

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[CIVIL DIVISION]**

**MISCELLANEOUS CAUSE NO. 104 OF 2018**

**IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES,**  
**2009**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**SMS EMPIRE LTD=====APPLICANT**

**VERSUS**

**1. UGANDA COMMUNICATIONS COMMISSION**

**2. MTN UGANDA LIMITED**

**3. ATTORNEY GENERAL=====RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant, a company offering Value Added Services on telecommunications, filed an application for judicial review seeking the following prerogative orders;

1. A declaration that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' decision, failure and refusal to attend to the Applicant's formal complaints against the 2<sup>nd</sup> Respondent lodged in January 2018, December 2017 and 2015, respectively while selectively attending to only one complaint of VAS Garage following the prejudicial sitting on 26/3/2018 to pre-emptively and prematurely renew her operating licence unconditionally is denial of a right to a fair hearing, arbitrary, illegal, unfair, null and void.
2. A declaration that the 1<sup>st</sup> Respondent denied the Applicant and other persons a fair hearing and discriminated against them when it failed to attend to their complaints against the conduct and illegal actions of the

2<sup>nd</sup> Respondent, and instead proceeded with the evaluation and public hearing process for renewal of licence and this is ultra vires, illegal, irrational, null and void.

3. A declaration that the 1<sup>st</sup> Respondent's abetting of the 2<sup>nd</sup> Respondent's various legal and operating licence breaches which itself confirmed in its Evaluation Report and proceeding to take the biased and pre-emptive decision to renew the 2<sup>nd</sup> Respondent's licence by the 23<sup>rd</sup> day of May 2019 is arbitrary, discriminatory, favouritism, breach of statutory duty, null and void.
4. That the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have illegally abandoned their duty of regulation by allowing the 2<sup>nd</sup> Respondent to exact illegal taxes it disguises as deemed costs on the Applicant and other VAS providers, contending further that it is an imposition of illegal taxation not authorised by the Parliament of Uganda contrary to Article 152 (1) of the Constitution for the second Respondent who repatriates the proceeds thereof without remitting the same to the 3<sup>rd</sup> Respondent.
5. Also, the decisions to allow the 2<sup>nd</sup> Respondent continue to cheat and stifle the Applicant's business by repatriating the money, appropriating and operating the Applicant's and other Ugandans' business of VAS for its own profit was a failure in performance of their statutory duty, deprived the Applicant and others of income and livelihood, hurt the economy by killing competition plus being ultra vires, null and void.
6. A declaration that the 1<sup>st</sup> and 3<sup>rd</sup> Respondent's decisions to allow the 2<sup>nd</sup> Respondent to engage in illegal practices of continuously understating the performance of the Applicant to pay less share revenue on understated figures and declare less taxes to the government is a breach of statute, null and void.
7. A declaration that the 3<sup>rd</sup> Respondent's wilful and gainful sending of unsolicited messages, dropping calls to cheat subscribers of their money and deducting subscribers' money without reprimand and/or restraining is a fundamental breach of both the licence and statutory duty which is ultra vires, illegal, null and void.
8. A declaration that the decision to wait until a day after a public hearing for the renewal of the 2<sup>nd</sup> Respondent's licence on 26/03/2018, selecting one of the complaints lodged by a Wireless Application Service Providers

Association (WASPA) member, Vas Garage and retrospectively giving a ruling upholding complaints analogous to those that the Applicant and WASPA had lodged against breach of the CPA by the 2<sup>nd</sup> Respondent which to date have never been determined was discriminatory and a cover up of the 2<sup>nd</sup> Respondent, arbitrary, illegal, null and void.

9. A declaration that the public hearing in which the Executive Director of the 1<sup>st</sup> Respondent made biased statements was a sham and dishonestly conducted; that the damaging infractions arising from their ruling on the complaint by Vas Garage equally applied to the Applicant.
10. A declaration that the 2<sup>nd</sup> Respondent continues to breach the rules of fair competition in abusing her dominant position in the industry, and especially that the 1<sup>st</sup> and 3<sup>rd</sup> Respondent have already taken a decision to renew the unexpired licence of the 2<sup>nd</sup> Respondent.
11. The Applicant also prays that an order doth issue calling into court the Evaluation Report of the 1<sup>st</sup> Respondent, proceedings and predetermined decisions. They also pray that the 2<sup>nd</sup> Respondent give a true and full account to the court of the monies cheated of the Applicant.
12. The Applicant further prays for an order directing, prohibiting and enjoining the 1<sup>st</sup> and 3<sup>rd</sup> Respondent to halt the renewal process of the 2<sup>nd</sup> Respondent's licence; coupled with an order for a forensic investigation of the false declarations of the 2<sup>nd</sup> Respondent.
13. Additionally, the Applicant prayed for an order of mandamus to restore the Applicant's VAS back to the network and into business, plus paying for economic loss.
14. Finally, the Applicant prays for pay of general, punitive, exemplary and aggravated damages.

The grounds upon which the application is based are set out in the Notice of Motion and expounded upon in the affidavits of Mutsibika Silva Musubika, director of the Applicant company and Andrew Mafundo, director of the Applicant company. They are briefly as follows;

1. That the 1<sup>st</sup> Respondent is a statutory body and the 3<sup>rd</sup> Respondent is the constitutional legal representative of the Government of Uganda mandated and duty bound to grant, renew, regulate, control, oversee and supervise the 2<sup>nd</sup> Respondent and other telecommunication

services and ensure that they comply with the Constitution, the governing law and best regulatory practices established for the regulation of telecommunication companies in Uganda.

2. That the License issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent was due to expire in August 2018 and the 1<sup>st</sup> Respondent was acting to renew it by the 23<sup>rd</sup> May 2018 without following the due process of law, acting illegally, unreasonably and with procedural impropriety.
3. That the 2<sup>nd</sup> Respondent does not meet the prerequisites for renewal of its operating license and the law generally and the 1<sup>st</sup> Respondent continued with the process of evaluating it for purposes of renewing her license in blatant disregard of the Telecommunications (Licensing) Regulations S.I No.20 of 2005.

In view of the absurdly lengthy grounds presented by the Applicant, and their similarity in exposition to the prayers being applied for, this court finds it prudent not to repetitively list down the same, as recourse can be had to perusal of the prayers.

The breaches aggrieved about were laid down in the affidavit of Mutsibika Silva Musubika, a director of the Applicant company, and are summarised as follows;

- a. The 2<sup>nd</sup> Respondent acted with impunity in breach of fair competition and abuse of its dominance of the market to short change the Applicant's money through understating the shared revenue on platforms thereby exacting and levying illegal taxes disguised as deemed costs without remitting the same to URA; as well as failing to prepare proper books of accounts. He further stated that the 2<sup>nd</sup> Respondent failed to establish and maintain efficient information and assistance services to assist subscribers and customers in resolving questions regarding its services contrary to Article 7.12(a) of the License. That the 2<sup>nd</sup> Respondent failed to pay taxes to government, they repatriated money outside the country and breached security including swapping citizen sim cards and hacking into subscribers' phones as well as defrauding customers through sham mobile money transactions among others.
- b. The deponent further swore that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents have failed to regulate and supervise the 2<sup>nd</sup> Respondent to ensure that they comply with the license. That they have abetted the 2<sup>nd</sup> Respondent's exacting

and imposing taxes on Ugandan citizens disguised as deemed costs without remitting them to URA and proceeded to appropriate the proceeds to its own use at the expense of the Applicant and members of the public. He also stated that the Respondents failed to monitor and enforce fair communication in the telecommunication sector.

The 1<sup>st</sup> Respondent in reply to this application filed an affidavit by Kenneth Lenox Sseguya, the Senior Legal Officer-Enforcement while the 2<sup>nd</sup> Respondent filed the affidavit of John Bosco Ssempijja, the Senior Manager, Legal & Regulatory Affairs of the 2<sup>nd</sup> Respondent.

The 2<sup>nd</sup> Respondent contended that they are neither a public body nor an administrative organ against which judicial review proceedings can be commenced. Further adding that the Applicant has no locus standi to challenge the alleged non-payment, non-declaration or under declaration of taxes by the 2<sup>nd</sup> Respondent in these proceedings.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondent both contended the application for judicial review is incompetent as there is no decision that has been made from which the application arises. This is supported by the 21<sup>st</sup> May, 2018 letter from Uganda Communications Commission marked "Annexure G" as attached to the 1<sup>st</sup> Respondent's affidavit in reply, and a 5<sup>th</sup> October, 2018 letter from UCC marked "Annexure F" as attached to the 2<sup>nd</sup> Respondent's affidavit in reply.

The 2<sup>nd</sup> Respondent further contended that the application is an abuse of court process as issues being raised such as a mandamus order to restore the Applicant's VAS back to the network are the subject of proceedings in the commercial court in High Court Civil Suit no. 383 of 2015.

Additionally, that the instant application for judicial review as under Article 50 of the Constitution is incompetent in that it in no way concerns the enforcement of rights in public interest but rather the advancement of personal and private commercial rights, which are already under pursuit in the ongoing commercial court civil suit.

The Respondents contended that as a contractual obligation under its licence, the 2<sup>nd</sup> Respondent applied for renewal of licence in October 2017, and as regulator, the 1<sup>st</sup> Respondent commenced the renewal process and as such kicked off the evaluation process of the 2<sup>nd</sup> Respondent's performance of licence obligation; conducted a public hearing on 26<sup>th</sup> March 2018 for the

solicitation of issues and grievances; a hearing which the Applicant did not attend.

It is supplemented that no right to a fair hearing was denied the Applicant nor members of the Wireless Application Service Providers Association (WASPA) in hearing the complaint of VAS Garage as the latter's was rightly lodged and not subject to legal proceedings, plus, neither the Applicant nor WASPA members attended the public hearing to have their issues heard.

Furthermore, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents argued that it would be prejudicial to the 1<sup>st</sup> Respondent and the interest of millions of Ugandans if the renewal process were halted, considering the services of telecommunication, mobile money, employment and corporate social responsibility that the 2<sup>nd</sup> Respondent offers.

The 1<sup>st</sup> Respondent especially contended in paragraph 8 of the affidavit that the Applicant had indeed brought to their attention alleged breaches of contract by the 2<sup>nd</sup> Respondent, a matter which was handled by the carrying out of an industry-wide study through consultations with two international consultant firms.

That before the investigations into the alleged breach could start, the Applicant filed a suit in the commercial court, which rendered a decision into the breach allegations undeliverable as the same would be *sub judice*.

The Respondents contend that the application is frivolous, vexatious and purely academic as it is void of any merit and does not disclose any prima facie case, or even a cause of action and should therefore be dismissed.

## **ISSUES**

The court directed counsel for the Applicant to generate issues for determination and exchange them with the Respondents, this was never heeded to despite the 2<sup>nd</sup> Respondent's correspondence in reminder. The Respondent thus framed the following issues in their submissions;

1. Whether the Applicant's application is legally moot.
2. Whether there are any legal grounds for judicial review.

In the interest of adequate discussion of the legal issues at hand, court rephrases the issues for determination to reflect as;

1. **Whether there are any grounds for judicial review**
2. **Whether the application is properly brought against the 2<sup>nd</sup> Respondent.**
3. **What remedies are available to the parties.**

The Applicant was represented by *Dr. James Akampumuza*, the 1<sup>st</sup> Respondent by *Kenneth Sseguya*, the 2<sup>nd</sup> by *Mafabi Micheal* and *Martha Kamukama* for the 3<sup>rd</sup> Respondent.

### **ISSUE 1: Whether there are any grounds for judicial review**

The Applicant contended that the 1<sup>st</sup> Respondent denied the Applicant and other persons a fair hearing and discriminated against them when it failed to attend to their complaints against the conduct and illegal actions of the 2<sup>nd</sup> Respondent, instead going ahead with the evaluation and public hearing process for renewal of the 2<sup>nd</sup> Respondent's licence.

He further contended that the abusive and threatening public media pronouncements and attacks made by the Executive Director of the 1<sup>st</sup> Respondent against members of the public daring them to "come to the public hearing and face his wrath" plus showing them what the 2<sup>nd</sup> Respondent had done in job creation; exhibited a partiality and thus are ultra vires, null and void.

The 1<sup>st</sup> Respondent replied through the affidavit of a one Kenneth Lenox Sseguya, the Senior Legal Officer-Enforcement of the 1<sup>st</sup> Respondent, contending that the 1<sup>st</sup> Respondent indeed received complaint letter from the Applicant in 2015 and went ahead to task the Competition and Industry Affairs Department to thoroughly investigate the issue. However, the Applicant went ahead to refer the matter to Commercial Division of the **High Court vide Civil Suit no. 383 of 2015**. The assertion supported by "Annexure B" for the 1<sup>st</sup> Respondent exhibit the court documents, a plaint and summons to file a defence under the civil suit. "Annexure A" for the 2<sup>nd</sup> Respondent.

He added, in paragraph 8 (f) of the affidavit, that once the matter was filed before the High Court, the 1<sup>st</sup> Respondent could not proceed with investigations specifically regarding the Applicant since the issues before Court were in *pari materia* with those submitted to the 1<sup>st</sup> Respondent and a decision on the alleged breaches with regard to the Applicant's contractual rights with the 2<sup>nd</sup>

Respondent could not be delivered by the 1<sup>st</sup> Respondent since the same would be *sub judice*.

The 1<sup>st</sup> Respondent also contended that the Applicant was actually offered the chance of a fair hearing whereby public notices were issued in the Uganda gazette dated 27<sup>th</sup> October, 2017 and in the New Vision newspaper on 15<sup>th</sup> March, 2018 inviting the general public to a public hearing scheduled for 26<sup>th</sup> March, 2018 to make comments and substantiate any complaints/claims made by those that had submitted the same. The Applicant did not attend the public hearing. “Annexure D”, the public notice in the Uganda gazette and “Annexure E” the public notice in the newspaper were offered in support by the 2<sup>nd</sup> Respondent. This was supported by Annexure G1 & G2, public notices, plus “**Annexure H**” a video recording of the public hearing, by the 2<sup>nd</sup> Respondent.

The Respondents further contended that the 2<sup>nd</sup> Respondent’s application for renewal of licence has neither been rushed nor granted prematurely as alleged by the Applicant. Annexing a letter from the 1<sup>st</sup> Respondent addressed to the 2<sup>nd</sup> Respondent notifying them that a decision on their application had not been reached (“**Annexure G**”). Supported by “**Annexure I**” of the 2<sup>nd</sup> Respondent, the letter dated 21<sup>st</sup> May, 2018.

The 2<sup>nd</sup> Respondent denied any allegations of bias or conducting its affairs unfairly, arguing that the 1<sup>st</sup> Respondent runs its affairs in a transparent way in accordance with the relevant laws and international best practices.

Counsel for the 2<sup>nd</sup> Respondent submitted in reliance on the case of **National Drug Authority & Another v Nakachwa Florence Obiocha Civil Appeal No. 281 & 286 of 2017**, wherein the Court of Appeal held that:

*“Judicial review is not concerned with determining the merits of the decision the Applicant is aggrieved about, but the decision-making process itself. The purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected. It is a legal process of subjecting to judicial control, the exercise of powers affecting people’s rights and obligations enforceable at law by those in public office.”*

Counsel sought to cement the submission by further relying on the case of **Pius Niwagaba v Law Development Center Civil Application no. 18 of 2006**, wherein the Court of Appeal stated that:



*“Judicial review is a process and should as much as possible be restricted to that process whereby the High Court exercises its supervisory jurisdiction over proceedings and decisions of the inferior courts, tribunals and other bodies of carrying out judicial, quasi-judicial functions or where they are charged with the performance of public acts and duties. Judicial review has its core purpose of issuing orders within the area of administrative law and not otherwise....it follows therefore in my judgement that litigants ought not to substitute judicial review for ordinary lodgement and prosecution of civil suits.”*

Having perused the evidence on file and taken into account the same, the court finds that:

Judicial review proceedings are grounded in **Article 42** of the Constitutions of Uganda which provides:

*“Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a Court of law in respect of any administrative decision taken against him or her.”*

Judicial review is essentially a legal measure intended to curb violations of natural justice by an administrative official or body as against anyone.

The learned authors Ssekaana Musa and Salima Namusoby Ssekaana in the book Civil Procedure and Practice in Uganda at page 287 1<sup>st</sup> Edition, define judicial review as the:

*“nature of proceedings by which the High Court exercises its jurisdiction of supervising inferior courts, tribunals and other public bodies, commanding them to do what their duty requires in every case where there is no specific remedy and protecting the liberty of the subject by speedy and summary interposition.”*

The learned author further lists the instances under which the court will review an exercise of power to include, where a public body has made an error of law and fact, has not considered all relevant factors and taken into account any irrelevant factors or abused its discretion, acted for a purpose not expressly or impliedly authorised by statute, has acted in a way that is so unreasonable that no reasonable public body would act in that way and; the public body has not observed procedural requirements and the common law principles of natural

justice or procedural fairness and legitimate expectation has improperly delegated its power.

The case of **Taylor LJ in R v Army Board of the Defence Council, ex parte Anderson [1991] 3 W.L.R 42** held that a body required to consider and adjudicate upon an alleged breach of statutory rights and to grant redress when necessary seems to be exercising an essentially judicial function and as such is required to follow the rules of natural justice.

The instant case concerns the flouting of the fair hearing principle of natural justice as is enshrined in the maxim "*audi alterem partem*".

This non-derogable right to a fair hearing is cemented in the bill of rights under Article 28 (1) and further expounded on in the case of **Owor Arthur and 8 Others v Gulu University, High Court Miscellaneous Cause No. 18 of 2007**, wherein court held that;

“...the overriding principle of judicial review is to ensure that the individual concerned receives fair treatment. If that lawful authority is not abused by unfair treatment...Implicit in the concept of fair treatment are the two cardinal rules that constitute natural justice; no one shall be a judge in one’s own cause and that **no one shall be condemned unheard.**”

The effect of reaching an administrative decision without observance of the principles of natural justice is that the decision becomes void. It may lead to the quashing of a decision and award of damages as was stated in the ruling of **Katutsi, J in Annebrit Aslund v Attorney General HC Miscellaneous Cause No. 441 of 2004.**

In consideration of the abovementioned case of **Drug Authority & Another v Nakachwa Florence Obiocha Civil Appeal No. 281 & 286 of 2017** where it was held that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected. It can therefore be seen that on receipt of the Applicant’s complaints against the 2<sup>nd</sup> Respondent, the 1<sup>st</sup> Respondent rightly tasked their department of Competition and Industry Affairs to investigate the allegations. (Paragraph 8(c) of 1<sup>st</sup> Respondent’s affidavit). To wit the 1<sup>st</sup> Respondent in concern for the best interests of the industry carried out an industry-wide study to ascertain the veracity of the Applicant’s allegations; as evidenced in the copy of Draft Industry Study Report (**1<sup>st</sup> Respondent’s Annexure “C”**) from two consultant

firms (Macmillan Keck Attorneys & Solicitors-Geneva, Switzerland, and Acacia Economic, Johannesburg, South Africa)

However, the Applicant went ahead to institute a civil suit in the Commercial Division of the High Court against the 2<sup>nd</sup> Respondent which resulted into the 1<sup>st</sup> Respondent halting the investigations for respect of the doctrine of sub judice.

The ingredients of the right to a fair hearing especially constitute notice, being given in adequate terms. In the instant case, it can be evaluated to the effect that the Applicant's right to a fair hearing was adequately respected. This is so as evidence with the notices offered in the gazette and newspapers inviting public contributions on the issue of renewal of the licences; the Applicant, for whatever reason, ended up not attending the public hearing session.

It seems to me that the Applicant in instituting a suit amidst the 1<sup>st</sup> Respondent's investigations and absenting themselves from the public hearing, went deliberately out of his way to take himself out of the ambit of a fair hearing that the 1<sup>st</sup> Respondent by law offered. It cannot therefore be concluded that a person who absented themselves from the application of fair hearing was denied the same by an entity that did what was in its procedural power to offer a fair hearing.

As regards the issue of bias from the Executive Director of the 1<sup>st</sup> Respondent in his public pronouncements, recourse will be had to the case of **Marvin Baryaraha v Attorney General Miscellaneous Cause No. 149 of 2016** where the learned trial judge **Hon. Justice Ssekaana Musa** quoted **Obiga Mario Kania v Electoral Commission EPA No. 04/2011 at paragraph 240-270** citing Professor **Isaac Newton Ojok v Uganda SC Crim. Appeal No. 33/91** where it was held, as a test of bias, that;

*“whether there was a reasonable suspicion of bias. The court looks at the impression which would be given to other people. Even if he was impartial as could be, nevertheless if fair minded persons would think that, in the circumstances, there was a likelihood of bias, the he should not sit, and if he does, his decision cannot stand.”*

With the above authorities and evidence in mind, it can readily be seen that whereas the pronouncements of the Executive Director might have imputed a hint of bias, there was no decision in the first place. Even when an allegedly biased public officer would have gone on to sit on an administrative panel they

should have recused themselves from, bias would have been adequately formed where, in the midst of the biased pronouncements by the Executive Director of the 1<sup>st</sup> Respondent as the instant facts argue; an improper, illegal or ultra vires decision was made thereafter.

The issue is thus resolved in the negative being as the Applicant did not adduce evidence to procedural impropriety nor actions ultra vires by the 1<sup>st</sup> Respondent; factors crucial to establishing grounds for judicial review.

**ISSUE 2: Whether the application is properly brought against the 2<sup>nd</sup> Respondent.**

The Applicant in the Notice of Motion sought prerogative orders against the 2<sup>nd</sup> Respondent including declarations that the MTN Uganda committed offences like false declaration of taxes, arbitrary tax impositions, breached statute and contract, violated rules of fair competition, an order directing the 2<sup>nd</sup> Respondent to render and give a true and full account to the court the monies it has accrued under the alleged malpractices and an order of mandamus directing the Respondent to restore the Applicant's VAS back to the network.

Counsel for the Applicant relied on the authority of **Anthony Tasasirana v Vivo Energy Uganda Limited Miscellaneous Cause No. 365 of 2013**, wherein Justice Nyanzi Yasin held that:

*"...the judicial review process relates and concerns itself with those bodies or persons doing public acts, making judicial or quasi-judicial decisions. It has no application to purely private corporations making business related decisions."*

Counsel for the 2<sup>nd</sup> Respondent further submitted that it is succinctly clear that judicial review cannot be commenced against a private entity and relied on the case of **International Development Consultants Limited v Jimmy Muyanja Miscellaneous Cause No. 133 of 2018** wherein the **Hon. Justice Ssekaana Musa** was of the holding that:

*"the third Respondent is not a public officer and does not exercise any public functions. The application did not cite any exercise of a public*

*function that was undertaken by the 3<sup>rd</sup> Respondent in this matter. Consequently, the application as brought against the 3<sup>rd</sup> Respondent in his individual capacity is incompetent and should on this ground be dismissed."*

Counsel however made a distinction with the instant case in saying that the facts in the case relied on court considered the nature of orders sought which required the 3<sup>rd</sup> Respondent as a necessary party who would be affected by the orders sought.

In consideration of the orders sought in the application, being that of mandamus to direct the Respondents reinstate the Applicant's VAS back to the network, and a prohibition and injunction on the Respondents not to go ahead with the licence renewal process, it can be seen the necessity of adding the 2<sup>nd</sup> Respondent as a party being as the orders would require direct activity of the 2<sup>nd</sup> Respondent in reinstating the VAS, and affect their business where the renewal process was halted.

However, in entire agreement with the words of the learned author **Ssekaana Musa, Public Law in East Africa, 37 (2009) LawAfrica Publishing, Nairobi at p. 37**, as is stated that:

*"...the purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large. Judicial review is only available against a public body in a public law matter. In essence, two requirements need to be satisfied: first, the body under challenge must be a public body whose activities can be controlled by judicial review. Secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights"*

I therefore find that as is vehemently clear that the 2<sup>nd</sup> Respondent is not a public body, and the consideration that the Applicant grossly misconceived that the 1<sup>st</sup> Respondent had made an administrative decision on the matter of licence renewal, a fact which throws the issue out of the ambits of public law principles; the application is not properly brought against the 2<sup>nd</sup> Respondent.

Worse still, considering the remedies the Applicant seeks especially those concentrated on proving the alleged breaches of contract and law by the 2<sup>nd</sup> Respondent, it is very much not in doubt that the Applicant is on a frivolous

fishing expedition as against the 2<sup>nd</sup> Respondent; a clear indication why the Applicant erroneously included the said Respondent, a private entity.

The issue is hereby answered in the negative.

**Issue 3: What remedies are available to the parties.**

Considering the failure of the Applicant to prove grounds for a judicial review, and as submitted by the 2<sup>nd</sup> Respondent, the mootness of the application, I find that there are no justifiable grounds to grant the orders sought by the Applicant.

This application is dismissed with costs.

I so order.

*Ssekaana Musa*

*Judge*

*20<sup>th</sup> December 2019*