

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, AT KAMPALA
MISC. APPLICATION NO. 433 OF 2008
(Arising From Misc. Cause No.171 of 2008)

IN THE MATTER OF SECTION 36, OF THE JUDGMENT ACT
AND

IN THE MATTER OF THE DECISION OF THE CHIEF
ADMINISTRATIVE OFFICER, NAMUTUMBA DISTRICT
INTERDICTING MRS. KAUMA KAGERE ROSE, AS SENIOR ASSISTANT
SECRETARY (Sub-County Chief)

KAUMA KAGERE ROSE ::: APPLICANT

VERSUS

NAMUTUMBA DISTRICT
LOCAL GOVERNMENT COUNCIL ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE V. F. MUSOKE-KIBUUKA

RULING:

In this motion, the applicant seeks the Prerogative Order of Certiorari calling for and quashing a decision of the Chief Administrative Officer (CAO) Namutumba District.

The decision was contained in the CAO's letter, Ref. CR/207, dated 25th June, 2008, which was attached to the motion as Annexure A. Through that letter, the CAO interdicted the applicant who was Senior Assistant Secretary/Sub-county Chief, Magada Sub-county.

The motion was presented before the Judicature (Judicial Review) Rules, 2009, came into Force. There is a statement of facts accompanying the motion and an affidavit in support, deponed by the applicant. The contents of the two documents are virtually the same.

However, in brief, the background to the motion appears to be that on 14th May, 2008, there was an internal audit report relating to Magada Sub-county where the applicant was Sub-county Chief. On 5th June, 2008, the CAO wrote a letter to the applicant laying charges against her and asking her to show cause why disciplinary action should not be taken against her. The applicant had, by law, to respond to the charges within 14 days.

The letter by the CAO, was apparently, not served upon the respondent until 17th June, 2008, when the applicant herself visited the CAO's office and saw it, whereby she signed the delivery book for it on that day. Nevertheless, on 25th June, 08, the CAO wrote the impugned letter, interdicting the applicant from duty, alleging, inter alia, that the applicant had failed to comment on the audit report and show cause why disciplinary action should not be preferred against her. The interdiction was stated to have been imposed in accordance with regulation 36, of the Public Service Commission Regulations, S.1.No.

It is the decision interdicting the applicant that is being challenged by the applicant through this motion.

Learned Counsel Mr. Kwarisiima represented the applicant at the hearing of the motion. The hearing of the motion by order of court, proceeded ex-parte because the respondent did neither file an affidavit in position nor attend court on the hearing date in spite of effective service having been carried out.

The applicant's only complain is about alleged non-compliance with the principle of natural justice; the rule of *audi alteram partem*. She argues that the CAO had a duty to observe that rule of fair play in taking the decision to interdict the applicant which she did

prior to the expiry of the 14 days set by law. Counsel accuses, the CAO of failing to take into account the applicant's response to the charges presented by her on 30th June, 2008. He submitted that the applicant was condemned unheard which was in breach of the rule of natural justice.

In Judicial Review Proceedings, Under Section 36 of the Judicature Act and Rule 3 (1) (a), of the Judicature (Judicial Review) Rules, 2009, the court is concerned with the process through which the decision was made. The court is merely concerned with whether the decision-making authority of public officer, exceeded jurisdiction, committed an error in law, acted without jurisdiction or breached the rules of natural justice.

Thus Certiorari issues to quash decisions that are ultra vires or which are vitiated by error on the face of the record or are arbitrary and oppressive. In Re **An Application By Bukoba Gymkhana Club (1963) E.A. 473 and Haji Mohamed Besweri Kezaala Vs. The IGG and 2 Others Misc. Appl. No.28 of 2009 (unreported).**

The concept of fairness in the adjudication as well as in administrative decision-making, where the body or public officer making the decision has a duty to act judicially or in a quasi judicial manner is well entrenched in our law. The principle of natural justice contains two necessary and obligatory rules or human conduct promulgated by nature through human reason.

As known to Ugandan law, the rules of natural justice stand out as two prominent rules which are known and observed throughout the civilized world. They are:

- nemo iudex in causa sua(no person shall be a judge in his or her own case)
- audi alteram partem(hear the other party)
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These two rules or principles of natural justice, according to the court of Appeal of Uganda, in **Marko Matovu & 2 Others Vs. Sseviri & Another, Civil Appeal No.7, of 1978**, must be observed by both judicial and administrative bodies. They must be

observed by all bodies and public officers who have a duty to act judicially or quasi-Judicially. **Abbot Vs. Sullivan [1952] 1 ALL. E.R. 226.** The modern view is that the duty to act fairly applied to almost all public decision making process. Article 42, of the Constitution of the Republic of Uganda leaves almost no doubt about the proposition. Also See: **Halsbury Laws of England 4th Ed., Para 84.**

In the instant case, regulation 36(1), of the Public Service, which the respondent purported to rely upon in taking the impugned decision, required the respondent to carry out preliminary investigations and specifically allow 14 days within which the applicant would state, in writing, any ground on which she relied to exculpate herself. Since the letter written to the applicant by the CAO on 5th June, 2008, was not served on the applicant or received by her until 17th May, 2008, the 14 days statutorily required under regulation 36(1), of the Public Service Regulations would only begin to run from 17th June, 2008. by the date of interdiction letter, the applicant had not had 14 days within which to answer the charges but only 8 days. The decision to interdict her was prematurely taken. It was unfairly taken as the applicant was denied the opportunity which by virtue of the regulations she ought to have had. *Certiorari* would issue upon that account.

Still worse, the decision of the CAO stated in paragraph 3 of her letter of 25th June, 2008,

“You are hereby in accordance with the Public Service (Commission) Regulations No. 36 interdicted from the exercise of the powers and functions of your office with immediate effect”.

It is clear to court that Regulations 36 was wrongly invoked by the CAO. That regulation does not vest the CAO with any jurisdiction or authority to interdict any officer. The regulation which contains that power is regulation 29 of the same regulations. An interdiction based upon regulations 36 was illegally effected as that regulation did not confer upon the CAO any powers of interdiction. *Certiorari* would also issue upon that account to quash the illegal decision of interdiction.

Lastly, this motion was originally presented against the CAO, Namutumba District. Ordinarily, the motion would have been struck out for being presented against a non-legal entity which could not respond to it.

Court, however, considering all the circumstances of the application ordered that Namutumba District Local Government Council, be substituted for the CAO, Namutumba District. It also took service that has been effected on 23rd September 2008, to be effective service upon the respondent within the meaning of regulation 26(1) of the Local Government Councils Regulations, contained in the third Schedule to the Local Governments Act, Cap.243.

The applicant's costs for this application shall be borne by the respondent.

V.F. Musoke-Kibuuka

Judge

05.10.2009