THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 195-2024

IN THE MATTER OF SECTION 36 OF THE JUDICATURE ACT CAP 16 AS AMENDED

AND

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW RULES)

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

1. **UGANDA SUGAR MANUFACTURES ASSOCIATION (USMA) LIMITED::::::

RULING

1 Introduction

Uganda's agricultural sector has undergone exponential growth in the last three decades, a phenomenon that partly explains our country's positive rural economic outlook. It is thus not surprising that the sector continues to witness both an increase in foreign direct capital inflow as well as a surge in local investment. These opportunities, however, present a dilemma as to how best to ensure adherence to the regulatory framework while mitigating the economic risks associated with antitrust competition.

In the case at hand, the Uganda Sugar Manufacturers Association Ltd (USMA) has approached this court for prerogative orders against actions and/or omissions by the Attorney General and Minister of Trade, Industry and Co-operatives (MTIC) arising from decisions to permit CN Sugar Ltd (CN) and Shakti Sugar (Shakti) to establish sugar and jaggery mills without the requisite licences.

The USMA's complaint is based on 20 grounds, which I have summarised as follows. The sugar industry in Uganda is regulated in the main by the Sugar Act, within which provision is made for the establishment of the Uganda Sugar Board (USB). The mandate of the USB is to license sugar mills, jaggery mills, and other plants that process sugarcane byproducts. However, to date the MTIC (in the USMA's view) has deliberately refused to operationalise the USB; instead, it continues to issue licences disguised as 'letters of no objection' (LONOs) to new sugar-producing companies, as was the case with CN and Shakti – an act that violates the law and the existing government policy.

1.1 Background

The USMA motion begins by making reference to correspondence from the MTIC to CN and Shakti that points to these illegal licences, the illegality of which is not contested by the Attorney General. The USMA singles out the acts of the Resident District Commissioner (RDC) of Namayingo district council, who, together with his assistant, has illegally encouraged the development of sugar mills in the area, leading to an oversaturation of actors there. The oversaturation of [sugar] mills in certain regions of the country is presented as a problem that has facilitated the 'poaching of sugarcane and other anti-competition practices'. The USMA

maintains that the grant of these sugar mill and jaggery licences, and the attendant proliferation of such mills, is not only illegal but a contravention of existing state policy.

The irony is that the MTIC had initially absolved itself of its earlier errors by revoking the CN [sugar] licence, but later recanted on this in August 2024 when permission was again granted, with CN and a yet-to-be identified sugar company illegally resuming sugar-milling operations. That aside, a 2010 government policy is in place which requires that sugar-mill factories should each be in a radius of 25 kilometres of each other. This policy is amplified by a presidential directive (2017) whose guidance was that no sugar factories should be permitted within a radius of 50 kilometres of each other. The decisions to license sugar factories within a radius of 19 kilometres are challenged not only for violating government policy, but also for undermining a later, more stringent presidential executive order.

1.2 Representation

The USMA was represented by Mr Allisson Karuhanga of *Ms Kampala Associated Advocates,* while the Hon. Attorney General and MTIC were jointly represented by Miss Barbara Nakanaba (SSA) and Mr Arnold Kyeyune (SA) of the *Attorney General Chambers*. The CN was represented by Mr Dan Wandera Ogalo of *Ms Victoria Advocates & Legal Consultants,* while Shakti was jointly represented by Mr Ivan Bwowe of *Ms Atto Advocates* together with Mr Andrew Kiryowa of *Ms Joseph Kiryowa & Co. Advocates*. As is this court's practice, I acknowledge with appreciation the arguments presented by counsel for all parties, and note that, where I have not considered particular arguments in depth, this is not out of disrespect but due to considerations of time and space.

1.3 Parties' depositions

The motion is supported by the depositions of Mr Jim Mwine Kabeho, the director of the USMA. I have elected to heavily redact the 31 paragraphs into four main sections, considering that most of what is stated by Mr Kabeho is already covered in the grounds of the motion.

The USMA is an association of major sugar manufactures, such as Kakira Sugar Works, Kinyara Sugar Works Ltd, the Sugar Corporation of Uganda Ltd, Bugiri Sugar Ltd, and Sango Bay Estates Ltd, and whose object it is to foster the sugar industry, sugar mills, and factories. In reply to the complaint raised in the motion, CN relies on 25 areas of deposition by its director, Mr Petel Namit, which again have been heavily redacted. In further challenge to the

motion, CN relies on the deposition of Mr Sanya Ronald, the Namayingo district council chairperson, whose averments have also been summarised. In reply to the motion, Shakti relies on the deposition of Mr Patel Ravikumar Ramalal, whose averment are again redacted. In reply to the motion, the Attorney General and MTIC rely on the deposition of Mr Ainebyona Denis, the Acting Commissioner of Industry and Technology in the Ministry of Trade Industry and Commerce, whose evidence too has been summarised and considered.

2 Issues for determination

This motion was prosecuted by way of written arguments, as is the practice in motions of the kind before this court. From the parties' depositions and arguments, the following issues emerged for determination:

1) *Whether the motion before this court is amenable to judicial review.*
2) *Whether the establishment of the sugar [and jaggery] mills by CN and Shakti is in contravention of the Sugar Act.*
3) *Whether the failure by the Minister to establish the USB was a breach of statutory duty.*
4) *Whether the USMA is entitled to any reliefs.*

3 The Court's power of oversight of public bodies

This section deliberates on Issue 1: *Whether the motion before this court is amenable to judicial review*. In so doing, it also engages with the fourth issue regarding remedies. In answering the question of amenability, this court must first deal with the four preliminary arguments put forward by the respondents.

3.1 Dealing with preliminary objections

Before addressing Issue 1, it is important to consider the following two preliminary objections that were raised. The first is that the grievances against Shakti should have been addressed first by the USB, an objection that speaks to the non-exhaustion of local remedies. The second is the contention that the letters of revocation that had reinstated the LONOs should have been challenged before this court within six months of the date at which they were first written, an objection which is concerned with an alleged delay in approaching the court within the three months' period stipulated by the rules.

These objections are the upshot of arguments by the respondents that the motion is not properly laid before this court. Six reasons are adduced in support of this contention. First, at no point did the USMA appear before any quasi-judicial body and suffer unfair mistreatment. Secondly, the USMA aims to substitute the decision of the MTIC with that of this court, which is an infringement of the right to a fair hearing. Thirdly, the motion does not challenge the process leading to the grant of the impugned LONOs. Fourth, the Hon. Attorney General was improperly joined as a party to a decision that may adversely affect the rights of CN and Shakti. Fifth, Shakti did not take part in the challenged decisions. Counsel for the Attorney General and the MTIC separately argued that decision not to establish the USB was informed by political considerations on merging of government agencies. Thus, such a decision cannot be inquired into by this court on the basis of the political question doctrine.

It was argued that, were this court to inquire why the USB has not been established, it would inevitably encroach on the political mandate of the Executive and Parliament. Reliance here was on the case of *CEHURD and 3 others*,[1] with the emphasis that once the political-question doctrine is established, it inevitably outs the jurisdiction of a court.

The first two points noted earlier above, taken with the latter six assertions immediately above, speak in principle to the issue of whether the motion in its present form is amenable to judicial review. To save time, I have elected to resolve these questions together in response to Issue 1.

3.2 Arguments by the USMA

Counsel for the USMA asserts that its complaint is capable of triggering the oversight power of this court, and thus argues that there are good reasons to grant the necessary prerogative reliefs. It is the USMA's argument that the permissions granted by the Attorney General and the MTIC (which were in turn used by CN and Shakti) were granted without following the mandatory legal provisions under the Sugar Act. The illegal nature of these permissions is sufficient to bring them under the scrutiny of Rule 2 of the Judicature (Judicial Review) Rules as amended, since those permissions were made by public officials. Judicial review, the argument went, is intended primarily to correct the illegal use of public authorities' power; as

[1] See *CEHURD and 3 others v Attorney General* (*CEHURD*) Constitutional Appeal 1 of 2013 p 25, where the court clarified that 'the political question doctrine has limited application in Uganda's Constitutional order and only extends to shield both the Executive arm of government as well as the Parliament from judicial scrutiny where either institution is properly exercising its mandate, duly vested in it by the Constitution …'.

such, the motion before this court is proper on the basis of the rules and precedents of the court, justifying rectification of any procedural errors by this court.[2]

It is thus argued by counsel for the USMA that since the impugned decisions were, first, made by public officials and, secondly, continue to assist CN and Shakti in operating their illegal sugar mills, there is a need for the intervention of this court through the usual prerogative reliefs. It is the further argument of the USMA that these illegal acts, together with the deliberate failure to put in place the USB, require an order to compel the MTIC to perform its lawful duty.[3] In consideration of these three factors, counsel for the USMA invites the court to find that the complaint before this court is properly laid.

3.3 Time limits

It is pellucidly clear that an application for judicial review must be brought immediately when a decision is made, or at least within three months of the date of the decision.[4] The principle is that once time has run out for an applicant, subsequent developments cannot revive it.[5] As has been stated elsewhere, every applicant in a judicial review should always know that a judge will not easily extend the time unless evidence is presented to show that there are good reasons that stopped the applicant from filing the application within the required time.[6]

I continue to highlight the importance of time limits in litigation, as many other courts have done in their various ways. The view of the courts remains that a litigant cannot treat statutory time limits lightly as if they mean nothing to him or her. No matter how valid the claims may be, no colourful words will deflate the defendant's shield arising from those limitations.[7] The requirement is that permission must be obtained first from the court to enlarge the time lest the application be wrongly before court. For judges who consider time limits as auxiliary to quick justice, the approach remains that

---

[2] See *Mrs Anny Katabazi Bwengye v Uganda Christian University* HCMC No. 268 of 2017; *His Worship Aggrey Bwire v Attorney General and the Judicial Service Commission* COA Appeal No. 9 of 2009.
[3] While relying on Blackstone C *Administrative Court: Practice and Procedure* General Editor: Beverley Lang Q.C. (2023) pp 2–23, also cited in *Attorney General of Uganda v General David Sejusa* CA No. 196 of 2016, counsel explains that 'a claim for judicial review means a claim to review the lawfulness of the decision, actions, or failure to act in relation to the exercise of a public function'.
[4] See section 5(1) of the Judicature (Judicial Review) Rules.
[5] See *Nicholson v England* [1926] 2 K.B. 93; *Arnold v Central Electricity Generating Board*: HL 22 October 1987.
[6] See *Attorney General of Uganda v General David Sejusa* (Civil Appeal 196 of 2016) [2022] UGCA 23.
[7] *Kilama-Lajul v Uganda Coffee Development Authority & Anor* (Miscellaneous Cause No. 270 of 2019).

> where rules have prescribed time for bringing an action and also the remedy for failure to bring the action in the prescribed time and a party fails to avail itself of either option, such a party cannot throw itself at the mercy of court because the court can no longer have any spare remedy to offer.[8]

3.4 Non-exhaustion of local remedies

Courts in this country take exception whenever a party attempts to circumvent readily available internal dispute resolution mechanisms.[9] I have previously discussed the courts' rationale for this approach, one which to my mind is not difficult to grasp in view of the cost of litigation and the ever-increasing workloads that judges face.[10]

In regard to the rule on the exhaustion of local remedies, I myself always adopt the approach that Chenwi takes in discussing the African Court on Human and Peoples' Rights. The author's preference for a flexible approach is thus acknowledged, with the consideration, that, if no remedies are available at all to exhaust, the rule must always be resolved in favour of the applicant.[11]

3.5 Determination

I wish to state that the two objections on non-exhaustion of local remedies and on time limits are of the weakest kind and do not require overmuch discussion to resolve. It is clear to me that the USB, a body which is legally mandated to resolve such disputes in terms of section 7(1)(e) of the Sugar Act, has never been put in place. Secondly, the main complaint deals with the fact that the Minister, as recently, as August 2024 had made decisions, and continues to make sugar mills and jaggery licencing decisions, which are objected to by the USMA. I must against reiterate the fact that the political-question doctrine and the issue of whether it limits the court's inquiry into the policy decisions of the Executive has been resolved by the *CEHURD* case. The position is that this doctrine can be used as a shield only when there are no red flags in the

[8] See *In the matter of an application for Judicial Review by Dawson Kadope v Uganda Revenue Authority (URA)* CV-CS-MC-0040-2019.
[9] *Microcare Insurance Limited v Uganda Insurance Commission* CV-MC No. 218 of 2009.
[10] *Classy Photo Mart Limited v Commissioner Customs Uganda Revenue Authority* CV-MC No. 30-2009 per Kiryabwire J.
[11] Chenwi L 'Exhaustion of local remedies rule in the jurisprudence of the African Court of Human and Peoples' Rights' *Human Rights Quarterly John Hopkins University Press* 41(2) May 2019 pp. 374–398.

execution of the Executive arm of government's mandate.[12] Considering the allegations surrounding the impugned decisions, I do not find any merits in all the objections.

3.6 The oversight power of the courts

When courts sit in 'judicial review', they are simply exercising their oversight role of the processes by which public bodies and officials exercising statutory functions make decisions.[13] Courts have warned time and again that they need to tread cautiously in recognition of their own narrow mandate to exercise such oversight.[14] The position is that the remedies that are available in judicial review are by nature discretionary and in fact may not be considered at all, even when an affront to certain procedural requirements is apparent.[15]

Therefore, whenever public bodies' decisions are challenged on account of illegality, irrationality, or procedural impropriety, three remedies are triggered. These are (1) *certiorari,* (2) *mandamus,* and (2) prohibition. Each of the writs available in judicial review operates differently depending on the act complained of. The USMA's chief arguments are anchored on the following factual narrations. The first is the insistence that the purported sugar mill licences are invalid and of no legal effect; in this regard, counsel points out the criminal nature of any sugar mills established after 28 August 2020, the date of commencement of the Sugar Act. As understood by this court, the main contention is that any permissions to establish sugar mills, disguised by the use of LONOs, are illegal and of no consequence. The tacit approval of the RDC of Namayingo district notwithstanding, the legislature (and initially the MTIC) disagree that these permissions could be used validly to establish sugar mills. According to the USMA, it was only when the MTIC contradicted itself about these permissions that it (the USMA) elected to approach this court for reliefs. In my view, there are clear questions that must be examined, with the upshot thereof being that the complaint before this court is amenable to judicial review.

This section now deliberates on Issue 2: *Whether the establishment of the sugar [and jaggery] mills by CN and Sharkti is in contravention of the Sugar Act.* In resolving this issue, I will focus

[12] See *CEHURD* (n 1) pp 25–26.
[13] See *Oyaro John Owiny v Kitgum Municipal Council* MC No. 0007 of 2018.
[14] See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 40–41, which cites *Wednesbury Corporation* [1948] 1 KB, 228.
[15] See *Credit Suisse v Allerdale Borough Council* [1997] QB 306 at 355D.

on the Uganda Sugar Policy 2010, the Sugar Act's provisions on the USB and land zoning, and the general investment licences granted by the Uganda Investment Authority (UIA).

The oft-cited position is that if a public body's powers are proscribed by the law, those powers cannot be exercised for any other purpose. The argument seems to be that once powers granted to a public official are for a specified purpose, no other incidental powers remain to be exercised.[16] Counsel for the USMA concedes that while a public official's acts may be incidental or connected to his or her plenary powers, those acts are valid only as long as they are not expressly prohibited.[17]

4 Examination

In dealing with the question of illegality, recourse is had to three major considerations arising from the depositions and arguments of the parties. The first is the argument that the failure to put in place a USB was a deferent of a statutory duty which then manifests an illegality. Secondly, there is the evidence that by law only the USB could grant any sugar licences. Thirdly, it is contended that since CN and Shakti already had investment licences from the UIA, they did not need another licence to grant them any other permissions; the third argument thus speaks to the concurrence and overlap of powers in the regulation of sugar licences in Uganda. Generally speaking, illegality as a ground in judicial review entails that the decision-maker is aware of the legal regulatory framework that may limit his or her decision-making power.[18]

4.1 The law on sugar mill licences

The broader objective of the legal framework on sugar in Uganda focuses on developing, regulating and promoting the sugar sector by using the USB as the main engine in this regard.[19] This understanding is also derived from section 2 of the Sugar Act, which employs words and phrases such as 'mill' with reference to a sugar mill or jaggery mill, and 'jaggery mill' with reference to the use of equipment in squeezing the sugarcane to yield sugarcane juice which is boiled into a jiggery as a finished product. In reference to a key regulatory body in the sugar

[16] Halsbury *Law of England Administrative Law* (Vol 1) 2011 Re-issue p 58.
[17] *Attorney General v Great Eastern Railways Co* (1880) 5 AC 473 cited by Mubiru J in *Thugitho Festo v Nebbi Municipal Local Council* HCMCA 15 of 2027.
[18] See *Council of Civil Service Union v Minister for Civil Service* [1984]3 ALL ER 935 at 950 per Diplock J.
[19] The long title of the Sugar Act indicates that it is '[a]n Act to provide for the development, regulation and promotion of the sugar industry; to provide for the establishment of the Uganda Sugar Board; and [to provide] for related matters'.

sector, section 3 of the Sugar Act provides for the establishment of the USB as a legal person; in terms of section 4 of the Act, the USB's composition includes key accounting officers from the MTIC, the Ministry of Agriculture, [Animal Industry and Fisheries] (MAAIF), and the Ministry of Finance, [Planning and Economic Development], as well as three representatives of millers and four representatives of [sugarcane] outgrowers.

Notwithstanding the MTIC's overall power to appoint the board, it is legally required that consultation with millers and [sugarcane] outgrowers' organisation must take place before any of these representatives may be appointed. It is also noted that in terms of section 5 of the Sugar Act, those members representing millers and [sugarcane] outgrowers can serve only for a three-year term, a term which is renewable only once. The MTIC is granted the power to remove a member from the USB only on clearly stated grounds.[20]

Section 7 of the Sugar Act lists 18 areas of functional competency of the USB, with these generally being regulatory in nature and concerned with oversight.[21] It is specifically provided in terms of section 7(1)(j) of the Act that the board's functions are 'to licence sugar mills, jiggery mills and plants to process the by-products of sugarcane', as well as to act as 'an intermediary between the sugar industry and the government'. Whereas section 9 of the Act calls upon the board to promote cooperation, the MTIC is granted general powers in terms of section 10 of the Act to issue policy direction to the board, guidance which must be complied

[20] Section 5 of the Sugar Act.

[21] Section 7 (1) provides that '[t]he functions of the Board are – (a) to regulate, develop and promote the sugar industry; (b) to co-ordinate the activities of individuals and organisations in the sugar industry; (c) to facilitate equitable access to the benefits and resources of the sugar industry by all interested parties; (d) to facilitate the export of sugar produced in Uganda*; (e) to arbitrate and mediate disputes between parties in the sugar industry*; (f) to regulate the disposal of the by-products of sugar production; (g) to provide advisory services to parties in the sugar industry; (h) to promote and encourage the use of environmentally friendly technologies in the sugar industry; (i) to collect, collate and analyse sugar industry statistics and maintain a database of such statistics for the industry; (j) to licence sugar mills, jaggery mills and plants to process the by-products of sugarcane; (k) to promote the efficiency and development of the sugar industry through the establishment of appropriate institutional linkages; (l) to act as an intermediary between the sugar industry and the Government; (m) to monitor the domestic sugar market with a view to identifying and advising the Government and interested parties on any distortions in the market; (n) to support the development of outgrower cooperative societies; (o) to review, on a regular basis, the problems and prospects of the sugar industry; (p) to promote innovations and diversifications in the sugar industry; (q) to monitor the production, importation and consumption of sugar and its by-products with a view to ensuring a viable industry; (r) to perform such other functions which, in the opinion of the Board, are necessary or expedient for the discharge of its functions under this Act; and (s) to lobby for incentives for the benefit of the sugar industry.' Emphasis added.

with. It is expressly prohibited by law to operate a sugar mill or jiggery mill without a valid licence, breach of which attracts serious criminal sanctions.[22]

Before it can be fully determined whether the questioned sugar mill licences could be lawfully granted, this court has to examine whether there has been a deferment of a statutory duty by the MTIC. This in turn requires that I must first answer a related question on deferment of duty, as discussed below.

This section therefore deliberates on Issue 2: *Whether the failure by the minister to establish the USB was a breach of the statutory duty*. The main argument of counsel for the USMA, as revealed in the deposition of Mr Kabeho, is that neither the Attorney General nor MTIC may cherry-pick which part of the law it wishes to enforce. Counsel for the Attorney General and the MTIC had initially relied on the political question doctrine to argue the decision not to establish the USB was both an Executive and a Legislative one which could not be questioned in court. The political question doctrine argument has already been discussed in section 3.5 of this ruling and there is no need to repeat it here.

4.2 Determination

A review of the legal framework on sugar in Uganda clearly indicates that the MTIC has had a legal duty to establish the USB since the time of the commencement of the Sugar Act. This court therefore rejects the evidence of Mr Namit (on behalf of CN) who, in attempting to explain the above legal vacuum, seems to rely on the ridiculous proposition that the proposed amendments to the Sugar Act (which seek to delete the provisions dealing with the board and replace the latter with a 'Sugar Industry Stakeholders Council') were to blame.

The reasoning that it was impracticable to perform such a statutory duty, as argued by the respondents, is rejected because no such difficulty has been demonstrated. In the deliberate refusal to put in place a proper regulatory system in the form of the USB, a dereliction of a statutory duty emerges, one which in turn creates a legal (and policy) vacuum. It is thus the

[22] Section 19 of the Sugar Act provides that (1) '[a] person shall not establish or operate a sugar mill, jaggery mill or a plant to process the by-products of sugar-cane without a valid licence granted for that purpose by the Board. (2) A person who establishes or operates a sugar mill or a commercial jaggery mill without a valid licence granted under subsection (1) commits an offence and is liable, on conviction to a fine not exceeding five thousand currency points for a sugar mill and five hundred currency points for a commercial jaggery. (3) Notwithstanding subsection (2), a mill or plant established or operated in contravention of this section shall be immediately closed by the Board.'

firm determination of this court that the failure to put the USB in place was a breach of a statutory duty by the MTIC (a line ministry in the sugar sector), a breach which is manifestly illegal.

Given that the USB is not in place and was therefore unable to execute its mandate, it becomes imperative to examine whether, on the basis of the exercise of concurrence of mandates, the UIA and MTIC could legally grant any 'licences' or permissions so as to fill the legal and policy void.

4.3 Explaining concurrence of mandates

The finding that there was a failure to perform a statutory function does not fully address the question of whether the alleged sugar licences granted were illegal. The court must therefore determine whether the oversight power that vests in the MTIC and the UIA could give rise to any residual powers and whether, on any such basis, a legal authority could emerge to grant legally sound sugar mill or jaggery licences.

To answer this subset of questions, a discussion of the meaning of the phrase 'concurrence or incidental of powers' is required. Concurrence or incidence of powers is common in highly decentralised systems in which a statute allocates powers to different government agencies but permits one agency, often the one closest to a specific sector, to exercise a power until the supervising public body steps in to override the previous decisions made.[23] Powers may also be shared where different agencies of government have powers that are related to each other, with a requirement for consensus before such a competency may be exercised.[24]

4.4 Examination

It is the evidence of Mr Kabeho that even after a meeting was convened in August 2024 by the Attorney General and MTIC (touching on the illegal nature of sugar mills and jiggery licences), the MTIC separately granted CN and Shakti permits to continue their illegal operations. Mr Kabeho points out that in addition to the MTIC's decision of September 2024, a further sugar manufacturing licence to an undisclosed company in Bugweri district council was granted. Mr

[23] See Rosen M 'From exclusivity to concurrence' (2010) 94 *Minnesota Law Review* 1051. See also Garner B et al. (eds) *Black's Law Dictionary* (2005) (abridged) Eagan, Minnesota: West Publishing p 1288, who define 'concurrency power' as 'a political power independently exercised by different agencies of the state governments in the same field of legislation'.
[24] Watts R *Comparing Federal Systems* (2008) Montreal & Kingston: McGill-Queen's University pp 88–89.

Sanya, on behalf of Shakti, disputes as false the allegation that the RDC of Namayingo district council gave special protection to CN so that it could continue its sugar operations, considering that the RDC only got involved after the dispute arose about establishing the sugar mill. Giving the following timelines, Mr Sanya explains that

- he received a letter, dated June 2023, from CN with the proposed plans to establish a sugar factory;
- he convened a district executive committee meeting (date not disclosed) to consider the proposal, and permission was granted;
- the approval of the district executive committee was communicated to CN; and
- CN then commenced its operations.

Mr Ramalal (leading evidence on behalf of Shakti) makes the point that neither the Attorney General nor the MTIC granted Shakti a [sugar] licence, given that it already had one in its possession from the UIA. The record is set straight that Shakti applied for and was granted an unqualified foreign investment licence (*sic*) by the UIA in the sugar manufacturing business in Nalyamabidde Bubajjwe Kayunga district on 15 November 2022. This licence required compliance only with the provisions of the National Environmental Act No. 5 of 2019, the Investment Code Act [sections 22, 23, 25 and 39] and the Regulations thereunder, and the National Sugar Policy 2010 (*sic*).

Shakti's 'sugar manufacturing business operational licence' was merely strengthened by the Kayunga district council's decision to grant it a development permit certificate on 19 May 2023. All that was required of Shakti was to present a Social Impact Assessment Certificate (SIAC) from the National Environment Management Authority (NEMA) before it could commence its business operations. It was averred too that the development permit certificate required compliance with the district sanitation and health standards and other planning controls, conditions which were complied with fully without exception.

Shakti also argued that since there have never been any formal criminal charges against it in terms of section 19(2) of the Sugar Act, its strong inference is that its licence was lawfully granted by UIA.

Four points emerge from the above factual narration and arguments:

1) The MTIC granted CN and Shakti 'permissions' to operate sugar milling businesses.

2) The RDC of Namayingo district extended a protective arm during the implementation of these permits.

3) Sharkti was granted an unqualified foreign investment licence (*sic*) by the UIA in the sugar manufacturing business in Nalyamabidde Bubajjwe Kayunga district.

4) These 'permissions' resulted in a dispute among other players in the sector.

While the MTIC acknowledges that it could not have granted CN and Shakti any sugar mill and jiggery milling licences, it is clear to me that the permits that were granted assumed the place of licences. These very permissions were in fact used in lieu of the licences for operating sugar and jaggery mills that are envisaged under section 7 of the Sugar Act. Even if these permissions were to take the place of the valid licences envisaged under the Act, their validity would depend on whether they could have been granted under the Ministers' broader exercise of plenary or incidental powers.

4.4.1 Determination

The position is that the oversight statutory powers of a minister are incapable of bestowing any additional or residual (incidental) powers to him or her except when those powers are used to test and verify compliance with a specific regulatory framework. The cautionary note is that the 'incidental powers doctrine', on which the respondents seem to rely, must be interpreted purposefully and restrictively.[25]

It is accepted that there are functions which, when strictly interpreted, will fall outside of a government agency's core function while in fact being critical for the administration of a specific sector. In such a case, the rule is that those incidental powers must be construed not to increase the functional ambit of the government's oversight power but rather to support the sector's institutional autonomy.[26] Adopting the above test, it is the determination of this court that neither the MTIC nor UIA could exercise any more powers than are vested in them by law. Any residual powers may be used only for the purposes of strengthening the sugar sector and not, for example, to weaken it by encouraging the commission of offences. There is evidence that the director of CN and Mr Sanya were summoned by the police's Criminal Investigations Department (CID) as persons of interest, inquiries which were later discontinued without its having been disclosed to them (the CN director and Mr Sanya) who the complainants were in

[25] Singiza D *Constitutional Law, Democracy and Development: Decentralisation and Governance in Uganda* London: Routledge 2019 pp 161–177.
[26] *Ibid.*

the first place. The fact that the police chose not to continue with criminal investigations does not absolve them of the obvious violations of clearly stated provisions.

The risks associated with relying on the concurrency of powers doctrine to bypass legally established provisions on the granting of sugar and jiggery mill licences lends credence to the position that any exercise of such plenary powers is manifestly illegal. Besides, it is a long-established principle of statutory interpretation that where there is a specific law, recourse cannot be had to another law that is general in application.[27] It is the final determination of this court that, in the absence of a properly constituted USB, neither the MTIC nor UIA could validly issue any sugar and jiggery mills licences on account of exercising their concurrent powers. It is the finding of this court that the licences granted to CN and Sharkti or indeed, any sugar mills and jaggery mills after the coming into force of the Uganda sugar Act 2010 are illegal and of no consequence.

Given the pertinence of the complaints raised before me and the potential ramifications that may results, I have thought it necessary to examine the challenged decision from the limb of procedural irrationality as well.

5 The test of irrationality

The question of whether a public body's decision is irrational has been discussed extensively in Ugandan jurisprudence. Simply put, a decision of a public body may be irrational if it is so 'out-of-this-world' that no sensible person would have made a similar decision on the facts available at the time. It is important to avoid falling into the usual traps here: simply because a decision is wrong does not make it irrational, unless of course it is 'unreasonably' wrong.[28] In answering the question of irrationality, this court has deemed it pertinent as well to examine the meaning of 'public policy' and the rules that may be adopted while interpreting a government policy. Thereafter, specific provisions are assessed to determine if the challenged decisions were in conflict with government policy and capable of rendering the decisions unreasonably wrong.

[27] See *Eaton Towers Uganda Ltd v Attorney General & another* Miscellaneous Cause No. 84 of 2019. See also *Pharmaceutical Society of Uganda v Attorney General & another* Miscellaneous Cause No. 260 of 2019.
[28] See *Council of Civil Service Union v Minister for Civil Service* [1984]3 ALL ER 935 at 950 per Diplock J.

5.1 Public policy as a governance tool

Public policy is an extension of statecraft which is deeply connected with the executive branch of the state and consists in a set of principles and belief systems that are deployed as tools of governance within the realm of public law. Public policy aims at shaping the direction of political ideas and structures, which in turn informs executive, legislative, and adjudicative processes. Thus, for public policy to produce the required social and economic outcomes, the principles and theories upon which it is anchored must be clear and ascertainable. Essentially, public policy must foster the problem-solving power of public law by helping to deepen public officials' decision-making autonomy. A good public policy must therefore be clear and written in simple diction so that its directives are actionable and devoid of vagueness.[29]

5.2 Interpretation of public policy document

While a government policy may take the nature of a legal document that may be subjected to the rules of legal interpretation, it is not analogous, in its nature or purpose, to an Act of Parliament. Thus, a public policy document should be interpreted objectively and in accordance with the language used, and read, as always, in its proper context.[30] It is therefore an error of law to attach meaning to words in a policy that are incapable of being interpreted accurately; it has been argued that once a wrong meaning is attached to words which they were incapable of producing, an error in law may result.[31] As a rule,

> if there is a dispute about the meaning of the words included in a policy documents … it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.[32]

With this in mind, I now examine Uganda's Sugar Policy 2010 in regard to land zoning through industrial licences.

---

[29] See generally Thomas A *An Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making* Routledge: London (2001).
[30] *R (Raissi) v Secretary of State for Home Department* [2008] QB 386.
[31] *Tesco Stores Limited v Dundee City Council* (Scotland) [2012] UK SC 1 pp 8–9 paras 13–18.
[32] Brooks LJ in *R v Derbyshire County Council, Ex P Woods* [1997] JPL 958 at 967.

5.3 Context

Industrial licences determine what is permitted and where. It is noted such licences may differ significantly from regulations to do with land-use planning and zoning. Industrial licences are concerned primarily with regulating a particular industrial sector, while land-use regulations as planning and zoning tools focus on the spatial effects that a specific land-related activity has on communities. An applicant for an industrial licence may in practice require land-use permission and probably a range of other permissions as well, such as an environmental impact assessment (EIA), which might overlap with land-use approvals. For example, where an industrial licence explicitly limits the extent of operations to a specified radius of an area, such a licence may take the character of land use, although in principle it is of an industrial kind.

5.4 Assessment

Mr Kabeho, on behalf of the USMA, invites the court to consider the provisions in the Sugar Policy 2010 in so far as they stipulate that 25 kilometres is the maximum radius between which sugar mills may be erected of each other. According to him, this policy rests on the shoulders of a later presidential (executive) directive in 2017 that in fact delimited the establishment of any new sugar mills within a radius of 50 kilometres. Mr Kabeho maintains that the fact that the challenged sugar and jaggery mills are within a radius of 19 kilometres of each other is evidence of a violation of a government policy. The evidence that the RDC of Nyamayingo district council (for whose actions the Attorney General is vicariously liable) continued to afford these two companies' protection becomes most relevant here.

Mr Namit's evidence is that, on the basis of the Sugar Policy 2010, CN decided to invest US $ 35,000,000 on the assurances that under the regulatory authority of the Ministry of Finance (*sic*), it could carry out its sugar-related activities. Mr Ramalal, for his part, points to the provisions of the National Sugar Policy 2010 at para 4.2(ii) p 13 that vest the power to grant new sugar factories licences for nucleus estates of about 500 hectares.

Mr Ainebyona (on behalf of the Attorney General and the MTIC), explains that the information available revealed that CN and Shakti had only established a *nucleus estate and a warehouse* (and not a sugar mill). The point was made that a sugarcane nucleus estate is only a preliminary step towards the grant of a sugar mill licence but does not, on its own, take the nature of an actual sugar mill licence. The MTIC had merely 'encouraged' CN and Shakti to establish nucleus estates (a process that does not require any licences).

This line of arguments also seems to flow directly from Mr Sanya's evidence as to the fact that the Namayingo district council's political leadership is highly supportive of their alleged sugar factories' licences for nucleus estates. It was further argued by the Attorney General and MTIC (a line of argument flowing from the evidence of Mr Ainebyona) that the policy guide, together with the presidential directive that requires sugar factories to be established within a distance of 25 kilometres (or 50 kilometres) of each other, is not backed up by the law. Invariably, such a policy guide, as well as presidential [executive] order, is problematic to enforce.

5.5 Determination

There is no doubt that a clear and coherent government policy is in place, the major objectives of which are oriented towards free market systems that support private-public cooperation. The policy intends to mitigate the disruptively high costs of sugar production, costs which, if left unregulated, could weaken the sugar sector.[33] The policy's specific objectives are to establish [sugar] cane growing zones so that sugar mills can be located at viable economic distances within an area where sugarcane is grown.[34] The policy's guiding principle focuses on equitable and productive development of sugar enterprises, such that that any sugarcane growing areas must be at a distance of 25 kilometres' radius. This is clear and obvious even to the ordinary person: the undeniable fact is that the policy prohibits the grant of any sugar mill licences within the prohibited spaces.[35] The idea is that, of the entire land in a given area, only 30% of it should be under sugarcane cultivation, with the rest reserved for food security and related activities. It is also noted that the policy is clear in terms of who may grant a sugar mill licence: only the government, through the UIA, may do so to an enterprise with a nucleus estate of 500 hectares outside the prohibited space.[36] The key consideration – that land must remain on which communities can grow food for their own survival – is too overwhelming to ignore.

It was a misconstruction of the government policy by the MTIC and UIA to attach a different meaning to otherwise clear and unambiguous words. There is no doubt that the policy document under examination does not make room for the establishment of any sugar mills, or even nucleus estates, within the prohibited distances of a 25-kilometre radius. Moreover, the construction by CN and Shakti that the policy document could permit them to rely on a general

[33] See Ministry of Tourism, Trade and Industry *National Sugar Policy* Kampala: 2020 para 3.2. p 11.
[34] *Ibid*. para 3.2(ii) p 11.
[35] *Ibid*. para 3.3(iv) p 12.
[36] *Ibid*. paras 4.2(i), (ii) & (iii) p 14.

investment licence from the UIA is not only unreasonably wrong but also very inaccurate indeed.

5.6 Evidence of irrationality through the prism of LONOs

Counsel for the USMA's argument on this point largely reiterates the deposition of Mr Kabeho. It was argued by counsel for the USMA that the grant of 'sugar licences' disguised by the use of LONOs contradicts the openly stated position of the Attorney General on the problematic nature of these letters. Notwithstanding the Attorney General's opinion, CN and Shakti continue to establish sugar mills without licences in breach of the clearly stated government policy. He cites a litany of letters from the MTIC, dated 7 July 2022, 29 August 2023, 12 October 2023, and 17 June 2024, requiring CN and Shakti to halt their activities and in fact revoking the LONOs. These letters were later contradicted by a letter from the same Minister, dated 5 July 2024, permitting them to 'set up a sugarcane nucleus estate … to supply at least 50% of the sugarcane requirements of the mill'.

Mr Namit makes the point that it is wrong for the USMA to consider the LONO (which is an administrative tool) as a sugar mill and jaggery licence in order to fabricate a complaint against CN. The fact that proposed amendments to the Sugar Act have stalled does not in any way suggest that CN has as a result been operating without a sugar licence, and thus the letter from the MTIC was never intended to halt its activities but only to restrict the extent of its sugar activities. The argument is made on behalf of CN, an argument which is a reiteration of Mr Namit's deposition that the initial decision to revoke their LONO by the MTIC was erroneous, a mistake that was corrected when accurate information was shared.

Counsel for the Attorney General and MTIC reiterates the evidence of Mr Ainebyona, by making the point that the LONOs that were granted by the MTIC to CN and Shakti are not sugar manufacturing licences. Rather, these letters were taken out for the purposes of obtaining 'investment licences' as well as establishing sugarcane nucleus estates.

5.7 Determination

The arguments of all the respondents remain that it is wrong to construe the LONOs granted to CN by the MTIC as a disguised licence when they were merely administrative requirements by the UIA. As already determined and in agreement with counsel for the USMA, the LONOs given to CN and Shakti were permissions which were illegally used to establish sugar factories

in different districts. For inexplicable reasons, these LONOs preceded a formal application to the MTIC to establish sugar and [jaggery] mills. This court wholly adopts the reasoning in the old English decision of *Council of Civil Service Union v Minister for Civil Service* that a public official 'cannot put something on nothing and expect it to stay. It will collapse.'[37] In this case, LONOs were legally nothing and must collapse because they were unreasonably and wrongly used in the place of lawful licences from the USB.

The last section deliberates on Issue 3: *Whether the USMA is entitled to any reliefs.*

Given the findings made in the preceding discussions, the following orders are hereby granted:

1) A declaration is made that the acts of the MTIC in licensing CN and Shakti, or indeed any other sugar enterprise, to establish and operate sugar and jaggery mills were unlawful.

2) A declaration is made that the acts of the Attorney General and the MTIC of allowing the establishment of the illegally licensed sugar and jaggery mills are *ultra vires* the Sugar Act.

3) It is declared that the failure to constitute and put in place the USB is illegal.

4) A declaration is made that the purported sugar and jaggery mill licences are not only illegal but also contravene the existing government policy on sugar in Uganda.

5) A declaration is made that the establishment of CN and Shakti sugar and jiggery mills within the 25 km-radius of the other existing sugar and jaggery mills is contrary to the government policy on sugar, as amplified by the presidential guidance on the zoning of sugar business enterprises.

6) An order of *certiorari* is granted cancelling all purported new sugar licences or permissions in the form of LONOs that had been granted to CN and Shakti.

7) An order is hereby granted to CN and Shakti to immediately halt all their sugar and jaggery mills until they have been duly licensed by an authorised body.

8) An order is hereby granted restraining CN and Shakti and any other sugar and jiggery mill enterprises from illegally constructing any mills that are in contravention of the law.

[37] See [1984]3 ALL ER 935 at 950 per Diplock J.

9) An order of *mandamus* is taken out ordering the MTIC to immediately constitute the USB in terms of section 4 of the Sugar Act within a period of three months from the date of this ruling.

10) An order is granted to the Inspector General of Policy to immediately remove all of CN's and Shakti's sugar and jiggery mills and related enterprises from the prohibited zones in terms of section 19 of the Sugar Act within 14 days from delivery of this ruling.

11) The prayer seeking a declaration that the MTIC illegally granted permissions for sugar and jiggery mills licences to Shakti on 13 August 2020 when it [Shakti] was incorporated on 1st September 2024 is considered redundant.

12) Costs of the application are granted and shall be shared equally.



Douglas Karekona Singiza

Judge

20 January 2025