

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0031-2005

1. KAGOMA SKYLUCK]
2. EVAS BEITWENDA]
3. FLAVIA KANAGIZI]APPLICANTS
4. EMMANUEL RUTAKYENGYERWA]
5. KANYESIGYE DIDAS]

VS

KABALE DISTRICT LOCAL GOVERNMENT..... RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

RULING

This is an application for judicial review seeking a writ of certiorari. The applicants by Notice of Motion want this court to call for and quash the decision of the respondent as contained in Minute 7/2005 of and 11th February 2005 whereby Rule 108 of Kabale District Council Rules of Procedure was suspended. It is contended by the applicants that the said suspension took place in order to censure the applicants and remove them from Kabale District Council Executive Committee. The Notice of Motion is accompanied by affidavits sworn by the applicants and a statement.

The grounds of the application as contained in the Notice are stated hereunder as they appear therein:

1) The grounds advanced for invoking Rule 4 of the Rules to suspend Rule 108 in the censure process to wit —

i. That the Original Petitions of November 2004 and January 2005 had been thrown out for violation of what was described as “Un-called for” procedure.

ii. That referring the matter to the Committee would only serve to delay the censure process further whereas Respondents' term of office runs out in December 2005 — February 2006 — were frivolous, vexatious, indefensible, wanting in both substance and principle and unjustifiable at law.

2) The decision to suspend Rule 108 of the Rules reflect a pre determined agenda to rid the Executive Committee of the Applicants at any cost and also reflect both haste and bias.

3) The decision to suspect Rule 108 of the Rules.

a) Violated the letter and spirit of Article 126 (1) and (2) (e) of the 1995 Constitution.

b) Violated the letter and spirit of the Mother Act- the Local Government Act — (its preamble) for good governance and democratic participation.

c) Abused the purpose and letter and spirit of the Rules themselves (in the Preface thereto) in particular to ensure co-ordinated orderly debates and to promote participatory democracy and good accountable local governance.

4. The decision and the suspension summarily negated, without a hearing, Applicants' right to refer the matter, the charges, their particulars and documentary evidence leveled against them; to an appropriate committee under the suspended Rule 108 for exhaustive investigation and verification of legalities.

5 The decision negated the purpose of Rule 108 for transparency checks and balance and exhaustive in investigation by a specialized committee considering the seriousness and multiplicity of charges and their particulars against each Applicant and consequently the enormity or mass of both oral and documentary evidence from applicants various service directorate involving overseeing supervising and implementation of Government policy and projects at all levels of local governments.

6. The decision and the suspension summarily denied the applicants their Constitutional right to fair play, to fair and just hearing and to a researched and informed vote.

7. The suspension led to a failure to provide to the Applicants and therefore the Tribunal (the Council) with the documents proposed to be adduced in evidence against the Applicants.

8. The suspension also denied the Applicant the all-vital verification of the legalities of the Petition by a specialized committee and the all-important verification for authenticity of the signatures of the alleged several Petitioners before/by the sergeant at Arms.

9. The decision also violated all rules of natural justice in particular the one of fair play and a fair hearing.

10. The Applicants have no other convenient remedy available to them.

11. LEAVE was granted to the Applicants on 9/3/2005.

In rebuttal the respondent relied on an affidavit in reply deposed by Samuel Katehangwa, the Chief Administrative Officer, Kabale District Local Government.

Before I go into the merits of this matter I should relate to the background to it. Kagoma Skyluck, Evas Beitwenda, Flavia Kanagizi, Emmanuel Rutakyengyerwa and Kanyesigye Didas are members of the District Executive Committee of Kabale. Besides being councillors they are respectively Secretary for Finance & Administration, Secretary for Production and Marketing, Secretary for Education & Community Based Services, Secretary for Health & Environment, Secretary for Works & Technical Services. Some members of the District Council apparently sought to depose the applicants as is allowed for under Rule 107 of the Model Rules of Procedure for District Councils, hereafter to be referred to as the Rules. The first such attempt was made in November 2004 through a petition which did not succeed. Another equally unsuccessful attempt was made in January 2005. The two attempts were in tandem with Rule 108 which elaborates the procedure to be followed preparatory to censuring members of the Executive Committee. However during its meeting of 10th and 11th February 2005 the District Council passed a resolution, evidenced by Minute 7/2005, by invoking Rule 4 of the Rules which allows for suspension of Rules including Rule 108. In the event the Council suspended Rule 108 by a vote of 25 for and 10 against. The resolution to suspend Rule 108 was arrived at in an effort to avoid the cumbersome procedure that had so ungainfully dogged earlier attempts at censuring

the applicants. The following extract from Minute 7/2005 is instructive concerning the speaker's advice:

---He however advised the movers of the motions to go and prepare their petitions in accordance with section 21 of the Local Governments Act CAP 243 and ensure that the charges against each Secretary are clear and where possible documentary evidence should be attached.'

It is gainful to refer to section 21 of the Local Governments Act, Cap 243 which relates to censure against a member of the District Executive Committee. It states:

- 1) A council may, by resolution supported by not less than half of all the members of the council, pass a vote of censure against a member of the district executive committee.
- 2) Proceedings for censure shall be initiated by a petition to the Chairperson through the speaker, signed by not less than one-third of all the members of the council, to the effect that they are dissatisfied with the conduct or performance of the member of the district executive committee.
- 3) The Chairperson shall upon receipt of the petition cause a copy to be given to the member of the district executive committee in question.
- 4) The motion of the resolution of censure shall not be debated until the expiry of fourteen days after the petition is sent to the Chairperson.
- 5) A member of the executive committee in respect of whom a vote of censure is debated under subsection (4) is entitled to be heard during the debate.

The applicants seek a writ of certiorari from this court. According to Halsbury's Laws of England, 4th edition, Volume 1 at paragraph 147 certain conditions have to be in place before grant of this writ:

'Certiorari lies, on an application of a person aggrieved, to bring the proceedings of an inferior tribunal before the High Court for review so that the court can determine whether they shall be quashed, or to quash such proceedings. It will issue to quash a determination for excess or lack of jurisdiction, error of law on the face of the record or breach of the rules of natural justice or where the determination was procured by fraud, collusion or perjury.'

The tribunal referred to is not restricted to inferior courts. It is extended to judicial functions which are both administrative as well as judicial. See HWR Wade in Administrative law, 5th Edition at page 551. See also In Re Application by Bukoba Gymkhana Club [1963] EA 478.

The writ applied for is a discretionary one which will be granted only in deserving circumstances. See Masaka District Growers C-operative Union vs Mumpiwakoma Growers Co-operative Society Ltd & 4 others [1968] EA 258. It is with the above considerations in mind that this application rises or falls. The writ is sought to quash a decision. Certiorari will therefore issue to bring up to the High Court and quash something which is a determination or a decision. See R vs Statutory Visitors to St. Lawrence's Hospital, Caterham, ex parte Pritchard [1953] 2 All ER 766, 772. There must be a decision in place.

What appears to have piqued all the applicants causing them to bring this matter up is the procedure adopted by the respondent when Rule 4 was invoked to suspend Rule 108 of the Rules. It is this they seek the writ of certiorari for so that it may be quashed. In that case we have to look at what took place in light of the test laid down in the passage I have already alluded to in Halsbury's Laws of England. When the Resolution under Minute 7/2005 was passed its effect was to adopt an alternative method to that provided for under Rule 108. Such alternative method was provided for under the Local Governments Act, Cap 243. I find the respondent in exercising the option did so within the ambits of the law. I find also that the cause of action was on the occasion accentuated by some expedience. As an immediate consequence of the suspension of Rule 108 the censure procedure was not complete but was still on-going and the applicants' tenure of their offices was not in the least affected. I should observe that censure is a process rather than the final. I do not find anywhere excess of jurisdiction or lack of it, as what was done was done within the law. There is no error on the face of the record and I find nowhere a breach of the rules of natural justice in the process that was still on-going. I am not persuaded either that a decision or determination has yet been arrived at. In sum this application is premature. Consequently I would dismiss this application with costs.

P. K. Mugamba

Judge

7th July 2005