

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 104 OF 1994

ISLAMIC UNIVERSITY OF (U):::APPLICANT

VERSUS

M.D.G. HOSSAIN KHAN:::RESPONDENT

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

R U L I N G :

This application is by Notice of Motion brought under Rules 5 and 8 (2) of the Law Reform (Misc. Provisions) Rules S 1. 7 4 - 1 for an order of certiorari to quash the proceedings of the Respondent's Appointment committee which rejected the applicant's application for Appointment.

The grounds on which the relief was sought are:-

- (1) that the Respondent's Appointment committee acted illegally and made errors in reaching the decision.
- (2) that the appointment committee was influenced by extraneous factors which led to discrimination against the applicant.
- (3) that the Respondent's Appointment committee was biased in reaching the decision.
- (4) that the appointment committee was illegally constituted.

The application was supported by an affidavit and another affidavit in Rejoinder both sworn by the Applicant Khan on 28/4/93 and 25/6/93 respectively.

The Respondent opposed the application. It relied on the affidavit in Reply sworn on 16/6/93 by Haruna Chemisto the Respondent's Assistant Secretary.

As regards the background to the application, the Respondent is an educational **institution** established under statute 8 of 1990 as a corporate body under the name of Islamic University in Uganda" Its powers and functions are set out in the statute.

The applicant, a Bangladesh National, had been appointed on a temporary term as Assistant Engineer with the Respondent pending consideration of his application for the post by the Respondent's Appointment and Disciplinary committee. After consideration, the applicant's application was not successful. He was duly informed of the fate of his application. The applicant was offended by the result of his application. Then he instituted legal proceedings seeking leave to apply for a relief of certiorari to quash the proceedings of the Respondent's Appointment committee. The leave was granted by my brother Justice Engwau in Mbale. Hence this application.

At the hearing, only three of the four grounds were argued. The fourth ground "that the appointment committee was illegally constituted" was abandoned.

Arguing ground No 1, Mr. Wandera submitted that though the applicant met all the required criteria spelt out in the advertisement for the post, the Respondent's appointment Committee did not consider the applicant's qualifications and experience, but instead acted illegally in appointing a non qualified person in preference to the applicant. Counsel relied on paragraphs 6 and 13 of the supporting affidavit of the Applicant. These paragraphs show the criteria shown in the advertisement for the post. Paragraphs 14 and

15 of the same affidavit state the academic qualifications of the applicant. Paragraph 9 – 12 and 16 - 17 of the same affidavit state the applicant's working experience in a similar position. All those were to show that the applicant possess all the criteria shown in the advertisement for the post.

It was however contended for the Respondent that the criteria outlined in the advertisement were merely for a guide but were never meant to be mandatory.

Upon listening to the above argument, and after perusing the affidavits in this regards, it is clear to my mind that the issues raised in the argument are two:-

- (a) whether the Respondent's Appointment committee did not consider the applicant's qualifications and experience and gave him no hearing.
- (b) Whether the appointment committee acted illegally in appointing the successful candidate in preference to applicant.

Paragraphs 5 and 6 of the affidavit in Reply appear to provide an answer to issue (a) above. The paragraphs read thus,

“(5) The applicant submitted his application to the committee and was invited to attend an interview between the 1st and 4th March 1993, on a scheduled committee meeting like all other meetings of the committee.

(6) The applicant attended the interview together with other applicants. He was given a hearing and allowed to present all his original academic and other necessary documents supporting his qualifications and working experience to the appointment Committee.

The above paragraphs show that the applicant’s application was placed before the appointment committee, he was called for interview and he was given a hearing. He was allowed to present all the documents necessary to support his academic qualifications and working experience. All these were considered but he was not successful.

Neither the supporting affidavit of the applicant nor the affidavit in Rejoinder refuted the above, nowhere in the supporting affidavit has it been stated that the applicant's qualifications were not considered. The claim in the applicant's application that the applicants qualifications and experience

were not considered by the Respondent's appointment committee was therefore not sufficiently substantiated.

As regards the applicant's claim that the Respondent's appointment committee -acted illegally in appointing a non-qualified person in the name of Kassim Namunyere-Mugeni, it is in my view relevant to reproduce the advertisement which appeared in the New Vision Newspaper of 15/7/92. It reads;-

“Administrative Posts

(1)Assistant University Engineer (1 post). Qualifications: - A good degree in electrical Engineering or its equivalent from a recognised University. Applicants must hold membership a recognised Association of Professional Engineers. Preference will be given to applicants with long working experience in a University or other recognised institutions. Post graduate qualifications in the relevant field will be an added advantage”.

The applicant laboured to show that the successful candidate did not have the above qualifications. That he has only a pass degree without any post graduate qualifications and lacks any working experience.

I am more inclined to agree with counsel for the Respondent that the above qualifications are meant to be only guide. It would be disastrous if those were mandatory and more persons with such qualifications applied for only one post. There were other factors which the interviewers also look for. For instance) how the interviewee presents himself before the Board. I do not find any act of illegality in this regard on the part of the appointment committee. The applicant complained in grounds 2 and 3 that the Respondent's Appointment committee discriminated against the applicant principally because the applicant is foreigner. In support of the complaint, it was stated in paragraph 18 of the supporting affidavit.

"that in exercising his statutory powers to amicably settle disputes, the Rector instructed the vice Rector not to convene appointment committee for purpose of making appointments but the Vice Rector took advantage of the Rector's absence to convene the meeting”.

It was contended in paragraph 19 of the supporting affidavit of Mr. Khan, that the above was a deliberate conspiracy against the applicant to favour a non-expatriate.

For the Respondent it was submitted that the applicant and other applicants were invited for interview on the committee's scheduled meeting days. That in considering applications the

appointment committee was enjoined by section 52 (4) of the statute 8 of 1990 in appointing administrative staffs of the University to give priority to the applicants in the following orders

- (1) Citizens from the Republic of Uganda
- (2) Citizens from other African Countries
- (3) Citizens from any other country.

That the committee acted within the law in giving priority to a Uganda citizen.

Upon listening to the above arguments and after perusing the affidavits in this regards, there appears to be no dispute that the applicant and other applicants were invited to attend interview. The interviews were called on scheduled committee meeting dates.

The interviews were however convened in the absence of the Rector.

This by itself is no sufficient evidence to establish conspiracy against the applicant. More evidence was required. A vice Rector is expected to deputise for the Sector when the latter was absent. Official duties should not be personalised. That is to say, the absence of the Rector should not bring official business of the University to halt.

As to the priority which was given to the Ugandan citizen who became the successful applicant, I find nothing illegal about it.

The law enjoins the committee in appointing Administrative staffs of the University to give first priority to applicants who are citizen of Uganda. That provision (S.54 (2) of statute 8 of 1990) is mandatory. In complying with that law, the committee did not act illegally. I do not even see anything wrong with that provision because every country has a duty to give employment to its nationals.

On the merits of the application, there is no sufficient proof of any error committed by the Respondent's Appointment Committee in reaching its decision to reject the applicant's application. There is therefore no justification for the relief.

As to jurisdiction, available authorities indicate that the ambit of certiorari cover every case in which a public body as opposed to a purely private body, has to determine matters affecting rights of subjects and has always a duty to act judicially. (See *R. v. Criminal Injuries compensation Board Ex-parte Lian* (1967) 2 QB 86b at 882.). the Respondent in this case is a public body. It was established under statute No. 8/1990. But it is open to debate whether in exercising its power of appointment involve inquiries comprising examination of witnesses to arrive at a decision whether or not to reject an applications, I think not. The committee would merely look at the application, interview the candidates and then decide on each application. This is not even a quasi- judicial function. It is a purely administration junction. That does not attract a relief a certiorari. For reasons I have given here above, this application cannot succeed. It is thus dismissed with cost.

G. M. OKELLO

JUDGE

30/8/94

Ruling delivered in open court in the presence of:-

Mrs. Katunguka

No body for the Applicant.