

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

MISCELLANEOUS CAUSE NO. NO. 280 OF 2019

ANDREW BATAAMWE::: APPLICANT

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE ESTA NAMBAYO

RULING

Andrew Bataamyé, (hereinafter called the Applicant) brought this application by way of Notice of Motion under **Article 126** of the **Constitution of the Republic of Uganda, 1995, Sections 33, 36(1)(a) & (c), 41 & 42 of the Judicature Act, Cap.13, Section 98 of the Civil Procedure Act, Cap.71, Order 52 Rules 1 and 3 of the Civil Procedure Rules SI 71-1, Rules 3,4,5,6,7 and 8 of the Judicature (Judicial Review) Rules 2009, Rules 3A,7A of the Judicature (Judicial Review) (Amendment) Rules, 2019** against the Attorney General (the Respondent) seeking for:

1. A declaration that the decision of the Law Council finding the Applicant ineligible to apply for a Certificate of eligibility for enrollment as an Advocate of the High Court of Uganda is illegal, unfair, irrational and arbitrary.
2. A declaration that the Applicant being a Ugandan holding a law degree from a University in Uganda recognized by the Law Council, should be considered for enrollment as an Advocate of the High Court of Uganda.
3. An order of Certiorari to issue quashing the Law Council's decision not to recognize the Applicant's Post Graduate Diploma in Legal Practice obtained from the Institute of Legal Practice and Development in Rwanda, for being illegal, unfair, irrational and arbitrary.
4. An order of Mandamus doth issue directing the Law Council to immediately and unconditionally receive and determine within the shortest time possible as Court may deem fit the Applicant's application for a Certificate of eligibility for

enrollment as an advocate of the High Court of Uganda and all Courts Subordinate thereto.

5. General damages be awarded to the Applicant.
6. Costs of the application be granted to the Applicant.
7. Any other appropriate relief.

The application is premised on the grounds set out in the chamber summons and further supported by the affidavit in support deposed by the Applicant.

Briefly, it is the Applicant's case that he holds a law degree from the Islamic University in Uganda, Kampala and a Diploma in Legal Practice, from the Institute of Legal Practice and Development in Rwanda. Having acquired the above qualifications, on the 1st of August, 2019, the Applicant wrote to the Law Council inquiring about his eligibility for enrollment as an advocate in Uganda. He was informed by the Secretary Law Council, by letter dated 26th August, 2019 that the Law Council Committee on Legal Education and Training, sat and found

that he was ineligible for enrolment as an Advocate in Uganda, hence this application.

In reply to the application, the Respondent through an affidavit deposed by Prof. Ssempebwa Edward Fredrick, the Chairperson of the Law Council Committee on Legal Education and Training, opposed the application averring that the Law Council's decision of finding the Applicant ineligible to apply for a certificate of eligibility for enrollment as an advocate of the High Court in Uganda was not tainted with any irrationalities, irregularities and illegalities that warrant the grant of the orders sought in this application.

When the matter came up for hearing, the Applicant appeared without Counsel. The Respondent was not present. There was proof of service to the Respondent. No explanation was given for the Respondent's absence in Court. The Applicant informed Court that he would represent himself in the matter. Court gave timelines to file written submissions. The Respondent did not file its submissions. The Applicant filed his written submissions that are on Court record. I

have studied the pleadings together with the Applicant's submissions. I will reproduce the relevant excerpts in this ruling.

The law on judicial review:

It is trite law that judicial review is not concerned with the decision in issue per se but with the decision making process. Essentially judicial review involves the assessment of the manner in which the 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, **See the case of *Koluo Joseph Andres & 2 Ors Vs the Attorney General Misc. Cause No.106 of 2010.***

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected. **See; *John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK) and Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.***

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.

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. See the case of **Ignatius Loyola Malungu vs /nspector General of Government MC No. 059 of 2016**

In this application, what this Court has to determine is:

1. Whether the application raises any grounds for Judicial Review?
2. Whether the applicant is entitled to the remedies sought in the application?

Issue 1: Whether the application raises any grounds for Judicial Review?

It is the Applicant's contention that the Law Council's decision of finding him ineligible to apply for enrollment as an Advocate in Uganda, when he already has the requirements needed for enrolment under S.8(8) a of the Advocate's (Amendment) Act No. 27 of 2002, is illegal, unfair, irrational and arbitrary.

Under paragraph 5 of the Applicant's affidavit in support of the application, the Applicant avers that on the 25th of January, 2019, the

High Court in the case of **Katungi Tony versus Attorney General MC NO. 204 of 2017** under paragraph 54 of the Judgment ordered that:

“Any Ugandan who holds a law degree from a University in Uganda or a University recognized by Law Council should be considered for enrollment if they satisfy the requirements of S. 8(9) of the Advocates (Amendment) Act.”

The Applicant further states in paragraphs 7,8 & 9 of his affidavit that following the above court order, he wrote a letter to the Law Council inquiring whether he was eligible to apply for a certificate of eligibility to enroll as an Advocate of the High Court of Uganda and Courts subordinate thereto. In reply, the Secretary to the Law Council informed him that the Law Council Committee on Legal Education and Training decided that he was ineligible to apply for enrollment as an Advocate in Uganda because he obtained his Post Graduate Diploma in Legal Practice from Rwanda which is not a Common Law Jurisdiction. The Applicant finds the Law Council’s decision not to consider him for enrollment contrary to the existing court order and therefore illegal.

He submitted that the Law Council relying on S.8(8)(b)(iii) of the Advocates (Amendment) Act No.27 of 2002 as a basis of its decision to deny him a certificate of eligibility was totally misconceived and erroneously applied to him as he is covered under S.8(8) a of the Act and not S.8(8)(b)(iii) of the Advocates (Amendment) Act No. 27 of 2002.

I have looked at the Applicant's submissions, the law and evidence presented. Admission to practice Law in Uganda is governed by the requirements set out in the Advocates (Amendment) Act No.27 of 2002, as well as its supporting regulations under the Advocates (Enrollment and Certification) Regulations) S I 267 – I.

Under S.2 of the Advocates (Enrollment and Certification) Regulations, it is provided that the requirements as to the acquisition of professional skill and experience under section 8(1) of the Act, (now S.8 of the Advocates (Amendment) Act No.27 of 2002) shall be—

- (a) in the case of a person specified in section 8(5)(a), which is now S.8(8)a of the Act as amended,

“attendance of a postgraduate bar course conducted by the Law Development Centre and award of a diploma in legal practice by the Law Development Centre on successful completion of the course.”; or

(b) in the case of a person specified in section 8(5)(b), now S.8(8)b of the Act who has been entered on the roll as a legal practitioner (by whatever name called) in a country specified in Part I of the First Schedule to these Regulations, work under the surveillance and in the chambers of an advocate enrolled under the Act or in the service of the Government as a State attorney at the commencement of his or her practice in Uganda for a period of not less than six months and who satisfies any regulations which may be made under section 8(7), now S.8(9) of the Act S. 8 (8) of the Advocates (Amendment) Act No. 27 of 2002.

S. 8(9) of the Advocates (Amendment) Act No. 27 of 2002 provides that:

“In the case of a person to whom subsection (8) applies being a person who has not practised for a minimum period of one year, that person shall not be eligible to have his or her name entered on the Roll unless he or she has complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience, as may be specified in regulations made by the Law Council.”

In the Katungi Tony case that the Applicant has relied on, Katungi Tony had done his Bachelors in Law degree at the Uganda Christian University where he he graduated in October, 2011. He then proceeded for his post Graduate Bar course at the Kenya Law School in January 2012. In 2015, Katungi returned to Uganda and applied to the Law Council for a certificate of eligibility to enroll as an Advocate of the High Court in Uganda. The Council attached him to Justice centers where he would practice under supervision for one year. He applied for review under **Section 8 (4) of the Advocates (Amendment) Act No. 27 of 2002** provides that:

“Any person aggrieved by the decision of the Law Council on enrolment, may, within thirty days from the notification of the decision of the Law Council, apply to the High Court for a review.”

In paragraph 42 of the Katungi Tony case the Court observed that:

“ There is no demonstration that the Law Council took the Applicant’s bar qualification from Kenya, a common law jurisdiction like Uganda, an East African State, into account when making its decision to subject him to an additional year of surveillance at Justice Centers”

What the above means is that the Court in the Katungi case was cognizance of the fact that Kenya, where the Applicant (Katungi) undertook his Bar Course was a common law jurisdiction, like Uganda. In the case before Court, the Applicant undertook his Post Graduate Bar Course in Rwanda, which is not a common law jurisdiction.

The issue in the Katungye case is that the Applicant having done his post Graduate Bar Course in a common law jurisdiction Country like Uganda, upon return to Uganda, he was referred to an attachment to

the Justice Centers as if he had not done a Post Graduate Diploma in Legal Practice. The Katungi Tony case doesn't apply to this case, in my view.

In my view, S.8(9) of the Act refers to a person who has enrolled and practiced in a foreign jurisdiction for less than a year. It is in such a situation that the Law Council is required to come up with regulations on who and how to qualify such people for enrollment in Uganda.

Clearly the Applicant is not covered under S.8(9) of the Act as he was not practicing in a foreign jurisdiction. Rwanda where the Applicant obtained his Post Graduate Diploma in Legal Practice is not a common law jurisdiction. The Katungi case recognized the fact that Kenya, like Uganda was a common law jurisdiction. It is my finding therefore, that the Katungi case doesn't apply to this case.

In his further submission, the Applicant explained that the Law Council must come up with and publish regulations for all Ugandans who are eligible to practice law in Uganda and set out the manner of practicing or how they should be equated to have complied with such requirements, whether relating to instruction, examination or

otherwise, as to the acquisition of professional skill and experience as directed by the High Court in the Katungi case. He explained that it is under the said regulations that the Law Council should have set regulations guiding on obtaining a Post Graduate Diploma in Legal Practice either from a common law jurisdiction or not. Counsel further submitted that it was the finding of the High Court that in the absence of the regulations, the Law Council arrogates to itself powers to consider applications on a case to case basis which is very wrong and must stop.

On paragraph 15 of Prof. Ssempebwa's affidavit in reply, the Applicant states that the draft regulations made under s.8(9) of the Advocates (amendments) Act were considered and approved by the Law Council on the 28th /8/2019 yet the decision that the Applicant was ineligible was considered on the 21/8/2019 and that therefore the decision that the Applicant was ineligible was made without valid regulations under S.8(9) which was unfair, irregular arbitrary and an illegality.

I note that annexure "A" to Prof. Ssempebwa's affidavit in reply that the Applicant has referred to is in respect of:

" The Advocates (Professional Requirements for Admission of Persons Enrolled in Foreign Jurisdictions) Regulations, 2019."

In the case before court, the Applicant is not a person enrolled in a foreign jurisdiction. The Applicant is a person who did his Post Graduate Diploma in Legal Practice in a country which is not a common law jurisdiction. This is the issue that the Law Council pointed out in its letter to him. The directives by the High Court to the Law Council to come up with regulations are in respect of Persons covered under S.8(9) of the Advocates (Amendment) Act No. 27 of 2002 which provides as already indicated herein above that:

"In the case of a person to whom subsection (8) applies being a person who has not practised for a minimum period of one year, that person shall not be eligible to have his or her name entered on the Roll unless he or she has complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience, as may be specified in regulations made by the Law Council."

In my view, the above provision applies to persons who enrolled in a foreign jurisdiction and would like to practice in Uganda. These are the rules that the Law Council was directed to come up with in the High Court ruling. These are the rules that the Law Council is working on as per the annexure "A" to Prof. Ssempebwa's affidavit. These rules do not apply to the Applicant in this Case.

For the above reasons, I find no reason to fault the Respondent as I find no irregularity, no illegality or procedural impropriety on the side of the Respondent.

Issue 2: *Whether the applicant is entitled to the remedies sought in the application?*

No ground for Judicial Review has been proved. Consequently, the applicant is not entitled to the remedies sought. This application is accordingly dismissed with no order as to costs.

Dated, signed and delivered by email at Kampala this 13th day of May, 2020.

ESTA NAMBAYO

JUDGE

Dated: 13th May, 2020