

**THE REPUBLIC OF UGANDA**

**COURT OF APPEAL**

**CIVIL APPLICATION NO. 18 OF 2006**

**(ARISING FROM CIVIL APPEAL NO. 3 OF  
2006)**

**(CORAM: ENGWAU, TWINOMUJUNI AND KITUMBA, JJ.A)**

**PIUS NIWAGABA;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,;APPELLANT**

**VERSES**

**LAW DEVELOPMENT CENTRE;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,;RESPONDENT**

*Administrative Law—Judicial Review—Meaning of Judicial Review—Circumstances where  
Judicial Review can be granted—Purpose of Judicial review*

*Administrative Law—Judicial Review—Court of Appeal—Appellant jurisdiction—Right to  
appeal prerogative orders—Whether respondents had right to appeal to Court of Appeal*

*Administrative Law—Judicial Review—Jurisdiction—Court of Appeal—Jurisdiction of Court  
of Appeal—Order made by High Court on matter brought to it by some statutory provisions  
and not Civil Procedure Act or Rules is appealable*

*Civil Procedure—Appeals—Court of Appeal—Leave to appeal—Order 40 rule 1 (2) of Civil  
Procedure Rules—Whether respondent's failure to seek leave to appeal rendered appeal  
incompetent*

*Administrative Law—Judicial Review—Certiorari—When certiorari can be ordered*

The applicant, a graduate of law from The Uganda Pentecostal University applied to the respondent for admission to the Bar Course. The respondent denied the applicant and other applicants from the same University on grounds that the University had not had its Bachelor of Laws training program accredited by the Law Council through its Committee for Legal Education and Training under the provisions of the Advocates' Act as amended

and the Rules made thereunder. The applicant applied for judicial review of the respondent's decision by Originating Motion under Order 42A rule 2 of the Civil Procedure (Amendment) (Judicial Review) Rules in Civil Application No. 589 of 2005. It sought prerogative orders of certiorari, mandamus and declaration.

The learned trial Judge allowed the application. Being dissatisfied, the respondent filed Civil Application No. 3 of 2006 against the learned trial Judge's decision. This application sought for orders that the Notice of Appeal and the appeal in Civil Application No. 3 of 2006 be struck out with costs. The main grounds of this application were that there is no right of appeal from prerogative orders of certiorari, mandamus and prohibition and alternatively, an essential step required by the rules had never been taken and as such the appeal was incompetent.

Counsel for the applicant argued that neither the Judicature Act nor the Civil Procedure (Amendment) (Judicial Review) Rules give a right of appeal against orders made in judicial review. That a right of appeal is a creature of statute and there is no right of appeal unless prescribed by law.

Counsel further contended that it is only the Chief Justice who is empowered by Section 42 of the Judicature Act to make rules under Section 36 of the same Act. Order 42A of the Civil Procedure (Amendment) (Judicial Review) Rules was contrary to the law and therefore, cannot be construed as giving appellate jurisdiction from orders made under Section 36 of the Judicature Act. Alternatively, Counsel urged that the appeal was incompetent because no leave was obtained as required by Order 40 rule 1 of the Civil Procedure Rules.

For the respondent, it was contended that Article 134 (2) of the Constitution of Uganda, 1995, Section 10 of the Judicature Act and the Rules made thereunder and the Civil Procedure Act provide for a right of appeal made under judicial review. Section 10 of the Judicature Act clearly shows that once the Constitution, the Judicature Act or any other law prescribes for the making of the decision by the High Court; such a decision is appealable to the Court of Appeal. That Section 36 of the Judicature Act which empowers the High Court to make prerogative orders is a decision prescribed by law and is therefore appealable to the

Court of appeal.

Further, Counsel urged that the effect of Section 10 of the Judicature Act and Section 66 of the Civil Procedure Act is that where an appeal from the High Court to the Court of Appeal is not specifically excluded, it lies as of right that is where it is obvious that there is a right of appeal but the draftsman did not clearly say so, the Courts have the duty when interpreting the law to imply the right of appeal. On the alternative ground, counsel submitted that there was no need to seek for leave before instituting the appeal because this application was brought by originating summons but was an actual suit and the learned trial Judge finally settled all the rights between the parties.

The issue in this application seemed to be whether or not there is a law which creates a right of appeal from the decisions of the High Court to the Court of Appeal against prerogative orders of certiorari, mandamus and prohibition.

**HELD:**

1. The Court agreed with both counsel in their submission that appellate jurisdiction is a creature of statute. A right of appeal does not have to be created by the law, which gives rise to a specific action or relief.
2. Section 36 of the Judicature Act empowers the High Court to issue orders of certiorari, mandamus and prohibition. The right of appeal in prerogative orders under Section 36 is provided for in Sections 10 and 66 of the Judicature Act and of the Civil Procedure Act respectively. These two Sections have the same effect thus; the Court of Appeal has the jurisdiction to hear appeals from decisions of the High Court. Therefore, where an order is made by the High Court on a matter brought to it by some statutory provisions and not the Civil Procedure Act or Rules, that order is appealable as of right unless the appeal is specifically excluded by some special legislation. The decisions so made by the High Court under Section 36 of the Judicature Act are, therefore, appealable to the Court of Appeal.
3. The respondent's failure to seek leave to appeal to this Court did not render the

appeal incompetent because the applicant's Application No. 589 of 2005 was brought by

Originating Summons and the learned trial Judge finally settled all the rights between the parties

4. Rule 10 (4) of the Civil Procedure (Amendment) (Judicial Review) Rules is to the effect that where the relief sought is an order of certiorari and the High Court is satisfied that there<sup>®</sup> are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing the decision, remit the matter to the lower Court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the High Court. In the case instant, the Court below should have quashed the decision, if it were inclined and then proceed to send the matter to the respondent with directions as provided by rule 10 (4) above.
5. The term prerogative order is not defined in the Judicature Act or in any other law of this country. Its meaning is derived from the history of its jurisdiction in England. According to Osborne Law Dictionary, the prerogative writs and orders were remedies issued from the superior Courts for the purpose of preventing inferior Courts or officials from exceeding the limits of their legitimate sphere of action or compelling them to exercise their functions in accordance with the law. This was to ensure full measure of justice to all subjects of the king. Presently, the prerogative orders provided in exercise of judicial review are contained in the Judicature Act, Cap 13. Judicial review is a process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of the inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are charged with the performance of public acts and duties. Judicial review in which prerogative orders are given is different from the ordinary judicial review of Court of its own decision, revision and appeal which may not be given where other powers of the High Court could be exercised. It is not an appeal from the decision but a review of the manner in which the decision

was made. The Court is not, therefore, entitled on application for judicial review to consider whether the decision was fair and reasonable. The purpose of judicial review is to ensure that the individual receives fair treatment by the authority to which he/she has been subjected, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide from itself a conclusion which is correctly in the eyes of the Court

*Application dismissed with costs.*

*Dated this 4<sup>th</sup> September 2006*

*ENGWAU, JA*

*TWINOMUJUNI, JA*

*KITUMBA, JA*

**Legislation considered:**

Civil Procedure Act, Cap 71, Section 66

Civil Procedure Rules, SI 65-3, Order 40 rule 1 and 2

Civil Procedure (Amendment) (Judicial Review) Rules, S.I No. 75 of 2003, Order 42A rules 2, 4

(3), 10(4), 12 .

Court of Appeal Rules Directions, 1996, rules 42 (1), 81, 82 (1) judicature Act, Cap 13, Sections 10,34,35,36 (2), (3), 42

Judicature Act, 1967, Sections 1 (1) (a) and (b), (2), 34 (3)

Parliamentary Elections Act, 2005, Act No. 17 of 2005, Section 67 (3)

The Constitution of the Republic of Uganda, 1995, Articles 86 (1), 134 (2), 140 (1), (2)

**Cases cited:**

Attorney General vs. Shah (No. 4) [1971] EA 50

Baku R. Obudra and Another vs. Attorney General, Supreme Court Civil Application No.

1 of 2005 Bander vs. Bander [1986] 2 ALLER 918

Chief Constable of North Wales Police Vs Evans [1982] 3 ALLER 141 Hilbome vs. Law Society of Singapore [1978] 2 ALLER 757 Inco Europe Ltd Vs First Choice Distributers (a firm) and Others [2000] 2 ALLER 1 Inspector General of Government Vs Orochi [2001] EA 75

Joseph Bayego Vs The Chief Registrar of Titles, Civil Appeal No. 20 of 1994 (unreported)

Makula International Ltd Vs Eminence Cardinal Nsubuga and Another [1982] HCB 11

The Environment Action Network Ltd Vs Attorney General, Court of Appeal Civil Appeal No. 63 of 2006

**Other legal materials referred to:**

Halsbury's laws of England, 3<sup>rd</sup> Edition, Paragraph 152, Pages 82-83 Osborne Law Dictionary, 8<sup>th</sup> Edition, Page 257