

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL AT KAMPALA
CORAM: OWINY - DOLLO DCJ, CHEBORION AND MUSOTA JJA.
CIVIL APPEAL NO 275 OF 2018

OYARO JOHN OWINY..... APPELLANT

VERSUS

KITGUM MUNICIPAL COUNCIL..... RESPONDENT

JUDGMENT OF OWINY - DOLLO; DCJ

I have had the benefit of reading the judgment of my learned brother Musota JA, in draft. I agree with his findings, and conclusion that this Appeal has no merit; and that in the circumstances of this matter, each party should bear his/its costs in this Court and in the Court below.

Since Cheborion Barishaki JA also agrees, orders are hereby given in the terms proposed by Musota JA.

Dated, and signed at Kampala this ^{7th} day of ^{Aug}..... 2020



Alfonse C. Owiny - Dollo

Deputy Chief Justice

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KITGUM MUNICIPAL COUNCIL:.....RESPONDENT

(Coram: Alfonse Owiny Dollo DCJ, Cheborion Barishaki, Stephen Musota, JJA)

JUDGMENT OF CHEBORION BARISHAKI, JA.

I have had the benefit of reading in draft the judgment of my learned brother Musota, JA.

I agree with him that this appeal ought to fail for the reasons he has set out in his judgment. I also agree with the orders he has proposed. I have nothing useful to add.

Dated at Kampala this.....^{7th}.....day of.....^{Aug}.....2020.



Cheborion Barishaki

Justice of Appeal

accordingly on the 23rd day of May 2018 filed an application for judicial review at Gulu High Court which the trial Judge dismissed with costs upon finding and ruling in favour of the respondent on all issues.

5 The appellant was dissatisfied with the decision of the High Court presided over by Justice Stephen Mubiru and filed this appeal on four substantive grounds of appeal as follows;

1. The learned trial Judge erred in law and fact when he came to the conclusion that the summary interdiction of the appellant by the town clerk of the respondent was not unlawful.
- 10 2. The learned trial Judge failed to properly value the evidence on record thereby misdirected himself in finding that the appellant committed serious misconduct punishable by summary interdiction.
3. The learned trial Judge erred in law and fact in finding that the decision to summarily interdict the appellant was not subject to the rule of
15 natural justice.
4. The learned trial Judge failed to properly evaluate the evidence on record thereby misdirected himself and came to a number of wrong conclusions that occasioned miscarriage of justice to the appellant.

Representation

20 At the hearing of the appeal, Mr. Silver Oyet Okeny appeared for the appellant while Mr. Jude Ogigi appeared for the respondent.

Issues for court's determination

At the conferencing, the parties raised the following issues for this court to resolve;

- 25 **1. Whether the summary interdiction of the appellant was not wrongful and ultra vires the powers of the town clerk?**
- 2. Whether or not the appellant committed serious service offence/misconduct punishable by summary interdiction?**
- 3. Whether the interdiction of the appellants is not subject to the
30 rules of natural justice?**
- 4. What are the remedies available to the appellant?**

Duty of this court as a first appellate court.

This is a first appeal arising from the decision of the High Court. It is therefore important for this court to remind itself of its duty. The duty of a first appellate court is well settled. In the case of *Kifamunte Henry v Uganda (Supreme Court Criminal Appeal No.10 of 1997)* it was held that

5 ***“The first appellate court has a duty to review the evidence
of the case and to reconsider the materials before the trial
Judge. The appellate Court must then make up its own mind
not disregarding the judgment appealed from but carefully
weighing and considering it. When the question arises as to
10 which witness should be believed rather than another and
that question turns on manner and demeanour the appellate
Court must be guided by the impressions made on the
Judge who saw the witnesses. However there may be other
circumstances quite apart from manner and demeanour,
15 which may show whether a statement is credible or not
which may warrant a court in differing from the Judge even
on a question of fact turning on credibility of witness which
the appellate Court has not seen. See *Pandya vs. R. (1957)*
E.A. 336 and” *Okeno vs. Republic (1972) E.A. 32 Charles B.
20 Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23
of 1985 at page 5.****

The duty of the Court of Appeal to re-appraise evidence on an appeal from the High Court in its original jurisdiction is set out in ***rule 29 Rules of the Court of Appeal*** as follows;

25 ***“30(1) on any appeal from a decision of a High Court acting
in the exercise of its original jurisdiction, the court may;***

(a) re-appraise the evidence and draw inference of fact; and

***(b) in its discretion, for sufficient reason take additional
evidence or direct that additional evidence be taken by the
30 trial Court or by a commissioner;***

(2)

(3)”

I will abide by this duty as I resolve the issues in this appeal.

Determination of the Grounds (issues):

Issue 1: Whether the summary interdiction of the appellant was not wrongful and ultra vires the powers of the town clerk.

Submissions of the appellant

5 Counsel for the appellant relied on the case of ***Charles Akoyo Vs Kamuli District Local Council Civil Appeal No. 8 of 2011*** which held that the legal provisions which ought to be applied in triggering disciplinary function of the District Service Commission are sections 55(4) and 65 of the Local Government Act. Under the relevant sections, the trial Judge should have
10 found that the officers of the respondent in their affidavits in reply and opposition contended that the town clerk could interdict without Kitgum Municipal Council's approval or resolution. The respondent was relying on the wrong section of the Local Government Act and Public Service Regulations for effecting summary interdiction.

15 The power to exercise disciplinary control on public servants in local government is vested in the District Service Commission and not town clerk. The District Service Commission, in exercising its functions, is only required to abide by standards and procedures prescribed by Public Service Commission and the regulations. Having failed on this procedure, the
20 appellant's interdiction can only be classified as illegal.

In addition, counsel submitted that the Local Governments Act does not cloth the town clerk of the respondent with powers to interdict public officers in local government. That power is vested in the District Service Commission pursuant to Article 22(1) of the Constitution and section 55 of the Local
25 Governments Act. That the town clerk is enjoined under section 65(2) (c) of the Local Government Act to implement lawful decisions taken by the Kitgum Municipal Council and since the decision to interdict is not his, he usurped the role of the council.

Submissions of the respondent

30 In reply, counsel for the respondent submitted that the interdiction of the appellant was not wrongful and ultra vires the powers of the town clerk. He relied on the Supreme Court decision in ***His Worship Aggrey Bwire Vs Attorney General and Judicial Service Commission S.C.C.A No. 8 of 2010*** on the proposition that interdiction is simply a step in the disciplinary

process to pave way for investigations. The law governing disciplinary matters is clearly espoused in the Public Service Commission Act No. 6 of 2008 which states that the powers to exercise disciplinary control over public servants lies in the Commission. Under Regulation 31(1), a responsible officer to interdict a public servant is the CAO or Town Clerk of the Local Government.

In addition, that discipline of civil servants is the preserve of the District Service Commission at Local Government level, however, in the instant case, the matter was still at interdiction which is a preliminary step before disciplinary action is taken.

Consideration of issue one

Article 200 of the Constitution of the Republic of Uganda, 1995 provides for the powers of the District Service Commission which include the power to exercise disciplinary control. It states that;

200. Functions of district service commissions.

(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in any office in the service of a district, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office, is vested in the district service commission.

Section 8 (b) of the Public Service Commission Act Supplement No. 6 of 2008 provides for the functions of the commission and amongst them is;

(b) to appoint, promote and exercise disciplinary control over persons holding office in the public service of Uganda as provided for under Article 172 of the Constitution....”

The functions of the town clerk are laid out in **Section 65 (2) of the Local Government Act** and it states that;

65. Town clerk and functions.

(2) The town clerk shall be the head of the administration of the relevant urban council and shall—

(a) be responsible for the expending of the council's funds and be the accounting officer of the relevant council;

(b) advise the council on legal and administrative matters;

(c) be responsible for the implementation of lawful decisions taken by the council;

(d) supervise and coordinate the activities of all officers and departments of the council;

(e) supervise and coordinate the activities of all officers seconded to the council; and

(f) have custody of all documents and records of the council.

From the foregoing, the power to exercise disciplinary control in Local Governments lies in the District Service Commission. The District Service Commission exercises such powers to discipline a public officer by request and submission from the relevant council as directed by **section 55(4) of the Local Government Act.**

Section 65 (2) (c) of the same **Local Government Act** gives the town clerk power to implement lawful decisions taken by Kitgum Municipal Council. In the present case, the town clerk made a decision to interdict the appellant without the involvement of Kitgum Municipal Council. **Section 54(2)** of the **Local Government Act** provides for the constitution of the commission to *consist of a chairperson and such other members as a district council shall determine, at least one of whom shall represent urban authorities and all of whom shall be appointed by the district council on the recommendation of the district executive committee with the approval of the Public Service Commission.*

All the above provisions relied upon by counsel for the appellant do not prohibit a town clerk from exercising the power of interdiction. Infact hey are general provisions in nature. They do not explain the procedural steps to be taken in cases of interdiction. The steps are instead provided for in regulations which the learned trial Judge correctly discussed and relied on.

The question then arises; does interdiction qualify as a disciplinary action and can a town clerk invoke the same without the involvement of the CAO or the municipal council?

The learned trial judge answered this question in his judgment at page 149 of the record of appeal and I agree with him. He specifically states between lines 5 -20 of page 149 of the record that;

5 ***“The Uganda Public Service Standing Orders (2010 edition), define “responsible officer” as the Permanent Secretary of a Ministry or a Department under which the officer is serving; or head of department as defined in the Public Service Act, or Chief Administrative Officer or Town Clerk of a Local Government. Regulation 16 of Part (A-a) thereof at***
10 ***page 5 casts upon “Responsible Officers” the duty to ensure the proper application of the provisions of the Standing Orders. The applicant herein was employed as a “Public Officer” by a Municipal Council. By virtue of***
15 ***Regulation 38 of The Public Service Commission Regulations S.I No.1 of 2009, and Regulation 28 of the Education Service Commission Regulations S.I 51 of 2012, the Town Clerk, being the “responsible officer,” had the legal capacity to interdict the applicant, who is a public officer from exercising his powers and performing the***
20 ***functions of his office. The Town Clerk’s decision therefore cannot be assailed for illegality on account of absence of legal power to interdict, I find that it was not ultra vires on that account”***

25 I shall, for ease of reference, reproduce the provisions the trial Judge relied on.

First the Public Service Standing Orders define the word interdiction. They provide that;

30 ***Interdiction refers to temporary removal of a public officer from exercising the duties of his or her office while investigations over a particular misconduct is being carried out.***

The Standing Orders also define responsible officer as;

Responsible Officer in relation to a public officer means the Permanent Secretary of a Ministry or a Department under

which the officer is serving; or head of Department as defined in the Public Service Act. Or Chief Administrative Officer or Town Clerk of a Local Government.

5 **Regulation 16(f) of part (A-a) of the Public Service Standing Orders,** gives as part of the functions of responsible officers the duty to ensure that the Public Service Standing Orders are properly implemented. It provides;

10 **(f) Ensuring that the implementation of the management policies and practices in the Ministry, Department or Local Government, generally, and the application of the provisions of the Standing Orders, in particular, are properly done.**

Regulation 38 of the Public Service Commission Regulations states that;

15 **38. Interdiction.**

(1) **Where—**

(a) **A responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his or her office; or**

20 (b) **Disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her, he or she shall interdict the officer from exercising those powers and performing those functions.**

25 (2) **A public officer who is interdicted shall receive a salary, not being less than half of his or her salary, as the responsible officer shall deem fit.**

30 (3) **Where disciplinary or criminal proceedings have been taken or instituted against an officer under interdiction and the officer is not dismissed or, as the case may be convicted as a result of the proceedings, the whole of any salary withheld under sub regulation (2) shall be restored to him or her upon the termination of the proceedings.**

(4) An officer who is under interdiction may not frequent the office or leave Uganda without the permission of the responsible officer.

5 **Regulation 28 of the Education Service Commission Regulations** also makes specific provisions on interdiction. It states that;

28. Interdiction

(1) Where the responsible officer, considers that due to public interest-

10 **(a) an officer should cease to perform the functions of his or her office;**

(b) disciplinary proceedings for an officer's dismissal are being taken or are about to be taken; or

15 **(c) criminal proceedings are about to be instituted against an officer, the responsible officer may interdict the officer from exercising those powers and performing those functions.**

(2) An officer who is interdicted shall receive not less than half of his or her salary.

20 **(3) Where disciplinary action or criminal proceedings have been instituted against an officer who has been interdicted and the officer is not subsequently dismissed or, convicted as a result of the proceedings, the portion of his or her salary withheld under sub-regulation (2) shall be restored to him or her upon the termination of proceedings and shall be done retrospectively.**

(4) An officer who is under interdiction shall not leave Uganda or have access to his or her office without the permission of the responsible officer.

30 **(5) Where an officer has been convicted of a criminal offence, and is fined, the responsible officer may, if he or she considers the charge serious enough to justify consideration of dismissal, interdict the officer from the**

performance of his or her functions and direct the withholding of half of his or her emoluments, pending consideration of his or her case under these Regulations.

5 *(6) Where an officer has been interdicted by the responsible officer, the responsible officer shall speed up investigations into the conduct of the interdicted officer, and shall ensure that they are brought to conclusion within a period of:*

10 *(a) three months after the date of interdiction for misconduct under the Ministry, department, school or institution or Auditor General; or*

(b) six months after the date of interdiction for misconduct requiring or involving the police, court of law or Inspectorate of Government.

15 *(7) Where an officer is interdicted under this regulation, the responsible officer shall immediately submit a detailed report, a copy of the letter of interdiction, a statement of allegations and charges and the disciplinary or criminal proceedings which are being taken or about to be taken against the officer for the Commission to note the interdiction.*

20 *(8) The Ministry, department, school or institution, Auditor General, Inspectorate of Government, Inspector General of Police, or responsible officer, shall on conclusion of investigations if it is considered that the officer is innocent, or that the case against him or her is not serious enough to warrant criminal prosecution or dismissal-*

25 *(a) make a detailed report on the charges the officer is facing, investigations carried out, the subsequent court proceedings and judgment of the case against the officer, and*

30 *(b) make appropriate recommendations to the Commission.*

(9) Interdiction of the officer shall remain in force until the Commission communicates the lifting of the interdiction.

(10) Where there is failure to conclude investigations within the time stipulated in sub-regulation (6), the officer shall be free to appeal to the Commission to have his or her interdiction lifted.

5 A study of all the above provisions clearly demonstrates that the law was on the side of the respondent Municipal Council. The provisions as interpreted and relied on by the trial Judge made it clear that a Town Clerk as a responsible officer is seized with power to interdict a public officer. It was not in dispute at the trial and it is not in dispute at this appeal that the appellant is a public officer. I therefore find no fault at all with the Judge's finding that the town clerk had power to interdict a public officer.

10 Indeed it is true that the evidence on record lacks proof of a request and submission to the District Service Commission canvassed by the town clerk in conformity with ***section 55(4) of the Local Government Act***. However, this was not necessary at the stage of interdiction as interdiction is but only a preliminary step to commencement of disciplinary action proceedings in public service. Should the interdiction still be in force, then the appellant should invoke the regulations to move the District Service Commission lift it.

15 ***Issue 2: Whether or not the appellant committed serious service offence/ misconduct punishable by summary interdiction?***

And

20 ***Issue 3: Whether the interdiction of the appellants is not subject to the rules of natural justice?***

Submission of the appellant

25 Counsel for the appellant submitted that interdiction of a public officer may be caused where disciplinary proceedings for dismissal of an officer are being taken or are about to be taken for serious misconduct or where criminal proceedings are about to be instituted against an officer. He submitted that the learned trial Judge failed to properly evaluate the evidence of the minutes of the meeting discussing the transfers dated April 6, 2018. That the forum did not find any misconduct at all on the appellant.

30 In addition, that the allegations did not specify any date when the appellant allegedly walked away from his office. April 6, 2018 was the day the

impugned transfers were finally settled and the town clerk of the respondent made representations to the appellant which were fully implemented. The appellant was transferred from Pandwong Muslim Primary School to Kitgum Public School. The respondent is estopped from using allegations of January 5 2018 which were never brought up on April 6, 2018 at a key meeting in which the appellant was transferred to Kitgum Prisons Primary School by the Town Clerk.

Submissions of the respondent

10 In reply, counsel submitted that there is no summary interdiction since interdiction is part of a process of disciplinary action. That the responsible officer, the respondent's town clerk, acted within the law and interdicted the appellant on misconduct of insubordination after refusal to hand over office. The interdiction forced the appellant to hand over on 17th April 2018 which was 8 days after being interdicted. The refusal to handover was prejudicial 15 to the effective conduct of the education in Pandwong Primary School.

Counsel argued that the interdiction was justified and prayed that the issue be resolved in favor of the respondent.

Consideration of issue 2 and 3

Regulation 8 of the Public Service Standing Orders (Part F-S) provides that;

20 ***8. Interdiction is the temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out.***

The definition of interdiction clearly shows that interdiction is not a punishment. It is the first step in the procedure for disciplinary action and 25 helps pave way for an investigation to take place. The fact that interdiction happens at a time when investigations have not even been concluded shows that there is even no possibility of a hearing.

Article 42 of the Constitution provides that;

30 ***42. Right to just and fair treatment in administrative decisions.***

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have

a right to apply to a court of law in respect of any administrative decision taken against him or her.

5 The above provision of the constitution enjoins administrative bodies or officials to grant persons appearing before it fair and just treatment and I see no violation of that provision in the actions of the Town Clerk. He warned the appellant before he could interdict him. The appellants' resistance of his transfer gave rise to a question as to whether or not he was guilty of insubordination. The appellant caused an administrative crisis when he refused to immediately accept his transfer and there was indeed a
10 misconduct to be investigated. It is not normal for a public officer to resist a transfer. The letter by the RDC canceling the transfer was inconsequential as he has no powers to do that. Surely this deserved interdiction.

15 The learned trial Judge made an extensive discussion of the principles and reasons why interdiction does not require a hearing and the relevance of interdiction in disciplinary actions in public service at pages 156 -164 and I agree with his reasoning and discussion of the principles of law together with his application of the said principles to the facts. After studying the judgment of the trial Judge and re-considering the evidence before the trial court I find no reason to fault the trial Judge's findings of facts and conclusions.

20 For the reasons I have given I would resolve issues 2 and 3 in favour of the respondent.

Issue 4: What are the remedies available to the appellant?

25 Having resolved all the issues in this appeal in favour of the respondent, I find that the appellant is not entitled to any of the remedies he sought in this appeal.

I would accordingly uphold the decision and orders of the trial Judge and dismiss this appeal.

30 In view of the circumstances of this case and given the employer/employee relationship between the appellant and the respondent, I will order that each party meets its own costs here and in the court below.

Dated this 7th day of Aug 2020

5



Stephen Musota
JUSTICE OF APPEAL