutional Court in **Kikondwa Butema** held that the respondent (IGG) is a body corporate with legal capacity to sue or be sued, the Supreme Court decision in **Gordon Sentiba & others Vs The Inspectorate of Government 2010** by virtue of the supremacy of the Supreme Court is binding on all courts as enunciated in Article 132(4) of the Constitution. The Supreme Court is the highest court of record in Uganda and by virtue of that status, this court is bound to follow the 2010 decision and view of B.J Odoki C.J (as he then was) (*supra*).

I agree with the submission by learned counsel for the respondent that only the Supreme Court can depart from its decision on all matters of law. All subordinate courts to the Supreme Court are bound by the Supreme Court decisions regardless of whether it was sitting as a Civil or Constitutional appellate court. Therefore the submission by learned counsel for the applicant that the Constitutional Court overruled a decision of the Supreme Court is clearly untenable. Therefore the decision in **Gordon Sentiba** case still binds this court unless otherwise varied by Supreme Court or until the Supreme Court agrees with the decision in Constitutional Petition 10/2012. The law is that it is the Attorney General to represent Government in Civil Proceedings. When I

perused the Supreme Court decision, I was unable to agree with learned counsel for the applicant that the decision made was obiter.

In the Sentiba case (*Supra*) the Supreme Court noted that the main issue in the ground of appeal was whether the respondent (IGG) had legal capacity to sue or be sued and court went ahead and resolved in the negative. The applicant, therefore has no *locus standi* in all cases against Government. See: **Constitutional Application 53 of 2011 Parliamentary Commission Vs Severino Twinobusingye & Attorney General** followed in **Gordon Sentiba & others (supra)** wherein it was held that :-

***“It is trite law that the Attorney General is the Principal legal advisor to Government as provided for in Article 119(3) of the constitution and that the legal opinion of the Attorney General is generally binding on government and public institutions like the respondent (IGG). Therefore the respondent is not correct in submitting that it can intervene or take over a case where the Attorney General has decided not to take action in order to prevent the Government from losing colossal sums of money. The respondent (IGG) is a creature of the Constitution and statute and its functions and powers are clearly laid down in those legal instruments*”**

The position as I have outlined herein applies with equal force to matters of Judicial Review. Judicial Reviews are suits within the meaning of S. 2 of the Civil Procedure Act and accordingly, parties to

the same should be individuals persons only although court can issue judicial review orders against a non-legal entity as part of supervisory powers. If parties are public offices, they should be empowered by statute like is the case with the Administrator General under S. 2 of the Administrator General and Public Trustee Act Cap 157.

In case of the IGG, however, there is nothing in the Inspectorate of Government Act that expressly allows the applicant to be a party in any civil proceedings.

For the reasons I have outlined above, I am unable to grant this application. The applicant cannot be added as a party for want of *locus standi* and legal capacity. The IGG is merely an interested party to the suit and its interests can be represented by the Attorney General. Infact the applicant has already filed affidavits on record which will be considered. The argument that the applicant will be prejudiced by representation by the Attorney General are untenable in the circumstances until the law as it is now is changed.

The application stands dismissed with costs.

Stephen Musota

J U D G E

17.11.2014