

6. Costs of the Application.

The grounds of the application are laid down in the affidavit in support of the application
40 but briefly are that: -

1. This application is brought in public interest to protect the public from abuse of the law and violation of constitutionally granted human rights in particular, freedom of expression, freedom of privacy and civic rights enshrined in Articles, 27(2), 29 (1) (a) and 38.
- 45 2. The public notice by the Respondent titled “REMINDER TO PROVIDERS OF ONLINE DATA COMMUNICATION AND BROADCASTING SERVICES TO OBTAIN AUTHORIZATION” dated September 7, 2020 is illegal, ultra vires and abuse of law.
3. It is just and equitable that orders sought are granted.

The Respondent filed an affidavit in reply opposing this application.

50 Brief background to the application.

The brief background to this case is that on the 7th September, 2020, the Respondent issued a public notice title “REMINDER TO PROVIDERS OF ONLINE DATA COMMUNICATION AND BROADCASTING SERVICES TO OBTAIN AUTHORIZATION”. The Applicant has now filed this application seeking for declarations that the notice is illegal, ultra vires and abuse of
55 the law.

Representation

The Applicant was self-represented while Learned Counsel Abdu Salaamu Waiswa together with Rita Zarambi were for the Respondent. Written submissions were filed as directed by Court.

60 Issues for determination are as follows: -

1. Whether this application is amenable to Judicial Review
2. Whether the Public Notice ““Reminder to providers of Online Data communication and Broadcasting services to obtain authorization” is lawful
3. Whether the actions of the Respondent in requiring registration and seek authorization
65 of Online Data communication providers infringes on freedom of expression.
4. Remedies available to the parties.

In their submissions, Counsel for the Respondent raised three preliminary objections on grounds that;

- i. This application is time barred, moot, bad in law, frivolous and vexatious.

- 70 ii. This application does not make reference to any decision or decision making process.
- iii. This application does not disclose any cause of action against the Respondent.

Determination of the preliminary objections

75 **Preliminary objection No.1: This application is time barred, moot, bad in law, frivolous and vexatious.**

Submissions for the Respondent

Counsel for the Respondent explained that classification of online data communication and online broadcasting services as licensable communication services was done in 2017, and that the decision was published in the Uganda Gazette Notice No. 977 of 3rd November, 2017.

80 He relied on paragraphs 5(c), (d), (e) & (f) of Martha Kamukama's affidavit in reply and clarified that the Public Notice of 7th September, 2020 was just a reminder and that the Applicant did not deny this fact in his affidavit in rejoinder.

Counsel referred this court to Rule 5(1) of the Judicature (Judicial Review Rules) 2009 and the cases of *Okoth Umaru & 3 Ors. –v- Busia Municipal Council, HCMC 12 of 2010, Prime*

85 *Contractors –v- Public Procurement & Disposal of Public Assets Authority & Ors., HCMA 91/2014* where Court while referring to the holding by Green MR in *Hilton Sutton Steam Landry (1946)1 KB 61 at 81* noted that; -

90 *“But the statute of limitation is not concerned with merits. Once the axe falls, it falls and a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled to insist on his strict rights.”*

He further relied on the case of *Basile Difasi & 3 Ors. –v- National Unity Platform & 8 Ors., Misc. Cause No. 266 of 2020* and submitted that from the affidavits in reply, it is clear that the decision which formed the subject of the impugned reminder of 7th September, 2020 was made in 2017 and published in the Uganda Gazette on the 3rd November, 2017. That the

95 sector has since moved on and many operators like Ramadhan Mbago who made the supplementary affidavit in reply have already obtained authorization for the provision of online Data communication and online broadcasting services.

Counsel prayed that this Court be pleased to dismiss this application for being out of time and contrary to Rule 5(1) of the Judicature (Judicial Review) Rules 2009.

100 **Applicant's submissions in reply**

In reply, the Applicant submitted that the Public Notice in issue is the one of 7th September, 2020 advising all persons providing online data communications, including blogs, online Tv, Online Radio, Online newspapers, audio over IP (AOIP), Internet Protocol Tv (IPTV), Video on demand (VOD), Digital Audio Radio, Television, Internet/web radio, internet/web television to regularize their operations or to seek authorization before use, with a deadline of 5th October, 2020.

That the argument that the decision was made in 2017 as per General Public Notice No. 977 of 2017 is intended to mislead this Court and it equally has no force of law. That the decision to issue a public notice which the Respondent has referred to as a reminder to the previous public notice was independent. He prayed that this Court finds it worthy to overrule this preliminary objection so that the matter is heard on the merits.

Analysis

Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009 provides that an application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made.

The above position has been held in several cases including the case of **Adinan Kawooya -v- Jinja Municipal Council Misc. Cause No.56 of 2011**, where the Judge in upholding the provision of **Rule 5 (1)**, cited with approval the case of **James Basiime -v- Kabale District Local Government Misc. Application No.20 of 2011**, where **Justice Kwesiga, (as he then was)** held that: -

“In my view, the statutory provision requires that for the application for Judicial Review to be valid, it must be filed not later than three months from the date when the matter or grounds complained of, or the cause of action arose.”

In this case, annexure “A” to the affidavit in support of the application is a Public Notice dated 7th September, 2020, titled; **“REMINDER TO PROVIDERS OF ONLINE DATA COMMUNICATION AND BROADCASTING SERVICES TO OBTAIN AUTHORIZATION.”** This is the Notice that the Applicant has relied on. He also refers to the same notice in paragraph 4 of his affidavit in support of the application.

130 It is clear from the above that the Notice that the Applicant complains of is *a reminder*.
The Respondent in paragraph 5 (d) of Martha Kamukama's affidavit in reply states that the
Respondent notified the general public in 2017, vide; *Uganda Gazette General Notice No.*
977 of 2017, that it had classified services that required licensing and authorization. Copy of
the Gazette is annexure "A" to Martha Kamukama's affidavit in reply. This application was
135 filed in court on the 10th September, 2020 way beyond the stipulated 3 months within which
an application for judicial review should be filed. Without leave of court to file this
application out of time, I would find that this application is time barred. Therefore, I find
merit in this preliminary objection, which I do hereby uphold and dismiss this application
from court with costs.

140 I so order.

Dated, signed and delivered by mail at Kampala this 12th day of September, 2023.

145 **Esta Nambayo**
JUDGE

12th /9/2023.