THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 352 OF 2021

BWENGYE DEUSDEDIT :: APPLICANT

VERSUS

ELECTORAL COMMISSION :: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought this application by Notice of Motion under Article 42 of the Constitution of the Republic of Uganda, Sections 33, 36 and 38 of the Judicature Act as amended, Rules 2, 3A, 4, 5, 6, 7, 7A & 8 of the Judicature (Judicial Review) Rules 2009 as amended, seeking for the following declaration and orders;

a) A declaration that the decision of the Respondent refusing to reserve the name, symbols, slogan and colours of the National Revolution for the Restoration of Uganda (NARRU), a prospective political party, as communicated in the letter dated 5th October 2021, was illegal, irrational or procedurally improper.

b) Orders for;

(i) Certiorari quashing the decision of the Respondent refusing to reserve the name and symbols of the National Revolution for the Restoration of Uganda (NARRU).

(ii) Mandamus compelling the Respondent to reserve the name, symbols, slogan and colours of NARRU.

(iii) Prohibition forbidding the Respondent from any further reliance on the impugned decision.

(iv) A permanent injunction restraining the Respondent from reserving the name, symbols, slogan and colours of NARRU for any other political entity other than the NARRU.

(v) Payment of general and exemplary damages to the Applicant.

(vi) Payment of the costs of the application to the Applicant.

[2] The grounds upon which the application is based are summarised in the Notice of Motion and also set out in the affidavit in support of the application deposed by **Bwengye Deusdedit**, the Applicant. Briefly, the grounds are that the Applicant is the elected president of a pressure group, the **National Revolution for the Restoration of Uganda** (herein after to be referred in short as **"NARRU"**), which aspires to metamorphose into a political party. The Applicant applied to the Respondent to reserve the name, slogan, symbols, colours and emblem as a preliminary step before registering a political party. The Respondent's Acting Secretary responded by letter dated 5th October 2021 that it could not reserve the name and the symbols of the NARRU because the name 'National Revolution for Restoration of Uganda' was the same or similar to that of 'National Resolution Party' and 'African Restoration Party'. The Applicant states that the Respondent did not give any legal basis upon which she refused to reserve the Applicant's name and symbols. The Applicant objected to the refusal and requested the Respondent to reconsider the decision but to no avail. The Applicant avers that the decision by the Respondent was illegal, irrational, malicious, unfair, unreasonable and it is in the interest of justice, equity, common sense and good conscience that the application is allowed.

[3] The Respondent opposed the application through an affidavit deposed by **Kiyingi Samuel**, a Principal Elections Officer in the Political Party's Unit of the Respondent who stated that his duties include verifying applications for registration of political parties, compile, update and maintain a data base of

reserved political party names and registered political parties. He stated that the Applicant applied for reservation of a name, symbol, slogan, colours and flag for a prospective political party called National Revolution for Restoration of Uganda (NARRU). The deponent stated that he conducted a search and verification and found that there were names of 'National Resolution Party' and 'Africa Restoration Party' that had been reserved earlier. He stated that to his knowledge, the Applicant's proposed name is similar to and closely resembles the already reserved party names above. He also knows that the desire by the Applicant to use of the map of Uganda as the party symbol contradicts the law as the same is a preserve of the Republic of Uganda. He further stated that the phrase 'Power to the People' is similar and closely resembles 'People Power … We are' a slogan that is already reserved for the Uganda Meritocracy Party. He also stated that he knows that reservation of names, slogans, colours, symbols and flags in contradiction of the law will cause confusion and uncertainty among the people of Uganda whom the Applicant seeks to engage. The deponent further stated that the red colour proposed by the Applicant as the dominant colour is already reserved and used by a registered political party in Uganda. He concluded that the Applicant was duly notified of the decision of not reserving the proposed political party name, logo, symbol and colours and the decision was arrived at impartially, rationally, based on the law and it is just and fair that the application is dismissed with costs.

[4] The Applicant made and filed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

[5] At the hearing, the Applicant appeared in person and was not represented by any advocate. The Respondent was represented by **Mr. Baguma Honest** and **Ms. Gilda Katuutu**. It was agreed that the hearing proceeds by way of written

submissions which were duly filed by both sides. I have considered the submissions in the course of determination of the matter before court.

Issues for Determination by the Court

[6] Two issues were agreed upon for determination by the Court, namely;

a) **Whether the Respondent's decision was illegal, irrational and/or procedurally improper?**
b) **What remedies are available to the applicant?**

Resolution of the Issues

Issue 1: Whether the Respondent's decision was illegal, irrational, and/or procedurally improper?

[7] The position of the law is that judicial review is concerned not with the merits of the decision but the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. The duty of the court therefore is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and /or arrived at in accordance with the rules of natural justice. See: *Section 3 of the Judicature (Judicial Review) (Amendment) Rules No. 32 of 2019*, *Attorney General v Yustus Tinkasimmire & Others, CACA No. 208 of 2013* and *Kuluo Joseph Andrew & Others v Attorney General & Others, HC MC No. 106 of 2010*.

[8] It therefore follows that the court may provide specific remedies under judicial review where it is satisfied that the named authority has acted unlawfully. A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful

on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: *ACP Bakaleke Siraji v Attorney General, HC MC No. 212 of 2018.*

[9] In this case, the Applicant challenges the decision of the Respondent on grounds of illegality, irrationality and procedural impropriety. I will consider the allegations under each ground separately.

The Ground of Illegality

[10] Illegality has been described as the instance when the decision making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality. **Lord Diplock** in the case of *Council of Civil Service Unions v Minister for Civil Service (1985) AC 375* stated thus;

> *"By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised".*

[11] A public authority or officer will be found to have acted unlawfully if they have made a decision or done something without the legal power to do so. Decisions made without legal power are said to be ultra vires, which is expressed through two requirements: One is that a public authority may not act beyond its statutory power and the second covers abuse of power and

defects in its exercise. See: *Dr. Lam –Lagoro James v Muni University, HC MC No. 007 of 2016*.

[12] On the case before me, it was alleged by the Applicant that the Respondent had a mistaken view of section 8 of the Political Parties and Other Organisations Act 2005 on what amounts to the "same or similar or nearly resembles" an already reserved party name, adopted a mistaken view that the law allows the Respondent to compare the proposed name with a combination of reserved names, instead of comparing one by one; and that the Respondent illegally discriminated the Applicant by refusing to reserve the symbol containing the map of Uganda yet it had earlier on reserved and registered it for other political parties.

[13] For the Respondent, it was shown that by letter dated 5th October 2021, the Respondent relied on section 8 of the Political Parties & Other Organisations Act to decline the request to reserve the proposed political party name and symbols reasoning that the law prohibits use of any name, symbol, slogan, or colour which is the same, similar or nearly resembles that of any registered political party or organisation. The Respondent found that the proposed name of National Revolution for the Restoration of Uganda (NARRU) was the same or similar to already reserved party names of National Resolution Party and African Restoration Party.

[14] Section 7(5)(a) of the Political Parties & Other Organisations Act 2005 provides that the "Electoral Commission shall not register any political party or organisation whose name, symbol, slogan or colour resembles that of a political party or organisation that has already been registered or contravenes paragraph (a) of section 8". Section 8 of the Political Parties & Other Organisations Act provides that;

"A political party or organisation shall not submit to the Electoral Commission for the purposes of registration under section 7, any identifying symbol, slogan, colour or name which is the same or similar to the symbol, slogan, colour, name or initials of –

a) Any registered political party;

b) The Republic of Uganda; or

c) A statutory corporation or other body the whole or greater part of the proprietary interest in which is held by or on behalf of the state, or in which the state has a controlling interest;

or which so closely resembles, the symbol, slogan, colour, or name or initials of another political party or the Republic of Uganda or a body described in para (c) as to be likely to deceive or confuse members of the public".

[15] From the above provisions, it is clear to me that the Respondent is empowered to consider an application for reservation of a name, symbol, slogan or colour of a political party proposed to be registered. The law also sets out parameters to be used by the Respondent when allowing and disallowing such an application. The allegation before me is not that the Respondent did not have the legal power to refuse the reservation of the name and symbols of NARRU. I also find that it is not established that in considering and refusing the application, the Respondent failed to act within the parameters provided by the law. The allegation by the Applicant is that the Respondent wrongly construed the relevant provisions of the law and came to a wrong conclusion.

[16] To my mind, this allegation by the Applicant does not fall within the domain of judicial review; it is an allegation challenging the decision of the Respondent on its merits. The question raised by the Applicant is whether the Respondent correctly applied the law and came to a correct decision. That is a question that could be considered on appeal and not in judicial review. It is not a question directed at the decision making process or to the legality in the

exercise of power by the Respondent. The court in judicial review should not be expected to substitute the decision of the public authority with the court's own decision. The court is only empowered to check the decision for legality, rationality or procedural propriety or fairness.

[17] In the circumstances, the allegations raised by the Applicant under the ground of illegality are incapable of establishing a case for judicial review. The allegations are wrongly before the Court and are accordingly rejected. No instance of illegality has therefore been established by the Applicant.

The Ground of Irrationality

[18] In judicial review, irrationality refers to arriving at a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. See: *Council for civil Service Unions (supra)*. In *Dr. Lam – Larogo (supra)*, it was held that in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[19] On the case before me, the Applicant argued that it was irrational on the part of the Respondent to inform him of the decisions for refusal to reserve the map of Uganda in an affidavit in reply and not in the letter communicating the decision. The Applicant also stated that it was irrational to conclude that the name National Revolution for Restoration of Uganda is the same or similar or closely resembles that of National Resolution Party or the African Restoration party.

[20] As I have stated above, the question regarding the conclusion reached by the Respondent is one of discretion on the part of the Respondent. In judicial review, once a decision by a public authority passes the test of legality, it is immaterial that the court would have arrived on a different conclusion on the law and facts of a given case. The court is not expected to interfere with the exercise of discretion by the public authority unless the discretion was exercised un judiciously. In this case, it has not been shown that the Respondent did not exercise their discretion judiciously. The Respondent considered the application and gave reasons based on the law as to why the application was rejected. I have, therefore, not found any instance of irrationality on the present facts.

The Ground of Procedural Impropriety

[21] As a ground for judicial review, "procedural impropriety" has been defined as "the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision." See: *Council of Civil Service Unions & Others v Minister for the Civil Service [1985] AC 374*. Under the law, procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: *Dr. Lam – Lagoro James v Muni University (HCMC No. 0007 of 2016*.

[22] Procedural propriety in public law matters calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause (the rule against bias). Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she

should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: *Byrne v Kinematograph Renters Society Ltd, [1958]1 WLR 762*.

[23] In this case, it was stated by the Applicant that while the Respondent claimed that the Applicant's dominant colour was red and it was rejected because the same had been reserved by another already registered political party, the Respondent had acted without sufficient facts and/or did not pay sufficient attention to the facts since it had clearly been shown that the Applicant's dominant colour was white. The Applicant argued that this constituted an instance of procedural impropriety.

[24] To begin with, an allegation of failure to properly evaluate evidence does not constitute an instance of procedural impropriety. As stated above, procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause (the rule against bias). Provided the public authority went through the process as required under the law, and acted in good faith, the mere fact that it arrived at a conclusion different from that expected by the Applicant cannot constitute an instance of procedural impropriety or unfairness. In this case, no breach of any rules of procedure or the rules of natural justice has been established; no bad faith in any material particular has been established; and neither has any instance of bias been cited or established. As such, no instance of procedural impropriety or unfairness has been established by the Applicant on the present facts. On the whole, Issue I is therefore answered in the negative.

Issue 2: What remedies are available to the Applicant?

[25] In light of the findings herein above, the Applicant has not established any of the alleged grounds for judicial review in the present application. The

Applicant has failed to prove that the decision by the Respondent refusing to reserve the name, symbols, slogan or colours of the proposed political party was illegal, irrational and/or procedurally improper. The application by the Applicant has thus wholly failed and is dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered by email this 16th day of January, 2024.

Boniface Wamala
JUDGE