

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

MISCELLANEOUS APPLICATION NO. 0376 OF 2023

1. ABUNDANT LIFE FAITH CHURCH OF UGANDA

2. GRIVAS MUSISI ::: APPLICANTS

VERSUS

1. OCHIENG PETER

2. MBABAZI EMMANUEL

3. KAZIBA SIMON

4. AGABA HANNINGTON

5. MATOVU MICHEAL

6. BALINDA N. HOPE

7. NON-GOVERNMENT ORGANISATIONS BUREAU ::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Section 98 of the Civil Procedure Act, Order 38 rule 3 and Order 52 rules 1-3 of the CPR seeking orders that;

- a) The registration of the 1st Applicant by the 7th Respondent as a Non-Government Organisation without authorization by the members was illegal and in contravention of the 1st Applicant's Articles and Memorandum of Association.
- b) The Board of the 1st Applicant at the Non-Government Organisation Bureau be dissolved.
- c) The Board of the 1st Applicant at the 7th Respondent hands over all and any document and or property of the 1st Applicant to the custodian of the 1st Applicant.

- d) The 1st – 6th Respondents be barred from acting for and on behalf of the 1st Applicant.
- e) Costs of the suit be provided for.

[2] The application was supported by an affidavit deposed by **Grivas Musisi**, the 2nd Applicant, who stated that he is a religious leader, member, subscriber and Director of the 1st Applicant company. He stated that around 1980, he invited the late Leslie Archibald Handel, a Canadian, to Uganda as a co-gospel minister at his ministry, at Prayer Palace Church in Kibuye. In 1988, the 2nd Applicant alongside his late brother, Deo Balabyekkubo, and Leslie Archibald agreed to mobilize and put together funds to start up a new ministry/church and expand the operations of their work. On 1st March 1989, they registered and incorporated a new ministry under the name of Abundant Life Faith Church of Uganda with four members, namely; Deo Balyabyekkubo (now late), Leslie Archibald Handel (now late), Thomas Collier (currently in Sierra Leone) and himself (the 2nd Applicant). The deponent stated that he identified land around Seguku, on Entebbe Road, to which the members put resources to buy and put up a new gospel ministry named Abundant Life Faith Church of Uganda, and appointed the late Leslie as the spiritual head.

[3] The deponent further stated that on 16th May 1995, Deo Balabyekkubo passed on in a road accident. The operations of the 1st Applicant continued under the guidance and support from himself and Leslie Handel as the spiritual head. On 7th September 2019, the 1st – 6th Respondents registered the 1st Applicant as a Non-Government Organisation including themselves as board members of the newly registered NGO without authorization from the 1st Applicant's members. The 7th Respondent proceeded to register and issue a permit and license to the 1st – 6th Respondents to operate the 1st Applicant as a Non-Government Organisation without prior authorization of members. The said 6 Respondents have taken advantage of the illegal license and permit to

take control and illegally manage and use the 1st Applicant including its property at Seguku. On 17th December 2020, the said Respondents, unknown to the Applicants, illegally and without authorization from members registered a resolution as signatories of the 1st Applicant's Bank Account with DFCU Bank. The deponent averred that he formally complained to the 7th Respondent against the registration and constitution of the board without formal authorization of the members but the Bureau ignored the plea. He concluded that it is just and equitable that the application is granted as prayed.

[4] The 1st – 6th Respondents opposed the application through an affidavit in reply deposed by **Agaba Hannington**, the 4th Respondent, who stated that he is a board/committee member of the 1st Applicant. He stated that the 1st Applicant was registered as a company limited by guarantee on 1st March 1989 with Dr. Leslie Archibald appointed as its spiritual leader and founder member under Article 16 of its Articles of Association. He stated that Article 5 of the Articles of Association provided for an executive committee of the company to which he and others were appointed in a general meeting of the church council in 2018 when Dr. Archibald was still alive. The committee was to undertake the responsibilities of the executive council that always ran the day to day activities of the church. In 2021, Dr. Archibald passed on and the executive committee carried on with the day today activities of the church.

[5] The deponent further stated that the 2nd Applicant had neither appeared nor been involved into church activities until he heard of the death of Dr. Archibald. He then rushed to Uganda Registration Services Bureau (URSB) with a forged resolution changing signatories to the church account held with DFCU bank, appointed himself together with one Akugizibwe Adolf as signatories and siphoned the funds on the account. He stated that the church has always been spearheaded by the late Archibald until his death and that the executive committee of the church was legally constituted. He also stated that

there was a requirement by government that all churches and religious institutions be registered as NGOs by the 7th Respondent and the registration was spearheaded by Dr. Archibald when he was still alive.

[6] The 7th Respondent opposed the application through an affidavit in reply deposed by **Martha Oundo**, the manager legal services of the 7th Respondent. She stated that the registration of the 1st Applicant as a Non-Government Organisation (NGO) was lawful and complied with the procedures set out in the law. She stated that the 1st Applicant was registered with the NGO Board as it then was in 1990, for an initial period of 12 months; which was renewed in 1994 for 36 months. On 4th August 1995, the 1st Applicant's registration was renewed for a period of sixty months. On 2nd September 2019, the organisation's founder member, Dr. Archibald, filed an application for renewal of its permit with the 7th Respondent. Upon examination of the documents submitted by the 1st Applicant, the 7th Respondent found that the Applicant had met all the requirements needed for renewal of its permit and was duly issued with a permit and certificate of registration on 7th September 2019 for a period of 60 months. The 1st – 6th Respondents were revealed in the filed documents as officers of the organisation and the permit was duly received by Dr. Archibald.

Representation and Hearing

[7] At the hearing, the Applicants were represented by **Mr. Akugizibwe Adolf** from M/s Newmark Advocates; the 1st – 6th Respondents were represented by **Mr. Godfrey Himbaza** of OSH Advocates while the 7th Respondent was represented by **Mr. Allan Mukama** from the Attorney General's Chambers. The hearing proceeded by way of written submissions which were duly filed and have been taken into consideration in the determination of the matter before Court.

Issues for Determination by the Court

[8] Three issues are up for determination by the Court, namely;

- a) *Whether the application is competently filed before the Court?*
- b) *Whether the 1st Applicant was lawfully registered by the 7th Respondent?*
- c) *What remedies are available to the parties?*

Resolution of the Issues

Issue 1: Whether the application is competently filed before the Court?

Submissions by Counsel for the 1st – 6th Respondents

[9] It was submitted by Counsel for the 1 – 6th Respondents that the instant application was incompetent before the Court on account that it was filed as a miscellaneous application instead of a company cause and that the provision of Order 38 rule 3 of the CPR is not applicable to the facts and circumstances of the present case. Counsel argued that the application seeks orders that affect the company documents and property which are contentious matters that may require adducing evidence and examination of witnesses in an ordinary suit or by petition. Counsel further argued that the irregularities in the instant case cannot be cured by Article 126(2)(e) of the Constitution since they go to the root of the matter.

Submissions by Counsel for the Applicants

[10] It was submitted by Counsel for the Applicants that the application was intended to be brought under Order 38 rule 5 of the CPR among other provisions and the Applicant mistakenly represented the application as a miscellaneous application instead of a miscellaneous cause. Counsel stated that despite the said error, the correct pleadings, by way of a Notice of Motion, was filed. Counsel cited the case of *Banco Arabe Espanol v Bank of Uganda* [1999] 2 EA 22 to the effect that the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant

from the pursuit of his rights. Counsel prayed that the Respondents should not be allowed to evade justice on the basis of a typographical error and invoked the provision under Article 126(2)(e) of the Constitution to the effect that rules of procedure are meant to guide courts in expediting court business but not to be ironclad obstacles to causes of action and justice.

Determination by the Court

[11] It is an established principle of the law that citing a wrong law or not citing any law at all is not fatal to an application provided the jurisdiction to grant the relief sought exists. The irregularity or omission can be ignored and the correct law inserted. See: *Saggu v Road Master Uganda Limited* [2000] EALR 255; *Nanjibhi Prabhudas & Co. Ltd v Standard Bank Ltd* [19568] EA and *Re Christine Namatovu Tebajjukira* [1992-93] HCB 85.

[12] In the present case, the application was brought as a miscellaneous application yet it was not arising from any main suit or cause. Counsel for the Applicant conceded that this was a mistake since they intended to bring it as a miscellaneous cause under Section 98 of the CPA and Order 38 rule 5 of the CPR. Looking at the orders sought in the application, the provisions under Section 98 of the CPA and Order 38 rule 5 of the CPR would be appropriate basis for the application. As such, citing rule 3 instead of rule 5 of Order 38 CPR cannot be a fatal error. Similarly, indicating the application as a miscellaneous application instead of miscellaneous cause is not a material defect provided the reliefs sought are well grounded. It is also not true that the reliefs sought cannot be proved by way of an application by Notice of Motion. I therefore find the cited irregularities curable and the application is competently before the Court.

Issue 2: Whether the 1st Applicant was lawfully registered by the 7th Respondent?

Submissions by Counsel for the Applicants

[13] Counsel for the Applicants cited Regulation 4(1) of the NGO Regulations 2017 which requires an application for registration to be accompanied by minutes and resolutions of the members authorizing the organisation to register with the NGO Bureau and submitted that the 7th Respondent registered and constituted a board of trustees for the 1st Applicant without any minutes and resolutions authorizing the same to be registered contrary to the 1st Applicant's Memorandum and Articles of Association. Counsel prayed that the Court finds that the registration of the 1st Applicant without authorization from its members was illegal and that the Board of Trustees registered with the 7th Respondent under the names of the 1st- 6th Respondents ought to be dissolved.

Submissions by Counsel for the 1st – 6th Respondents

[14] Counsel disputed the Applicants' contention that the 1st Applicant was registered as an NGO in 2019 and stated that the 1st Applicant was registered as an NGO as far back as 1994 upon an application of the founder member, the late Dr. Archibald Leslie. Counsel stated that since then, the 2nd Applicant had never come out to protest the registration from that time. Counsel pointed out that article 5 of the Articles of Association required the company to have an executive committee and in 2019, the 1st – 6th Respondents were appointed to serve in the different positions on the executive committee to date. Counsel also stated that the 2nd Applicant never got involved in the church activities since 1989 as he already had his church at Prayer Palace Kibuye until he heard of the death of Dr. Archibald Leslie and rushed to URSB with forged resolutions changing signatories to the accounts.

Submissions by Counsel for the 7th Respondent

[15] Counsel for the 7th Respondent submitted that the 7th Respondent's predecessor was mandated with authority under sections 7(a) and 8 (a) of the NGO Registration Act Cap 113 of 1989 to approve or reject applications for registration of organizations and stated that the 1st Applicant through its founder member submitted an application for registration as an NGO and a certificate of registration was granted in 1990, renewed in 1994 and 1995 and no further renewals were made until 2019. Counsel stated that the application for renewal was made by Dr. Handel Leslie and Peter Ochieng which shows that the 1st Applicant was already in existence as an NGO before the application made under the new Non-Governmental Organisations Act 2016. Counsel further stated that Dr. Leslie has been the applicant for all the certificates of registration since 1990 and has always attached the necessary requirements. Counsel submitted that the 7th Respondent only renewed the 1st Applicant's certificate of registration because the organisation was to fall under the new NGO Act of 2016.

[16] Counsel further submitted that at the time of registration of the 1st Applicant as an NGO in 1990, there was no requirement for a board resolution to apply for registration of an NGO. Counsel stated that the 1st Applicant has been an NGO for over 30 years without the 2nd Applicant bringing any claim against registration as an NGO and only laid a claim over its unlawful registration upon the demise of Dr. Archibald. Counsel also stated that it is not true that the 7th Respondent constituted a board of trustees for the 1st Applicant and the 1st - 6th Respondents were revealed as officers of the 1st Applicant within the application for registration and renewal of a permit to operate an NGO.

Determination by the Court

[17] It is not in dispute that the 7th Respondent is mandated with the powers to register Non-Government Organisations (NGOs) in Uganda. The evidence on record indicates that the 1st Applicant was first registered as an NGO way back in 1990 with subsequent renewals in 1992, 1995 and most recently in 2019 upon the coming into force of the NGO Act 2016. From the present facts, the Applicants challenge the registration of the 1st Applicant and renewal of its permit in 2019 to operate as an NGO as being unlawful for lack of authorization from the members of the organization and for non-compliance with the requirements under the NGO Act 2016. According to the evidence by the 2nd Applicant, it was required that before registration, the application had to be signed by at least two members of company and had to be accompanied by a resolution and minutes of the meeting of the company, among others. On the other hand, it was the evidence of the 7th Respondent that there was no requirement for a board resolution in order to apply for registration as an NGO at the time of registering the 1st Applicant in 1990.

[18] The above contentions require an examination of the provisions of the Non-Governmental Organizations Registration Act Cap 113, the Non-Governmental Organizations Act 2016 and the Non-Governmental Organizations Regulations 2017. Section 2(1) of the NGO Act Cap 113 provided that “*No organisation shall operate in Uganda unless it has been duly registered with the board*”. The board referred to was the National Board of Non-Governmental Organisations. “Organisation” under the Act meant a non-governmental organisation established to provide voluntary services, including religious, educational, literary, scientific, social or charitable services, to the community or any part of it.

[19] According to Section 2(2) of Cap 113, upon registration, “the board shall issue a certificate of registration to the organisation, subject to such conditions or directions generally as it may think fit to insert in the certificate, and particularly relating to — (a) the operation of the organisation; (b) where the organisation may carry out its activities; and (c) staffing of the organization”. Under Section 2(3) of the Act, no organisation could be incorporated or register any document under the Companies Act or the Trustees Incorporation Act before that organisation is registered with the board.

[20] It was conceded by the Applicants that the present application was not concerned with the initial registration of the 1st Applicant as an NGO and that the same was not an issue for consideration in this application. I however note that the said registration is relevant to the matter before the Court in as far as the Court has to establish whether the process done in 2019 was a fresh registration of an NGO or a renewal of the previous NGO. By virtue of Section 3(3) of Cap 113 cited above, it appears to me that it was the requirement under that Act that an organization had to first register as an NGO before it could register either as a company limited by guarantee or a Trust. As such, the certificate of registration issued in 1990 in favour of the 1st Applicant under Cap 113 is not affected by the provisions in the memorandum and Articles of Association of the 1st Applicant (as a company limited by guarantee). Under Section 2(2) of Cap 113, upon registration, the organization could be issued with a certificate which included the conditions for operation of the organization. On available evidence, the 1st Applicant herein was issued with a certificate of registration with one of the conditions being the period of operation being 12 months in 1990; 36 months in 1992 and 60 months in 1995. The last certificate to operate therefore expired in the year 2000.

[21] The pertinent question, therefore, is whether upon non-renewal of the organisation’s certificate after the year 2000, the existence of the organization

ceased as an NGO. The relevant law, Cap 113, is silent on the consequence of non-renewal of the certificate save for liability to commit an offence under Section 2(4) of the Act. Before arriving at any conclusion over this issue, let me examine the provisions of the Non-Governmental Organisations Act 2016 which repealed Cap 113. Under the 2016 Act, an “organization” means “a legally constituted non-governmental organization under this 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”. Under Section 29(1) of the NGO Act 2016, any person or group of persons incorporated as an organization shall register with the National Bureau of NGOs established under the Act. Under Section 29(4) of the Act, an organization that has been registered under the Act remains registered until either its registration is cancelled in terms of the Act; the organization is voluntarily deregistered; or the organization is wound up or dissolved.

[22] It ought to be noted that under Section 31(1) of the Act 2016, an “organization shall not operate in Uganda without a valid permit issued by the Bureau”. Despite this provision under Section 31(1) of the Act, it should be noted that failure to renew a permit is not one of the conditions that terminate the life of an NGO in accordance with Section 29(4) of the Act, cited above. In my view, these provisions sufficiently disclose the intention of the legislature regarding termination of the life of an NGO. Despite the silence in Cap 113 over the issue, I do not find an intention on the part of the legislature that once the NGO did not renew its certificate of registration in accordance with the terms of its issue, the life of the organization terminated. Rather, like was clearly expressed under the new Act, the non-renewal of the certificate would only make the organization unable to conduct business. In other words, while the organization could not lawfully conduct business it was registered to do, it remained in existence.

[23] It follows, therefore, that the organization registered in 1990, which last had an operating certificate in 2000, remained and was still in existence in 2019 when it was re-registered for purpose of bringing it in conformity with the new law. Because the earlier certificate issued to the 1st Applicant had been issued under a now repealed law, it was imperative on the part of the 7th Respondent to issue a new registration certificate in accord with the new law. Secondly, it is clear that under the old legal regime, the registration certificate also acted as the licence or permit and the conditions for operation were set out therein. Conversely, under the new Act, there was provision for a certificate of registration different from a permit. The conditions for operation were set out in the permit. As such, it was imperative on the part of the 7th Respondent to issue a permit to the 1st Applicant as if it was a newly registered organization. This was simply because the 1st Respondent, although legally in existence, had never been issued with a permit in accordance with the 2016 Act. The 1st Applicant could, therefore, not be issued with a renewal of a permit.

[24] That being the case, there was no breach of the law or any procedure on the part of the 7th Respondent in the re-registration and issuance of an operating permit to the 1st Applicant. Since the process was done upon the basis of the 1st Applicant's prior registration, it could not be subjected fully to the conditions provided under the 2016 Act. The 7th Respondent was entitled to rely on the information that had been provided during the earlier application for registration. There is no evidence that the 2nd Applicant featured anywhere during the prior registration. As already highlighted above, the prior registration of the 1st Applicant as an NGO was not based on its memorandum and articles of association as a company limited by guarantee. As such, there was no way the 7th Respondent would establish a membership of the 1st Applicant that was different from that presented in 1990 and 2019 respectively.

[25] In the premises, I have not found any illegality on the part of the 7th Respondent in the execution of its mandate in the way it did. Similarly, there is no evidence to establish that the 1st – 6th Respondents were illegally included as executive committee members of the 1st Applicant. If the 2nd Applicant anticipated being one of the members of the executive committee, such was an internal management matter which he would have raised separately and over which the 7th Respondent was not concerned. In the circumstances, I find that the 1st Applicant was lawfully registered by the 7th Respondent. Issue two is answered in the affirmative.

Issue 3: What remedies are available to the parties?

[26] In light of the above findings, the Applicants have not satisfied the Court on a balance of probabilities that the 1st Applicant was unlawfully registered by the 7th Respondent. The application has accordingly failed and is dismissed with costs to the Respondents.

It is so ordered.

Dated, signed and delivered by email this 28th day of June, 2024.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala

JUDGE