

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**AT SOROTI**

**HCT-09-CV- MA. 001/2011**

**CHARLIS ALIR .....APPLICANT**

**VERSUS**

**KOTIDO DISTRICT LOCAL GOVERNMENT.....RESPONDENT**

**BEFORE: HON. JUSTICE MUSOTA STEPHEN.**

**RULING**

Through M/S Alaka and Co. Advocates, the applicant Charles Alir filed this application for Judicial Review by way of Notice of Motion under the law cited.

The reliefs sought are:-

- a. Quashing by way of Certiorari the decision of the 2<sup>nd</sup> Respondent interdicting the applicant and making him handover his office as communicated to the applicant on 8<sup>th</sup> and 15<sup>th</sup> day of January, 2009.
- b. in the alternative an injunction be issued restraining and stopping the District service Commission of the 2<sup>nd</sup> Respondent from carrying out any disciplinary measures against Charles Alir, the applicant basing on his interdiction.
- c. Judicial Review by way of declaration that the interdiction of the applicant is null and void and unlawful.
- d. Judicial review for damages caused to the applicant as a result of the inconvenience mental torture, trauma and shock as a result of the actions of the Respondent.
- e. Costs be provided for.

The grounds of this application are that:-

1. The applicant is the internal auditor of the 2<sup>nd</sup> respondent and has substantial interest in this application.
2. On 24<sup>th</sup> December, 2008 after the 2<sup>nd</sup> respondent's end of year party, the applicant with some friends continued to make merry at the venue of the party called Nameu Palace Pub in Narikapiripirit ward, Kotido Town Council.
3. At around 05.40 a.m. as the applicant contemplated to go home, one Grace Atoo the Vice Chairperson of the 2<sup>nd</sup> Respondent in the company of the Chief Administrative Officer staggered in a drunken stupor towards the applicant.
4. The said Grace who at one time was a girl friend to the applicant's brother tried to pass over some information through the applicant to the applicant's brother. The applicant declined upon which the said Grace Atoo who was drunk started hurling insults at the applicant whereupon the Chief Administrative Officer joined and started assaulting the applicant by boxing him at his left eye and on the head upon which the applicant lost consciousness and sustained orbital injury and grievous Harm.
5. That when the applicant regained consciousness the Chief Administrative Officer Kotido ordered a mob to lynch the applicant and ordered his body guard to shoot at the applicant and the body guard fired shots which missed the applicant by a whisker.
6. That the applicant was rushed to Kotido Diocesan Development Health Centre 3 for treatment.
7. Further that unknown to the applicant, the Chief Administrative officer rushed to police and reported a case against the applicant whereupon the District Police Commander Kotido summoned the applicant and detained him for one night.
8. The applicant also reported a case of assault to police.

9. That on 8<sup>th</sup> January, 2009 the Chief Administrative Officer interdicted the applicant citing disrespectful and irregular conduct on his part which resulted into the embarrassment of the Vice Chairperson of the respondent basing on the events of 24<sup>th</sup> December 2008.
10. On 15<sup>th</sup> January, 2009 the Chief Administrative Officer communicated to the applicant to hand over his office and forcefully threw him out of office.
11. The applicant contends that the actions of the respondent was in bad faith motivated by biasness and was a blatant disregard of the principles of national justice and without fairness.
12. By assaulting the applicant and causing his detention and later interdicting him the Chief Administrative Officer violated the principles of natural justice.
13. The applicant further contends that the intention by the respondents Chief Administrative Officer to move the District service Commission to discipline the applicant might result into termination of his services yet the respondent's Chief Administrative Officer made his decision in error of law on the face of the record when he misinterpreted Chapter IFR (7) of the Uganda Government standing orders and used it unfairly.

Finally that the applicant has been humiliated, has lost self esteem, was psychologically tortured and has suffered damaged for the acts of the respondent which calls for the review of the respondents' decision by way of certiorari, prohibition, declaration and injunction as the decision to interdict the applicant is tainted with illegality is biased and in bad faith. That it was in error of law on the face of the record and disregarded the principles of natural justice.

The Notice of motion is supported by the affidavit of the applicant which echoes the grounds outlined above. It also had annexures relied upon by the applicant.

The respondent Kotido District local Government represented by M/S Egou – Engwau advocates filed an affidavit deponed by Mr. Andrew Leru its Chief Administrative Officer in reply and two supplementary affidavits in reply Ms Vicky Akello a business woman in Kotido and M/S Grace Oyugi the Vice Chairperson of the respondent.

In his affidavit, the Chief Administrative Officer refuted the claims by the applicant. He acknowledged however that there was a get together party attended by District Officials including the applicant but avers that the applicant was in the habit of fighting in public places including bars. That on the day of the party the applicant staggered to the vice chairperson asking to dance with her which she declined. Upon the decline the applicant unleashed obscene abuses at the Vice Chairperson and threatened to beat her up for rejecting the proposal to dance with him. The Chief Administrative Officer interven<sup>3d</sup> but instead the applicant attacked him in a brutal manner, over powered him prompting security guards to fire in the air forcing the applicant to flee. The Chief Administrative Officer denied that he ordered a mob to lynch the applicant. That is was the applicant who instead assaulted the Chief Administrative Officer and never lost consciousness. The Chief Administrative Officer disputed the authenticity of the applicant's medical form marked 3 which is dated 18 days after the alleged incident of 24. December, 2008.

The Chief Administrative Officer further deponed that he reported to police soon after the assault where he was given PF.3. That the applicant was charged with assault occasioning actual bodily Harm and the trial is ongoing. The Chief Administrative Officer further deponed that as a result of the applicant's misconduct an Urgent Executive Committee was called on 7<sup>th</sup> January, 2009 to address the unbecoming behavior of the applicant including criminal cases against him in courts of law. The committee did not deliberate on the matter

since they witnessed the fracas and decided to refer the matter to the District Service Commission. However, the Executive Committee directed the Chief Administrative Officer to interdict the applicant.

The Chief Administrative Officer further deponed that the applicant handed over office peacefully. That the actions of the respondent were legal and the best disciplinary option under the circumstance. That the applicant will be afforded a fair hearing before the District Service Commission and no final disciplinary action has been taken against the applicant. Further that the applicants' alleged humiliation and loss of esteem was self inflicted.

In the supplementary affidavit in reply by Ms. Vicky Akello she substantially supported the deponements by the Chief Administrative Officer for the respondent. She was the host of the party from which the matters before court arose.

In her supplementary affidavit in reply, Ms Grace Oyugi the Vice Chairperson also refuted the deponents by the applicant and substantially supported the averments by the Chief Administrative Officer. She inter alia annexed minutes of the meeting of the District Executive Committee of 7<sup>th</sup> January 2009, Annexure "K DLG - 7".

During the hearing of this application, both learned Counsel were allowed to file written submissions which they did but out side the time frame given. They were excused for this.

I have considered the application as whole. I have related the same to the law applicable. I have also studied and comprehended the respective submissions by learned Counsel. I will go ahead and decide this application as argued. Substantially what is being challenged in this application is the decision by the respondent' Chief Administrative Officer to interdict the applicant. It is this

decision that the applicant wants prohibited and quashed by way of certiorari. These are prerogative orders. The law relating to grant of prerogative orders was summarized ably in the celebrated case of **R v Electricity Commissioners Ex parte London Electricity** joint committee (1924) 1KB 171 that:-

*“Whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially acts in excess of their legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs”*

In Uganda the said decisions are subject to the controlling jurisdiction of the High Court. In the instant application the applicant has sought for an order of certiorari. Certiorari lies if a statutory tribunal or body acts without or in excess of jurisdiction. The issues this court has to decide is whether Kotido District Executive Committee at its sitting of 7<sup>th</sup> January, 2009 in which the applicant was interdicted acted without jurisdiction or exceeded its jurisdiction/mandate and/or authority in reaching the decision to interdict the applicant.

The other issue for determination is whether in interdicting the applicant Kotido District Executive Committee breached the basic tenets of natural justice namely that the applicant was not afforded a fair hearing from members who were biased and interested parties in determining his fate.

I will deal with the issues separately:-

**(1). Whether the Kotido District Executive Committee had jurisdiction to interdict the applicant or if so whether it exceeded the same.**

In his submission, Mr. Alaka stated that the powers to discipline civil servants in a district are not the preserve of the District Executive Committee. That this

power lies with the District Service Commission. He referred to Article 198 (1) of the Constitution and S.55 (1) of the Local Government Act.

Learned Counsel for the respondent did not agree and I agree with him. Article 180 of the Constitution establishes local Government Council which shall be the highest political authority within its area of jurisdiction – with executive powers. It consists of the Chairperson, Vice Chairperson and such number of secretaries as the Council may decide.

S.63 of the local Government Act establishes the office of Chief Administrative Officer for each District who is the head of the public service in the District. The Chief Administrative Officer is also the head of administration of the District Council and the accounting officer of the district. He is also the responsible officer who has control over Civil servants under his supervision. He therefore has authority to discipline errant staff before referring any matters to the District service Commission which is established under Articles 198 (1) of the Constitution.

I therefore agree with learned Counsel for the respondent that the District Executive Committee that met on 7<sup>th</sup> January, 2009 was properly constituted and had the mandate to deliberate on the issue concerning the indiscipline of the applicant. It rightly made directions referring the matter to the Chief Administrative Officer who is the head of the Civil service in the District to handle the issue in accordance with the law.

## **2. Whether the applicant was entitled to a hearing before being interdicted.**

According to Mr. Alaka, his client was not given a hearing in order to defend himself against the allegations against him. That the action of the Chief Administrative Officer interdicting the applicant was in blatant disregard of the

principles of natural justice and without fairness. That they were prosecutor and Judge all-in one since they were interested parties.

Learned Counsel for the respondent to the contrary.

In the instant case, it had not been denied that the applicant was charged with assault occasioning actual bodily harm. He is on trial for the said criminal charge. As a responsible officer; the Chief Administrative Officer is mandated to act against such an officer in accordance with the rules.

The rules and procedures in managing disciplinary control in the public service are enshrined in Article 173 of the Constitution and S.60 of the Local Government Act.

As rightly submitted by learned Counsel for the respondent the rules and procedures in managing disciplinary control in public service are operations malice by public service regulations. These provide that if an officer is arrested under the penal code act on allegations of having committed a felony he must be immediately interdicted under the appropriate legal provision for the public service (standing order (FR-6).

It is therefore mandatory that a responsible officer has to interdict a public servant who has been charged under the penal code Act. The law places the discretion to do so on the responsible officer. Interdiction may be invoked under circumstances enacted in S. 29 of the public service Act S.29 (1) provides that:-

*“(1) where a responsible officer considers that the public*

*interest requires that a Public Officer ceases to exercises*

*the powers and functions of his/her office he or she shall interdict the officer from exercising those powers and functions if proceedings for his or her dismissal are being taken or are about to be taken or if criminal proceedings are being instituted against him or her.”*



*(2). A public Officer who is interdicted shall receive such salary, not being less than half his or her salary, as the responsible officer shall think fit.*

Since there are criminal proceedings instituted against the officer then the responsible officer who is the Chief Administrative Officer had to interdict the applicant. This has been held to be the proper course of action in similar case of **Joel Cox Ojuko v Attorney General HMC 109/2004** which was an application for judicial review. The facts of that case were that the applicant being a public servant was summoned by police, charged and released on police bond over an allegation that he had committed a felony in the course of his employment. Before the Director of Public Prosecutions could consent to the applicants' prosecution, his immediate supervisor interdicted him pending submission of an interdiction memo to the Solicitor General. The applicant sued the Attorney General for Judicial review on the grounds that he was interdicted without being given a hearing. **Remmy Kasule J** (then) rejected the application for reasons I agree with that:-

*“It was in public interest that the applicant be interdicted while criminal investigations against him continue and/or The Director Public prosecutions decides upon the matter”*

*“.....it is also good sense and promotes a perception of justice that if a public officer makes him/herself to be a subject of criminal investigations and to be released on bond in connection with his duties of his/her public office, that such with his duties of his/her public office, that such*

*officer keeps away from his or her office until investigations are completed one way or the other”.*

“The applicant had opportunity to give his explanation to the police about the possible crimes the police was investigating, it is not necessary that before interdicting the applicant, the Solicitor General ought to have given another hearing to the applicant”.

The above decision applies to the circumstances of this case. From what I have gathered from the affidavit evidence in this application; the respondent lawfully directed the interdiction of the applicant. The interdiction letter was written by the Chief Administrative Officer of the respondent as is required. The applicant does not in any way complain about the manner in which the police investigations were conducted before he was charged. He does not say police did not act reasonably in arresting and interrogating him. Further to this the applicant does not deny he has criminal charges against him in Kotido Magistrate’s Court which were pending against him before interdiction.

As rightly submitted by learned Counsel for the respondent, the decision to interdict the applicant is not a dismissal but beginning of a disciplinary process. The applicant is still the Internal Auditor of the respondent. If cleared, he will be reinstated.

According to the Chief Administrative Officer, the disciplinary cases against the applicant have been referred to the Kotido District Service Commission which is the appropriate forum to handle the matter and will give the applicant the right to defend himself.

In my considered view, the interdiction of the applicant was lawful and within the law. Nobody acted in excess of authority in causing the interdiction of the

applicant. At this stage it is not a requirement that the applicant is given a hearing before being interdicted since police interrogated and charged him in court. When time comes, the applicant will be given a hearing by the District Service Commission. What was done to the applicant is standard disciplinary procedure to maintain sanity in the Civil Service.

The applicant has not on a balance of probabilities proved that the actions by the Chief Administrative Officer for the respondent were in bad faith or was motivated by bias, unfairness and/or disregarded the principles of natural justice. He acted as mandated under Cap. 1 F – r 6 of the standing orders.

Consequently, I will order that this application for Judicial review be and is hereby dismissed.

Since the applicant is still an employee of the respondent who is awaiting his fate, I will order that each party meets its own costs.

Stephen Musota,

JUDGE.

24/8/2012