

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE

HCT CIVIL MISC. APPLICATION NO. 20 OF 2011

**IN THE MATTER OF JUDICIAL REVIEW APPLICATION UNDER JUDICATURE
(JUDICIAL REVIEW) RULES 2009**

JAMES BASIIME :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

KABALE DISTRICT LOCAL GOVERNMENT:::::::::::::::::RESPONDENT

BEFORE HON. MR. JUSTICE J.W. KWESIGA

RULING

This Application by Notice of Motion was brought under Judicature (Judicial Review) Rules 2009 rules 2 to 10, Section 98 of the Civil Procedure Act, Sections 13, 33 and 36 of the Judicature Act and order 52 Rules 1, 3 and 5 Civil Procedure Rules. The Applicant seeks orders of PROHIBITION, MANDAMUS, CERTIORARI, plus exemplary damages and costs of this application.

Brief grounds of this application;

1. The letters of The Chief Administrative Officer (hereinafter referred to as CAO) of Kabale dated 26th July 2011 and 8th August, 2011 are invalid, null and void.

2. That the decision of demotion from the post of Head teacher to classroom from the post of Head teacher to classroom teacher is ultravires, un lawful and un reasonable.
3. That the decision contained in the said letter of demotion is viciated by error on the face of record.
4. That the decision is arbitrary, authoritarian, an abuse of discretion and oppressive.
5. That the applicant suffered damages, has been removed from pay roll, has been put to grave anxiety, mental torture, anguish, inconvenience and embarrassment.

The Application is supported by the Applicant's Affidavit with several annextures which shall be referred to in this ruling.

The Respondent, Represented by the Attorney General contested this Application, filed two affidavits, one of NTAHO FRANK (CAO) and KASUNGAKI BERNARD (Assistant CAO). The Applicants Advocate Mr. Murumba Wilfred and Mr. John Kalemera a State Attorney from Attorney General Chambers at Mbarara Regional Offices filed written submissions in support and against this application respectively which I have found helpful and I shall refer to them where appropriate.

BACK GROUND

The background of this Application needs to be set out from the pleadings before I deal with or refer to the issues and the Law

applicable. In 2000 (1st July, 2000) The Applicant was Deputy Head teacher Grade II Primary School by Kabale District Service Commission. Under minute 64/2000 (ii), under minute 164/2002 (iii) The Applicant was promoted to Head teacher Grade III (See Annexures 'C' and 'D' to the application).

On 19th July 2010 (see Annexure 'E') the Applicant was suspended on allegations of District Inspector of Schools of negligence of duty and absenteeism and on 3rd November, 2010, the Applicant was Demoted from Head teacher Grade II to class room teacher. From Evidence available his salary dropped to 273,000 for 333,100/= per month, a difference of Sh. 60,100/= per month.

From the Affidavit of Kasangaki Bernard (Assistant CAO) dated 9th December, 2011 which has annexure of District Service Commission (DSC) meeting held from 4th to 8th October, 2010, the Applicant was demoted under minute 70 of 2010 of that meeting. My reading of the minutes shows that Basiime James made submissions on the charges against him and he appeared before the DSC and verbally (orally) defended himself. The minutes contain a summary of the questions he was asked and the answers he gave after which the commission Resolved that:-

- (a) To rescind its decision of promotion of Applicant.
- (b) To Demote the Applicant.

(c) To subject him to supervision.

The Application and grounds of application set out above arise from the above facts. Section 14 of The Judicature Act relied upon by the Applicant gives this court unlimited original jurisdiction in all matters while section 33 of the same Act provides for the General remedies that this court is empowered to give. Section 36 specifically empowers this court to hear and grant Judicial Review Applications in the following terms.

Section 36 "(1) The High Court may, upon application for Judicial review, grant any one or more of the following reliefs in a Civil or Criminal matter.

(a) ***An order of mandamus, requiring any act to be done.***

(b) ***An order of prohibition, prohibiting any proceedings or matter.***

(c) ***An order of certiorari, removing any proceedings or matter into the High Court,"***

Section 36 (2) empowers this court to award damages in Judicial Review.

Mr. Kalemera, the State Attorney, representing The Respondent raised a preliminary objection on points of Law in his written submissions which, in my view, should be resolved before indulging in the merits or demerits of this application. The preliminary objections were state as follows:-

- (a) That the Application was filed out of time and therefore it should be struck out.
- (b) That the affidavit in support of the application is replete with falsehoods and should be struck out.
- (c) That the main order of certiorari prayed for is totally defective hence the application should be struck out.

Section 36 (7) of The Judicature Act (Cap 13) provides; * (7) An application for Judicial review shall be made promptly and in any case within 3 months from the date when the ground of the application arose, unless the court has good reason for extending the period within which the application shall be made."

The Judicature (Judicial Review Rules) 2009 under Rule 5(1) provides that an application for judicial review shall be made promptly and in any case within (3) three months from the date when the grounds of the application first arose unless the court considers that there is good reason for extending the period within which the application shall be made.

In my view the statutory provisions above require that for the application for Judicial Review to be valid must be filed not later than three (3) months from the date when the matters or grounds complained of or the cause of action arose. Failure to bring the application within time the Applicant should apply for extension of time which can only be granted by the applicant

showing good reasons. Alternatively, the judicial review application ought to contain good reasons which must be pleaded and be considered by court to satisfy itself that they are good reasons for the delayed application. The facts of this case show that this application was filed on 30th September, 2011. The Applicant was suspended from duty on 19th July, 2010 and on 3rd November, 2010, the Applicant was demoted pursuant to the hearing he was accorded by the District Service Commission which sat between 4th and 8th October, 2010. From the above dates and events it would be almost 9 months from the date of demotion to the date of filing this application. There is no doubt the application was filed beyond (3) three months without seeking courts indulgence to enlarge the time for this filing.

Mr. Murumba for the Applicant contended it was not until a letter dated 29th July 2011 headed STATUS IN THE SERVICE that the decision was communicated to the applicant and that time should start running from that date. The contents of the letter speak for themselves, the Applicant appears to have been confusing different officers avoiding the demotion and transfer he had already got and was aware of. My finding is that the Applicant knew of his suspension and demotion much earlier than this letter and in any case he had known of those matter more than 3 months before he filed the application in breach of the provisions of Section 36 (7) of The Judicature Act and Rule 5 (1) of The Judicature (Judicial Review Rules), 2009 which renders the

Application invalid and the only remedy is to order that it be struck off with costs to the Respondent.

Having decided that this application is invalid for reasons that it was filed out of time and there are no good reasons for, or application for extension of time to validate this application I will not indulge in examination of the substantive complaints because to do so would purely be an academic exercise that would not be resolving a live dispute between the parties.

Dated at Kabale this 21st day of September, 2012.

J.W. KWESIGA JUDGE

21/9/2012

In the presence of:

Mr. Basiime James Applicant present.

Mr. Murumba for Applicant absent.

Attorney General Representative absent.

Mr. Joshua Musinguzi- Court-Clerk.