THE REPUBLIC OF UGANDA

IN THE HIGFI COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0106-2005

ODO TAYEBWA ……APPLICANT

vs

I. BUSHENYI DISTRICT LOCAL GOVERNMENT COUNCIL)

2. ATTORNEY GENERAL) ……..……..RESPONDENTS

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

RULING

The applicant is the incumbent Speaker to Bushenyi District Local Government Council. He brings this application for the writs of certiorari and prohibition against the two respondents. The order for certiorari is sought so that this court may call and quash the petition of the first respondent dated 26th April 2004 which was submitted to the second respondent. He seeks the order of prohibition so that the Minister may be prohibited from taking any action in respect of the petition for censure proceedings based on the first respondents' petition.

Given its urgent nature this matter has been heard during court vacation. On 19th July 2005 the applicant filed an application for a Certificate of Urgency pursuant to rule 4 of the Court Vacation Rules. That application was granted on the 20th July 2005: whereupon on 21st July 2005 this court, upon application ex parte, the applicant was granted leave to file the present application. This ruling results from the hearing of the application which was based on the following grounds apparent in the motion:

1. The procedure of censuring the District Speaker was laid out by the law has been willfully neglected or violated.

2. The applicant has been denied an opportunity to be heard in his defence.

3. The first respondent's decision to submit the petition to the Minister without going through the District Council denied the applicant his Constitutional right to a fair hearing.

4. The first respondent has acted in want or in excess of its jurisdiction.

5. The applicant has no other convenient remedy available for him.

6. LFAVE was granted to the applicant on 21/7/2005.

The notice of motion was supported by an affidavit sworn by the applicant himself and a statement. Another supplementary affidavit was filed later in support. For the respondents each filed an affidavit in reply in opposition to the application. I find the following facts not disputed. On 26th April 2004 some Bushenyi District Council members whose number was 36 put their respective signatures on a document which they said was their petition for the removal of the applicant from the office of Speaker. By a letter dated 20th June 2005 the Chairman Bushenyi District Local Government forwarded the said petition, through the Clerk to Council, to the Minister of Local Government. The said Minister thereafter wrote to the Clerk to Council aforesaid a letter dated 20th July 2005. In the Minister's letter I find the following paragraph remarkable:

'In keeping with section 11 (6) the Local Governments Act, as amended, I have appointed Mr. Charles Katarikawe, Assistant Commissioner. Ministry of Local Government to convene and preside over a meeting of Bushenyi District Council on 4th August 2005 at 10.00 a.m. at the District Council Hall for the purpose of handling the petition to remove the District Speaker and, if need be, to elect a new Speaker.'

On behalf of the applicant it is contended that the procedure adopted by the respondents So far is irregular, the proper procedure having been willfully neglected or violated. Both respondents on the other hand, are of the view nothing is amiss with the procedure so far adopted. They see no merit in the application which they want dismissed. As a matter of fact at the time of the hearing of this application the respondents sought to raise preliminary objections which they said would dispose of this matter. Given the time available and consideration that the matter would better be resolved if the substantive issues were dealt with, I opted to put aside matters of procedure until I

had considered the substantive issues. For this measure I find no little support in Article 126 (2) (c) of the Constitution. I have no doubt this is the proper course in the circumstances.

The applicant contends that the procedure for the removal of the District Council Speaker is governed by rules 105, 106 and 108 of a handbook entitled Model Rules of Procedure For District Councils which was commended to District Councils by the Minister of Local Government in 1998. On behalf of the respondents it was argued that the rules involved have since been overtaken by provisions of the Local Governments Act after it was amended by Act 13 of 2001. Sections 12 (6A), (6B) and (6C) were cited for effect. It is factual that when the handbook was made no specific provisions relating to the removal of the Speaker existed on the statute book, let alone on the Local Governments Act. However when specific provisions were enacted under Act 13 of 2001 they became law and. needless to say, took precedence over the flexible guidelines contained in the Handbook. As such where the views in the handbook are not in tandem with the express provisions of the Act the enactment prevails to the extent of the inconsistency. Bearing that in mind I find, respectfully, the argument on behalf of the applicant that the Act and the rules in the handbook are supplementary not correct at all. The proper way to look at ii is that where the rules are inconstant with the Act these rules are extinguished to the extent of the inconsistency.

I now turn to the Local Governments Act and its provisions relevant to this matter. When the 36 members of Bushenyi District Council appended their signatures to a notice which the' addressed to the Chairperson on 26th April 2004 stating their grounds and their intention to pass a resolution to remove the Speaker, they acted pursuant to section 12 (6A) of the Act. The notice was later submitted to the Minister by the Clerk to the Council. The Minister has within the stipulated period proceeded to call the meeting of the Council as required. In that respect section 12 (6C) of the Act has so far also been complied with. Need I in this connection reiterate the unambiguous contents of the Minister's letter which I have had occasion to quote in part earlier on in this ruling? I find that ground 1 has been duly addressed in light of the relevant law. As for ground 2 it is not factually correct to say that the applicant has been denied the right to be heard in his defence when one bears in mind the contents of the Ministers letter already referred to. A meeting of the Council is yet to take place. So the process is not at an end yet. Regarding ground 3 again it is not factually correct to state that it was necessary for the petition to go to the

Minister without being first submitted to the District Council. What was done is what the law provides for and this petition is yet to be submitted to the meeting of the District Council, if the Minister's letter is to go by. Concerning ground 4 the applicant has not shown where the first respondent has acted in want or in excess of jurisdiction. Perhaps it needs to be appreciated that the matter is still in preliminary stages preparatory to being presented before the District Council. A petition is a document signed by a large number of people demanding or requesting some action from the government or another authority. That is the interpretation in the çpbri4g International Dictionary of En1ish. Ground *5* states that the applicant has no other convenient remedy available to him. Respectfully this again is not factually correct as he is due to appear before a meeting of the District Council where he is to defend himself against all manner of accusations levelled against him.

Before a writ of certiorari such as is sought in this action can be granted Halsbury's Laws of England, 4th edition Volume 1 at paragraph 147 sets out what must be in place. I am compelled to quote it:

'Certiorari lies, on an application of a person aggrieved, to bring the proceedings of an interior 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.'

Needless to say, reference to tribunals above is not restricted to inferior courts. It extends to judicial functions which are both administrative as well as judicial. See *HWR Wade, Administrative Law,* 5th edition page 551. Refer also to In *Re Application by Bukoba Gymkhana Club [1963] EA 478.* It must be noted also that the writ of certiorari will 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, Calerham ex parte Pritchard [1953] 2 All ER 766, 772.* In the instant case no decision has been shown to exist and there is none to quash. Also missing is evidence of any grievance on the part of the applicant who continues to hold the office of Speaker. I find this matter is premature.

The writ of prohibition is related to that of certiorari save that whereas certiorari will issue to quash what has already been determined prohibition will issue to restrain the respondent from carrying out what has been the subject of the writ of certiorari. Given my ruling regarding the writ of certiorari, which I decline to grant, and the fact that the writ of prohibition acts in prospect, for those same reasons I do not find the writ of prohibition available to the applicant.

As I do not find merit in the application for the two writs I would dismiss it with costs and decline discussion of the preliminary objections as such discussion would he moot in the circumstances of this case.

P. K. Mugamba

Judge

3rd August 2005