

5. An award of general damages for defacing and destroying the applicants outdoor advertisement tools as an act of trespass by the by the respondent without due process against the applicant's members.
6. That an order of prohibition issues prohibiting the respondent from levying and charging outdoor advertising rates and fees issued by Authority Minute KCCA 11/61/2018 and published in the Uganda Gazette of 11th January, 2019 under General Notice No. 38 of 2019.
7. A permanent injunction restraining the respondent, its officers and agents from levying the unlawful advertising rates and charges and from removing, defacing and destroying outdoor advertising tools of the applicants for non-payment of the impugned rates and charges basing on the impugned decision.
8. An order issues for payment of costs of this application against the respondent.

The applicant alleges that sometime in 2008, Kampala City Council, the predecessor of the respondent developed the City Outdoor Advertising Policy 2008 creating various outdoor advertising rates and fees to be paid by the members of the applicant as a prerequisite for carrying out their outdoor advertising business in the city of Kampala.

In 2011, following the establishment of the respondent, the same inherited and further implemented the same by levying, charging and collecting outdoor advertising rates from the members of the applicant based on the City Outdoor Advertising Policy, 2008 legislation enacted by parliament. The applicant further alleges that the respondent under KCCA minute; KCCA 11/61/2018 made a decision of approving revised outdoor advertising rates and published the same in the Uganda gazette of 11th January 2019 in which it made more than 100% increment on all the rates and charges.

The applicant further alleges that the respondent does not have powers to levy, charge and collect outdoor advertising rates as there is no enabling legislation and therefore the said rates are illegal, unlawful and ultra vires. It claims that the respondent's decision to levy outdoor advertising rates based on policies and minutes of the respondent was without justification, ultra vires, illegal, unlawful and unconstitutional for being in contravention of the Constitution of the Republic of Uganda and the Kampala Capital City Act.

The respondent opposed this application on both points of law and facts as contained in affidavit in reply sworn by Mr. Seruwagi Norbert, the manager audit and inspectorate of the respondent.

The applicant was represented by *Mr. Samuel Muyizzi Mulindwa* and *Mr. Kenneth Paul Kakande* whereas the respondent was represented by *Ms. Doreen Tusiime*.

The applicant proposed the following issues for determination by this court.

- 1. Whether the outdoor advertising rates levied, charged and collected by the respondent from the applicant's members under the respondent's City Outdoor Advertising Policy 2008 and the varied new outdoor advertising rates levied, charged and collected under minute; KCCA 11/61/2018 are void, ultravires, illegal, irrational and unlawful.*
- 2. Whether the respondent's unilateral actions of removal, defacing and destruction of the applicant's members' outdoor advertising tools for failure to act within the confines of the respondent's City Outdoor Advertising Policy 2008 to pay rates which were varied and revised under Minute; KCCA 11/16/2018 are justified at law.*
- 3. Whether the applicant is entitled to the reliefs sought.*

The parties were directed to file written submissions and accordingly filed the same. The same have been considered in this ruling.

DETERMINATION OF ISSUES

Whether the Outdoor advertising rates levied, charged and collected by the respondent from the applicant's members under the respondent's City Outdoor Advertising Policy,

2008 and the varied new outdoor advertising rates levied, charged and collected under Minute; KCCA 11/16/2018 are void, ultra vires, illegal, irrational and unlawful.

Submissions

Counsel for the applicant submitted that judicial review is concerned with the decision making process through which the decision was made. The applicant stated that the respondent made that the City Outdoor Advertising Policy 2008 creating various outdoor advertising rates and fees to be paid by the applicant's members as a prerequisite for carrying out their advertising business in the city, the rates and fees were varied and revised under KCCA minute; KCCA 11/61/2018.

The impugned rates were charged by the respondent against the applicant's members since its inception in 2011. The applicant's case is that the process leading to the advertising rates so levied, charged and collected was contrary to, and ultra vires the provisions of the Constitution of the Republic of Uganda and the Kampala Capital City Act and hence unlawful. Counsel relied on Article 152 of the Constitution on taxation and section 50 of the KCCA Act, 2011.

Counsel submitted that the resolution of the council meeting held on the 22nd December 2008 under Min. FPAI. 28/68/08 (68.1) and the resolution of the respondent by Authority Min KCCA 11/61/2018 do not qualify as the legislation intended by the framers of the Constitution and, or Parliament when it enacted the cited provision of the KCCA Act. He stated that it is the constitutional imperative under the provisions that no tax can be imposed except under the authority of an Act of parliament and further still that the respondent cannot revise or vary the rates as it did in both impugned decisions except under the law.

Counsel stated that the law enacted under Article 152 (1) nullifies any taxes levied without the authority of a specific Act of parliament and clause (2) confers powers on any person or authority to waive or vary a tax imposed by that law provided that that person or authority shall report to parliament periodically on the exercise of those powers as shall be determined by law (*see; Kampala Nissan Uganda Ltd v URA at pg. 12 & 13, Rock Petroleum (U) Ltd v URA HCT, CC-OS-0009-2009 at p. 4& 7.*

Counsel therefore stated that the impugned City Outdoor Advertising Policy 2008 which created various outdoor advertising rates and fees to be paid by the applicant's members as a pre-requisite for carrying out their outdoor advertising business in the city which policy was inherited and rates of which were varied and revised by the respondent vide KCCA Minute; KCCA 11/61/2018 were all made without an enabling legislation and or following the procedure as required by law under Article 152 of the Constitution and section 50 of the KCCA Act, 2011

Counsel noted that upon the applicant challenging the respondent's decision in this court, the respondent attempted to remedy the mischief by making an Ordinance to KCCA Act to which the applicant submits that this is enough proof the respondent has no legislation for levying and collecting outdoor advertising rates as is required of it by law.

Counsel therefore prayed that court grants an order of certiorari quashing the decision of the respondent under Minute; KCCAS 11/61/2018 publishes on the gazette of 11th January 2019 under General Notice No. 38 of 2019 for being ultra vires, illegal, irrational and unlawful. He also prayed that court finds that the UGX. 13,726, 210,605 being rates and fees and other charges received and collected were unlawfully levied, charged, collected and received by the respondent.

He further prayed that court grants an order of prohibition be consequently issued prohibiting the respondent from levying and charging outdoor advertising rates and fees issued by the authority.

Respondent's submission

Counsel for the respondent submitted that in order for the application for judicial review to succeed, the applicant has to satisfy court that the matter complained of is tainted with any, or a combination of illegality, irrationality and/ or procedural impropriety.

In respect of illegality, counsel relied on section 7 (a) and (c), 50, 78 (2), 5 (4) of the Kampala Capital City Act where she stated that by virtue of this provision, the Authority is allowed to apply the 5th Schedule, Part IV, Regulation 13 of the

Local Government Act which gives the respondent the legal mandate to charge the advertising fees.

She stated that the KCC Act and the Local Government Act were enacted by parliament in exercise of its constitutional mandate and as such, no illegality was committed by the respondent in exercise of its legal mandate to make policies and charge advertising fees.

Counsel stated that the burden of proving the allegation of an illegality is on the applicant which it has failed to discharge in the application.

Counsel further submitted that the respondent as per para. 9 of the affidavit in reply that the members and non-members of the applicant have complied with the City Outdoor Policy 2008 and stated that its members participated coming up of those rates/ policies and therefore precluded from retracting from their earlier relations which they created with the respondent.

Counsel stated that advertising fees and taxes are not the same and therefore, Article 152 of the constitution is irrelevant to this application. She stated that tax is a charge by government so that it can pay for public services and that advertising fees are not a tax but an official charge by the respondent and does not need an Act of parliament as submitted by the applicant. He stated that it is only fair that the advertising companies pay a rental fee to use the respondent's facilities for example street poles and all advertising tools in the road reserves owned by the respondent.

The respondent further states that it is still incumbent on the respondent to regulate placements on private land and such ought to attract a fee as to remove the same would be to create anarchy, disorganization in city.

Counsel states that the regulation of this business is necessary because there is a danger of insecure signage structures, some of which are extensive proportions, collapsing or blowing over from the tops or sides of tall structures in densely populated areas onto sidewalks and areas frequented by the public. She stated that the respondent has a legitimate, substantial and pressing purpose of promoting public safety and welfare by ensuring that outdoor signs comply with

applicable building regulations and that payment of outdoor advertising fees is part of regulating the said.

Counsel also stated that the applicant and its members have been paying the said fees since 2008 and have even paid the revised fees and are therefore estopped from claiming the orders sought in the application and prayed that court dismisses this application.

On the aspect of irrationality, counsel stated that the respondent made no outrageous decision but simply implemented and charged outdoor advertising fees under the Kampala Capital City Act and Local Government Act which are Acts of Parliament.

In respect of procedure impropriety, counsel stated that the respondent has not faulted any procedure since the outdoor advertising rates are being charged in accordance with the law. She stated that the respondent further undertook proper procedure before arriving at the outdoor advertising rates and that the applicants were involved in the process that resulted into the policies being challenged. She therefore prayed that this court dismisses the application as it lacks merit.

Counsel for the applicant in rejoinder submitted that whereas section 7 of the KCCA Act provides for functions of the respondent being to initiate and formulate policy and also to determine taxation levels among other functions, section 50 of the KCCA Act goes ahead to provide that the power to levy, vary and charge the impugned rates has to be exercised in accordance with a law enacted by parliament. He further submitted that section 78 (2) and 80 (1) of the Local Government Act as cited by the respondent are not self-contained in relation to taxation as they are legislations envisaged and intended under Article 152 of the Constitution. Counsel stated that it is trite that taxation laws have to be specific and unambiguous and that taxation matters are not determined by policy and, or mere resolution of the respondent's council per se.

On the respondent's submission as to Article 152 of the Constitution being inapplicable for reasons that the impugned advertising rates are fees and not taxes, counsel stated that this argument is flawed for reasons that it contradicted

the respondent's pleadings. He stated that is preposterous for the respondent to state that the same are fees and not taxes yet the interpretation of the relevant section 50 of the KCCA Act specifically provides for both fees and rates levied, charged and collected to be subject of Article 152 of the Constitution even if it comes to variation alone.

He therefore submitted that the respondent's submission on estoppel is wrong and misconceived for reasons that estoppel cannot hold against a statutory obligation (*see; Pride Exporters Ltd v Uganda Revenue Authority HCCS No. 563 of 2006*)

On the applicant's members' compliance and participation in the process, counsel submitted in rejoinder that it is a misrepresentation of facts and some members' payment of the impugned rates and that this does not preclude them from challenging the legality of the rates charged and collected by the respondent and that section 114 of the Evidence Act is not applicable in the circumstances.

In respect of the procedural impropriety and rationality, counsel submitted that the lack of proper process and, or legislation as provided by law and non compliance with the law whenever variation of the rates is being made is the source of acrimony and irrationality plaintiff submitted that the plaintiff was injured as a result of use of deadly force by a law enforcement officer in circumstances where the same was not at all warranted.

Determination

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in

inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of Administrative Law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

For one to succeed under Judicial Review it trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

It is the applicant's case that the process leading to the advertising rates under the City Outdoor Advertising Policy 2008 and revised under KCCA Minute; KCCA 11/61/2018 so levied, charged and collected was contrary to and ultravires the provisions of the Constitution of the Republic of Uganda and the Kampala Capital City Act and hence unlawful.

Article of 152 of the Constitution provides that;
152. Taxation.

(1) No tax shall be imposed except under the authority of an Act of Parliament.

(2) Where a law enacted under clause (1) of this article confers powers on any person or authority to waive or vary a tax imposed by that law, that person or authority shall report to Parliament periodically on the exercise of those powers, as shall be determined by law.

Counsel further relied on section 50 of the Kampala Capital City Act which provides that;

50. Power to levy taxes.

(1) The Authority may levy, charge, collect and appropriate fees and taxes in accordance with any law enacted by Parliament under article 152 of the Constitution.

(2) The fees and taxes levied, charged, collected and appropriated under this section shall consist of rent, rates, royalties, stamp duties, fess, trading licenses, fees from registration and other fees and taxes that Parliament may by law prescribe.

It should be noted that no tax can be imposed except under the authority of an Act of Parliament neither can an authority waive tax except under a law enacted by Parliament. To do so would be null and void and subject to a challenge on the ground that the law does not authorize it.

The respondent argues that the said rates are not taxes levied but an official charge to monitor and regulate the business in accordance with section 7 (a) & (b), 50 and 78 of the KCC Act and that Article 152 of the Constitution is irrelevant in the circumstances.

The imposition of taxes or monetary burdens against the citizenry must be rooted in the law and in absence of any law to impose the same would amount to wrongful deprivation of property. The logic behind this principle is that imposition of taxes, levies, fees is also a kind of imposition of penalty which can only be imposed if the language of statute or legislation unequivocally says so. A person cannot be taxed unless the language of the legislation unambiguously imposes the obligation without straining itself.

Intention of the legislature to tax must be gathered from the natural meaning of the words of words by which it has expressed itself. Any kind of intendment or presumption as to tax does not exist. Nothing can be drawn by implication. The language must be explicit. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be.

Section 50 of the KCCA Act gives the respondent power to levy, charge, collect and appropriate fees and taxes in accordance with any law enacted by Parliament. But the case at hand is about charging the applicants members with fees without any legislation. The applicant has been illegally collecting taxes based on City Outdoor Advertising Policy. This is erroneous and illegal. Taxes, levies or charges are imposed by law duly enacted and policy of the respondent.

On the other hand, if the respondent is seeking to recover the tax or levies, they ought to have authority of the law. Revenue is law and you cannot collect revenue in an entity of government without any statute unless it is a bribe or a tip.

The respondent seems to be inviting this court to give an equitable construction of KCCA Act; such equitable construction is not admissible while imposing a tax obligation on the citizens. Statutes imposing pecuniary burdens are interpreted strictly in favour of those on whom the burden is desired to be imposed. Neither can the language of a taxing legislation be so stretched as to do a favour to the government nor can it be narrowed as to benefit the person sought to be taxed.

Having considered the submissions of both counsel, I entirely concur with counsel for the applicant. The Constitution under Article 152 is very clear as regards to taxation and it is from this provision that section 50 of the KCC Act derives its power. The said fees are charged under the section 50 of the KCC Act that gives the respondent authority to levy, charge, collect and appropriate fees and taxes in accordance with any law enacted by Parliament under Article 152.

The respondent cannot therefore claim to have acted within the confines of the law in enacting the said policy since their authority to levy any charge under the KCC Act is derived from section 50 which is subject to Article 152 of the Constitution.

A cardinal principle of the interpretation of taxing statutes was laid down by Rowlett in *Cape Brandy Syndicate v IRC* (1921) K.B 64 where he held that: - *"In a taxing Act, clear words are necessary in order to tax the subject. In a taxing Act, one has merely to look at what is clearly said. There is no room for an intendment. There is no*

equity about tax. There is no presumption as to a tax. Nothing is to be read in it, nothing is to be implied. One can only look fairly at the language used".

The principle propounded in the above case is the literal rule which is to the effect that when words of a statute are clear and unambiguous, they should be given their plain meaning and that Courts should not read into the sections of a taxing statute words that are not there so as to meet the minds of the legislators. *See; Uganda Revenue Authority v Kajura CIVIL APPEAL N0.09 OF 2015.*

The respondent cannot ably rely on the Kampala Capital City Act and Local Government Act to levy the said charges on the applicant as the taxing Act must be clear and unambiguous, however the said law in the circumstances does not provide a clear framework under which the applicant and its members are being charged or taxed.

The said Policy and revised charges were therefore an unlawful as they did not conform to the provisions of the law under Article 152 of the Constitution and section 50 of the Kampala Capital City Act which regulate the procedure under which the respondent operates.

In respect of the argument that the applicant and its members are estopped since they have been complying with the said policy, it follows that to raise a bar of estoppels can only arise where Parliamentary authority has permitted the imposition of a specific tax.

This was an illegality and law of estoppel cannot be used to sanction breach of the Constitution. Equitable considerations cannot be taken into account while construing tax legislation. The doctrine of estoppel cannot operate so as to enable the authority to do what it has no power to do under the law. See *Minister of Agriculture and Fisheries v Mathews [1949] 2 All ER 724*

I therefore find that the Outdoor advertising rates levied, charged and collected by the respondent from the applicant's members under the respondent's City Outdoor Advertising Policy, 2008 and the varied new Outdoor Advertising rates levied, charged and collected under Minute; KCCA 11/16/2018 are void, ultra vires, illegal and unlawful.

This issue is resolved in the affirmative.

Issue 2

Whether the respondent's unilateral actions of removal, defacing and destruction of the applicant's members outdoor advertising tools for failure to act within the confines of the respondent's City Outdoor advertising Policy 2008 to pay rates which were varied and revised under Minute; KCCA 11/ 61/2018 are justified at law.

Submissions

The applicant contended that on the basis of the impugned Policy and resolutions of the respondent, it has over time unilaterally without recourse to due process of the law defaced, removed and destroyed billboards signage's and other outdoor advertising tools in the event of delay of payment of the impugned rates by the Applicant's members.

Counsel for the applicant cited Article 42 of the Constitution that provides for the right to just and fair treatment in administrative decisions. He further relied on the authority of *Unzi Godfrey Licho v Moyo District Local Government, Arua High Court Misc. Cause No. 0097 of 2016 at pg.3 & 4* where court stated that a public body will be found to have acted unlawfully if it has done something without a legal power to do so.....or without deserving the rules of natural justice... failure to observe natural justice includes; denial of the right to be heard.

Counsel therefore prayed that court find that the respondent's unilateral actions of defacing, removing and destroying billboards and signage as pleaded by the applicant contrary to, and without the due process of the law violated the rights of the applicant's members enshrined under Articles 28 and 42 of the Constitution were unfair and improper at law and unjustified in the circumstances.

It was submitted for the respondent that it is not correct that without recourse to the due process of law, the respondent defaced, removed and destroyed billboards and other outdoor advertising tools belonging to the applicant's members in the case of delay of payments. Counsel stated that the applicant had not adduced any evidence to show that the respondent illegally defaced, removed and destroyed its billboards. Counsel stated that Annexure G was

merely a notice to those engaged in street pole advertising with no valid permit and did not amount to defacing or removal of the said billboards. It was therefore submitted that the applicant had no legal basis to claim the alleged loss of funds, loss of contracts with advertisers, loss of business image, loss of tools of trade and damages equivalent to 1,000,000,000/=

Counsel stated that Article 42 of the Constitution and the case authorities relied on by the applicant do not apply in the circumstances and are irrelevant to the present case. He therefore submitted that the applicant failed to prove that the respondent removed, defaced and destroyed its members' outdoor advertising tools and is thus not entitled to any reliefs sought.

Determination:

The applicant has not led any evidence before court to prove the respondent's unilateral actions of removal, defacing and destruction of the applicant's members' outdoor advertising tools for failure to act within the confines of the City Outdoor Advertising Policy, 2008 to pay rates which were varied and revised under Minute; KCCA 11/61/2018. The said Annexure G attached to the affidavit in support is merely a notice to the applicant's members engaged in street pole advertising and requesting those in default to fast track the payment or remove their advertising tools before the said enforcement operations.

I therefore find that the applicant did not prove the alleged removal, defacing and destruction of its members' advertising tools beyond a balance of probabilities.

This issue is therefore resolved in the negative.

Issue 3

What remedies are available the applicant is entitled to the reliefs sought.

In the case of *Mayambala Mustafa & 3 others representing over 5000 taxi Owners, Drivers and Conductors v Kampala Capital City Authority Court of Appeal Civil Appeal No. 31 of 2014* the court held as follows;

"...having found that the appellants had been the victims of payment of illegal taxes to the respondents, the law obligated the trial court to a refund of the monies they had collected. I accept the submissions for the appellant that the learned trial

Judge had no discretion on the matter as the law provided sufficient guidance on the matter.

I am unable to agree with the logic applied by the learned trial judge that because the money illegally collected from the appellants may have been used to provide social services in the city, which the appellants may have benefitted from, then the appellants could not be refunded their monies although the respondent had illegally collected the same. It may be true that the respondent provides very valuable social services, but the provision of those services is funded using monies which have been lawfully collected or allocated to the respondent. To hold otherwise would be absurd."

This decision has given this court complete guidance on the possible remedies sought by the applicant.

This court hereby grants the applicant the following orders;

1. An order for certiorari quashing the decision of the respondent approving outdoor advertising rates under Minute; KCCA 11/61/2018 published in the Uganda Gazette of 11th January 2019 under General Notice No.38 of 2019 for being ultra vires, illegal and unlawful.
2. A declaration that the respondent is entitled to a refund of all the money and other charges unlawfully levied, charged, collected and received as outdoor advertisement rates by the respondent from the applicant's members since 2011.
3. The respondent shall refund all the monies collected from the appellant's member by way of illegal tax. The same shall be determined by court upon clear proof of evidence (documentary). The collective amount of UGX 13,726,210,605/= will have to be specifically proved and split accordingly.
4. The applicant is awarded interest on the amount that will be proved before court at 15% per annum from the date of filing this matter.
5. The applicant is awarded costs of the application.

I so order.

Dated, signed and delivered be email at Kampala this 23rd day of April 2020

SSEKAANA MUSA
JUDGE