THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO.23 OF 2021

1. **UGANDA WOMEN'S NETWORK**
2. **THE UGANDA NATIONAL NGO FORUM:::::::::::::::::::::::::::::::::::: APPLICANTS**

VERSUS

1. **FINANCIAL INTELLIGENCE AUTHORITY**
2. **ATTORNEY GENERAL:: RESPONDENTS**

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

The Applicants, Uganda Women's Network and the Uganda National NGO Forum (hereinafter referred to as the 1st and 2nd Applicants respectively) brought this application **under Article 42 of the 1995 Constitution of Uganda, Sections 33 and 36 of the Judicature Act, 2009 as amended and Rules 3, 4, 5, 6, 7 & 8 of the Judicature (Judicial Review) Rules S I 13 -1** against the Financial Intelligence Authority and the Attorney General (hereinafter referred to as the 1st and 2nd Respondents respectively) seeking for declarations that:-

1. **The 1st Respondent's freezing of the 1st Applicant's funds in Stanbic Bank (U) Limited Account Nos. 9030005606445, 9030005606496, 9030005606542, 9030005606461, 9030005606526, 9030005606488, 9030005606534, 9030005606453, 9030005606518 & 9030012369947 and the 2nd Applicants' funds in Stanbic Bank (U) Limited, Account Nos. 9030005662019, 9030005662027 & 9030015821956, Absa Bank (U) Ltd Account Nos. 0341996317, 6001944051 & 6003124337, Standard Chartered Bank (U) Limited Account Nos. 0108212045100, 0108212045101**

& 0108212045102 and KCB Bank account Nos. 2202265783 (hereinafter referred to as the Applicants' Bank Accounts) was ultra vires, illegal, null and void.

2. **The decision by the 1st Respondent directing the Applicants' bankers to freeze, restrict or halt all withdraws or debits from the Applicants' Bank Accounts were without reasonable suspicion to warrant an investigation into the allegations of terrorism financing; and**
3. **The 1st Respondents failure to inform the Office of the Director of Public Prosecutions within the mandatory forty-eight hours after the time of freezing the Applicant's Bank Accounts as provided for under Section 17A (2) of the Anti-Terrorism Act, 2015 was procedurally improper; and**
4. **The continued failure and/or refusal of the Director of Public Prosecutions to expeditiously act on the information provided by the 1st Respondent vide; the latter's letter dated 10th December, 2020 as required under Section 17A (3) of the Anti-Terrorism Amendment Act, 2015 was not only procedurally improper but also irrational.**
5. **An order of certiorari quashing the decision of the 1st Respondent ordering the Applicant's bankers to halt all withdrawals and debits and to freeze all funds on the Applicants' said Bank Accounts.**
6. **An order of mandamus directing the 1st Respondent to unfreeze the Applicants' Bank Accounts immediately.**
7. **An order of prohibition restraining the Respondents, any Government Department, Agency, Authority, Official, respective officers, servants, agents, representatives, the Applicants' Bankers or any person, from directly or indirectly or in any other way, implementing, applying, using, or relying on the 1st Respondent's impugned decision/communication to halt and or freeze the Applicants' Bank Accounts.**

8. **A Permanent Injunction restraining the Respondents, any Government Department, Agency, Authority, Official, their respective officers, servants, agents, representatives, the Applicants' Bankers or any person, from directly or indirectly or in any other way, implementing, applying, using, or relying on the 1st Respondent's impugned decision to halt and or freeze the Applicants' funds held in the said Applicants' Bank Accounts.**
9. **An award of general damages to be paid by the Respondents to the Applicants;**
10. **An order for exemplary/punitive damages be awarded to the Applicants; and,**
11. **The costs of this Application be awarded to the Applicants.**

The grounds of this application are laid down in the affidavits in support of the application by Rita H. Aciro-Lakor, the 1st Applicant's Executive Director and Moses Isooba, the Executive Director of the 2nd Applicant, but briefly are that;

1. **The 1st Applicant is an indigenous Non-Governmental Organization (NGO) duly registered with the National Bureau for Non-Governmental Organizations, Uganda, with a mandate to coordinate collective action among women's rights and gender equality stakeholders, improving socio-economic conditions of women and promoting access to power and decision making for women, throughout the country.**
2. **The 1st Applicant is also an advocacy and lobbying coalition of thirty national women's NGOs, institutions, companies, regional and district women's networks and individuals working towards gender equality.**
3. **The 2nd Applicant is equally an indigenous Non-Governmental Organization (NGO) duly registered with the National Bureau for Non-Governmental Organizations and mandated to carry out its activities in the fields of acting**

as a forum drawing together NGOs and other civil society groups in Uganda, policy advocacy, capacity building, maintaining dialogue with government, networking and information sharing.

4. **The 2nd Applicant has a membership of about 670 Civil Society Organizations and its objective is to provide a sharing and reflection platform for NGOs so that they can influence governance and development processes in Uganda.**
5. **The Applicants jointly file this application as they have suffered the same undue process and offences to natural justice and as permitted by law, Applicants may join together in a judicial review Application.**
6. **In their activities, the Applicants are supported financially from time to time by various International Development Partners such as: Democratic Governance Facility (DGF), UN Women Uganda, Austrian Development Cooperation (ADC), DaChurchAid (DCA), Oxfam International, Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ), Horizont3000, Dreikonigsaktion (DKA), Robert Bosch Stiftung, Irish Aid, Danish International Development Agency (DANIDA), Department for International Development (DFID), United States Agency for International Development (USAID), United Nations Development Program (UNDP), Open Society Initiative for Eastern Africa (OSEA), Urgent Action Fund and Ford Foundation. It is through such funding that operating costs of each Applicant are met.**
7. **The said funding is subject to best practice terms and conditions for applications, funding, monitoring, reporting, compliance and other requirements of the international donor organizations.**
8. **The Applicants hold and operate various bank accounts with licensed Commercial Banks operating in Uganda.**

9. **On or about the 23rd of November, 2020, the 1st Respondent instructed all the Applicants' bankers to freeze all the accounts belonging to the Applicants.**

10. **The said orders to freeze were issued without any notice to or knowledge on the part of the Applicants and they were only made aware of the above decision when they sought to operate the said accounts, upon which they were informed by their bankers of the freezing Orders/instructions from the Respondent.**

11. **The said freeze of the funds was purportedly done under Section 17A of the Anti-terrorism (Amendment) Act, 2015 but did not fulfill the requirements of the said statutory provision.**

12. **Section 17A of the Anti-terrorism (Amendment) Act, 2015 permits the 1st Respondent to cause the freezing of bank accounts "where it is satisfied that the funds are or the property is intended for terrorism activities. The 1st Respondent caused the freezing of bank accounts at a time when it was not satisfied that the funds are intended for terrorism activities. The 1st Respondent therefore failed to comply with Section 17A and acted outside the powers afforded to it by legislation. There was and still is no credible evidence that the said funds were intended for terrorism activities. Accordingly, in causing the bank accounts to be frozen, the 1st Respondent acted ultra vires, illegally and improperly.**

13. **Section 17A (2) of the Anti-terrorism (Amendment) Act, 2015 requires that the 1st Respondent informs the Office of the Directorate of Public Prosecutions within not more than forty-eight hours after the time of the freezing.**

14. **The 1st Respondent's letter to the Office of the Directorate of Public Prosecutions dated 10th December, 2020 was more than two weeks and**

manifestly outside the 48 hours' window as stipulated under the statutory provision and as such, was tainted not only with procedural irregularity but also illegally.

15. **Similarly, Section 17A (3) of the Act requires the Office of the Directorate of Public Prosecutions to apply to Court for an order freezing or seizing such funds or property and the Court should make a determination expeditiously; but as at the date of making this application, the Office of the Directorate of Public Prosecutions has not applied to Court for such an order.**
16. **The failure by the Office of the Directorate of Public Prosecutions to so apply is a breach of the statutory requirement. Accordingly, the 2nd Respondent is currently acting illegally, improperly and offending the principles of natural justice and the right to a fair hearing.**
17. **The 1st Respondent's freezing orders have affected and continue to affect the livelihoods of over 200 households as the 1st and 2nd Applicants have both been unable to pay salaries of their staff members.**
18. **The Applicants are also unable to meet their other financial obligations as and when they fall due and this has affected not only the Applicant's operations meant to support vulnerable persons in Uganda but also caused them untold financial and reputational harm.**
19. **The accusation of terrorism financing has far reaching impacts on the image, reputation and standing of the Applicants and is likely to peril the Applicants' relationships with their legitimate financers and other potential supporters.**
20. **It is in the interest of justice that the prerogative orders and judicial reliefs sought be granted to the Applicants.**

The Respondents filed affidavits in reply opposing this application.

Brief background to the application.

Briefly, the background to this application is that the Applicants are indigenous Non-Governmental Organizations duly registered with the National Bureau of Non-Governmental Organizations, while the 1st Respondent is a Government Agency mandated to fight money laundering and combating terrorism financing in Uganda and the 2nd Respondent is the Attorney General. In November, 2020, the 1st Respondent directed the Applicants' Bankers to freeze all the Applicants accounts under S. 21 (o) of the Anti- Money Laundering Act, 2013 and later on under S. 17 A (1) of the Anti -Terrorism (Amendment Act) Act, 2015. The Applicants being dissatisfied with the manner in which the 1st Respondents froze their accounts filed for Judicial Review before this court. In the course of proceedings, the 1st Respondent unfroze the Applicants accounts and now claims that this matter should be dismissed for being overtaken by events.

Representation

Learned Counsel F.K Mpanga appeared for the Applicants, while Ampeirwe Cynthia together with Margaret Nabukeera were for the 1st Respondent and Hillary Ebilu was for the 2nd Respondent. Counsel for the Applicants and the 1st Respondent filed their written submissions as directed by Court. Counsel for the 2nd Respondent did not file his submissions.

The following issues are set down for determination by this Court: -

1. **Whether this application is moot.**
2. **Whether the Respondents' actions in regard to the Applicants were lawful, judicious and in accordance with the rules of natural justice.**
3. **What remedies (if any) are available to the Applicants**

Resolution of issues

Issue 1: Whether this application is moot.

Applicant's submissions

Counsel for the Applicant relied on the case of ***Julius Maganda –v- National Resistance Movement, MA No. 154 of 2010,*** where court noted that;

"courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or merely no longer exist."

Counsel also relied on the case of ***Pine Pharmacy Ltd & Eight Others –v- National Drug Authority MA No. 142 of 2016*** where court held that: -

"The doctrine of mootness is part of a general policy that a court may decline to decide a case which rises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. Accordingly, if subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot."

Counsel submitted that in this case, there is still a live controversy which affects the rights of the parties. That the Applicants seek declarations that the process by which their bank accounts were frozen and unfrozen on three different occasions was

illegal, irrational and procedurally improper and that the purpose of Judicial Review is to assess the exercise of public powers and not necessarily the result of that exercise of power as noted in the case of ***Chief Constable of North Wales Police – v- Evans [1982] 3 ALLER 141 (per Lord Hailsham of St. Marylebone LC), cited in the case of Editors' Guild Uganda Ltd & Center for Public Interest Law Limited – v- Attorney General MC No. 400 of 2020.***

Counsel explained that the Office of the Directorate of Public Prosecutions and the Criminal Investigations Department of the Uganda Police continue to carry out investigations in this matter and may again subject the Applicants to the same inconvenience that caused them to come to court. That in this application, the Applicants seek a permanent injunction to restrain the Respondents from freezing their accounts among other prayers. That the Applicants also suffered and continue to suffer harm for which they have sought for damages and that as such, this application is not moot but rather pertains to a live controversy that affects the rights of the Applicants.

1st Respondent's submissions

In reply, Counsel for the 1st Respondent submitted that this application has been overtaken by events, that it is frivolous, vexatious and moot as against the 1st Respondent. That the Applicants seek orders of certiorari to quash the 1st Respondent's decision and an order of mandamus directing the 1st Respondent to lift the halt of financial action on their bank accounts and yet the Applicants' accounts were released on the 19th February, 2021 as indicated in paragraph 8 of the 1st Respondent's supplementary affidavit and annexure "B" thereto.

Counsel relied on the case of ***Patricia Mutesi –v- Attorney General MC No.241 Of 2016*** where court noted that;

"Black's Law Dictionary, 9th Edition, page 1090 defines a "moot case"' to mean a matter in which a controversy no longer exists; a case that only presents an abstract question that does not arise from existing facts or rights. In the case of Justice Okumu Wengi -v- Attorney General of Uganda (2007) 600 KaLR, it was held that; "……. for an application and reliefs sought to be moot, it means that the remedies sought cannot be realized…Also in Human Rights Network for Journalists and Another –v- Uganda Communications Commission, & Others MC No. 219 of 2013 court held that; courts of law do not decide cases where no live dispute between parties is in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or no longer exist. The instant application is thus an exercise in futility…"

Counsel further relied on the case of ***Turyakira John Robert & Odur Anthony –v- URA MC N0.166 Of 2018,*** and explained that the present application falls in the mootness doctrine which bars courts from deciding moot cases. That the exercise of judicial power depends upon existence of a case or controversy. He prayed that this honorable court dismisses this application on the basis that it is moot, frivolous and vexatious as against the 1st Respondent.

Analysis

In ***Peter Kaluma's book, Judicial Review, Law Procedure and Practice, 2nd Edition, at page 46*** it is stated that;

"In Judicial Review the court's exclusive concern is with the legality of the administrative action or decision in question. Thus, instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the court in an application for judicial review is concerned only with the question as to

whether or not the action under attack is lawful or should be allowed to stand, or be quashed.''

In ***Municipal Council of Mombasa –v- Republic & Umoja Consultants Ltd [2002] eKLR,*** the Court of Appeal stated that;

"Judicial Review is concerned with the decision making process, not with the merit itself; the court would concern itself with such issues as to whether the decision makers had the jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision, the decision maker took into account relevant matters or did take into account irrelevant matters".

In this case, the Applicants seek for declarations that the procedure applied by the 1st Respondent to freeze their accounts was ultra vires, illegal, null and void. So, this court is called upon to examine the procedure followed and its legality. Whether or not the 1st Respondent has since caused the unfreezing of the accounts does not make the matter overtaken by events/ moot. What this court is called upon to do is to examine the procedure that the 1st Respondent used to arrive at the decision to freeze the Applicants' accounts and pronounce whether it was legal or not. The Applicants also claim to have suffered inconvenience for which they seek for an award of damages. Much as the Applicants' accounts have been unfrozen there are live controversies still pending between the parties that this court is called upon to address. Therefore, I find that this case is not over taken by events and the doctrine of mootness which Counsel for the parties have ably submitted on is not applicable.

Issue 2. Whether the Respondents' actions in regard to the Applicants were lawful, judicious and in accordance with the rules of natural justice.

Applicants' submissions

Counsel for the Applicants submitted that the Respondents' conduct of freezing and unfreezing of the Applicants' bank accounts was an unreasonable exercise of discretionary power, that it was illegal, procedurally improper and in bad faith.

On the ground of unreasonableness, Counsel relied on the case of ***Sundus Exchange & Money Transfer and five others –v- Financial Intelligence Authority MA No. 154 of 2018*** where court noted that; -

"It is true that discretionary power conferred upon legal authorities is not absolute, even within its apparent boundaries, but is subject to general limitations. Therefore, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to exercise discretion are usually expressed in different ways, i.e. discretion must be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, that there must not be any malversation of any kind or that the decision must not be arbitrary or capricious…. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse."

Counsel submitted that in the above case, there was evidence that the Respondent relied on for the suspicion that the suspect, Furhan Hussein Haider, was coordinating financial and logistical support to terrorist groups in Somalia and Kenya, unlike in this case where the 1st Respondent did not present any evidence that it relied on for the suspicion that the Applicants were dealing in terrorism financing. That the 1st Respondent's claim that the information they have is confidential does not stand because if that was the case, it would have proceeded under regulation 18 of the Anti-Terrorism Regulations S.I. No. 63 of 2018.

Counsel explained that the freezing and unfreezing of the Applicants' bank account coupled with a pro-longed period of investigation was irrational and in bad faith. He relied on the case of ***Uganda Health Marketing Group –v- Financial Intelligence Authority MC No. 170 of 2019*** where court noted that whenever a decision is reached to do an act that affects the rights of a person, there is a corresponding duty to ensure that such limitation of the party's rights ends as soon as possible; but that in this case, investigation for a period of over three months reeks of bad faith, injustice, unfairness and unreasonableness on the part of the Respondents.

On the ground of illegality, Counsel submitted that much as the Respondents are required under S. 17 A of the Anti - Terrorism (Amendment) Act, 2015 to be satisfied that the funds and/or property is intended for terrorism activities, the Respondents in this case failed to show any grounds leading to their satisfaction that the funds were intended for terrorism funding. That the exercise of discretion by the 1st Respondent in freezing the Applicants' accounts was outside the scope of the law and illegal and this is why the ODPP directed the 1st Respondent to unfreeze the Applicants accounts as investigations in the matter continue.

Counsel further submitted on the ground of procedural impropriety, that the Respondents did not conduct themselves with procedural propriety in that the Respondents failed to adhere to the procedural rules laid down in the statute and to comply with the rules of natural justice in arriving at its decision to freeze and unfreeze the Applicant's accounts. That the Applicants were not given an opportunity to be heard even after their accounts were frozen by the 1st Respondent. Counsel relied on the Sundus, case (supra), where court noted that the purpose of an initial freezing of accounts is to enable further investigations into the activities of the Applicants and that at that stage, accord the Applicants a right to be heard. He explained that in this case, the Applicants were not heard even when the

1st Respondent froze, unfroze and again froze their accounts until when the ODPP directed that the Applicants' accounts be unfrozen pending further investigations into the matter. Counsel prayed that this court finds that the Respondents acted with procedural impropriety having disregarded the rules of natural justice and having failed to adhere to the rules of procedure as laid out under the Anti- Money Laundering Act, 2013 and the Anti-Terrorism (Amendment) Act, 2015.

1st Respondent's submissions

In reply, Counsel for the 1st Respondent submitted that the purpose of freezing the Applicants' accounts was to enable investigations in the activities of the Applicants. That on the 9th December, 2020, the Respondent issued instructions to the bank to halt financial transactions on the Applicants' accounts and there after wrote to the ODPP informing them of the suspected involvement in terrorism financing as indicated in paragraph 8 and 9 of Mr. Sydney Asubo's affidavit in reply. That this was in conformity with the provisions of Section 17A of the Anti-Terrorism Act, 2002 as amended. Counsel explained that it is not within the 1st Respondent's powers to decide when to unfreeze the accounts not until the investigations have been completed or when advised otherwise. That before completion of investigations or advise otherwise, the Respondent's actions to unfreeze the account would be premature and illegal without guidance from the ODPP. That the actions of the 1st Respondent were procedurally proper and therefore do not fall within the ambit for an application for Judicial review. Counsel relied on the cases of ***John Jet Tumwebaze -v- Makerere University Council & 2 Ors, MC No.353 of 2005***, ***Sundus Exchange & Money Transfers & 5 Ors –v- Financial Intelligence Authority MC No. 154 of 2018, R -v- Commission for Racial Equality exp Hillingdon LBC [1982] QB 276 & Sharp –v- Wakefield [1891] AC 173.***

He emphasized that terrorism activities in any country of the world have far reaching consequences as regards the security and wellbeing of its citizens and that the 1st Respondent having wind of information or suspicion of terrorism financing by the Applicants, acted swiftly and without hesitation to halt financial activities of the Applicants.

In reply to the requirement to be satisfied before halting financial transactions, Counsel for the 1st Respondent contended that the nature and mandate of the 1st Respondent requires swift and expeditious actions and in such circumstances, it may not be possible to exercise the right to be heard to the suspect at such an early stage. Counsel relied on the cases of ***Bank of Uganda –v- Caring for Orphans, Widows & Elderly (COWE), Civil Appeal No. 35 of 2007; Sundus Exchange & Money Transfers & 5 Ors –v- Financial Intelligence Authority (supra); Lloyd –v- Mc Mahon [1987] AC 627; R (West) –v- Parole Board [2005] 1 WLR 350 and Opio Belmos Ogwang –v- Attorney General and Inspectorate of Government, MC. No. 158 of 2015.*** Counsel prayed that this court finds no merit in this application and dismisses it with costs.

Analysis

In the case of ***Pastoli -v- Kabale District Local Government Council and Others [2008] 2 EA 300*** court noted that: -

"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 and 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 and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

Section 17A of the Anti-Terrorism (Amendment) Act, 2015 mandates the 1st Respondent to freeze or seize any funds or property where it is satisfied that the said funds or property is intended for terrorism activities. It provides as follows;

S.17 A (1) The Financial Intelligence Authority may cause the freezing or seizing of funds or property where it is satisfied that the funds are or the property is intended for terrorism activities.

(2) Where the Financial Intelligence Authority causes the freezing or seizing of funds or property under subsection (1), the financial Intelligence Authority shall, immediately inform the Director of Public Prosecution in any case not later than forty-eight hours after the time of freezing or seizing.

(3) After receipt of the information under subsection (2), the Director of Public Prosecutions shall apply to court for an order freezing or seizing such funds or property and the court shall make a determination expeditiously.

From the above provision of the law, before freezing of any one's funds or seizing their property, the 1st Respondent ***must be satisfied*** that the funds or property in issue is intended for terrorism activities; and in order for the 1st Respondent to be satisfied as provided under S. 17A (1), in my view, would mean that it must have information or look at circumstances leading to reasonable suspicion that the suspected party has engaged or is about to engage in terrorism activities. There must be proper basis for the 1st Respondent's actions and it must be in position to present that information or circumstances to court, if called upon, for court to see that there was genuine cause for its action.

In this case, Mr. Sydney Asubo, the Executive Director of the 1st Respondent states in paragraphs 4, 5 & 6 of his affidavit in reply that the 1st Respondent received intelligence reports from national security agencies that the Applicants were involved in terrorism financing activities and that after diligently and cautiously analysing the information, the 1st Respondent moved to freeze the Applicants accounts.

Regulation 18 of the Anti-Terrorism Regulations, 2016, mandates courts to vary an order freezing or seizing the funds or property upon justification of the circumstances that are given. Under regulation 18 (2), it is provided that;

"upon an application being made under sub regulation (1), the court shall examine ex parte and in camera any security or intelligence reports or other information or evidence considered confidential by the Financial Intelligence Authority, which were considered by the Financial Intelligence Authority and which formed, in part or in whole, the basis for the seizing or freezing of the funds or property."

I agree with the submission of Counsel for the Applicants that the 1st Respondent should have moved court under regulation 18(2) of the Anti-Terrorism Regulations,

2016, to have its evidence, the basis of its actions examined in camera, if it considered the information too confidential to be presented in open court.

Under ***S.103 of the Evidence Act, it is provided that;***

"The burden of proof as to any particular fact lies on that person who wishes the Court to believe its existence, unless it is provided by law that the proof of that fact lie on any particular person."

Musa Ssekaana, J, in the case of ***Ndangwa Richard –v- Attorney General MC No. 244 of 2017, while relying on the case of R (on application of British Sky Broadcasting Ltd) -v- Central Criminal Court [2011] 3451(Admin); 2012 QB 785 and R (on application of MD (Gambia) –v- Secretary of State for Home Department [2011] EWCA Civ 121***, noted that courts should set aside decisions of public bodies or authorities if unsupported by substantial evidence.

In this case, the 1st Respondent has not presented any evidence that it claims to have relied on to freeze the Applicants' Bank Accounts and yet it claims to have received intelligence reports that the Applicants were financing terrorist activities. When the matter was referred to the ODPP, the 1st Respondent was directed by the ODPP to unfreeze the Applicants accounts pending further investigations into the matter. It wouls appear that the ODPP found no credible evidence warranting freezing of the Applicants' accounts.

In the case of ***Ojangole Patricia & 4 Others -v- Attorney General MC No.303 of 2013,*** court noted that illegality is when the decision making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint.

In this case therefore, I would find that the 1st Respondent committed an error of law when it exercised its mandate of freezing the Applicants' accounts without evidence leading to its satisfaction that the Applicants were financing terrorist activities; and as such, its actions were illegal, ultra vires and irregular.

Issue 3: What remedies (if any) are available to the Applicants?

Section 36 of the Judicature Act, 2009 provides for the remedies under judicial review.

In *Robert Coussens -v- Attorney General, SCCA No. 08 of 1999,* Court held that;

"The object of the award of damages is to give the plaintiff compensation for the damage, loss or injury he or she has suffered…. and that a party claiming damages should lead evidence or give an indication of a figure of what amount of damages ought to be awarded as to the quantum."

In the case of ***Luzinda –v- Ssekamatte & 3 Ors HCCS No.366 of 2017*,** court noted that;

"As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions."

In this case, the Applicants have pleaded and claimed for damages but not proved the damages incurred. In the circumstances, this court declines to award damages to the Applicants and now makes declarations and orders as follows;

1. It is hereby declared that the 1st Respondent's freezing of the 1st Applicant's funds in Stanbic Bank (U) Limited Account Nos. 9030005606445, 9030005606496, 9030005606542, 9030005606461, 9030005606526, 9030005606488, 9030005606534, 9030005606453, 9030005606518 & 9030012369947 and the 2nd Applicants' funds on Stanbic Bank (U) Limited, Account Nos. 9030005662019, 9030005662027 & 9030015821956, Absa Bank (U) Ltd Account Nos. 0341996317, 6001944051 & 6003124337, Standard Chartered Bank (U) Limited Account Nos. 0108212045100, 0108212045101 & 0108212045102 and KCB Bank account Nos. 2202265783 (hereinafter referred to as the Applicants' Bank Accounts) was illegal, ultra vires, null and void.

2. It is hereby declared that the decision by the 1st Respondent directing the Applicants' bankers to freeze, restrict or halt all withdraws or debits from the Applicants' Bank Accounts was without reasonable suspicion to warrant an investigation into the allegations of terrorism financing

3. Remedies of certiorari, mandamus, prohibition and Permanent Injunction are not applicable in this case as evidence on records shows that the 1st Respondent has since unfrozen all the Applicants' Bank accounts.

4. The 1st Respondent pays costs of this application.

I so order.

Dated, signed and delivered by mail at Kampala on this 7th day of September, 2022

Esta Nambayo
JUDGE
7th/9/2022