

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS CAUSE NO. 29 OF 2015**

**NILEFOS MINERALS LIMITED ::: APPLICANT**

**VERSUS**

- 1. ATTORNEY GENERAL**
- 2. GUANGZHOU DONG SONG**  
**ENERGY GROUP (U) COMPANY LIMITED ::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: LADY JUSTICE LYDIA MUGAMBE**

**RULING**

**a) Introduction**

1. The Applicant brought this judicial review application under articles 28, 42, 44(c) of the Constitution, section 119(1) & (2) of the Mining Act 2003, sections 33, 36 and 37 of the Judicature Act and Rules 3, 4, 6 and 8 of the Judicature (Judicial Review) Rules, 2009 seeking:
  - i. An order of certiorari to issue quashing the decision of the Hon. Minister of Energy and Mineral Development (herein after the Minister) made on the 23<sup>rd</sup> of January 2015, confirming the decision of the Commissioner Department of Geological Surveys and mines (hereinafter the Commissioner) made on 29<sup>th</sup> October 2014 granting the second Respondent a mining lease.

- ii. Prohibition of the first Respondent from granting mineral rights in the Sukulu area to the second Respondent.
  - iii. Costs of this application.
2. Mr. Elison Karuhanga of M/s. Karuhanga Kasaija & Co. Advocates represents the Applicant. The first Respondent is represented by Mr. Kalemera George from the Attorney General's Chambers and Mr. Kabiito Karamagi of M/s Ligomarc Advocates represents the second Respondent. The Attorney General is sued in his representative capacity under section 10 of the Government Proceedings Act for the actions of the Minister.
3. The application is supported by the affidavit of Mr. Laxman Mendon the company secretary of the Applicant. The grounds for the application are briefly that on 23<sup>rd</sup> January 2015 the Minister confirmed the decision of the Commissioner to grant the second Respondent a mining lease; the decision was tainted with bias, was prejudicial, illegal, irrational and procedurally improper.
4. The application was opposed by both Respondents. Eng. Irene Muloni the Minister swore the affidavit in reply on behalf of the first Respondent. She averred that this application has illustrated no evidence whatsoever that the decision was irrational, illegal, tainted with bias, prejudicial or procedurally improper. The Applicant had a chance to develop the mineral resources in the contested area but sat on the mineral rights since 2005 until when its mineral rights absolutely expired and could not be renewed under the provisions of the Mining Act.
5. Mr. Young Hu the Country Director of the second Respondent deposed an affidavit in reply on behalf of the second Respondent. He contended that the orders being sought in the application are not enforceable against the second Respondent and that the application against it is incompetent, misconceived and does not meet the conditions for grant of the orders sought.

6. Mr. Mendon in rejoinder deponed that the decision in issue was tainted with bias and all allegations made against the second Respondent have been well documented. He also averred that the mining lease was issued and applied for in contempt of court orders.

**b) Law**

7. Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions/duties/acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law. It is different from the ordinary review of the Court of its own decisions, revision or appeal in the sense that in the case of ordinary review, revision or appeal, the Court's concerns are whether the decisions are right or wrong based on the laws and facts whereas for the remedy of judicial review, as provided in the orders of mandamus, certiorari and prohibition, the Court is not hearing an appeal from the decision itself but a review of the manner in which the decision was made. See **Kuluo Joseph Andrew & Ors v. Attorney General & Ors Misc Cause No. 106 of 2010.**
8. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374.**
9. In the case of **John Jet Tumwebaze v. Makerere University Council and ors (Civil Application No. 78 of 2005)**, Ag. Justice Remmy Kasule (as he then was) gave the definition of *Certiorari* as a prerogative writ issued to quash a decision which is *ultra vires* or vitiated by an error on the face of the record. *Certiorari* is a prerogative order designed to control inferior Courts, tribunals, administrative and statutory authorities.

10. In **Stream Aviation Ltd v. The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)** Justice V. F. Musoke Kibuuka held that the prerogative order of *certiorari* is designed to prevent the access of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.
11. Prohibition lies to restrain authorities or bodies which are inferior to the High Court from assuming jurisdiction where there is none or from doing what they are not authorized to do. It does not correct the practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.<sup>1</sup>

### c) Analysis

12. The Applicant filed Misc. Cause 184 of 2014 against the Respondents in this court in which it challenged the Minister's refusal to grant the Applicant a mining lease in the Sukulu area. The Minister had done this by confirming the decision of the Commissioner of 10<sup>th</sup> June 2013.
13. Before Justice Musota returned judgment in Misc. cause 184 of 2014, the Applicant filed the instant Misc. Cause 29 of 2015 challenging the Minister's grant of a mining lease in the Sukulu hills to the second Respondent. The background, context and substance of Misc. cause 184 of 2014 and Misc. Cause 29 of 2015 is the same and between the same parties.
14. On 29<sup>th</sup> February 2016 Justice Musota returned his ruling in Misc. cause 184 of 2014. In this ruling the judge found that illegality had been proved and the Applicant was entitled to an award of damages.
15. In my view since the award of the mining lease to the second Respondent was a continuing action in a pending dispute before the trial judge, the Applicant should have brought this to the attention of the judge in a timely manner to enable him take account of it in the

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<sup>1</sup>Peter Kaluma "Judicial Review Law Procedure and Practice" second edition, p.119.

determination of Misc. cause 184 of 2014. Instead the Applicant filed a fresh judicial review application in which it wants this court to re-litigate the issues in Misc. Cause 184 of 2014. This is a proper case of forum shopping and I am disinclined to consider this application. The Applicant should concentrate on the ruling in Misc. cause 184 of 2014 where it is entitled to an award of damages for the illegality that was proved there.

16. Judicial review was never meant to be a game of chance where litigants file different applications hoping that they can get their choice remedy from one court if not the other. In my discretion therefore, this application is dismissed, each party shall bear its own costs.

I so order.

**LYDIA MUGAMBE.**  
**JUDGE.**  
**19<sup>TH</sup> JANUARY, 2018.**