

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**HCT-00-CV-MC- No. 0074 OF 2012**  
**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**AND**  
**IN THE MATTER OF**

**HON. JUSTICE ANUP SINGH CHOUDRY ::::::::::::::::::::::::::::::::::: APPLICANT**

**- VERSUS -**

**ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. MR JUSTICE V.T. ZEHURIKIZE**

**RULING:-**

The applicant, a Judge of the High Court of Uganda brought this application under section 24 (2) (b) of the Judicial Service Act, sections 33, 36, 38, 41 and 42 of the Judicature Act, order 52 rules 1 and 3 of the Civil Procedure Rules and any other enabling provision of the law.

The application seeks for the following orders:-

- 1. That a declaration be made that the Judicial Service Commission's report made on 2/7/2009 regarding the applicant is null and void.**
- 2. That an order of certiorari issues to quash the said Judicial Service Commission's report.**
- 3. That an order of prohibitions issues to stop the Judicial Service Commission from enforcing and taking any further action premised on the respondent's report.**
- 4. That provision be made for costs of this application.**

The application is founded on the following grounds namely:-

- (1) That the applicant was notified by the Chairman of Judicial Service Commission that a complaint had been lodged against his person regarding fitness to sit as a Judge of the High Court of Uganda.**
- (2) That the applicant filed a written response with the Judicial Service Commission.**
- (3) That to date, the Applicant still awaits a hearing date where he may cross-examine the complainants and also present his defence pursuant to Article 42 and 44 (c) of the Constitution.**
- (4) That the Respondent has never been summoned by the applicant to cross-examine the complainants or defend himself pursuant to S.11 (b) Judicial Service Act, Cap. 14.**
- (5) That the Applicant was notified on 5<sup>th</sup> April 2012 by a communication from the Principal Judge that a petition had been filed by few members of the Uganda Law Society in the Constitutional Court to compel His Excellency the President of the Republic of Uganda to appoint a Tribunal to investigate the Applicant on recommendations of the Judicial Service Commission.**
- (6) That Applicant upon perusing the copy of the Constitutional Court Petition, came to learn that the Commission without giving the Applicant any hearing, had already arrived at a conclusion and issued a report adverse to the Applicant.**
- (7) That the Applicant has to date never been told of the reasons for the decision of the Commission contrary to S. 11 (d) Judicial Service Act, Cap. 14 and Article 42 of the Constitution.**
- (8) It is just, fair and in the interest of justice that this application is allowed in favour of the Applicant.**

The application is supported by the affidavit of the applicant which is quite detailed. But the salient averments in this affidavit are that on 5/12/2008 he received communication from the Judicial Service Commission (JSC) enclosing a complaint from the Uganda Law Society to which he responded.

He contends that since the filing of his response and complaint regarding the impartiality of the Chairman of the JSC the Hon. Retired Deputy Chief Justice Seth Manyindo and Prof. Fredrick

Ssempebwa a member of the Commission, he has to date been waiting for the summons by JSC to attend a hearing wherein he can cross-examine the complainants and also present his side of the case.

It is his case that he only came to know that the JSC had taken a decision advising the President of Uganda to appoint a Tribunal to investigate him when he received a memo from the Hon. The Principal Judge dated 5/4/2012 informing him that the Uganda Law Society (ULS) had filed a Constitutional Petition against the Attorney General seeking orders directing His Excellency the President to appoint a Tribunal pursuant to the Judicial Service Commission recommendations.

That upon reading the Constitutional Petition No. 11 of 2012 ULS Vs Attorney General he realized that a lot of correspondences had been going on without being given a copy of the correspondences.

He averred that to date he has never been notified of the decision taken so far by the JSC.

That the acts and omissions of the JSC will result in a substantial miscarriage of justice.

The respondent filed an affidavit in reply through one Kagole Expedito Kivumbi, the Secretary of the Judicial Service Commission. The gist of his affidavit is that the JSC received a complaint from the Uganda Law Society and undertook investigations.

That following the inception of the complaint by the ULS the Commission did on 5/12/2008 ask the applicant to comment on the Findings/Decisions of the Court of England on matters raised by the ULS.

That the applicant replied by asking for details of the complaints, the judgment, press reports and questioning how documentation against him was procured.

He concluded averring that the applicant was accorded fair and impartial treatment in the conduct of the complaint against him.

The brief background to this matter as far as I can gather from the pleadings on record is as follows:-

The applicant is a Judge of the High Court of Uganda. The Uganda Law Society made a Petition to the Judicial Service Commission to formally request the appointing authority to rescind the applicant's appointment as a judge or to advise him to step down.

The reason for the request was that the applicant had been struck off the roll of solicitors in England following a ruling against him by the solicitors' Disciplinary Tribunal of England.

As a result the Uganda Law Society was of the view that the applicant is not a fit and a proper person to hold the office of a High Court Judge in Uganda.

The Chairman Judicial Service Commission communicated this complaint/petition to the applicant for his comments.

The applicant responded by his letter of 5/1/2009. This was followed by other subsequent correspondences which I will refer to later in this ruling.

Eventually the Judicial Service Commission made their representation to the President in accordance with the provisions of article 144 (4) of the Constitution.

It appears the President delayed in appointing the Tribunal which prompted the Uganda Law Society to file a Constitutional Petition No. 11 of 2012 for an order that he complies with the above constitutional obligation.

It is contended by the Applicant that he was not aware that the JSC had made presentation to the President until when he perused the Constitutional Petition by the ULS which was attached to a memo from the Principal Judge.

It is this discovery that prompted the applicant to file this application.

At the hearing of this application the applicant was represented by Mr. Jimmy Muyanja while the respondent's counsel was Mr. Henry Oluka the Learned Principal State Attorney.

In his submission counsel for the applicant asserted that the communication by the chairman JSC dated 5/12/2008 could not have been influenced by the complaint in the letter of the President of Uganda Law Society which is dated 17/12/2008 but rather by a letter written by Prof. Ssempebwa dated 14/11/2008 and yet Prof. Ssempebwa is a Commissioner with the JSC.

It was further his contention that the letter of 5/12/2008 (Annexure 'A') was not a complaint under the Judicial Service Act and rules made under it. That it did not satisfy the requirements spelt out under Judicial Service Regulations No. 87 of 2005.

He asserted that the law applicable in the matter is the Judicial Service Act and regulations made there under and article 150 (2) of the Constitution which provides that parliament may make laws for regulating and facilitating the discharge by the President and the Judicial Service commission of their functions under this chapter.

In a summary it was counsel's view that the applicant was not accorded a fair hearing and that the whole process was in violation of the applicant's rights under S. 11 (b) & (c) of the Judicial Service Act.

Counsel emphasized that Prof. Ssempebwa acted both as a complaining advocate and as a Commissioner while the Attorney General who also sat as a Commissioner was at the same time an advisor to the President on this matter.

It was his view that these two Commissioners were therefore disqualified to sit in his client's case thereby leaving the JSC without a quorum and therefore the Commission could not proceed with the matter in view of the provisions of S-9 (b) of the Judicial Service Act which requires at least six members present to be able to make any decision.

It was counsel's view that the participation of the Attorney General and Prof. Ssempebwa in this matter was in contravention of S12 (1) and (2) of the Judicial Service Act because the JSC failed to address the applicant's objection against the said two Commissioner's on ground of bias and conflict of interest.

It is further counsel's contention that the JSC's recommendation to the President was pre-mature in that the applicant was not notified of the decision.

That if the applicant had been notified of the decision referring the matter to the President, he would have been able to seek legal relief to test the veracity of the decision before it was tabled before the President.

It was counsel's view that the JSC's conduct violated the provisions of the Judicial Service Act which are a reflection of the norms set out in articles 28 (1), 42 and 44 (c) of the Constitution which are to the effect that whenever a decision is made the subject is vested with the rights to seek legal redress against the decision. That the applicant was denied this right in this case.

In a bid to fortify his point Mr. Muyanja cited *Fox Odoi Oywelowo & another Vs Attorney General (Constitutional Petition No. 8 of 2003)*. He prayed that the application be allowed.

In reply the learned Principal State Attorney made opening remarks to the effect that this matter is of great public and judicial importance, as court is requested to determine whether a Judicial Officer upon whom a complaint involving moral turpitude of that officer can be determined by this court.

It was further his view that this application seeks to deny the complainant i.e. ULS and the people of Uganda an opportunity to have an investigation by a tribunal into the conduct of a judicial officer.

Counsel pointed out that the JSC acted under article 147 (1) (d) of the Constitution where its function is to receive and process people's recommendations and complaints concerning the Judiciary and the administration of justice and generally to act as a link between the people and the Judiciary.

That in this case the complaint was received from the ULS relating to the conduct of a Judge and that the disciplinary action can only be handled under the provisions of article 144 of the Constitution.

He clarified that the duties of the JSC, on receiving complaint that the applicant is not a fit and proper person to hold the office of a Judge of the High Court owing to the fact that he filed bogus claims while a Solicitor in the United Kingdom leading to being struck off the role of Solicitors were as follows:-

- (1) To receive the complaint.**
- (2) To analyze it.**
- (3) To gauge it in its discretion as the supervisory body whether such complaint merits further investigation and if so to bring particulars of the complaint to the applicant.**
- (4) To internally investigate the merit of such complaint.**

It was counsel's view that S. 11 (a) of the Judicial Service Act applies to Judicial Officers of the caliber of the applicant. He contended that the respondent in the affidavit in reply has shown that the applicant was given particulars of the case against him by the Commission thereby acting well within the provisions of article 147 (1)(d) of the Constitution.

He emphasized that the applicant was at all times aware of the conduct of the Commission in processing the complaint lodged with it by the ULS as evidence by various correspondences.



The principal State Attorney contended that a fair hearing can only be granted at the stage of a Tribunal proceedings. That the duty of the JSC was to receive and process the complaint, analyze and decide whether to make a recommendation to the President or not.

On the complaint that Prof. Ssempebwa was both an advocate and Commissioner, counsel contended that this is permitted under the provisions of article 146 (2) (c) of the Constitution. That he represents a Constituency of the ULS. He argued that the applicant had not proved any act of bias on Professor Ssempebwa's part.

As regards the Attorney General who is a member of the JSC and at the same time being a person that would convey the decision that the President appoints a tribunal, counsel explained that the Attorney General is a Principal Legal Advisor to Government under article 119 of the Constitution and that under article 146 (3) he is an ex-officio member of the Commission. That in this case the Attorney General was simply performing his duties and there was no bias.

In conclusion counsel contended that the acts of the Commission were not ultra vires the Judicial Service Act or the Constitution. He prayed that the application be dismissed.

In rejoinder Mr. Muyanja for the applicant insisted that it has not been shown that there was a complaint before the Commission as of 5/12/2008. He explained that every Commissioner takes an oath to render service and does not represent a Constituency.

I have considered submissions by both counsel and the pleadings on record. The gist of the applicant's complaint in this application is that:

- (a) There was no complaint properly before the JSC.
- (b) That applicant was not accorded a hearing as envisaged under S.11 of the Judicial Service Act.
- (c) That there was bias and conflict of interest.

**COMPLAINT AGAINST THE APPLICANT:**

The complaint by the Uganda Law Society was expressed in clear terms by Justice S.T. Manyindo Chairperson – Judicial Service Commission in his letter to the applicant dated 5/12/2008. The letter states in part:

***“RE: RULING AGAINST YOU BY THE SOLICITORS’ DISCIPLINARY TRIBUNAL***

***The Commission received from the Uganda Law Society, documents relating to your trial by the Solicitors’ Disciplinary Tribunal of England and Judgment of the Supreme Court of Appeal (Civil Division). Copies of the same are enclosed.***

***The Commission considered the contents of those documents and decided that you be asked to comment on the decisions of the court and tribunal as they are quite serious.”***

In my view the above letter disclosed a clear complaint against the applicant. It was that the Uganda Law Society had submitted documents disclosing a ruling against him by the Solicitors Disciplinary Tribunal of England and judgment of the Supreme Court of Judicature Court of Appeal. Copies of the decisions against him were enclosed.

It is immaterial that by letter of 17/12/2008 the President ULS wrote to the Secretary JSC raising the same issues.

It is clear to me that the Commission had earlier on received the complaint. This explains why by letter of 14/11/2008 Frederick Ssempebwa in his capacity as a Commissioner directed the Secretary JSC to place on the agenda the complaint regarding the applicant.

He was clear in his letter when he said

***“Please find herewith the information obtained by the Uganda Law Society on the conduct of His Lordship as Solicitor in the United Kingdom.”***

From the above correspondences it is obvious that the complaint against the applicant was not raised for the first time by the President of the ULS in the letter of 17/12/2008 which was some 12 days after the complaint had been brought to the attention of the applicant by letter of 5/12/2008.

Prof. Frederick Ssempebwa cannot be regarded as the complainant on behalf of ULS, as counsel for the applicant wanted this court to believe in a bid to cast him in bad light. His letter to the Secretary was clear that there was information from the ULS regarding the conduct of the applicant, and he simply wanted the matter to be placed on the agenda for deliberation.

In these circumstances I have no difficulty in finding that there was a complaint before the Commission against the applicant to which he responded by his letter dated 5/1/2009 and that of his lawyer one Peter Carter QC.

All the above correspondences are attached to the applicant’s application.

**FAIR HEARING:**

In his affidavit in support of the application the Applicant averred that the JSC arrived at the decision which they communicated to the President without summoning him to attend the hearing; that he was not availed the opportunity to cross examine the complainants or availing him the opportunity to defend himself.

Counsel for the applicant argued very assertively that his client was entitled to a fair hearing pursuant to the provisions of S. 11 of the Judicial Service Act which states:

***“Rules of natural Justice.***

***In dealing with matters of discipline, and removal of a judicial officer, the commission shall observe the rules of natural justice; and, in particular, the commission shall ensure that an officer against whom disciplinary or removal proceedings are being taken is –***

- (a) informed about the particulars of the case against him or her;***
- (b) given the right to defend himself or herself and present his or her case at the meeting of the commission or at any inquiry set up by the commission for the purpose;***
- (c) where practicable, given the right to engage an advocate of his or her own choice; and***
- (d) told the reason for the decision of the commission.***

On the other hand while counsel for the respondent conceded that S. 11 (a) of the Act was applicable to the applicant as a Judge, he however contended that he was entitled to a hearing only before a Tribunal to be appointed by the President under article 144 (4) of the Constitution.

I have carefully considered counsel’s submissions on this point. In view of the relevant provisions of the Constitution I find that S. 11 of the Judicial Service Act does not apply to disciplinary proceedings against a Judge of the High Court, like the applicant.

The Judicial Service Commission has as one of its functions to advise the President on appointment, confirmation and removal of a Judge. It has no power to do any of those acts apart from advising the President.

Article 147 (1) (a) of the Constitution provides:

***“147 (1) The functions of the Judicial service Commission are:***

- (a) to advise the President in the exercise of the President’s power to appoint persons to hold or act in any office specified in clause (3) of this article, which includes power to confirm appointments, to exercise disciplinary control over such persons and to remove them from office”***

The offices specified in Clause 3 of the said article 147 are:

- “(a) the office of the Chief Justice, the Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, a Justice of Appeal and a Judge of the High Court; and***
- (b) the office of Chief Registrar and Registrar”***

Article 148 of the Constitution makes a clear distinction as to which persons the Judicial Service Commission can exercise powers of appointment and disciplinary control. It specifically excludes offices which the applicant is one of the holders. Article 148 provides:

***“Subject to the provisions of the Constitution, the Judicial Service Commission may appoint persons to hold or act in any judicial office other than the offices specified in clause (3) of the article 147 of this Constitution and confirm appointments in and exercise disciplinary control over persons holding or acting in such offices and remove such persons from office.”***

The role of the Judicial Service Commission in the process of removal of a Judge is to make a presentation to the President that a question for the removal of a Judge has arisen and that he

should appoint a tribunal to conduct the investigations within the meaning of article 144 (4) of the Constitution.

The procedure to be followed by the Commission before coming to the conclusion that the question for removal of a Judge has arisen to warrant advising the President to appoint a tribunal is not specifically provided by law. Further, as far as I know, this type of application is the first of its kind in this jurisdiction thus there is no precedent from which this court can draw guidance.

According to counsel for the applicant the procedure to be followed is as detailed in S.11 of the Judicial Service Act. In view of the aforesaid Constitutional provisions, the procedure under this section is clearly for disciplinary proceedings for judicial officers over which the Judicial Service Commission has jurisdiction to discipline and or remove.

According to counsel for the respondent the role of the Commission is to receive and process the complaint, analyze it and decide whether such complaint merits further investigation and if so bring particulars of the complaint to the applicant and also internally investigate the complaint.

It was further his view that S. 11 (a) of the Judicial service Act applies.

I am inclined to agree with counsel's proposition save the invocation of S. 11 (a) of the Act which as I have already found is not applicable.

The office of a judge is a protected one. He or she enjoys the security of tenure. A judge may be removed from office only for the grounds specified under article 144 (2) of the Constitution

otherwise he/she is supposed to keep his/her office until he/she reaches the retirement age. His or her remuneration cannot be varied to his or her disadvantage.

These and other protections are intended to maintain the independence of the judiciary as a separate organ of Government and the independence of Judges as individuals. Judges will only be strong pillars in the maintenance of the rule of law and proper administration of justice if they are protected from threats of arbitrary removals from their office, among other things.

It follows therefore that there must be a process undertaken by the Judicial Service Commission before reaching a decision that the question for the removal of a judge has arisen to warrant making a presentation to the President under article 144 (4).

Although there is no prescribed procedure to be followed by the Commission, I am of the humble view that the commission must adopt such a procedure that would enable it observe the principles of natural justice which are so fundamental in any decision making process.

The right to a fair hearing is entrenched in our Constitution. Article 44 (c) provides:

**“44. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-**

- a)** .....
- b)** .....
- c) The right to fair hearing;**
- d)** .....

Further article 42 provides that any person appearing before any administrative official or body has a right to be treated justly and fairly.

The right to a fair hearing and fair treatment is so fundamental that it must be observed at all times in decision making process even if no procedure is prescribed.

The affected Judge, as in the instant case, must be accorded a fair hearing. He must be informed clearly of the complaint against him or her and be required to respond.

I am strengthened in this view by a persuasive authority from the High Court of Kenya which was availed to me by counsel for the applicant i.e. ***Republic of Kenya Vs The Chief Justice of Kenya and 6 others [2005] 2 EA 250.***

Following what is popularly referred to as the ***RINGERA COMMITTEE*** the applicant was suspended from the exercise of his duties as a Judge of Appeal and a Tribunal to investigate his conduct was appointed.

He applied for Judicial Review seeking orders of certiorari and prohibition.

The respondents are the Chief Justice who is a chairman of the Judicial Service Commission, while the rest of the respondents are the chairman and members of the Tribunal that was investigating him. In fact the 7<sup>th</sup> respondent was counsel to the Tribunal.

Many issues were raised, but for our purpose, the relevant issue is whether the Chief Justice as chairman of Judicial Service Commission was under duty to extend and did extend an opportunity to the applicant to question the complaint leveled against him and to put his side of the story before a representation was made to the President.



Section 62 (4) & (5) of Kenya Constitution is similar to article 144 (4) of our Constitution save that for Kenya it is the Chief Justice as Chairman of the Judicial Service Commission who represents to the President that the question of removing a judge ought to be investigated.

In answer to the above issue the court had this to say:

***“The intention of Parliament was to afford the Judge the dignity of office to enable him perform his duties and that the security of his office can only be lost through a machinery known under our laws..... As stated the Constitution lays the framework upon which the removal of a judge may be investigated, the rules of procedure is left to the Judicial Service Commission in the first stage. The successive steps must not be considered separately but also as a whole. The question must always be whether looking at statutory procedure as a whole, each separate step is fair to the persons affected.”***

I wish to observe that in the removal of a Judge in Uganda, there are two steps. The first is consideration by the JSC of the question whether the removal of a judicial officer should be investigated. The second stage is the investigation by a Tribunal appointed by the President.

The court went further and stated:

***“In our understanding the role of the JSC is to determine whether the act complained about is of the nature and degree to qualify as misbehavior, misconduct or unethical sufficient to set the process that may lead to the adverse representation being made by the Honourable Chief Justice to the President. We also add that another critical function of the JSC is that upon receipt of an allegation of misbehavior or misconduct of a judicial officer, it is to evaluate it in order to ascertain whether it should be advanced to the next stage, the act of removal exercise of a judge under section 62. Looked at objectively, the JSC by a careful and thorough examination of the facts is required to extract what the issues have been and the material facts found in***

*relation to the complaint and considered germane to a proper and balanced exercise of the JSC's decision to make or not to make an adverse representation to the President that the question of removing a judge from office ought to be investigated. Such an examination would in our view, include seeing and hearing the complainant and the judge separately for that would serve to inform and enhance a balanced and proper evaluation of the circumstances that has arisen which is likely to lead to removal of a Judge.”*

After stating the need for affording the affected judge a fair hearing and studying some of the contents in the **Ringera** report court went ahead to say:

*“It may not be clear under section 62 that the applicant is not entitled to a hearing prior to representation to the President. However, we think the representation is such a grave and serious matter with severe consequences of likely to remove a judge from office. Therefore it is mandatory for the judge to be given a hearing either by the JSC or by the Chief Justice before a representation was made to the President .... We are saying so because Judges operate in a crucible controversy where emotions run high, the ambiance is often hurried, adversarial, confrontational and the inevitable disappointed side or perhaps both sides is deep and personal. We also state that the sensitive nature of litigation in this country make it apparent that real or feigned outrage can be a reaction to thoughtless or relatively harmless comment. In that regard Judges are perused vigorously by men and women who delight in taking aim at judicial targets to lead to public trial which is intended and or calculated to disturb judicial independence. It therefore seems correct to hold that judicial office holders' participation in the initial stages of the disciplinary process as a precondition to be observed prior to the decision to make or not make the adverse, representation to the President.*

*The Judge ought to be heard by the JSC prior to the commencement of the removal exercise.”*

I totally agree with the above view because failure to accord a fair hearing would make Judges vulnerable to all forms of malicious allegations which on the face of it and without hearing the Judge might appear more credible than the Gospel.

In holding the way they did, the High Court of Kenya had in mind the decision in ***Evan Rees & others Vs Richard Alfred Crane, Privy Council Appeal No. 13 of 1993 delivered on 14/2/94.***

It was an appeal from the Court of Appeal of Trinidad and Tobago.

This is a Judgment of the Lords of Judicial Committee of the Privy Council which was availed to me by counsel for the applicant. I find it highly persuasive.

I will make a few references to it.

The brief facts were that the respondent had been a Senior Judge of the High Court of Trinidad and Tobago.

The original application form was for Judicial Review, inter alia, on the ground that the decision of the Commission to represent to the President that the question of removing the Respondent from the office ought to be investigated, being ultra vires, should be quashed and the Commission be prohibited from representing to the President that such question ought to be investigated.

On what the Commission is expected to do before making representation to the President, their Lordships had this to say:

***“It is also in their Lordships’ view clear that the Commission is not intended simply to be a conduit pipe by which complaints are passed on by way of representation. .... The Commission before it represents must, thus, be satisfied that the complaint has prima facie sufficient basis in fact and must be sufficiently serious to warrant representation to the President, effectively the equivalent of impeachment proceedings. Both in deciding what material it needs in order to make such a decision and in deciding whether to represent to the President, the Commission must act fairly.”***

I find their Lordships’ view above quite persuasive and adequately applicable in our situation in Uganda.

The question whether the removal of a judicial officer should be investigated under article 144 (4) of the Constitution is by its nature a decision arrived at by the JSC.

In arriving at such decision and referring the matter to the President with the advice that he or she should appoint a tribunal, the JSC must observe the principles of natural justice in obedience of the provisions of article 44 (c) and 42 of the Constitution.

They are not a conduit through which complaints are referred to the President to appoint the tribunal to investigate the matter.

In order to act fairly the Commission is obliged to investigate and study the complaint. If they find there is substance in the allegations, the affected Judge should be given ample opportunity to respond to the allegations leveled against him or her.

The Judge should be confronted with all the relevant materials in support of the complaint so that he can adequately make a response.

Their Lordship in *Evan Rees (supra)* had this to say on the mode of hearing to be accorded to the Judge.

***“He ought to have been told of the allegations made to the Commission and given a chance to deal with them – not necessarily by oral hearing, but in whatever way was necessary for him reasonably to make his reply.”***

I agree. I have already held that the provisions of S.11 of the Judicial Service Act which envisages oral hearing where witnesses can be cross-examined does not apply to the instant case.

There is no procedure prescribed by law which the JSC is obliged to follow and equally there is no law prohibiting them from observing the cardinal safeguards under article 42 and 44 (c) of the Constitution.

Therefore the Commission would be entitled to adopt its own procedure depending on the nature of the complaint before them, but bearing in mind that no party should be condemned without a hearing.

They can conduct an oral interview with the Judge if in their wisdom that would be the best way to hear his or her side of the case, but a written response would suffice.

The Commission is not obliged to call and swear witnesses to be cross-examined by the affected Judge as the applicant asserts. This is not a trial but an investigation to enable the Commission make an informed decision.

They are not expected to conduct an inter party hearing at this stage. All that is necessary is that they have carefully studied the complaint and come to the conclusion that this is a proper case where reference should be made to the President with advice that he/she appoints a tribunal to investigate the conduct of a Judge.

In the instant case, upon receiving a complaint from the Uganda Law Society the chairperson Judicial Service Commission wrote to the Applicant about the complaint and enclosed copies of the ruling against him with the request to respond.

The applicant's first reaction in his letter of 5/1/2009 (annexture "C" to his affidavit) was to seek for certified copies of the judgment and tribunal decision. He also demanded for certified copies of proceedings. He made some other demands.

However attached to the applicant's affidavit I have found a detailed explanation written by the applicant's counsel one Peter Carter QC.

It is by letter of 19/6/2009 written to Hon. Justice S.T. Manyindo Chairperson Judicial Service Commission. It raises both factual and legal issues in defence of the applicant.

Further, according to paragraph 5 of his affidavit the applicant filed a response on 2<sup>nd</sup> and 9<sup>th</sup> July to the Judicial Service Commission mainly complaining about the composition of the Commission.

The letter of 9/7/2009 states in part as follows:

***“I refer to my letter of the 2<sup>nd</sup> July and enclosures and enclosed the same herewith for your ready reference. I am aware that you will be writing a report following my response.*”**

***I will be grateful if you will exhibit my letter of 2<sup>nd</sup> and the enclosures and state that I have complained about the Judicial Service Commission not being impartial in considering my response in view of the presence of the above Commissioner who ought to have been disqualified.”***

The above letter is attached to his affidavit. Also equally attached as an affidavit sworn by Mr. Uruhimis Antoniou Orphanou and another letter written by Jonathan Crystal. These are also in defence of the applicant.

From the above correspondences and presentations I find that the applicant used the opportunity availed to him to state his side of the case.

This court is not concerned with determining whether in view of his defence on record the Commission should not have referred the matter to the President under the said article 144 (4) of the Constitution.

In deciding a Judicial Review application, the court is not concerned with the merits of the decision in respect of which the applicant is made. It is more concerned with the lawfulness of the decision making process.

The merits of the applicant's response can be appropriately addressed by the Tribunal. I find that in the circumstances of this case the applicant was afforded a fair hearing. The case against him was stated and details were to be found in the enclosed judgments and he made a response through his lawyer.

I will now proceed to the issue of bias.

**BIAS:-**

The allegation of bias on some of the members of the Commission is brought out in paragraphs 5 and 6 of his affidavit in support.

The first attack is directed to the Hon. Retired Deputy Chief Justice Seith Manyindo who was the Chairman of the JSC.

The complaint against him is that he is an uncle to one William Byaruhanga a partner in Kasirye, Byaruhanga & Co. Advocates whom he believes are behind the petition against him because he handled a case where they were disgruntled.



It may or it may not be true that the said firm of lawyers were prompted to file this complaint after the Judge/applicant passed an unfavourable decision against their client.

If it is true it is most unfortunate. But what I find wanting is that the chairman of the Commission would automatically be biased because he is related to one of the partners in the firm. I find no foundation for this allegation or suspicion. This claim was not made in good faith. The applicant should have looked for better grounds in his defence. I do not see any basis or likelihood of bias on the part of the Chairman JSC.

The second attack was directed at Prof. Frederick SSsempebwa. It is contended that he was biased because while a member of the Commission he participated in the Uganda Law Society proceedings in which the case against the applicant was discussed.

Further that he wrote a letter of 14/11/2008 (annexture "F" to the applicant's affidavit) in which he directed the Secretary of JSC to place the complaint against the applicant from the Uganda Law Society on the agenda of the next meeting, on his firm's headed paper.

Counsel for the respondent explained, and I agree with him, that Prof. Frederick SSsempebwa is a member of the Commission by virtue of the provisions of article 146 (3) (c) of the Constitution.

Mere direction to the Secretary Judicial Service Commission to put the complaint on agenda cannot raise even suspicion that this Commissioner was biased.

It is immaterial that the letter was written on his firm's headed paper. Apparently he had nothing to hide. He only wanted the matter to move forward.

There was a complaint against the Attorney General. As explained by the Learned Principal State Attorney, the Attorney General is an ex-officio member under clause 3 of article 146. He is at the same time Principal Legal Adviser of Government under article 119 (3).

The mere fact that he exercises these two Constitutional roles cannot render him biased or put him in a position of conflict of interest.

Allegations of bias are serious matters which should not be raised merely to make the Commission fail to execute its duties. Clear evidence should be brought out before a member of the Commission or even of other bodies can be required to disqualify himself or herself from sitting in the matter.

Consequently I find that the Commission was properly constituted when it took the decision that it did. The allegations of bias and conflict of interest leveled against the aforesaid members were baseless and I believe were made in bad faith.

Lastly the applicant complained that he has never been notified of any decision taken so far by the JSC nor given reasons thereof.

This complaint appears to be genuine. There is no evidence that the JSC communicated to the applicant that a decision had been taken that his removal from office be investigated.

In my view the applicant who is a Judge and has been delivering decisions legitimately expected to be informed of the outcome of the Commission's investigation of this matter.

It was necessary that he be supplied with a copy of the decision that was presented to the President with the advice that he should appoint a tribunal.

The decision appears to have been taken in July 2009. It is now 3 years since then. He should not have been left in the dark for all this time. He was entitled to know what lies ahead so as to prepare himself. This was an error on the part of the Commission. But it was not so fundamental as to invalidate the decision.

It is hoped that the Tribunal, if set up, will avail the applicant all the required material to enable him prepare his defence.

It is hoped that in future such an omission will be avoided by the JSC.

In conclusion having found that there was a clear complaint before the Commission, that the applicant was afforded an opportunity to state his side of the case which he did, and that there was no bias on part of any of the Commissioners, I find no merit in this application. It is hereby dismissed.

I make no order as to costs.

**Dated 5<sup>th</sup> day of July 2012**

**VINCENT T. ZEHURIKIZE**

**JUDGE**