

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

MISC.CAUSE NO. 059 OF 2012

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

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| <p>1. UGANDA VOLUNTARY MOBILIZERS
ORGANISATION LTD</p> <p>2. HAJJI YUSUFU KASAJJA</p> <p>3. HAJATI HAWA NAKITO</p> <p>4. SAITI NABAKIIMBI</p> <p>5. DDAMBA HARUNA</p> <p>6. ABDUL MATOVU</p> <p>7. PHOEBE ARINAITWE</p> <p>8. STEVEN KUTEESA</p> <p>9. SILVER TUSINGWIRE</p> <p>10. PATRICK LUMBASI</p> <p>11. TIMOTHY TIMUZIGU</p> | } | APPLICANTS |
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VERSUS

ATTORNEY GENERAL:..... RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

This is an application for Judicial Review but it cited no particular section of the Judicature Judicial Review Rule 2009 under which it was brought. The Uganda Voluntary Mobilisers

Organization Limited and 11 others represented by M/s. Tusasirwe & Co. Advocates have sought for orders of this court that:

- (i) An order of certiorari quashing the decision of the Director Criminal Investigation Department and the Inspector General of Police of preferring and charging the applicants with the charge of obtaining money by false pretence as stated in the charge sheet date 24th of November 2011.
- (ii) An order of certiorari quashing the decision of the Director Public Prostitutions of approving and sanctioning the charges and the subsequent decision to prosecute the applicants on a charge of obtaining money by false pretence as stated in the charge sheet dated 24th November 2011.
- (iii) An order of Prohibition issues prohibiting the Director of Public Prosecution prosecuting the applicants on the same charge of obtaining money by false pretence.
- (iv) An order of certiorari quashing the Inspector General of Police and the Director of Criminal investigation decision to close the offices of the 1st applicant soon after the arrest of the 2nd to 10th applicants from 21.11.2011 up to date.
- (v) An order of certiorari cancelling the decision of the Inspector General of Police and the Director of Criminal Investigations to seize, impound, confiscate and keep the property of the applicants on the 20.11.2011 and purportedly carrying out criminal investigations.
- (vi) An order of prohibition restraining the Director of Criminal Investigations from detaining the applicants' said property.
- (vii) An order that the Director of Criminal Investigations returns to the applicants' property.
- (viii) A declaration that the Inspector General of Police and the members of the police acts of arresting and detaining the applicants for 5 days without preferring any charge against them is illegal and an abuse of the applicants' rights and process of the law.
- (ix) A declaration that the impounding and keeping away of the applicants' property aforesaid is illegal, an abuse of applicants' rights.
- (x) A declaration that the arrest and detention of the applicants for four days which is more than forty eight hours as required by law between the 21st and 24th of November,

- 2011 without producing them before any court of law, violated the applicants' fundamental rights and freedoms as provided for by the Constitution.
- (xi) A declaration that the prosecution of the applicants is an abuse of court process.
 - (xii) A declaration that the search carried out at the applicants' place of business on the 21st day of November, 2011 was illegally done since the police authorities who carried out the search were without a search warrant to that effect.
 - (xiii) An order to terminate the criminal proceedings aforesaid.
 - (xiv) An order that the respondent pays exemplary and punitive damages to the applicants.
 - (xv) An order of general damages.
 - (xvi) An order for interest on (h) and (i) at a court rate from the date of judgment until payment in full.
 - (xvii) An order for costs.

The grounds upon which this application is based are that:-

- 1) The applicants have never at any one time either by themselves or through their organization of Uganda Movement Mobiliser's Organisation tried to or obtained large sums of money fraudulently from anyone under the pretence of securing that person a meeting with the president.
- 2) The decision of the Police authorities of arresting, searching and bringing criminal charges against the Applicants which was solely based on misinformation and untruths was wrong and amounted to an abuse of the legal process.
- 3) The decision of the Director of Public Prosecutions of preferring and sanctioning the charge of obtaining money by false pretences against the applicants without any complaint from Charles Wabwiire Hood or any of the members of Uganda Voluntary Mobiliser's Organisation or any member of the public as alleged is irrational, unreasonable and an abuse of discretionary powers of the Director of Public Prosecutions.
- 4) The decision and the actions taken by the respondent's agents of detaining the applicants at Katwe Police Station for more than 48 hours between the 21st and 24th day of

November 2011 without producing them in court of law was illegal and violated the applicants' fundamental rights and freedoms as enshrined in the constitution.

- 5) That the seizure and retaining of applicants' property is illegal.
- 6) The search of the applicants' office and the close of the same is illegal.
- 7) The respondent is the legal representative of the Republic of Uganda and is vicariously liable for the actions of the officers of the government of Uganda whilst in the execution of their duties.
- 8) The applicants have been unfairly and without justification been made to suffer physical and mental anguish and anxiety hence should be granted damages.
- 9) It is fair and equitable that the Applicants be granted the reliefs sought and the application be allowed with costs.

The applicants have prayed that the costs of and occasioned by this motion be provided by the respondents or as court may direct.

On hearing of this motion, the applicants used the affidavits and exhibits, copies of which are attached to the motion.

The application is supported by the affidavit of Hajji Yusuf Kasajja, Hawa Nakito, Saiti Nabakiimbi, Haruna Ddamba, Abdul Matovu, Steven Kuteesa, Silver Tusingwire, Patrick Lumbasi, Timothy Timuzigu, Phoebe Arinaitwe as well as Esther Mikisa and Wabwire Hudu Charles. Save for the last two, the rest of the respondents are among the applicants.

What runs through the supporting affidavits are denials of any wrong doing. Each of the deponents denies obtaining the alleged 60 million shillings from Wabwire Hudu Charles and aver that they each were wrongfully incarcerated at the police yet the offence with which they were arrested is not backed by evidence. That their detention was illegal and unconstitutional.

That as a result of the police action the applicants have suffered great damage and loss because their documents, equipment and property has been illegally taken away. That they cannot carry on their activities because they have no office or place to work.

The applicants further allege that the DPP abused his powers and office since there is no evidence whatsoever to justify the charge. That the actions by the DPP were illegal, improper and an abuse of the powers of the office of DPP.

The applicants further complained that there is no evidence whatsoever to justify the charge because the DPP did not properly evaluate the evidence and acted negligently, wantonly, rashly to sanction the charge. That the DPP acted prejudicially to the rights of the applicants.

In its affidavit in reply, the Attorney General through Elisha Bafirawala Senior State Attorney deponed in opposition of the application that the Uganda Police Force is empowered by law to arrest and detain anybody suspected to have committed or about to commit a crime. That the Uganda Police is also empowered by law to conduct lawful searches in all places to look for evidence to assist it in conclusively investigating any criminal activities and can retain such properties as may be required for further investigations and even take all measures possible to protect all properties and assets of individuals, organizations that involve or are suspected to have involved in criminal activities. That in this case, police used legal, proper, fair and reasonable procedures in handling the matters connected with the applicant's organization. Mr. Bafirawala further deponed that Uganda Police Force is empowered by law to even temporarily close any business premises where criminal activities are suspected to have been conducted with the view of avoiding the tampering with evidence that may be needed in subsequent court processes. Further that the DPP is empowered by law to sanction the charging of any individuals with committing a crime or crimes as he or she deems fit and the DPP acted legally, diligently, reasonably, properly, fairly and justly in handling matters brought before him with regard to the

applicants. That the applicants have not used the right procedures available to them in litigating this dispute as there are other available remedies to the applicants. Finally that the remedies sought by the applicants can only be issued based on matters or facts which are clear, certain or and disputed.

Another affidavit in reply was sworn by one Samali Wakholi a Senior State Attorney with the DPP's office. She explained that the DPP is a government office created by the Constitution with the mandate to *inter alia*:

- (a) Direct the police to investigate any information of a criminal nature and to report to him or her expeditiously.
- (b) Institute criminal proceedings against any person or any authority in any court with competent jurisdiction other than the court martial.
- (c) To take over and continue with any criminal proceedings instituted by any other person or authority.

That these functions can be exercised by the DPP himself or by officers as authorized by him or her in accordance with general or specified instructions.

Ms Wakholi further deponed that she received a file number, Katwe CRB 7621/2011 on 22nd November 2011, wherein police sought legal advice on the evidence assembled in a criminal investigation that had been carried out by police on the file. That she found that the applicants had obtained 60.000.000= by false pretences from one Wabwire Hudu of UVUMO Busia District which is an offence under S. 305 of the Penal Code Act.

That on 24th November 2011, she instructed police to charge the applicants herein with the offence of obtaining money by false pretences. That the instructions were given within the constitutional mandate of the DPP.

Two issues were framed for the termination and commencement of hearing this application and these are:

- (1) Whether the applicants have established facts to justify the grant of prerogative orders stated in the application.
- (2) What are remedies available.

Court allowed respective counsel to file written submissions in support of their respective cases.

I have considered the application and affidavit evidence adduced on both sides. I have related the same to the law applicable and the submissions by respective counsel. Circumstance under which a prerogative order of certiorari may be granted has been satisfactorily outlined by both counsel. Both learned counsel relied on the same case with the same citation but different defendants.

Whereas learned counsel cited the case as **Geoffrey Musinguzi Vs Mbarara District Local Government MA No.193 of 2011** (unreported), Mr. Bafirawala cited the same case as **Musinguzi Geoffrey Vs Kiruhura District Local Administration MA No. 193 of 2011**. I had no opportunity to read the authority cited because none of the parties availed a copy to court. That notwithstanding, it is now settled law that prerogative orders of certiorari such as the one sought in this application can be granted for correcting errors committed by administrative bodies or authorities in exercise of their jurisdiction; which is done improperly or with material irregularity. This is usually done without affording a party affected by the decision a right to be heard contrary to natural justice.

The writ of certiorari is supervisory in nature and court is not entitled to determine the matter as if it is exercising appellate jurisdiction of the impugned decision. The findings of fact by the administrative authority as a result of an appreciation of the evidence before it cannot be

brought into question or be re-opened in proceedings of certiorari. Errors apparent on the face of the record can be corrected by certiorari orders but an error of fact however grave it may appear to be, cannot be a subject certiorari. The adequacy or sufficiency of evidence on an issue cannot be challenged through a writ of certiorari.

In the case under consideration, the complainants claim that police arrested them for no offence committed. That when the matter was referred to the DPP, the latter did not peruse the police file diligently. The applicants assert that Wabwire never gave money which was allegedly received by the applicants. Further on perusal of the application, there appears to be no claim that the respondent violated the rules of natural justice or the right to be heard. In any case, the applicants were informed of the offence against each of them.

I agree with submission and evidence adduced by the respondent that the matters complained of do not warrant issuance of prerogative orders because the Uganda Police Force is empowered by law to arrest and detain anybody suspected to have committed or is about to commit an offence. The police is mandated to conduct lawful searches in all places to look for evidence to assist in conclusively investigating any criminal activities. It can in the process retain such properties as may be required for further investigations and can temporarily close any business premises where criminal activities are suspected to have been conducted to prevent tampering with evidence. All these are not administrative actions amenable to Judicial Review. Illegal detention cannot be remedied under prerogative orders.

Regarding the role of the DPP, it is clear that in most cases, he acts on information provided to him by the Uganda Police Force. The DPP is empowered by law to sanction charging any individuals with committing a crime. In executing its constitutional mandate, the DPP has authority to direct police to investigate any information of a criminal nature and to report to him expeditiously. The DPP can also institute criminal proceedings against any person or authority in any court other than the court martial and can take over and continue or discontinue criminal

proceedings instituted by any other person or authority. These functions can be delegated to any authorized officer. This is what happened in this case when the DPP authorized Ms Wakholi to peruse and advise the police in respect of Katwe CRB 7621/2011 concerning the applicant. Wherein she found evidence to warrant charging the applicant with obtaining 60.000.000= by false pretences from one Wabwire Hudu of UVUMO Busia district. Whether the evidence is sufficient or not is not a subject for Judicial Review. The applicants have not used the right procedure available to them in litigating this dispute since there are alternative remedies available to them through ordinary Civil Suits. That is the most appropriate procedure because actions by police cannot be challenged through Judicial Review for police is not an administrative organ vis-a-vis the criminal suspects.

Apart from mere allegations in the Notice of Motion and supporting affidavits, the legal status of the applicant has not been sufficiently proved to guide this court on whether the first applicant has a locus standi to sue on its behalf. It has remained unclear whether the first applicant is an NGO or a Limited Liability Company. This brings into question whether they legally collected money from its members. No attachments were put on the application to prove the status of the first applicants.

For the reasons I have given above, I am in agreement that the cause of action the applicants relied on is not suitable for Judicial Review or the issuance of an order of certiorari.

That notwithstanding, the DPP acted legally, diligently, reasonably, fairly and justly in handling the matters brought before him by the police in regard to the applicants. This court cannot judiciously issue an order granting immunity to the applicant from being arrested and prosecuted.

From the scanty evidence provided by the applicants, I cannot determine that the applicants' arrest is unlawful without the applicants' culpability being determined by this court.

Regarding remedies, since the applicants have failed to show that police and the DPP acted irrationally, illegally, and in an improper manner to arrest, arraign and prosecute the applicants or seal off their premises, there was nothing done *ultra vires*. Therefore the prohibition and the certiorari orders sought cannot apply since the prosecution of the applicants was within the powers of the DPP.

It follows that the applicants are not entitled to any damages. Should the applicants still feel aggrieved, they have recourse under the law to other remedies but not Judicial Review.

Consequently, this application is dismissed with costs.

Stephen Musota

J U D G E

23.06.2014