

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

HCT-00-CV-MC-0057-2012

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:-

This application is brought under Rule 5(1) of Judicature (Judicature Review) Rules No.9 of 2009 sections 96, 98 of Civil procedure Act, Cap. 71, Order 51 rule 6 of the Civil Procedure Act, Judicial Service Act, Article 42 of the Constitution and any other enabling provisions of the law for orders that:

- 1. The time within to file an application for Judicial Review be extended for 14 days or other time deemed fit by this Honorable Court from the date of granting the orders sought in this application.**
- 2. Provision be made for the costs in this application. The application is supported by the applicant and founded on the following grounds:-**

- (a) That the applicant was not notified by the judicial Service Commission that it had indeed issued a report against him until 5th April 2012 when he read The Uganda Law Society Vs. Attorney General, Constitutional Petition No. 11 of 2012 which was attached to the memo from the principle Judge.***
- (b) That the applicant was denied a hearing contrary to article 28 of the Constitution and section 11 (a), (b) and (c) and section 12 of Judicial Service Act.***
- (c) That the applicant was not told the reasons for the decision of the Commission under section 11 (d) of the Judicial Service Act and Article 42 of the Constitution.***
- (d) That the applicant will suffer irreparable harm if the application is not granted.***

The detailed affidavit generally asserts that the applicant was never summoned by the Judicial Service Commission to attend the hearing or availing him the chance to cross-examine the complainants. It is his case that he only came to know the Judicial Service Commission had taken a decision advising the president for investigating when he received communication from the Principal Judge.

At the hearing of the application of the application Mr. Jimmy Muyanja appeared for the applicant while Mr. Henry Oluka the learned principal State Attorney was for respondent.

In his submissions Mr. Muyanja reiterated what is contained in the Notice of Motion the supporting affidavit. He clarified that upon reading the petition filed by the Law Society Commission on 2nd July 2009 had reached a conclusion on the Complaint against him but this was not communicated to him as required by section 11 (d) of Judicial Service Act.

Counsel further explained that the only remedy available to the applicant if he has any complaint against the Commission is to proceed by way of Judicial Review by virtue of section 24 (2) (b) of the Judicial Service Act.

Counsel for the applicant concluded by submitting that the respondent will not prejudice if extension of time is granted but the reverse would inflict harm arising from denial of a fair hearing by the Commission.

In reply Mr. Henry submitted that from the evidence on record the applicant at all times was aware of the process being undertaken within the meaning of Article 147 (1) (d) of the Constitution. That since the applicant replied to the complaint against him he was given a fair hearing in processing the complaint.

Lastly counsel submitted that the application was aware of the final decision of the Commission as evidenced by his letter of 1st November 2011. He prayed for the application to be dismissed.

I have considered submissions by both counsel and pleadings on record. In an application of this nature, the main consideration is whether there is good reason disclosed by the applicant to warrant extending the period within which the application shall be made. The reasons or reasons should account for the application enlargement of time is made.

Court would also be persuaded to grant the application in addition to the reason or reasons for the delay, the applicant demonstrates that prima facie the intended application for Judicial Review has chances of success.

In the instant case the applicant contends that he was not aware that the Judicial Service Commission had taken a decision advising the president to investigate the allegations against him.

It is his contentment that he learnt of the commissioner's decision on 5th April 2012 when he received a memo from the principal Judge to which was attached the Uganda Law Society's Constitutional Petition which disclosed that the Commission had made the decision as far back as 2nd July 2009. These averments are contained in the applicant's affidavit in support of his application.

There is nothing in the respondent's affidavit in reply to rebut the above averment save for a blanket statement in paragraph 8 of the affidavit in reply that

“it is not true that the applicant was kept in the dark...”

Instead in paragraph 7 of his affidavit Mr. Batanda Gerald for the respondent boldly stated that the Judicial Service Commission is not and was not obliged to notify the applicant of the correspondences it made to various authorities touching this matter. This, in my view, is admission that the applicant was kept in the dark.

From all the above I find that the Judicial Service Commission did not communicate to the respondent of their decision advising the president to investigate the complaint made against him.

This was good reason for the delay in making the application and consequently a good ground to allow this application.

On whether the intended application has chances of success, I would not delve into the merits or demerits of the matter despite the fact that both sides did slide into that area.

The gist of the applicant's case is that he was never summoned to attend the hearing and that he was never availed the chance to cross-examine the complaints.

Counsel for the applicant contended that the Commission acted in contravention of the provision of section 11 of the Judicial Service Act which provides:

“11. Rules of natural Justice.

In dealing with matters of discipline, and removal of 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 undertaken 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 purposes;***
- (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.***

The question that arises is whether the above provision is applicable where the Judicial Service Commission is acting under Article 144 (4) of the Constitution.

In other words, before the Commission refers a Judicial Officer to the president for investigation, what ground work is it supposed to have done?

- (a) Is the Commission expected to carry out an inquiry envisaged under section 11 of the Judicial Service Act? Or***
- (b) Is it expected to first carry out an investigation upon which it comes to the conclusion that the question for removal of a Judicial officer has arisen requiring reference of the case to the president to appoint a tribunal to investigate the matter?***
- (c) Once a complaint warranting the removal of a Judicial officer is brought to its attention and without doing any other thing the Commission can simply refer the matter to the president for investigation by the tribunal appointed by him?***

I find the above issued to be of great public importance to deserve consideration by this court.

Consequently, I find that this is a proper case in which the order sought should be granted.

The application is allowed. The applicant is given 14 days from today within which to file an application for Judicial Review of the decision of the Commission. There will be no order as to costs.

VINCENT T. ZEHURIKIZE

JUDGE

Ruling delivered by the Deputy Registrar this 24th Day of May 2012

