

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 08 OF 2011

(Arising from High Court at Jinja Miscellaneous cause No, 013/2006)

Charles Akoyo Appellant

VERSUS |

Kamuli District Local Council:..... Respondent

Coram: Hon. Mr. Justice s.b.k. Kavuma Ag. DCJ

Hon. Mr. Justice A.s. Nshimye JA

Hon. Mr. Justice Remmy Kasule, JA

JUDGEMENT OF THE COURT

This appeal arises from the Ruling and orders of the *Hon. Lady justice Irene Mulyagonja Kakooza*, delivered on 23rd June 2010 in High court of Uganda at Jinja in *Miscellaneous Cause NO. 013/2006*.
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Background

As discerned from the appellant’s affidavit in support of *Miscellaneous Cause No. 013/2006* and the conferencing notes, the appellant was on the 16th January, 2001 duly appointed the principal Education Officer (DEO) of Kamuli District Local Council. The appointment was done under the

Constitution of Uganda, The Public Service Act, Local Governments Act, The Pensions Act, Public service Standing Orders and Administrative Instructions made there under.

On the 2nd February, 2004 the appellant's office of Principal Education Officer was re-designated to be referred to as the District Education Officer (DEO) on an elevated salary scale of U1 as from 1st July 2003.

In July 2005 the inspectorate of Government (ICG) investigated allegations against the appellant to the effect that as DEO he had abused his office and had been involved in financial mismanagement. The inspectorate after the investigation issued a report dated 11th July, 2006 in which the appellant was absolved of all the allegations against him.

On the 19th June 2006 the respondent's Chief Administrative Officer (CAO), wrote a letter to the appellant requiring him to show cause within seven (7) days why he, the CAO, should not interdict him (appellant) in the interest of the service of the respondent.

In the letter, the CAO alleged that the appellant was carrying out an administration which was full of unethical behavior, unprofessionalism and falsehood; failing to adhere to laid down procedures and regulations governing financial management, failing to accept responsibility and exhibiting poor quality of work, being lazy, rude and un co-operative, lacking public relations, having no interpersonal and communication skills and being reluctant to change.

The appellant replied in writing to the CAO in detail denying the above allegations on 26th June, 2006, and ended his reply stating:

'With due regard to the explanation given above, hope you reverse your intention to interdict we from service'.

The CAO was not persuaded in any way by the appellant's written explanations. On 14th July, 2006 the said CAO interdicted the appellant from his work as DEO, effective from 17th July, 2006. The appellant was to receive half pay of his basic salary during the period of interdiction. He was to hand over his office to the respondent's Education officer, Administration.

contending that the CAO acted *ultra vires* his powers, illegally and without jurisdiction in interdicting him, the appellant filed ***Miscellaneous Cause No. 013/2006*** in the High Court at Jinja for a Judicial Review Application seeking for prerogative orders of certiorari, mandamus, prohibition and injunction challenging the legality and appropriateness of the acts of the CAO. He also

prayed for damages and costs of the application.

The learned trial Judge heard the application and dismissed it with costs on 23rd June, 2010. Hence this appeal.

The appellant appealed on 3 grounds as hereunder:

1. The learned trial Judge erred in law and misdirected herself when she came to the conclusion that the interdiction of the appellant by the Chief Administrative Officer of the respondent was lawful.
2. The learned trial Judge erred in law when she came to the conclusion that the disgraceful dismissal of the appellant

by the District Service commission if the respondent basing on the submission of the Chief Administrative Officer conformed to the law that governed the appellant's employment with the respondent.

3. The learned trial Judge erred in law when she ordered the appellant to pay the costs of the cause.

This Court was prayed to make the following orders:

- a) The appellant's appeal be allowed with the result that the ruling and orders of the learned trial Judge are set aside.
- b) The appellant be granted all the reliefs he prayed for in the lower Court.
- c) The appellant be awarded the costs of the appeal and these of the Court below.

At the hearing of this appeal the appellant was represented by learned Counsel Elias Habakurama and Robert Mugisha. The respondent was supposed to be represented by the Attorney General but no lawyer from the Attorney General's chambers turned up in court on 28th May, 2013, the day of the hearing the appeal.

Since it was clear that the respondent had been served, this court, stayed the proceedings to 11.30 a.m. of 28th May 2013, in the hope that respondent's Counsel would have arrived in Court by that time. When no counsel for respondent showed up even by that time, Court decided to proceed with the hearing in the absence of any representative of the respondent.

Counsel for the appellant, argued grounds 1 and 2 together. Ground 3 was abandoned by the appellant.

In respect of grounds 1 and 2 appellant's counsel submit that although the Chief Administrative Officer (CAO) is the head of Public service at the District, the Local Governments Act does not vest the powers to interdict a District employee like the appellant into the office of the said CAO. It is the District Service commission which is vested with disciplinary powers over the appellant pursuant to **Artia 200 (1)** of the constitution and **Section 55** of the **Local Governments Act**. The District Service Commission is the body that has powers to discipline all public servants employed by the District. **Articles**

198 and 200 of the Constitution and **Section 55** of the **Local Governments Act** clearly bring out this position of the Law.

The powers of the CAO are to implement lawful decisions taken by the District Council according to Section 64 (2) of the Local Governments Act.

Learned counsel submitted that the trial Judge therefore misdirected herself when she held that the interdiction of the appellant by the CAO was lawful basing herself on **Section 64** of the **Local Governments Act** and the Public service Regulations. The trial Judge was also in error to conclude that the office of the CAO was vested with powers to interdict the appellant

Appellant's Counsel invited this court to find as correctly stating the law the Uganda High Court decisions of Ntorantyo v Mukono District Council: High Court at Kampala Miscellaneous Application No. 19/2005 and Bashakara v Mbarara Municipal Council: High Court at Mbarara Miscellaneous Application No. 048/2001. Counsel also invited this court to consider its decision of Bank of Uganda v Betty Tinkamanyire Court of Appeal Civil Appeal No 49 of 2005.

counsel further submitted that the District Service Commission (DSC) wrongly dismissed the appellant when it only had to act on a recommendation or submission of Council regarding disciplinary action against the appellant yet in this case the District service Commission acted on the appellant's case when the same was referred to it directly by the CAO.

Thus the DSC acted *ultra vires* its powers to dismiss the appellant contrary to **Section 55 (4)** of the Local Governments Act which is mandatory and overrides any subsidiary legislations providing to the contrary.

In respect of the remedies sought, Counsel submitted that the appellant was entitled to the reliefs sought in **Miscellaneous Application No. 013/2006** namely:

- a) A declaration to the effect that the interdiction of the appellant by the CAO and the appellant's subsequent dismissal by the DSC was unlawful and therefore null and void.
- b) An order reinstating the appellant to his position as the District Education Officer, Kamuli District.
- c) An order directing the respondent to pay to the appellant all his emoluments in form of monthly salary that the appellant ought to have been drawing as from the date of interdict on till the date of delivery of judgment of this Court.
- d) An award of General damages for the unlawful interdiction and unlawful dismissal.
- e) Alternatively, but without prejudice to the remedy of reinstatement, an order be made entitling the appellant to the payment of all his accrued salary emoluments, pension and gratuity in accordance with the **Pensions Act**.
- f) costs of the appeal and those in the lower Court.

g) interest on the sums awarded, at a rate to be determined by the Court in the exercise of its discretion

As already pointed out, the Respondent was not represented as none of the Attorney General's lawyers turned up on the day of hearing the appeal. So there was no response to the submissions of Counsel for the appellant.

The only response of the respondent that is on Court record is that contained in the respondent's conferencing notes dated 04.04.2011 and filed in this court on 06.04.2011. In that response the respondent contended that the CAO, as the responsible officer under the law, had powers to interdict the appellant and thereafter handover further disciplinary proceedings against him (appellant) to the District Service Commission. Further that the CAO and the DSC acted with the full authority of the District Council.

The duty of this court as the first appellate court is to reappraise the evidence and draw therefrom inferences of fact

See: Rule 30 (1) of the Judicature (Court of Appeal Rules) Directions SI No. 13-10. The purpose of re-appraising such evidence is to facilitate the first appellate court to come to its own independent decision whether or not the trial court's decision can be sustained. See: *Uganda Breweries v Uganda Railways Corporation* SCCA No. 6/2006 (SC), *Kifamuhte Henry v Uganda: Cr. Appeal No. 10/97 (sc)*, *Bogere Moses and Another v Uganda: CR-Appeal No. 1/97 (SC)*.

The evidence before the lower Court was laid out in pleadings/affidavits of both parties in *Miscellaneous cause No. 013/2006*. It was an application for Judicial review brought under *Article 42* of the constitution, *Sections 36* and *38* of the

Judicature Act and Rules 2 and 6 '2) (b) of the Civil Procedure (amendment) (Judicial Review) Rules SI NO 75/2003. The application prayed for orders that:

- (1) An order of certiorari issues quashing the decision of the Chief Administrative Officer whereby he interdicted the appellant.
- (2) An order of prohibition and or injunction stopping the respondent from proceeding with any process in so far as the same is aimed at replacing the Applicant or filling out the post of District Education Officer.
- (3) An order of mandamus directing the respondent to reinstate the appellant to his job and or post, of District Education Officer.
- (4) The respondent to pay damages to the applicant.
- (5) The respondent to pay costs to the appellant.

In the affidavit supporting the application the appellant contended that:-

- a) The CAO in interdicting him (appellant) acted illegally and without jurisdiction.
- b) The CAO had acted illegally without any instructions from the District Local Council.
- c) The appellant was denied unjustifiably and illegally his inalienable constitutional right to work.

The respondents filed three affidavits in reply opposing the application. One was deposed to by Dr. David Kazungu, the then Chairperson of the District Service Commission, the other was of Mr. George Tebigwayo-Kaizzi, the then CAO Kamuli district for the period of December 2003 to November, 2006. The third affidavit was of Mr. Mugweri.

Badru, acting Secretary, District Service commission, Kamuli District.

The affidavits of Dr. Kazungu and Mr. Mugweri were similar in substance. They opposed the application stating that both of them knew that the powers of the CAO included the power to exercise disciplinary control over the appellant. They also both knew that under the 1995 Constitution and the Local Governments Act, the District Service Commission (DSC) is mandated to exercise disciplinary control and to remove the appellant from office. This is what had been done. Thus -no law had been infringed.

Mr. George Kaizzi Tebigwayo in paragraph 9 of his affidavit contended, on his part, that as CAO he did not need a District Council resolution to write a letter to the applicant notifying him of the intention to interdict him and later on interdicting him. He did so while exercising his powers vested in him as CAO by the 1995 constitution and the **Local Governments Act**, the **Public Service Act** and the Regulations made thereunder.

Before proceeding to resolve the grounds raised by this appeal it is necessary on our part to set but the relevant law applicable to the facts of this appeal.

section 36 of the **Judicature Act**, empowers the High Co to make orders as the case may be of:

- a) Mandamus requiring an act to be done
- b) Certiorari removing any proceedings or matters to High Court to be quashed, and
- c) Prohibition, prohibiting any proceedings or matters.

It is trite law that the purpose of prerogative orders is to provide remedies by Superior courts to prevent inferior Courts and public officials from exceeding the limits of their powers under the law. Prerogative orders are there to make pu authorities and officials act in accordance with the law. see; *Pius Niwagaba v Law Development Centre: Uganda Court of Appeal Civil Appeal No. 18/2006*: See also. *R v Minister For Local Government and Another ex-parte: Mwabiwa* [2002] KLR 557

Lord Atkin LJ in the case of King v Electricity Comitiission Ex-Parte London Electricity Joint Committee [1924] IKB 17 stated that: "wherever any body of persons having legal authority to determine question affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised of these writs".

in the case of Pius Niwagaba, (supra), the court of Appeal quoted with approval a holding from the honoes of Lords case Of: Chief Constable Of NORTH WALES POLICE VS EVANS [1982] 1 All ER 141, that: "the purpose of a judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized or enjoined by law to decide for itself a conclusion which is correct in the eyes of Court".

It is not in dispute that at all material time, relevant to the matters giving rise to this appeal, the appellant was in employment, first as Principal and later as District Education

Officer (DEO) of the respondent, a local government entity in the nature of a District, established pursuant to **Article 177 of chapter Eleven** of the Constitution.

Article 198 (1) of the constitution establishes a District Commission for the respondent.

Under Article 200(1) of the Constitution, the exercise disciplinary control over persons holding or acting in any office in the service of a district, which the respondent is, is one of the specific functions vested in the District Service Commission of any District.

By **Article 206 (1)** of the Constitution, Parliament is mandated subject to the constitution, to make laws relating to local government for the purpose of giving fill effect to Chapter eleven of the constitution whereby the whole subject of "Local Government" is dealt with in the Constitution of Uganda.

It is pursuant to the said **Article 206 (1)** of the constitution that Parliament enacted the **Local Governments Act, cap. 243**, herein ("The Act") whose commencement date is 24th March, 1997. The said Act, according to its preamble is, amongst others:

"**to amend, consolidate and streamline the existing law on local governments in line with the Constitution to give effect to the decentralization and devolution of functions, powers and services, to provide for decentralization at all levels of local governments to ensure good governance and democratic participation in, and control of, decision making by the people;...**

The said Act therefore has its foundation in chapter Eleven of the Constitution. Its purpose is to ensure and consolidate the spirit of the constitution as regards decentralization, devolution of functions, powers and services at all levels of local governments, ensuring good governance based upon democratic participation of the people in the process of decision making, including the exercise of disciplinary control over those officers in the service of the District and other local governments of lower levels.

The **Act**, under its **section** 58, makes the District service Commission, in the performance of its functions, including the one of exercising disciplinary control over local governments employees, to be independent, and not to be subjected to the direction or control of any person or authority, except only when being guided and co-ordinated by the Public Service Commission under **Article 166(1)(d)** of the Constitution.

In relation to carrying out its functions as set out in **Article 200** (1) of the Constitution and re-stated word for word in section 55 (1) of the Act, the District Service Commission is mandatory to act pursuant to Section 55(4) of the Act:

"Only upon the request and submission of the relevant Council":

It appears to us that Parliament in its wisdom thought it fit that representatives of the people at local governments who constitute the local councils at the different levels of local governments, should participate in decision making by first deliberating and considering issues of their society, including those involving disciplinary control over those employees serving in the local governments, it must therefore be the

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decision of the concerned local council, to refer or not to re Tran issue involving the exercise of disciplinary control of the Council's employees, of which the appellant was one, to the District Service Commission of that particular District before the said District Service Commission can act upon the matter. This way the people's participation in decision making as regards disciplining their employees is ensured.

No doubt the 1995 Constitution and the Local Governments Act, Cap 243, the Public Service Act, the Public service Regulations and Government Standing Orders, all have a bearing on the power of exercising disciplinary control over public officer including those public officers serving in local governments is also a fact that **Article 166 (1) (d)** enjoins the Public Service Commission:

to guide and co-ordinate District Service Commissions".

In our considered view the application where it is appropriate, of the Public service Act and the Regulations and/or standing Orders made under it for the purpose of guiding and co-ordinating district Service commissions of local governments, in the area, amongst others, of the exercise of disciplinary control has to be done subject to **Article 274** of the constitution.

Article 274 requires that the operation of a law that was in existence before the coming into force of the constitution is not to be affected by the said coming into force of the constitution, but the said existing law shall be constructed with such modifications, adaptations, qualifications and exceptions, as may be necessary to bring it into conformity with the constitution and in conformity with the Act of Parliament subsequently enacted to operationalise the constitution.

Accordingly, the Public Service Act and the Regulations/Standing Orders made thereunder, as the law existing before the 1995 Constitution was promulgated, must be interpreted and applied in matters of exercising disciplinary control over officers, like the appellant, employed in local Governments with such modifications, adaptations, qualifications and exceptions as mandated by Article 274.

Bearing the above legal principles in mind and the evidence pleadings and submissions of both the appellant and the respondent as were availed to court at trial and summarize in this Judgment, we find that the CAO adamantly assumed powers he did not have to interdict and eventually to make submissions to the DSC to dismiss the appellant. The legal provisions which ought to have been applied are **Sections 55(4) and 64** of the **Local Governments Act**. The CAO ought to have first submitted the case of the appellant to the District Council, which body, after deliberating upon the case, would make or not make a submission to the District Service Commission. Per the District Service commission to take, if the Councils submission was to that effect, disciplinary action against the appellant, we find that the learned trial Judge erred when she failed to properly interpret and apply the above two sections of the law. She misdirected herself completely when she handled the case as if it arose from an ordinary employment dispute.

The actual issues which the trial Judge had to determine were:

- (1) whether the CAO acted ultravires his powers when interdicted the appellant, and

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(2) Whether the DSC acted ultravires its powers when it acted on a submission by the CAO and not from the District Council when the said DSC dismissed the appellant.

It is clear to us that it could not be correct that sections ~~61 64~~ of the Local Governments Act had the Impact of making [the CAO the responsible officer to interdict the appellant. The CAO was only empowered to implement lawful decisions of the council and the District Service commission. No evidence was availed to the trial Court that the interdiction was as a result of the Council making a submission to the District Service Commission.

Sections.55 (1) and 55(4) of the Local Governments Act have to be read together. S.55(1) provides "the power to appoint persons to hold or act in any office in the service of a District or urban Council including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove those persons from office is vested in the District Service Commission".

Section55 (4) provides that the District Service Commission shall, in relation to its functions spelt out in sub-section (1) above, act only upon the request and submission of relevant Council.

It is apparent that the District Service Commission acted and exercised its powers wrongly, it acted on a submission of CAO when the law in mandatory terms required that commission had to act on a submission from the District Council.

The rationale for those provisions, which we have already explained, has also been Judicially pronounced upon by the High Court, correctly in our view, in a number of earlier court decisions like *Marrion Tukahirwa v wakiso District Lee, Council and Another: Miscellaneous cause No. 278/2003*, *Margaret Ntorantyo v Mukono District Council* (Supra) and *Bashakara v Mbarara Municipal Council* (Supra). The rationale was to give efficacy to the provisions of **Articles 42, and 173** of the Constitution, and **section 59** of the Local Governments Act which are aimed at ensuring participation of the people in decision making and at the same time maintaining just and fair treatment in administrative decisions and protection from victimization, discrimination, dismissal or removal from office or reduction in rank or other punishment without just cause of public officers, including those serving in local governments..

The provisions of **section 55(4)** of the Local Governments Act are mandatory and the trial Judge grossly misdirected herself when she ignored them. The District Service Commission could only act in way of exercising disciplinary control j over the appellant only on a submission from the District Council and not on a submission from the CAO. Therefore grounds 1 and 2 of the appeal succeed.

Ground 3 of the appeal was abandoned, and since grounds 1 and 2 have been successful, it follows therefore that this appeal succeeds.

As for remedies, the appellant prayed to be awarded general damages. No credible evidence from the appellant was adduced at the trial to justify the award of general damages to him. Before us, appellant's Counsel referred to the issue of general damages rather in a passing manner. The appellant, in

our considered Judgment did not discharge the burden of proof of being entitled to an award of general damages. |we feel that the appellant would be sufficiently atoned for what he suffered by being awarded all the emoluments he was entitle to get, together with interest at the Court rate, had he not been interdicted and eventually dismissed:

Accordingly, this appeal is allowed. The Ruling of the High Court in Miscellaneous Cause no. 013 of 2006 dated 23.06.2010 Mulyagonja Kakooza, J. is set aside and the following remedies are hereby granted:

- a) A declaration that the interdiction of the appellant, Charles Akoyo, as District Education Officer (DEO), by the Chief Administrative Officer, Kamuli District, on 14th July, 2006 a his subsequent dismissal by the District Service Commission, Kamuli District, on 15th November, 2006 were unlawful null and void ab initio.
- b) An order that the appellant be re-instated in his post as District Education Officer, Kamuli District or be deployed elsewhere as the responsible authorities may deem appropriate.
- c) An order that the respondent, Kamuli District Local council, pays the appellant all his emoluments accrued from the time he was interdicted and dismissed as District Education Officer, Kamuli District, to the date of payment of the same in full.
- d) The sum awarded in (c) above is to carry interest at Court rate from the date of interdiction till payment in full.

The appellant is awarded the costs of this appeal and those in the Court below. i
Dated at Kampala this 23rd day of 2014.

Hon. Mr. Justice S.B.K Kavuma
Acting Deputy Chief Justice

Hon. Justice A.S Nshimye
Justice of Appeal

Hon. Mr. Justice Remmy K. Kasule
Justice of Appeal

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