

STATUTORY INSTRUMENTS

SUPPLEMENT No. 27

25th September, 2003

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STATUTORY INSTRUMENTS

2003 No. 75.

The Civil Procedure (Amendment) (Judicial Review) Rules, 2003.

*(Under sections 43 and 51 of the Judicature Statute, 1996,
Statute No. 13 of 1996).*

IN EXERCISE of the powers conferred on the Rules Committee by sections 43 and 51 of the Judicature Statute, 1996 these Rules are made this 26th day of May, 2003.

1. Citation

These Rules may be cited as the Civil Procedure (Amendment) (Judicial Review) Rules, 2003

2. Commencement

These Rules shall come into force ninety days after these Rules are published in the *Gazette*.

3. Insertion of new Order on judicial review. S.I. No. 65-3

The Civil Procedure Rules are amended by inserting immediately after Order LXII the following new Order—

“ORDER XLII A

Judicial Review

1. Meaning of Court in this Order.

(1) The “High Court” means the High Court as provided by article 138 of the Constitution, sitting in Kampala and such other places where High Courts have been established.

(2) The “Court” or “Lower Courts” means any subordinate court established by law; the Industrial Courts; tribunals established by law, and any other similar bodies.

(3) The “Registry of the High Court” means the Registry of the High Court at Kampala and the Registry of a High Court established in other parts of Uganda.

(4) The “Criminal Division of the High Court” means the administrative arrangement by which criminal matters are assigned to a

judge of the High Court sitting either in Kampala or at a High Court in another part of Uganda.

(5) The Civil Division of the High Court means the administrative arrangement by which civil matters are assigned to a Judge of the High Court sitting in Kampala or at a High Court in another part of Uganda.

(6) “Commercial Court” means the administrative arrangement by which commercial matters are assigned to a Judge of the High Court sitting in Kampala or at a High Court in another part of Uganda.

(7) Where no Court as described in sub-rule (4), (5) or (6) of this rule exists in any place, the reference to the Court referred to in that sub-rule shall mean the High Court.

2. Cases appropriate for judicial review. Statute No. 13 of 1996.

(1) An application for—

(a) an order of mandamus, prohibition or certiorari, or

(b) an injunction under section 40 (2) of the Judicature Statute, 1996 restraining a person from acting in any office in which the person is not entitled to act,

shall be made by way of an application for judicial review in accordance with the provisions of this Order.

(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (b) of subrule (1) of this rule), may be made by way of application for judicial review, and on such an application the High Court may grant the declaration or injunction claimed if it considers that, having regard to—

(a) the nature of the matter in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;

(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and

(c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

3. Joinder of claims for relief.

On any application for judicial review, any relief mentioned in sub-rule (1) or (2) of rule 2 of this Order, may be claimed as an alternative to any

other relief so mentioned if it arises out of, or relates to, or is connected with the same matter.

4. Grant of leave to apply for judicial review.

(1) No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with this rule.

(2) An application for leave must be made *ex parte* to a Judge by filing the application in the High Court Registry in Kampala, or at any place where a High Court is established by a notice in Form A in the Appendix FF containing a statement of—

- (i) the name of the description of the applicant;
- (ii) the relief sought and the grounds upon which it is sought;
- (iii) the name and address of the applicant's advocates, (if any); and
- (iv) the applicant's address for service; and
- (v) an affidavit which verifies the facts relied on.

(3) The Judge may determine the application in chambers, or, if requested to do so, in open court.

(4) Where the application for leave is refused by the Judge, or is granted on terms, the applicant may renew it by applying—

- (a) in any criminal cause or matter, to the High Court dealing with criminal matters;
- (b) in any other case, to a Judge sitting in open court in a civil division of the High Court;

except that no application for leave may be renewed in any non-criminal cause or matter in which the Judge has refused leave under sub-rule (3) of this rule after a hearing.

(5) In order to renew the application for leave, the applicant shall, within ten days after being served with notice of the Judge's refusal, lodge in the High Court registry notice of his or her intention in Form B in Appendix FF.

(6) Without prejudice to its powers under Order VI rule 18, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed, any judgement, order, conviction or other proceedings which is subject to appeal, and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave, it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then—

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

5. Time for applying for judicial review.

(1) 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.

(2) Where the relief sought is an order of certiorari in respect of any judgement, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgement, order, conviction or proceedings if that decision is delivered in open court, but where the judgement, order, conviction or proceedings is ordered to be sent to the parties, or their advocates, (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by registered post.

(3) This rule shall apply, without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

6. Mode of applying for judicial review.

(1) In any criminal cause or matter, where leave has been granted to make an application for judicial review, the application shall be made by originating motion to the Criminal Division of the High Court.

(2) In any other such cause or matter, the application shall be made—

(a) by originating summons to a judge in chambers; or

(b) by originating motion to a judge of the relevant Civil Division of the High Court including the Commercial Court.

(3) Any direction under paragraph (a) of sub-rule (2) of this rule shall apply without prejudice to the Judge's power under Order XLVIII rules 8 and 10.

(4) The notice of motion or summons must be served on all persons directly affected and where it relates to any proceedings in or before a lower Court and the object of the application is either to compel the lower Court or an officer of the lower Court to do any act in relation to the proceedings or to quash them or any order made in the proceedings, the notice or summons shall also be served on the Registrar of the Court and, where any objection to the conduct of the Presiding Officer is to be made, on the Presiding Officer.

(5) Unless the Court granting leave has otherwise directed, there shall be at least ten days between the service of the notice of motion or summons and the hearing.

(6) A motion shall be entered for hearing within fourteen days after the grant of leave.

(7) An affidavit giving the names and the addresses of, and the places and dates of service on, all persons who have been served with the notice of motion or summons shall be filed before the motion or summons is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit shall state that fact and the reason for it: and the affidavit shall be before the Court on the hearing of the motion or summons.

(8) If on the hearing of the motion or summons, the Court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served, has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice of the motion or summons may be served on that person.

7. Statement and affidavit.

(1) Copies of the statement in support of any application for leave under rule 4 of this Order, shall be served with the notice of motion or summons and subject to sub-rule (2) of rule 4, no grounds shall be relied upon, or any relief sought at the hearing except the grounds and relief set out in the statement.

(2) The Court may, on the hearing of the motion or summons, allow the applicant to amend his or her statement, whether by specifying different additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application.

(3) Where the applicant intends to ask to be allowed to amend his or her statement or to use further affidavits, he or she shall give notice of his or her intention and of any proposed amendment to every other party.

(4) Any respondent who intends to use any affidavit at the hearing shall file it with the Registrar of the High Court as soon as practicable and in any event, unless the Court otherwise directs, within fifty six days after service upon the respondent of the documents required to be served by sub-rule (1) of this rule.

(5) Each party to the application shall supply to every other party on demand and on payment of the proper charges, copies of every affidavit which he or she proposes to use at the hearing, including in the case of the applicant, the affidavit in support of the application for leave under rule 4 of this Order.

8. Claims for damages.

(1) On an application for judicial review the court may, subject to sub-rule (2) of this rule, award damages to the applicant, if—

- (a) he or she has included in the statement in support of his or her application for leave under rule 4 of this Order, a claim for damages arising from any matter to which the application relates, and
- (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages.

(2) Order VI rules 1 to 5 shall apply to a statement relating to a claim for damages as it applies to a pleading

9. Application for discovery, interrogations cross-examination *etc.*

(1) Unless the court otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge notwithstanding that the application for judicial review has been made by motion and is to be heard by the Criminal Division of the High Court.

(2) This rule does not apply to any statutory provision or rule of law restricting the making of an order against the Government of Uganda.

(3) In this rule "interlocutory application" includes an application for an order under Order X or XVII for an order dismissing the proceedings by consent of the parties.

10. Hearing of applications for judicial review.

(1) On the hearing of any motion or summons under rule 6 of this Order, any person who desires to be heard in opposition to the motion or summons, and appears to the court to be a proper person to be heard, shall be heard, notwithstanding that he or she has not been served with notice of the motion or the summons.

(2) When the relief sought is or includes any order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant of commitment, conviction, inquisition or record unless before the hearing of the motion or summons he or she has lodged with the Registrar of the High Court a copy of it verified by affidavit or accounts for the failure to do so to the satisfaction of the High Court hearing the motion or summons.

(3) Where an order for certiorari is made in any such case as is referred to in sub-rule (2) of this rule, the order shall, subject to sub-rule (4) of this rule, direct that the proceedings shall be quashed forthwith or then removed into the High Court.

(4) Where the relief sought is an order of certiorari and the High Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing the decision, remit the matter to the lower Court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the High Court.

(5) Where the relief sought is a declaration, an injunction or damages, and the High Court considers that such relief should not be granted on an application for judicial review but might have been granted if such relief had been sought in an action begun by writ by the applicant at the time of his or her application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order XLVIII rule 10 shall apply as if, in the case of an application made by motion it had been made by summons.

11. Saving for person acting in obedience to mandamus

Except for persons acting in obedience to mandamus no action or proceedings shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

12. Appeals from Judge’s order

No appeal shall lie from an order of a Judge under sub-rule (3) of rule 4 on an application for leave which may be renewed under sub-rule (4) of that rule.”

4. Insertion of Appendix FF.

The Civil Procedure Rules are amended by inserting immediately after Appendix F new Appendix FF as follows—

“APPENDIX FF
(Order XLIIA)

Rule 2

Form A

In the High Court of Uganda
[Kampala] [Jinja, Mbarara, Fort Portal, Mbale, Gulu etc.]

In the Matter of an application for leave to apply for judicial review In the matter of AB (applicant) The applicant applies *ex parte* for the leave of the High Court of Justice to apply by motion in court/Summons in Chambers for judicial review before the Honourable Mr./Lady Justiceat Kampala [any other High Court]on the day of19...../ 20 on the terms and on the grounds set out below—

- (i) the name of the applicant is of(address) and (occupation)
- (ii) the relief sought
- (iii) the grounds upon which the relief is sought.....
- (iv) the name and address of the applicants advocates (if any)
- (v) the applicant’s address, for service, is
- (vi) an affidavit verifying the facts relied on is attached to this application.

DATED thisday of, 20

Signed:
(Applicant or Advocate)

* Strike out as necessary

FORM B.

Rule 4

In the High Court of Uganda at Kampala (any other High Court)
In the matter of an application of renewal of an application for leave to Apply for Judicial review.

In the matter of (criminal case) namely or in the matter of civil cause
namely
In the matter of AB the applicant.

The applicantAB.....herewith
Take notice that "pursuant to the refusal of leave or leave given on
terms by the Hon. Mr. Justice /Lady Justice.....On
theday of19...../20.....the High Court will be moved
as soon as counsel can be heard on the applicant's behalf to renew the application for leave
to apply for judicial review.

The application/ motion to the Hon. Mr. Justice/ Lady Justice was filed
onday of19...../20on the terms and grounds set out in
Fom 1 A attached.

*And take notice that the motion to renew the application for leave to apply for judicial
review will be moved before the Hon. Mr.

Justice/Lady Justiceas soon as counsel can be heard for an order for
relief in the terms and grounds set out in Form A.

*And take notice that the summons to renew the application for leave to apply for judicial
review will be heard by the Hon. Mr. Justice Lady

Justiceas soon as Counsel can be heard for an order for
relief in the terms and on the grounds set out in Form A and take notice that the costs of and
occasioned by this

motion/application be

And take notice that on the hearing of this motion/application. the applicant will use the
affidavit and exhibits, copies of which accompany this notice.

* And take notice that if the Court grants leave, the applicant will apply for interim relief as
follows:

.....
.....
.....

To: Advocate for
Respondent

Signed by applicant
Name & address signed
For applicant advocate

Name—Address of Advocate

*strike out as and when necessary

FORM C
CRIMINAL MOTION

[Rules 6, 7 & 8]

Take notice that pursuant to the leave of the

Hon. Mr. Justice/Lady Justice.....

Given on.....day of19/20..... the Court will be moved as soon as Counsel can be heard on the applicant's behalf for an order for relief on the terms and on the grounds set out in Form A herewith;

(Take notice that the applicant will apply to amend the statement by specifying different or additional grounds different relief or otherwise) And take notice that the costs of and occasioned by this motion betake notice that on the hearing of this motion the applicant will use the affidavit and exhibits, copies of which accompany this notice. (and take notice that leave was granted for

the Hon. Mr. Justice/Lady Justicewho directed that all proceedings in (or on) the saidbe stayed until after the hearing of this motion or further order. Dated this.....day of.....

To Advocate for Signed:

Applicant or Advocate for Applicant

FORM D
CIVIL APPLICATION

[Rules 6, 7, & 8]

Take notice that pursuant to the leave of the
Hon. Mr. Justice/Lady Justice

Given on.....day of.....19...../20.....the Court will be moved as
soon as Counsel can be heard on the applicant's behalf for an order for relief on the terms
and on the grounds set out in Form A herewith,

*(Take notice that the applicant will apply to amend the statement by specifying different or
additional grounds different relief or otherwise)

*And take notice that the costs of and occasioned by this motion be
.....

And take notice that on the hearing of this motion the applicant will use the affidavit and
exhibits. copies of which accompany this notice.

*[and take notice that leave was granted for.....

*the Hon. Mr. Justice/Lady Justicewho directed that all proceedings in (or on)
the saidbe stayed until after the hearing of this motion or further order.
Dated this..day of

To Advocate for

Signed:
Applicant or Advocate for Applicant

"Strike out as and whenever necessary"

Chairperson of the Rules Committee.

B.J. ODOKI,