**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**HCT-00-CV-CA-0062-2009**

**(Arising from the Report/Letter, Findings/Decisions and Directives of the IGG Ref. TS. 73.2005 dated 12th October, 2009)**

**NESTOR MACHUMBI GASASIRA ::::::::::::::::::::::::::::::::::::APPELLANT**

**VERSUS**

**1. INSPECTOR GENERAL OF GOVERNMENT**
**2. ATTORNEY GENERAL** **::::::::::RESPONDENTS**

**BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE**

**JUDGMENT**

The appellant is a Principal Accountant in the Public Service in the Ministry of Health. The Inspector General of Government, the IGG, carried out investigations regarding assets, income and liabilities declared by the appellant. Following the said investigations, a report dated 12th October, 2009 was produced containing inter alia decisions and directions to the Permanent Secretary Ministry of Finance to cause the appellant immediate dismissal and forfeiture of his property by the 2nd respondent said to be in excess or under declared to the 1st respondent. The appellant being aggrieved by the decisions, orders and directives of the 1st respondent filed an appeal on 2/11/2009 in this court contending inter alia that he was condemned without being heard and that the decisions are contrary to law. Subsequent to filing the appeal, he filed an application for stay of orders to restrain the respondents from executing and implementation of orders, decisions and directives contained in the said report. I disposed of that application on 22/12/2009 vide ***HCT-00-CV-MA-0548 – 2009 Nestor Machumbi Gasasira vs Inspector General of Government & Anor.***

It is now time for the appeal itself.

**APPELLANT'S CASE**

As already indicated above the appellant is challenging the decision of the 1st respondent contained in a letter dated 12th October, 2009. The basis for the appeal is briefly that:

***a). There was no fair hearing.***

***b). There was no credible evidence or evidence at all of wrong doing on the part of the appellant.***

***c). The order, decisions and directives of the IGG are contrary to law.***

***d). There is undisputable evidence to show how the appellant lawfully acquired his property and/or wealth.***

**1ST RESPONDENT'S CASE**

In a nutshell the 1st respondent contends that it carried out investigations for the years 2002, 2005 and 2007 pursuant to the provisions of the Constitution, especially Articles 225 and 226 and as laid down in its reply to the appeal; that at all times during investigations and the verification exercise, appellant was given an opportunity to be heard as per the various annextures to the affidavit. It is the case for the 1st respondent that the verification exercise involved site visits, inspection of bank accounts and various reports on various properties were determined and the annual income and liabilities of the appellant were ascertained before the recommendations contained in the impugned report were issued for enforcement. It is further contended that the 1st respondent took into account various properties that were acquired/obtained before the appellant became a leader; that consideration was given to those which were re-developed during the period of leadership; and, that the burden was on the appellant to provide credible evidence to prove his legitimate sources of income, assets and liabilities.

That it was also verified that during submission of forms for the period in dispute the appellant never declared any property that was jointly owned as required by law. It is the case for the 1st respondent, therefore, that the recommendations to have the appellant dismissed from service and have all the properties attained or obtained in excess of his legitimate income to be confiscated or forfeited to the state was lawful; that no abuse of natural justice was occasioned by the 1st respondent to the appellant; and, that therefore the appeal lacks merit.

**2ND RESPONDENT'S CASE**

It is contended for the 2nd respondent that the appeal as laid out in the Notice of Motion/Memorandum of Appeal and affidavit in support clearly indicates that this appeal is against the decision and actions of the 1st respondent; that the submissions of the appellant are also entirely on the alleged erroneous evaluation of evidence by the 1st respondent and the failure to conduct a fair trial.

It is therefore the 2nd respondent's contention that the 2nd respondent should not have been joined as a party in this appeal.

***Issues:***

At the conferencing the reliefs sought were amended and they stand as follows:

1. ***The appeal be allowed.***
2. ***The findings, decision and directives of the 1st respondent be set aside and vacated.***
3. ***The caveats/Administrative prohibitions lodged on the appellant's properties be vacated.***
4. ***The respondents pay costs of this appeal.***

On the basis of the above reliefs the parties agreed that the twelve grounds of appeal contained in the Notice of Motion/Memorandum of Appeal do constitute the issues for determination, subject to the appellant's right to combine some of them.

I would observe that many of the Grounds of appeal are lacking in conciseness. Many are unnecessarily wordy and repetitive. But I take cognizance of the fact that this is a rather unique appeal based on volumes and volumes of correspondences and reports. I would add that although under Section 25 of the Leadership Code Act the Inspectorate of Government may, after consultation with the Minister and the Attorney General, make rules regulating the procedure under this code, to-date there are no such rules in place. It is therefore not surprising that the appeal title is "Notice of Motion/Memorandum of Appeal" (under Section 33 Leadership Code Act, O.52 r.1 CPR). The appellant had to get

a way of bringing the matter to court notwithstanding the absence of rules envisioned under Section 25 of the Leadership Code Act.

**Counsel:**

***M/s Ntambirweki Kandeebe & Company Advocates***
***M/s Buwule & Mayiga Advocates*** ***fo the appellant***
***M/s Luwum, Rutaremwa & Co. Advocates***
***Mr. Vincent Kasujja for the 1st respondent***
***Ms Christine Kahwa for the 2nd respondent.***

I will first deal with the objection raised by the 2nd respondent regarding its involvement in this case.

The grounds of appeal as laid out in the Notice of Motion/Memorandum of Appeal and the affidavit in support clearly show that the appeal is against the decision and actions of the 1st respondent. The submissions of the appellant are also exclusively on the alleged erroneous evaluation of evidence by the 1st respondent and its alleged failure to conduct a fair trial.

Under Sections 19 (1), 20 (1) and 21 of the Leadership Code Act, the IGG is empowered to make binding decisions. Under Section 35 (2) (b), such decisions cannot even be reviewed by a court of law. They can only be appealed. Hence this appeal.

The IGG acts under no direction or control of any person or authority. He directed that the appellant be dismissed from Public Service for stated reasons. Upon completion of an inquiry, the Inspectorate communicates its decision in a report to the 'authorized person', that is, a person or body authorized to discipline a leader, and requires the authorized person to implement the decision. The said authorized person is not necessarily the Government. However, if the authorized person is a government body, as in the instant case a Permanent Secretary, he/she may indeed seek in-put of the Attorney General (in accordance with Article 119 (4) of the Constitution) before implementing the decision. This in itself does not make the authorized person or indeed the person rendering legal advice to him/her a party to the case. He/She is merely executing the decision of an independent statutory body.

I would think that until the decision of the IGG is carried out by the authorized person, it remains an implementable decision unless set aside on appeal. If an appeal is preferred and it is upheld by the trial court, the matter ends there unless otherwise ordered by another court of competent authority. If the appeal is disallowed, then the authorized person proceeds to execute the decision of the IGG as by law established.

In the instant case, the appellant, aggrieved by the orders of the IGG appealed to this court within 60 days of the decision of the IGG. The second respondent was not privy to the investigation that led to the impugned decision. By the time the appeal was lodged, the authorized person, no doubt a servant of the 2nd respondent had not executed the decision to warrant either that authorized person or the 2nd respondent in his representative capacity being drawn into the dispute on appeal. In all these circumstances, notwithstanding that the Government would be the beneficiary or decree holder out of the decision of the 1st respondent, I would agree with the submission of learned Counsel for the 2nd respondent that the appellant does not have any grounds against the 2nd respondent and therefore has no cause of action against him.

For the reasons stated above, I would order the appeal against the 2nd respondent struck out for being misconceived with costs to the 2nd respondent.

I do so.

**GROUNDS OF APPEAL**

These are twelve in number and are:

1. ***The respondent erred in law and fact when he condemned the appellant without a hearing.***

2. ***The respondent erred in law when he condemned the appellant without any evidence on record.***

3. ***The respondent erred in law when he relied on totally discredited evidence to find that the appellant had not declared his assets and liabilities as provided by law.***

4. ***The respondent erred in law and fact when he shifted the burden of proof that the appellant should prove that he did obtain property in breach of the Leadership Code.***

5. ***The respondent erred in law and fact when he found that the appellant failed to declare or account for how he obtained his property.***

6. ***The respondent erred in law and fact when he flouted principles and rules of natural justice in coming to the conclusion that:***
   - ***(i). Bank Deposits of the appellant were in excess of his income.***
   - ***(ii). Properties were under declared.***
   - ***(iii). Development of the property cost more than what the appellant stated.***
   - ***(iv). The appellant did not explain the source of his money/wealth.***

7. ***The respondent erred in law and fact when he relied on speculative rumours that the property of the appellant was of more value than that stated by the appellant.***

8. ***The respondent erred in law and fact when he purported to rely on a self discredited subject valuers' report to come to a conclusion that the appellant did not declare or explain how he obtained property worth to be about Shs.1,217,225,700/=.***

9. ***The respondent erred in law and fact when he totally disregarded the appellant's letter/explanation dated 5th February 2008, thereby coming to a wrong conclusion that the appellant failed to explain his wealth/income and liabilities.***

10. ***The respondent erred in law and fact when he used crude arithmetic means to come to what is said to be the value of his property.***

11. ***The respondent erred in law and fact when he purported to investigate purported conduct of the appellant prior to his becoming a leader.***

12. ***The respondent erred in law and fact when he found that the appellant made false declaration of stamp duty/purchase price whereas not.***

From the above grounds, the long and short of the appellant's case against the 1st respondent (the only respondent for that matter) is that he, the respondent, condemned the appellant without a fair hearing. The other grounds revolve around this. I will therefore concentrate on it in the hope that the answer thereto will dispose of the entire appeal.

It is the duty of the first appellate court to review the record of evidence for itself in order to determine whether the decision of the trial court should stand. It is trite to say that if the conclusion of the trial court has been arrived at on conflicting testimony after seeing and hearing witnesses, the appellate court in arriving at a decision would bear in mind that it has not enjoyed this opportunity and that the view of the trial court as to where credibility lies is entitled to great weight.
From the pleadings, in or around 1992, the first Leadership Code of Conduct (Statute No. 8 of 1992) was passed to strengthen the fight against corruption through increased accountability and transparency by the leadership in Government. The Code defined the Leaders to whom it would be applied, required the Leaders to make declarations of their income, liabilities and assets to the IGG and further prohibited certain conduct by leaders. The IGG was given power to enforce the Leadership Code of conduct.

Later, the Leadership Code of Conduct was incorporated in the Constitution of 1995, Chapter 14 thereof. Article 233 (2) of the Constitution provides that the Leadership Code of Conduct shall require specified officers to declare their income, assets and liabilities

from time to time and how they acquired them, as the case may be. And Article 234 gives the Inspectorate of Government powers to enforce the Leadership Code of Conduct.

In 2002 the Leadership Code, 1992 was repealed and the Leadership Code Act 2002 was passed. It is not necessary to reproduce the relevant Sections in that Act. Suffice it to say, however, that under Section 25 (3) thereof, ***no matter that is adverse to any person, or public office shall be included in a report of the Inspectorate unless the person or head of that office has been given prior hearing*** (emphasis mine).

As far as investigations of allegations of the breach of the Code by Leaders are concerned, any person may lodge a complaint with the IGG alleging breach of the Code by any leader relating to declaration or engaging in prohibited conduct, for example, conflict of interest, undeclared properties, misuse of public property, etc. It is not indicated as to who raised complaints against the appellant in this case although he appears to blame it on people who had an axe to grind with him. Since the Inspectorate can on its own initiative investigate breach of the Code by leaders, it is immaterial as to who started it all. I will revert to this point later in connection with the appellant's letter to the IGG dated 6/10/2009, annexture 'C' to the Notice of Motion/Memorandum of Appeal.

I should perhaps add that in 2005 an amendment was introduced in the Constitution. It introduced Article 235A and it reads:

> ***"235A. Leadership Code Tribunal.***
> ***There shall be a Leadership Code Tribunal whose composition, jurisdiction and functions shall be prescribed by Parliament by law."***

To-date the Tribunal is yet to be constituted. I will also comment on the effect of this later.

It is the case for the respondent that he carried out investigations in accordance with the relevant Sections of the Leadership Code Act; that he investigated and verified the

appellant's declarations for the years 2002, 2005 and 2007 and concluded that the appellant breached Section 4 (4), 4 (7) and S. 6 of the Leadership Code Act and produced a report dated 12/10/2009. All this is not denied by the appellant. The appellant's complaint is that the decisions and directives contained in the said report are not backed by any evidence, facts and were reached in total violation of law and principles of natural justice (paragraph 10 of his affidavit in support of the Notice of Motion). And although the IGG says that he relied on a report of a duly qualified valuer, the appellant contends in paragraph 11 that:

> ***"The valuer's Report(s) that the 1st Respondent relies on is an opinion of that valuer and the value of the properties are perceived prices not physical cash flows which varies from one valuer to another."***

I could go on and on in respect of each complaint. It is in my view not necessary to go that extra mile. What is necessary is to determine whether there was a breach of the rules of natural justice in this case.

I have addressed my mind to all the able arguments of counsel.

***Natural justice*** is a legal philosophy used in most jurisdictions in the determination of just, or fair processes in legal proceedings. Article 28 (1) of the Constitution provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and ***public hearing before an independent and impartial court or tribunal established by law*** *(emphasis mine).*

The Oxford Advanced Learner's Dictionary, 7th Edition, p.691 defines 'hearing' inter alia as:

> ***"an official meeting at which the facts of the crime, complaint, etc are presented to the person or group of people who will have to decide what action to take; or, an opportunity to explain your actions, ideas or opinions."***

Section 23 of the Leadership Code Act gives the IGG power of the High Court with regard to attendance, swearing and examination of witnesses, the production and inspection of documents and enforcement of its orders. The procedure envisioned under this section comes within the Dictionary meaning of '***Hearing***' above.

And under Section 26 of the Act, the IGG when inquiring into an allegation shall observe ***rules of natural justice***.

What then are those rules of natural justice?
The Concise Law Dictionary by P.G. Osborn, 5th Edition at p.217 expresses it this way:

> ***"Natural justice. The rules and procedure to be followed by any person or body charged with the duty of adjudicating upon disputes between, or the rights of others; e.g. a government department. The chief rules are to act fairly, in good faith, without bias, and in a judicial temper; to give each party the opportunity of adequately stating his case, and correcting or contradicting any relevant statement prejudicial to his case, and not to hear one side behind the back of the other. A man must not be judge in his own cause, so that a judge must declare any interest he has in the subject matter of the dispute before him. A man must have notice of what he is accused. Relevant documents which are looked at by the tribunal should be disclosed to the parties interested.***
>
> ***In short, not only should justice be done, it should be seen to be done: See Local Government Board vs Arlidge [1915] A.C.120; Errington vs Minister of Health [1935] 1 K.B. 249……"***

How then did the respondent go about the investigations and hearing in this case?

The answer is partly contained in a letter to the appellant dated 16th January, 2008. Its title is: ***REPORT ON THE VERIFICATION/INVESTIGATION OF YOUR INCOME, ASSETS AND LIABILITIES.***

The then IGG Justice Faith E. K. Mwondha wrote:

> ***"This office carried out investigations and verification of your 2002, 2005 and 2007 Declarations of income, assets and liabilities. During the investigations you were given an opportunity to be heard in accordance with Section 26 of the Leadership Code Act 2002. Clarification was sought from you and you sent a written clarification explaining your declarations.***
>
> ***Investigations and verifications of the declarations have been concluded.***
>
> ***The report detailing the outcome of the investigations/verification is now forwarded to you. This is to give you a further opportunity to be heard and to show cause, with evidence, why in accordance with Section 21 (1) and 35 (a) of the Leadership Code Act 2002, your undeclared proportion and properties which are exceedingly not commensurate to your income should not be confiscated and forfeited to Government.***
>
> **……**
>
> **……"**

From the above letter and the attached report, the methodology used throughout the matter in gathering evidence was solely that of looking at the declarations of the appellant; records from the Registrar of Companies on M/s Sagimex Enterprises Ltd; records from motor vehicle Central Registry, URA regarding the appellant's vehicles; inspection of the appellant's bank accounts and copies of the pay slips for the relevant years; a letter from URA on submission of Tax returns by M/s Sagimex Enterprises Ltd;

letters from the IGG to the appellant seeking clarification and his responses to the Deputy Inspector General of Government. The IGG also relied on a Report on cost evaluation of the appellant's properties in Kampala and Kisoro Districts prepared by M/s Buildecom East Africa dated December 2006.

The IGG also relied on Mr. William Wilberforce Kiwagama's declaration of income assets and liabilities and Transfer documents for Block 220 Plots 1334, 1337 and 1338 and Plot 102 Luthuli Avenue Bugolobi.

On the basis of the above, and without affording the appellant opportunity of a face to face interview with the various sources for cross-examination purposes, the respondent concluded as he did.

In ***John Ken Lukyamuzi vs Attorney General & Anor Const. Appeal No. 02 of 2007*** the Supreme Court (per Tumwesigye, JSC) observed that usually written procedures of a public institution may indicate whether the institution has judicial functions and powers or not in performing its functions; that the only procedures written in the Inspectorate of Government Act under Part IV of the Act are procedures for conducting investigations although the IGG is given power to prescribe rules of procedures generally.
No such rules exist to-date. Even then the law is categorical that no matter that is adverse to any person shall be included in a report of the IGG unless the person has been given prior hearing.

Was the 'hearing' accorded to the appellant as per the copy of the letter reproduced above the sort of 'hearing' the law maker envisioned under Section 25 (3) or 'hearing' in a legal context? In my view, for as long as the rules of natural justice demand that each party be given the opportunity of adequately stating his/her case, and correcting or contradicting any relevant statement prejudicial to his case, and not to hear one side behind the back of the other, the methodology used by the respondent to collect evidence, assess it and base conclusions on it, did not come within the meaning of 'hearing' envisioned under the said section. The methodology used deprived the appellant of the opportunity to ask questions and contradict the evidence of those who made statements against him.

I have already indicated that the Constitution guarantees a right to a fair trial in Art. 28. The right to be heard is an opportunity to know the case against the defendant. It also means the right to make representation in the case against the defendant. It includes the right to appear and present one's case, that is, give oral testimony in criminal trials and the right to examine adversary witnesses in order to check their credibility whether it be in a criminal or civil matter.

Thus in ***University of Ceylon vs Fernando [1960] 1 WLR 233*** it was observed that the opportunity to cross-examine a witness may not be held to have been denied while the complainant is given a chance but does not take it up. This was a case of dismissal of a student for examination mal-practice. The victim did not cross-examine one of the witnesses before the disciplinary committee although he was given a chance. In this case it was pointed out that the principle is not that one must cross-examine but that one must be given the opportunity.

Finally on this point, the right to be heard includes the right to bring documentary evidence which includes the right to be informed of all evidence that is being used against any individual. I harbour no doubt in my mind that the procedure adopted by the respondent throughout the investigation amounted to hearing one side behind the back of the other. This was contrary to the principles of natural justice.

In the submissions, learned Counsel for the appellant (page 6 paragraph 2) observed that the IGG approached the present case from the investigative angle and ignored quasi-judicial one, that the IGG for purposes of the Code under Chapter 14 of the Constitution is the Tribunal under Article 235A. They noted that the learned IGG in all his communications and decision chose to proceed as an investigator and not a Tribunal under Article 235A of the Constitution yet he purports to make orders which can only be made by a Tribunal after a fair hearing.
This is where the problem lies.

Their submissions were filed in court on 29 March 2010. Two days later, on 31 March 2010, the Supreme Court delivered a decision in ***John Ken Lukyamuzi*** case, supra. One of the issues in that case was whether the IGG is the appropriate tribunal mentioned in Article 83 (1) (e) of the Constitution which provides that a member of Parliament shall vacate his/her seat in Parliament if that person is found guilty by the appropriate tribunal of violation of the Leadership Code of conduct and the punishment is or includes the vacation of the office of a Member of Parliament.

For reasons that appear in that judgment, their Lordships held that the IGG is not such a tribunal.

Learned Counsel for the respondent has sought to distinguish the facts in the ***John Ken Lukyamuzi*** case from the instant one. He has submitted that whereas the main issue in ***John Ken Lukyamuzi*** case was whether the IGG was the appropriate tribunal under Article 83 (1) (e) of the Constitution or any other law, the main issue for determination in the instant case is that of fair hearing and offending principles of natural justice alleged in the grounds of appeal.

With the greatest respect to learned Counsel for the respondent, his attempt to distinguish the two cases is in my view ingenious but fanciful. The court found in that case that breaches of the Leadership Code are punished with severe penalties. These include confiscation and forfeiture of property; payment of compensation for loss suffered by the Government on account of the Leader's breach of the Leadership Code Act; dismissal from or vacation of office, and imposition of other severe penalties provided under Section 35 of the Leadership Code. The Judgment of Tumwesigye, JSC quotes him as saying at page 27 in reference to the above penalties:

> ***"In my view such penalties should be imposed by a court of law or a tribunal established by law which observes due process. The right to a fair hearing guaranteed by Articles 28 (1) and 44 (c) of the Constitution is about due process which must be observed by all***

***courts of law or tribunals for justice not only to be done but also to be seen to be done."***

The Constitutional court had said in the same case that the IGG would remain the enforcement authority of the Leadership Code until another authority, perhaps the Leadership Code Tribunal mentioned in Article 235A, is appointed by Parliament, apparently implying that both authorities cannot enforce the Leadership Code together. That view was rejected by the Supreme Court which observed:

***"I think both authorities can enforce the Leadership Code at the same time, the IGG bringing cases of violations of the Leadership Code as the accuser and the other authority trying the cases and pronouncing a verdict on it as a tribunal. The fact that those who amended the Constitution put the Leadership Code Tribunal in Chapter 14 together with the IGG shows, in my view, that the two institutions were intended to be complementary to each other and not to be alternatives."***

As learned Counsel for the appellant have correctly observed, in my view, this binding precedent/decision answers ¾ of this appeal. Article 235A of the Constitution was introduced in the Constitution in 2005. The IGG carried out the investigations herein for the years 2002, 2005 and 2007. The Supreme Court in the Lukyamuzi case observed that for a body or person to be called a tribunal there must be an accuser and an accused person or parties with a dispute to resolve. That the tribunal will then conduct a hearing and come to a decision which will then be binding on the parties. The court concluded that this is what the Leadership Code tribunal under Article 235A was established in the Constitution to do and lamented Government's failure to set up such a tribunal. Mr. Kasujja's submission amounts to a suggestion that there is one law for members of Parliament and another law for everyone else in this respect. This cannot be so as under Article 21 (1) of the Constitution, all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of law. It is immaterial therefore, at least in my view, that ***John***

***Ken Lukyamuzi*** was a Member of Parliament and the appellant herein is a Principal Accountant. Both are leaders according to the Leadership Code Act. Much as the appellant's case does not fall within Article 83 (1) (e) of the Constitution, if the impugned report herein is equated to a judgment of the IGG in the matter, which it is for purposes of this appeal, then clearly the IGG acted as the complainant, the investigator, and the judge, all the three rolled in one. It offends one of the principles of natural justice that a person who makes a decision should be unbiased and should act in good faith. He/she therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the latin maxim: ***nemo judex in sua causa,*** meaning that no man is permitted to be a judge in his own cause.

I have no doubt in my mind that this is what happened in the instant case. The point made by their Lordships in the ***John Ken Lukyamuzi*** case regarding the role of the IGG as the accuser, the investigator and the judge in a matter is best illustrated by the appellant's own letter to the IGG dated 6/10/2009, annexture C to his affidavit in support of the Notice of Motion/Memorandum of Appeal. In that letter he pointed out to the current Ag. IGG, Mr. Raphael Baku how on 14/10/2008 his predecessor, Justice Faith Mwondha, the Director of the Leadership Code, Ms Susan Bisharira and the lead investigator, one Moses Baguma, made life difficult for him, on being invited to orally explain how he had amassed wealth. He laments (at p.2):

> ***"To the best of my knowledge I was never given a chance to even open my files that I had carried with me in which I had supporting documents to support my explanation.***
>
> ***To contrary her Lordship Faith Mwondha entertained me to a barrage of abuse, insults and all sorts of intimidation. The lead counsel had a pre-determined list of issues which I was being forced to agree to and I objected because they did not relate to the issues or answers I had provided in my responses.***
>
> ***I addressed myself to specific issues which IGG had raised in her report January 2008 the Director, Leadership Code opposed this***

***approach but instead she opted to read out a list of decisions to which I was meant to agree. I objected to this because I saw no justice was being seen to be done."***

He then complains about the conduct of Ms Susan Bisharira and how Justice Mwondha tortured him psychologically. He then makes a request:

***"Sir, I request that you institute another Committee of independent people to review my responses to the investigations on my wealth. I have fears that I cannot get justice from the two said officials.***

- ***have worked for 31 years in public life.***
- ***I have all the documents to support whatever property I have gathered all these years.***
- ***I have never hidden any properties in my bi-annual declarations. Any omissions if any have been explained in my report.***
- ***The government has fortunately set up courts of law to deal with corruption and I am not in any way afraid to appear before such courts if there are charges against me."***

These are serious lamentations of an aggrieved person. While he was waiting for a response, he received a copy of the latter to the Permanent Secretary, Ministry of Finance Planning & Economic Development to take action against him. I cannot say that the lamentations carry the gospel truth of what happened that day. The appellant could have spiced them up. But in an appeal of this nature, where the appellant is specifically denied the remedy of judicial review by the enabling statute, court must consider the procedures, and consequently the fairness of those procedures, followed by the decision–maker in arriving at the decision. Decision–makers are bound to ensure that their procedure of decision – making complies with the rules of natural justice. It is a duty lying on every one who decides anything to act in good faith and fairly listen to both sides. This duty is a legally enforceable elementary standard that must be followed by the decision – maker, to use the apt words of Cooke J in ***Daganayasi vs Minister of Immigration [1980] 2 NZLR 130***.

I must emphasize, as court did in the Daganayasi case, that the two most basic and fundamental principles of natural justice are that the parties be given adequate notice and an opportunity to be heard (often expressed as the principle of ***audi alteram partem***) and that the decision-maker be unbiased. In the ***Daganayasi*** case, supra, Cooke J emphasized that these requirements of natural justice may be applicable to a statutory power of decision-making in one of two ways: either through what is to be inferred or presumed in interpreting the Act or by judicial supplementation of the Act when this is necessary to achieve justice without frustrating the apparent purpose of the legislation. The ***John Ken Lukyamuzi*** case is in line with the latter principle.

Additionally on this point, the appellant complains in paragraph 24 of his affidavit that his wife Rosebell Nduhukire Gasasira is a working lady in gainful employment as an Accountant who also works privately as Landscaping expert; that she is entitled to own property in her own right in addition to contribution to jointly owned property.

It is the appellant's case that his wife has never been invited by the IGG to defend her property rights or explain or disclaim her interest in the property in issue. He contends that if the impugned orders of the IGG are not set aside, his own property and that of his wife which they own jointly will be forfeited to the state without any fair hearing to both of them.

The respondent appears to have no kind words for the appellant on this point. According to the affidavit of the IGG dated 11th March 2010, the appellant did not provide evidence of his wife's employment and ownership of the property in his Declaration Forms.

This is of course a novel point of law where a leader who allegedly breaches the leadership code is apparently deemed to have committed the breach with his/her spouse who too stands to lose out on the property notwithstanding that he/she was not privy to the Declaration. The IGG's submission that the burden of proof was on the appellant to prove to him and also to this court that the suit property included that of his spouse appears to be in conflict with the decision of the Court of Appeal in ***Julius Rwabinumi vs Hope Bahimbisomwe CACA No. 30 of 2007*** (unreported) that from the time husband and

wife are declared so, it is irrelevant who owns the property; that it belongs to both. This joint trust principle, according to the authority, applies to all property belonging to the couple at the time of marriage and during its subsistence. This being so, it may in future be incumbent upon the IGG to ensure that before an order of confiscation and forfeiture is made, both spouses are heard to avoid condemning one of them unheard. To argue otherwise is to go back to earlier notions that women in a matrimonial relationship would not acquire and hold real property, which is absurd. I rest my case on this point since the argument appears to have been raised in passing and was, therefore, not given sufficient prominence throughout the proceedings.

When all is said and done, from the evidence presented to court and doing the best I can in the circumstances of this case, I am of the considered view that the 1st respondent flouted the rules of natural justice. And if the rules of natural justice are flouted, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision at all.

***See: Medical Council vs Spackman [1943] A.C. 627.***

I would of course appreciate the set back likely to be occasioned by this decision to the fight against corruption given the evidence of wealth accumulation on the part of the appellant said to be out of proportion with his income over the years. However, the legal requirement for impartiality of the decision-maker is a cornerstone for maintaining public confidence in the administration of justice. This is reflected in the often cited maxim that justice should not only be done, but it should manifestly and undoubtedly be seen to be done. Hence the wisdom of the law-maker in enacting Article 235A of the Constitution to redress the unsatisfactory state of affairs in enforcing the Leadership Code Act.

For the reasons stated above, I would allow the appeal, set aside the findings, decision and directives of the first respondent and order the caveats/administration prohibitions lodged on the appellant's property vacated.

The appellant shall have the costs of this appeal, ***certified for two (2) counsel only.*** The appellant shall meet the legal costs of his third counsel.
Orders accordingly.

**Yorokamu Bamwine**
**JUDGE**
**27/05/2010**

**27/05/2010:**
Mr. Kandeebe-Ntambirweki
Mr. Adoch Luwum for the appellant
Mr. Buwule
Mr. Vincent Kasujja for the 1st respondent
Ms. Christine Kahwa for the 2nd respondent
Appellant present.

**Court:**
Judgment delivered in open court.

**Yorokamu Bamwine**
**JUDGE**
**27/05/2010**