

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 316 OF 2021

IDEA UGANDA LIMITED:.....:APPLICANT

VERSUS

- 1. OKELLO STEPHEN, EXECUTIVE DIRECTOR,
NATIONAL BUREAU FOR NGOs:.....:1st RESPONDENT**
- 2. NATIONAL BUREAU FOR NON-GOVERNMENTAL ORGANISATIONS
(NATIONAL BUREAU FOR NGOs):.....:2nd RESPONDENT**
- 3. ATTORNEY GENERAL:.....: 3rd RESPONDENT**

RULING

BEFORE: HON. JUSTICE SSEKAANA MUSA

The applicant instituted this application for judicial review against the impugned decision of the 1st and 2nd respondent under Articles 42, 45 and 50 of the Constitution, Sections 33,36 and 38 of the Judicature Act, Rules 3,6,7 and 8 of the Judicature (Judicial Review) Rules SI No. 11 of 2009. The applicant sought the following orders;

- 1. A writ of certiorari be issued quashing the 1st respondent's decision to stop the operations of the applicant.*
- 2. A declaration be issued that the applicant is not subject to oversight or regulation by the 1st and 2nd respondents.*
- 3. An order of prohibition be issued against the 1st and 2nd respondents to stop interfering with the operations of the applicant.*

4. *A writ of mandamus be issued against the 1st and 2nd respondents to recall the press release purporting to suspend the applicant's operations.*
5. *A declaration doth issue that the 1st respondent is unlawfully and irregularly occupying the office of the Executive Director of the National Bureau for Nongovernmental Organisations in absence of a functioning Board of Directors that is legally mandated to appoint an Executive Director.*
6. *A declaration doth issue that the National Bureau for Non-Governmental Organisations in absence of the statutory governing Board of Directors required under the Non-Governmental Organisations Act, 2016, is incapable of functioning as the body envisaged under the Non-Governmental Organisations Act.*
7. *A declaration that the office of the Executive Director of National Bureau for the Non-Governmental Organisations is vacant as the governing body has not been constituted to exercise its legal mandate to appoint the Executive Director.*
8. *A writ of certiorari issues quashing all decisions taken by the 1st respondent purporting to exercise the powers of the governing authority under the Non-Governmental Organisations Act, 2016*
9. *An Injunction be issued against the 1st respondent to prevent him from purporting to act as Executive Director of the National Bureau for Non-Governmental Organisations and management of the day to day operations and funds of the bureau till a board of directors has appointed one to act as such.*
10. *A writ of certiorari issue quashing the directives of the 1st and 2nd respondent in the "Statement on Halting of Operations of Fifty Four (54) NGOs Due to Non-Compliance with the NGO Act 2016" in the press release of 20th August, 2021 for being illegal, procedurally irregular and irrational.*

11. An order of mandamus be issued compelling the Minister responsible for Internal Affairs to appoint a board of directors of the 2nd respondent as required by law.

12. That costs of this application be provided for.

The grounds of this application were contained in the affidavit of the applicant's Director, Job Simon Kijja, and briefly were;

- i. The applicant is not a registered Non-Governmental Organisation and is not subject to the directives and control of the 1st and 2nd respondent under the Non- Governmental Organisations Act, 2016.
- ii. That on the 20th August, 2021, the 1st and 2nd respondent issued a press release dubbed, "**Statement on Halting of Operations of Fifty Four (54) NGOs Due to Non- Compliance with the NGO Act 2016,**" in which the operations of the applicant were halted for purportedly operating without registering with the Non-Governmental Organisations Bureau.
- iii. That the applicant was not heard or even asked to explain its non-registration with the 1st and 2nd respondents prior to suspension of its programs.
- iv. That the applicant is regulated under the Companies Act 2012 by the Uganda Registration Services Bureau and as such, is not a Non-Governmental Organisation.
- v. That the 1st respondent has no lawful appointment as Executive Director of the 2nd respondent and is illegally occupying the office because of the inactions of the 3rd respondent and the Minister responsible for internal affairs
- vi. That it is in the interest of justice for the applicant and the wider public interest that this application be granted

The applicant also raised grounds as to the legality of the 1st respondent's appointment. In their submissions, however, the same were abandoned. By direct implication, the prayers sought against the 3rd respondent touching the questions regarding the legality of the 1st respondent's appointment as Executive Director of the 2nd respondent.

The 1st and 2nd respondents filed an affidavit in reply opposing the application sworn by the 1st respondent briefly stating;

- i. The applicant was established as a not-for-profit as per clause 1(c) of the applicant's memorandum of association.
- ii. That any person or group of persons incorporated as an organization under the Companies Act or Trustees Incorporation Act and those that fall within the definition of an organization under the Act shall register with the NGO Bureau.
- iii. The applicant was suspended for non-registration as per the law prescribed.

Background to the case

The 1st and 2nd respondents issued a press release statement on the 20th day of August, 2021 which contained a list of 54 companies that were directed to halt their operations with immediate effect for alleged allegations of non-compliance with the Non-Governmental Organizations Act. In the said statement, 23 companies were halted for allegedly operating with expired permits, suspended activities of 15 companies for allegedly failing to file annual returns, and halted activities of 16 companies for allegedly operating without registering with the 2nd respondent. The applicant company was among the companies whose activities were halted for allegedly operating without registering with the NGO Bureau.

The applicant was represented jointly by *Counsel Jude Byamukama and Counsel Phillip Nyesiga* while *Nabaasa Charity (Senior State Attorney)* represented the respondents

The following issues were framed for determination when the matter came up for hearing on 22nd February 2022.

- 1. Whether the applicant is subject to oversight and resolution of the 1st and 2nd respondents?***
- 2. What remedies are available?***

The applicant raised more issues in their submissions which were never raised at trial;

- 1. Whether the Board of Directors of the 2nd respondent is properly constituted and capable of performing as a governing body envisioned under the Non-Governmental Organisations Act?***
- 2. Whether the impugned decision of the 1st and 2nd respondent was irrational, illegal, procedurally improper, ultra vires, and violated the principles of natural justice?***

The issues will be determined in that order as presented and argued.

Preliminary Considerations by Court

The court on its own motion has noted that there are serious discrepancies in the applicant's name. This application was brought by the applicant-IDEA UGANDA LIMITED. A close scrutiny of the documents attached to the application to wit a certificate of incorporation and Memorandum & Articles of Association shows that the name of the company is INNOVATIONS FOR DEMOCRATIC ENGAGEMENT AND ACTION (IDEA) UGANDA LIMITED.

In my view, the applicant is not registered as a company and it would indeed be a misrepresentation to the public to have the applicant as a party without using the proper name of the registered entity.

The name of a competent party to a suit must be the real name by which he is known, in the case of a natural person and its corporate name, in the case of a

non-natural entity. Such name should be found in the company documents like the certificate of incorporation or the Memorandum and Articles of Association.

Therefore, naming a non-juristic person as a party is not a misnomer, that is, the use of the wrong name of a juristic person cannot be amended to substitute a juristic person. Where a person commences an action in court, such a party must be a person known to the law, i.e a legal person, and if a party to an action is not a legal person, the party should be struck out of the suit, and if such a party is the applicant/plaintiff, the action should be struck out. ***See Agbonmagbe Bank Ltd v General Manager. G.B Olivant Ltd [1961] All NLR 116: Njemanze v Shell BP Port Harcourt [1966] 1 All NLR 8: Okechukwu and Sons v Ndah [1967] NMLR 368.***

This application would be disposed of on this preliminary consideration that it was filed by a non-existing party or a wrong name of the juristic person and accordingly would be struck out.

However, for completeness this court would proceed to determine the merits of the application.

Whether the applicant is subject to oversight and resolution of the 1st and 2nd respondents?

Counsel for the applicant submitted that as a company limited by guarantee, the applicant was not subject to the jurisdiction and control of the 1st and 2nd respondents as regulators of all voluntarily registered Non-Governmental Organizations in Uganda. That Non-Governmental Organizations Act did not vest power in the 1st and 2nd respondent to oversee the activities of companies like the applicant that were by choice not registered as organizations under the Non-Governmental Organizations Act.

Counsel submitted that under *Section 29(1) of the Non-Governmental Organisations Act and Regulation 3(1) of the Non- Governmental Organisations Regulations*, companies registered under the Companies Act and the Trustees Incorporation Act were subject to the control of the 1st and 2nd respondent only upon the company's voluntary registration with the 2nd respondent.

Counsel cited *Section 3 of the Non-Governmental Organisations Act* that defines an Organisation to mean a legally constituted non-governmental organisation under the Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes. Section 31 (2) of the Non-Governmental Organisations Act stipulates that organisations incorporated or registered under the Companies Act or the Trustees Incorporation Act and those that fall within the definition of an organisation shall only operate within Uganda with a valid permit issued by the 2nd respondent.

Counsel submitted that there was no proof from the respondents that the applicant company passed the test of being an organisation under the Act, there was no proof to show that they were established to provide voluntary services to the community or any proof that whatever they did was not for profit or commercial purposes. Counsel contended that the applicant company was not an organisation within the said law.

Furthermore, that the registration under the Act was voluntary because the law could not have envisioned that some organisations could opt to be voluntarily deregistered from the control and direction of the 2nd respondent under *Section 29 (4) (b) of the Non-Governmental Organisations Act of 2016*. That the said section read;

“An organisation that has been registered remains registered until the organisation is voluntarily deregistered.”

Counsel submitted that in light of that provision, the law envisioned that some organisations though registered with the 2nd respondent would at a certain time out of their own volition opt not to be under the control and direction of the 2nd respondent, which meant that they would revert to their old status of being companies regulated by the Companies Act of 2012 and the Uganda Registration Services Bureau.

Counsel submitted that this also applied to companies like the applicant which upon incorporation opted not to register with the 2nd respondent and maintained

that such companies were regulated under the Companies Act and were under the oversight and control of the Uganda Registration Services Bureau.

Counsel submitted that it was never the intention of Parliament to have all organisations registered under the Companies Act and the Trustees Incorporation Act subjected to the direction and control of the 1st and 2nd respondent. That the 1st and 2nd respondents were claiming to have powers under the Non-Governmental Organisations Act that they clearly did not have. Further that it was without legal basis because it falsely suggests that such companies have no status within the law unless they are registered with the Bureau. Taking into account the whole Companies Act and the Uganda Registration Services Bureau Act, such companies remain under the regulation of the Companies Act of 2012 and control of Uganda Registration Services Bureau.

Counsel submitted that the Non-Governmental Organisations Act in its entirety provided no legal consequence for organisations like the applicant company that had opted not to be registered with the 2nd respondent, which substantiated the claim that registration under the Non-Governmental Organisations Act for companies was voluntary and not mandatory as claimed by the respondents.

Counsel submitted that there was no doubt, in their view that the 1st and 2nd respondents exercised powers that they did not have under the Non-Governmental Organisations Act.

In response, counsel for the respondents submitted that the applicant was a company registered by guarantee and incorporated on the 26th June 2018. That under Clause 1(c) of the memorandum of association stated; “the organization is a youth led, non-aligned, secular and not for profit institution that accommodates the spectrum of affiliation in Uganda.” Counsel submitted that this brought the applicant within the ambit of the NGO Act and the regulations regulated by the respondent.

Further that the NGO Act defines an Organization to mean a legally constituted non-governmental organization under the Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes.

Counsel submitted that section 29(1) of the Act stated that any person or group of persons incorporated as an organization shall register with the Bureau. Section 31(1) of the NGO Act 2016 stated that an organization shall not operate in Uganda without a valid permit issued by the Bureau. Section 31(2) states that subsection 1 shall apply to organizations incorporated or registered under the Companies Act or Trustees Incorporation Act and those that fall within the definition of organization under section 3 of the Act.

Counsel submitted that Regulation 3(1) and (2) of the NGO Regulations 2017 states

“Any person or group of persons incorporated as an organization under the Companies Act or Trustees Incorporation Act and those that fall within the definition of an organization under the act shall register with the bureau.

(2) the application for registration of organization with the Bureau shall be in Form A as prescribed in the schedule.

Counsel submitted that it was clear from the sections, especially section 31(1) and (2) of the NGO Act that the applicant should have registered and that registration was mandatory.

According to Section 6 of the NGO Act on the functions of the NGO Bureau; is to establish and maintain a register of all NGOs in Uganda. That the respondent also performs any other function under this Act or may be directed in writing by the minister. Counsel submitted that the minister of Internal Affairs had directed in 2019 that going forward after the validation exercise that was held in September, 2019 all NGOs had to be updated on the Updated National NGO Register (UNNR) which was published every Monday morning.

The respondents submitted that the NGO Act, 2016 gave the Bureau the mandate and oversight role to companies like the applicant to act if the same companies operated without abiding to the law. Counsel noted that courts should be reluctant to restrain the public body from doing what the law allows it to do or to execute its core mandate or function.

Counsel for the applicant rejoined that the 1st and 2nd respondents had miserably failed to demonstrate that the Non-Governmental Organisations Act gave them the mandate to oversee the activities of the applicant. Counsel submitted that registration of NGOs under the said Act is directory but not mandatory and that it was therefore a misdirection on the part of the respondents to contend that because the applicant Company under Clause 1 (c) of its Memorandum of Association was a nonprofit institution, automatically rendered the same a Non-Governmental Organisation governed by the Act under Section 29(1), was misleading and erroneous.

Analysis

The applicant's contention is that the respondents have no mandate to regulate and oversee their operations on the ground that they voluntarily chose not to register with the 2nd respondent.

The applicant's memorandum of association under clause 1 describes the name nature and purpose of the company. The company is limited by guarantee, with no share capital. **Clause 1(c)** states that it is a not-for-profit organization. The purpose of the organization is to establish a platform that provides incubation, reflection, and conceptualization spaces for young people with pro-democracy ideas as well as the required technical support needed to translate to reality.

The nature and purpose of the applicant clearly describe the meaning of an organization defined under the Non-Governmental Organisation Act. The NGO Act **section 3** defines an Organization to mean a legally constituted non-governmental organization under the Act, which may be a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part, but not for profit or commercial purposes. By that definition, the applicant squarely fits as an organization governed by the Act.

The NGO Act mandates the 2nd respondent with the capacity to register, regulate, coordinate, and monitor Non-Governmental Organisations' activities. In that vein, the 1st respondent in his official capacity is mandated under section 16(4)(a) with the responsibility for the day-to-day operations of the Bureau.

The applicant's argument that they had to voluntarily register with the Bureau in order to be regulated is flawed, baseless and devoid of any legal merit. This is a 'squinted' or skewed reasoning and argument which imputes that an applicant can opt out any given regulatory legal regime.

Section 6(g) of the Act mandates the Bureau to establish and maintain a register of organizations. Regulation 3 of the NGO Regulations 2017 states that any person or group of persons incorporated as an organisation under the Companies Act or Trustees Incorporation Act and those that fall within the definition of an Organisation under the Act, shall register with the Bureau. The applicant would not have the luxury of opting out of the regulatory legal framework simply to defeat the law or become a non-regulated entity. This would breed impunity and chaos in the civil society institutional framework in Uganda.

Registration with the Bureau is mandatory and not voluntary as claimed by the applicant. That argument defeats the purpose of the Act that was established to regulate activities of companies like the applicant.

The powers conferred under the Non-Governmental Organisations Act were never intended to be exercised in such a way that would defeat the entire spirit of the Act of regulating operations of the Non-governmental organisations or civil society sector. The fundamental rule of interpretation of statutes is that legislation is to be expounded "according to the intent of them that made it" In other words the rule of construction is to intend the legislature to have meant what they actually expressed. See ***Chapter Four Uganda v National Bureau for Non-Governmental Organisations [2022] UGHCCD 80***

It is unfathomable and irrational to have the opinion that legislators intended that companies like the applicant would choose which laws and authorities to be regulated by. As a not-for-profit organization whose purpose is to provide voluntary services to the community, the applicant is subject to oversight and resolution of the NGO Bureau.

Whether the Board of Directors of the 2nd respondent is properly constituted and capable of performing as a governing body envisioned under the Non-Governmental Organisations Act?

The applicant contended that the 2nd respondent had no statutory governing board of directors envisioned under the Non-Governmental Organisations Act, which meant that there was no functioning Bureau envisioned under the Non-Governmental Organisations Act.

Counsel submitted that there was evidence on record to prove that at the time the press release statement was issued to halt the activities of the applicant company, there was no governing body of the 2nd respondent. Counsel submitted that according to the 1st respondent's affidavit, the tenure of the Board had lapsed on 4th September 2020 which fact was not disputed by the respondents.

That as per Section 16 of NGO Act, there was evidence on the record of court to prove that the board of directors was not in existence to check his powers which meant that the decisions of the 1st respondent were illegal and wrong for acting in an individual capacity.

Counsel submitted that the press release statement was unrecognizable under the Act because the 1st respondent functioned under the general supervision and control of the board of directors which was absent at the time he halted the applicant's activities.

In response, counsel for the respondent submitted that the applicant had no evidence to show what the intention of Parliament was in regard to the NGO Act. That he had not adduced to court the Hansard for this honorable court to conclude the intentions of Parliament. Counsel submitted that section 11 of the Act stated that the functions of the Board which deals with oversight and policies of the Bureau.

Paragraph 14 of the affidavit in reply stated that the Executive director under section 16 of the NGO Act run all the day to day operations of the Bureau and the current board of Directors was a policy and oversight Board. That further among the functions of the Executive Director was keeping a register of registered organizations. Section 16(4)(e) of the Act.

It was the respondent's submission that the press release of suspension of the applicant was based on the law, section 31(1) (2) of the Act and registration was mandatory. The applicant had not complied with the above law.

In rejoinder, counsel for the applicant submitted the impugned statement was issued on the 20th day of August, 2021, almost 1 year into the 2nd respondent functioning with no board of directors. That this was clearly insubordination on the part of the 1st respondent and offended the provisions of **Section 16 (4) of the NGO Act** that stipulated that the office of the 1st respondent was subject to the general supervision and control of the board of directors.

In further rejoinder, counsel submitted that there was no need for the applicant to adduce evidence in the form of parliamentary Hansards to establish the intention of Parliament regarding the statutory requirement for the 2nd respondent to have a functioning board of directors. Counsel cited ***Constitutional Appeal No.01 of 2015 Theodore Ssekikubo and Others v The Attorney General and 4 Ors at page 30***, where the supreme court held;

"The Constitutional Court itself found that the word "leave" as it is used in Article 83(1)(g) is plain, clear and unambiguous, and must be interpreted using the literal rule of statutory interpretation. However, in spite of this finding, it went out of the provision of the Constitution itself to look for aid elsewhere for its interpretation. We respectfully think that this was an error on the part of the majority Justices of Constitutional Court. The words of Article 83(1) (g) being plain, clear and unambiguous should not have necessitated the Constitutional Court going to the Hansard to look for their interpretation.

Counsel submitted that they were persuaded that the plain and natural meaning of **Section 9 of the Act** was clear and unambiguous, there was no need to establish the intention of parliament through the aid of the parliamentary debates prior to its enactment. Counsel submitted that Hansards were only visited when the literal meaning of a statutory provision leads to an absurdity which was not the case here.

Counsel concluded that the evidence on court record pointed to the fact that at the time the 1st and 2nd respondent issued the press release statement on the 26th

day of August, 2021, there was no governing board of directors and the 1st respondent was making sole decisions on behalf of the 2nd respondent, a heinous act not permitted by the Non-Governmental Organisations Act. Counsel prayed that this court finds so.

Analysis

The applicant contends that by the mere fact that there was no functioning Board of Directors of the 2nd respondent, the actions of the 1st respondent were illegal. The applicant contends that the Act intended for the 1st respondent to perform their duties under the supervision of the Board which was non-existent at the time.

The Executive Director of the 2nd respondent is mandated under ***section 16 of the Act*** to among others run the day-to-day operations of the Bureau and also keep a register of the registered organizations. The Executive Director is subject to the general supervision of the Board of Directors.

It is uncontested that at the time the respondents halted the activities of the applicant, the tenure of the Board of Directors had expired.

The NGO Act was enacted by Parliament to regulate the activities of NGOs in Uganda.

Regardless of whether there is a functioning Board of Directors at a time, the Bureau is supposed to proceed with carrying out its duties as prescribed under the Act. The Executive Director is empowered to conduct the day to day activities of the Bureau. Had the decision of the Bureau been outside its mandate, the same would have been quashed by this court. The applicant only raised this as an issue in a bid to undermine the decision of the NGO Bureau and partly to justify their illegal circumvention of the law intended to regulate their activities.

Whether the impugned decision of the 1st and 2nd respondent was irrational, illegal, procedurally improper, ultra vires, and violated the principles of natural justice?

Counsel submitted that the impugned statement issued to halt the operations of the Applicant company was illegal because as discussed in issue 1. That the intention of Parliament was never to vest power in the Bureau to oversee the activities of all companies not registered under the NGO Act. The function of regulating and monitoring the activities of registered NGOs was one of the key and core functions for which the NGO Act was enacted. Any attempt by the Bureau to usurp those powers to companies that are not registered with the 2nd respondent was ultra vires.

The applicant then contended that the decision was irrational because no reasonable authority or person can purport to exercise authority over another person without legal backing. Counsel submitted that the applicant had demonstrated that parliament did not intend for the 1st and 2nd respondents to have control and oversight over companies that were not voluntarily registered with the 2nd respondent.

Lastly that the impugned press statement was procedurally improper and violated the principles of natural justice. Counsel cited Section 7(2) of the Non-Governmental Organisations Act stipulates that, “The Bureau shall before taking any action against an organisation under subsection (1), give the organisation the opportunity to be heard.

Counsel submitted that the court of appeal had held that courts would not usually interfere with the decisions of statutory bodies like the 2nd respondent unless the process was proved to have been irregular or contrary to the established procedures and rules of natural justice. The application of the rules of natural justice was implied in any quasi-judicial process and compliance with the same is fundamental in any decision from that process. A decision taken in non-observance of the rules of natural justice was void ab initio. *See The Executive Director, National Environmental Management Authority V Solid State Limited at page 38*

Counsel cited ***Miscellaneous Cause No.108 of 2018 Hebron Evangelical Pentecostal Ministries v The National Bureau for NGO at page 8***, where this court while handling a similar matter with the 2nd respondent ruled that it was

pertinent to follow rules of procedure by issuing a notice to show cause before a decision was taken against an organisation.

Counsel submitted that in the said decision, the Bureau was excused by this court because it had followed the principles of natural justice which it did not do in the instant case. No opportunity was ever given to the applicant company to show cause why they were not registered with the 2nd respondent.

Counsel concluded that this is a grave violation of protections afforded to persons appearing before administrative bodies and prayed that issue 3 be resolved in the affirmative for the impugned decision being illegal, irrational, procedurally improper, ultra vires, and for violating the principles of natural justice and good conscience.

In response, counsel for the respondent submitted that the limits within which courts may review the exercise of administrative discretion were stated in *Associated Provincial Picture Houses Limited vs Wednesbury Corporation [1947] 2 ALL ER 680: [1948] 1 KB 223* which were illegality, irrationality and procedural impropriety.

On whether the decision was illegal, counsel cited the case of *Thugitho Festo vs Nebbi Municipal Council* at page 9 where Mubiru J stated that;

An action or decision may be illegal on the basis that the public body has no power to take action or decision, or has acted beyond its powers. If an act is with the powers granted, it is valid. If it is outside them, it is void. *In Regina v Hull University Visitor, Ex parte page; Regina v Lord President of the Privy Council ex parte page, [1993] 3 WLR 1112, [1993] AC 682,*

The respondent submitted that as discussed above, the decision was taken within the law and the NGO Bureau had the mandate in issuing the halting of the operation of the 54 NGOs due to non-compliance.

Counsel submitted that it was further clear from the applicant's submissions that they were acting without any valid permit as per the NGO Act.

It was the respondents' submission that the decision was not irrational, procedurally improper and did not violate the rules of natural justice.

Counsel for the applicant rejoined that the respondents had not submitted on the issue of the decision being irrational, procedurally improper, ultra vires, and violating the principles of natural justice which the respondents ignored were true and unchallenged. Counsel also contended that the respondents had not made out their case that the decision was not illegal.

Counsel reiterated that the applicant company was not a registered NGO and there was no proof on the record to establish the authority that the 1st and 2nd respondent had to halt their activities. Counsel maintained that the said decision was very illegal because companies are subject to the control of the 1st and 2nd respondent only after registration with the same pursuant to Section 29 of the Non-Governmental Organisations Act, and prayed that this court finds so.

Analysis

In **Pastoli vs Kabale District Local Government Council and Others [2008] 2 EA 300** it was held while citing **Council of Civil Unions vs Minister for the Civil Service [1985] AC 2;**

“In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety ...

Illegality is when the decision -making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission

“Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law

before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards....

Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision.”

The applicant failed to register with the Bureau and its activities were henceforth halted for failure to register. With the above authority in mind, it is clear that the Bureau as seen above acted within its mandate in doing so hence making the decision legal and rational. The applicant did not prove that there was procedural impropriety that tainted the Bureau’s decision to halt its application. The 1st and 2nd respondents were enforcing the law which prohibits parties from operating without any permit from the 2nd respondent in accordance with the law.

Any regulator like the 2nd respondent who is enforcing the law cannot look on as the law is being broken with impunity or continue to procrastinate in long processes as the law is being violated or breached. The consequences of not complying with the legal regime must be enforced without delay in order to avoid extreme absurdities or continued breach.

Parliament never intended that parties should break the law like what the applicant did and later demand that they should have been accorded a hearing. The right to fair hearing is not cast in stone and should only depend on the circumstances of each case. The issue of whether a person can be heard may also be one for the discretion of the decision-maker. The test is whether no reasonable body would have thought it proper to dispense with a fair hearing. The court is final arbiter of what is fair.

What is required in any particular case is incapable of definition in abstract terms. As Lord Bridge has put it;

“ the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body , domestic, administrative or judicial, has to make a decision will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.”

See ***Lloyd v Mc Mahon [1987]AC 625 at 702***

This court accepts that fairness is variable concept and fairness is not something that can be reduced to a one-size-fit all formula. The circumstances of the present case did not require the applicant being given a hearing as noted earlier since the regulator has a wider duty to protect the NGO sector and public from such unregistered or fake organisations operating without permits in Uganda and this is an immediate corrective action as a check on the law-breakers like the applicant.

This issue accordingly fails.

The application is dismissed with costs to the respondents.

I so order

SSEKAANA MUSA
JUDGE
5th May 2023