

Real Task Agencies Limited v Uganda Revenue Authority and Others (Miscellaneous Cause No. 069 of 2023) [2025] UGHCCD 61 (21 May 2025)
[2025] UGHCCD 61

BEFORE: HON. JUSTICE SIMON PETER M. KINOBE**RULING****BACKGROUND**

The Applicant brought this application under Article 42 of the Constitution, Sections 33 and 36 of the Judicature Act Cap. 13, Section 98 of the Civil Procedure Act Cap. 71 as amended, Rules 3, 4,5,6,7 and 8 of the Judicature (Judicial Review) Rules, SI 13-1 seeking for:

1. Declarations

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- 2. Orders of certiorari
- 3. An order of mandamus
- 4. An order of prohibition
- 5. A permanent injunction
- 6. An order for special claims
- 7. An order for special compensatory damages
- 8. An award of general damages
- 9. An order for damages exemplary/punitive damages
- 10. An order for unassessed taxes
- 11. Costs of the application, against the Respondents

The application is supported by an affidavit sworn by Kamba Michael Musangala. The grounds of the application are set out in the affidavit but briefly are that;

- a) The applicant is a body corporate incorporated in Uganda, dealing in machinery and equipment spares, service parts and accessories.
- b) The applicant was audited on 28th November 2020 and based on the audit findings, additional income tax and VAT assessments were issued by the 1st respondent.
- c) The applicant objected to the audit findings arguing that there were mistakes and errors which required rectification under the Tax Procedure Code Act.
- d) During the objection process, the 1st defendant obstructed and predetermined the decision.
- e) Being aggrieved with the conduct and outcome of the objection proceedings, the applicant filed an appeal for Alternative Dispute Resolution.

- f) The application was declared null and void by the 1st and 2nd Respondents.

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- g) It is in the interest of justice that the prerogative orders and judicial reliefs sought be granted to the applicant.

The 1st and 3rd Respondents filed affidavits in reply to oppose the application.

The 1st respondent's affidavit in reply was sworn by Diana Mulira. In brief she contended that:

- a) The application was not tenable against the 1st respondent and that the court had no jurisdiction to handle the matter.
- b) The applicant had not exhausted all available remedies under the law. That the applicant was not entitled to the remedies sought.
- c) The 1st Respondent disallowed the applicant's objections to the assessments on grounds that the applicant did not provide sufficient evidence to warrant vacating of the assessments.
- d) It was in the interest of justice that the application be dismissed with costs.

The 3rd Respondent's affidavit in reply was filed by Sarah Rukundo. In brief she contended that:

- a) The application was misconceived, baseless, vexatious and an abuse of court process.
- b) The 3rd respondent received a 3rd party agency notice from the 1st respondent requiring it to effect payment of UGX 1,119,041,824 and that it had an obligation to comply with it in accordance with the law.
- c) The 3rd Respondent was under no legal obligation to inform the applicant about the 3rd party agency notice.

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- d) The application did not satisfy the grounds for judicial review.
- e) The suit was premature and improper before the court.
- f) This court lacks the jurisdiction to hear tax disputes.
- g) The deponent of the applicant's affidavit had no authority to sustain the application.
- h) That the applicant was not a body corporate.
- i) The application was disguised as an appeal against the decision of the 2nd respondent.
- j) The reply was in opposition to all the prayers sought and that it should be struck out with costs.

REPRESENTATION

The applicant was represented by Wanok Conrad and the 1 st and 2nd Respondents by kwerit Sam. The 3 rd respondent was represented by Eric Enokit

ISSUES FOR DETERMINATION

- 1. Whether this Honorable Court has jurisdiction to hear and grant this application
- 2. Whether the applicant is entitled to a grant of the orders and reliefs sought under Judicial Review

DETERMINATION

I have had the opportunity to read and analyse the application and all the attendant affidavits. I have also decided to handle the issues above collectively as one since the same lead to a similar conclusion.

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This application is centered around alleged illegality. It also alleges the wrongful exercise of jurisdiction by the 1st and 2 nd respondent. I note that the dispute is mainly between the applicant and the 1st and 2nd respondents.

The respondents in opposition aver that all that was done was within its jurisdiction and mandate. That this application is defective, does not raise grounds for Judicial Review and that court does not have jurisdiction to entertain this application.

In Pheona Nabasa Gladys Wall Vs Uganda Law Society and Anor HCC-JRC NO. 0049 OF 2024 it was held by Justice Musa Ssekaana that; -

"Judicial review is not concerned with the decision in issue but with the decisionmaking process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights".

..... *Judicial review is premised on allegations that a public body failed to comply with law and applicable rules of fairness or natural justice or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it. The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected to".*

I agree with this position of law and find no reason to depart from it.

In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained about 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

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jurisdiction or *ultra- vires*, or contrary to the provisions of a law or its principles, are instances of illegality.

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 failure to act with procedural fairness towards the one to be affected by the decision. It may also involve a 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 (see; HC-MC No.059 of 2016, Ignatius Loyola Malungu Vs IGG)

For a party to be successful in judicial review the party must prove any of the above grounds (see; HCC-JR-MC No.207 of 2022 Watoto Church Ministries and Anor Vs KCCA and Anor)

It is important to note that Judicial Review is not an appeal, and the jurisdiction is exercised in a supervisory manner not to vindicate rights as such but to make sure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality (see; Koluo Joseph Andres and 2ors Vs AG MC-No.106 of 2010)

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In *Chief Constable Of North Wales Police Vs Heavens* (1982)3 All ER 108, it was held, and I agree, that ;-

"The purpose of judicial review is to ensure that the individual receives fair treatment not to ensure that the authority after according a fair treatment reaches on a matter it is authorized or enjoined by law to decide from itself a conclusion which is correct in the eyes of the court"

It is for this very reason that the law puts in place certain procedures to find redress for decisions one may find legally wrong, for instance appeals.

Upon careful study of the application, I find that this is a tax conflict arising from, an audit and, additional Income Tax and VAT assessment. It is based on the legality of the 1 st Respondents decision to disallow the applicant's objection to the assessment. This application is intended to determine an individual right and is a form of "appeal" intended to challenge the correctness of the decision of the respondent as opposed to challenging the process and the manner in which the decision was arrived at.

In line with the above authorities, it is manifestly clear that the court does not have jurisdiction to interpret and or interfere with the correctness of the decision of an entity exercising a quasi-judicial function as is in this application.

I thus agree with the 1 st and 2nd respondents that the actions of the respondents were taxation decisions that were arrived at following the set procedures of law and without a violation of the applicant's rights (see Section 1 Tax Appeals Tribunals Act Cap 341 on the definition of a taxation decision) .

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There may be disagreements as to the quantum of assessment among others, but my finding is that this does not give rise to grounds for judicial review as discussed above (see Chief Constable Of North Wales Police Vs Heavens (1982)3 All ER).

Further, this honorable court does not have the jurisdiction to entertain any matter of review of a taxation decision as a court of first instance indeed Section 14 of the Tax Appeals Tribunal Act Cap 341 gives the original jurisdiction in reviewing taxation decisions to the Tax Appeals Tribunal (also see; Uganda Revenue Authority Vs Rabbo Enterprise (U) LTD and Anor No. 12 of 2004).

The case of Uganda Revenue Authority Vs Rabbo Enterprise (U) LTD and Anor No. 12 of 2004 stated that the original jurisdiction in tax matters pursuant to Article 152(3) of the Constitution of The Republic of Uganda lies with the Tax Appeals Tribunal. The High Court can only exercise appellant jurisdiction from the decisions of the Tax Appeals Tribunal and not original jurisdiction.

If one is not agreeable with the decision of the 1 st and 2nd respondents, done in line with the provisions of the law and the principles of natural justice, the aggrieved party should follow the set procedures of appeal as established by law and in this case the Tax Appeals Tribunal Act Cap 341 and the Tax Procedure Code Act cap 343.

It is clear from this application that the applicant is not seeking to deal with the process but with the decision which is outside the jurisdiction of this court.

I also agree with the position that save in exceptional circumstances court will not invoke its inherent jurisdiction under Section 98 of the Civil Procedure Act Cap 71, to provide a solution outside the set procedure (see; Salim Ali Bhai and Ors Vs

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Uganda Revenue Authority MC 123 of 2020, also; National Union of Clerical, Commercial & Technical Employees Vs NIC SCCA. No17/1993 [1993] (UGSC46) (reported) IV KALR 60)

As discussed above and for the reasons already given, I see no reason to invoke the inherent special powers of this court.

In this circumstance, I find that this application is not amiable for Judicial Review, and I accordingly dismiss the same with costs to the respondents.

I, so order

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SIMON PETER M. KINOBE JUDGE

DATE: 21st May 2025

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