THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – MC – 017 OF 2023

KANIMI KAGANDA JOHN :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

NTOROKO DISTRICT LOCAL GOVERNMENT :::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The applicant brought this application under Sections 36, 37 and 38 of the Judicature Act and Rules 3 & 6 of the Judicature (Judicial Review) Rules 2009 as amended for orders that:

1. **A declaration that the respondent's decision to reduce the applicant's monthly salary from Ugx 6,500,000/= to Ugx 1,728,007/= is illegal, irrational, ultra-vires, null and void.**
2. **An order of certiorari quashing the said purported decision of the Respondent to reduce the Applicant's salary.**
3. **An order of Mandamus directing the Respondent to re-instate the applicant to the monthly salary of Ugx 6,500,000/= and fully pay all his salary deductions for the period he has spent on reduced salary.**
4. **An order of permanent injunction permanently prohibiting the Respondent from deducting the applicant's salary.**
5. **General damages and costs of the suit.**

History:

The brief background behind this application is contained in the affidavit in support of the application deponed by the applicant where he averred as follows:

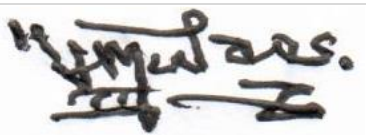
1. That he is an employee of the Respondent working as the District Planner since his appointment on 23rd March 2020.

2. That from the time of his appointment on promotion in March 2020 till March 2023, his salary was enhanced to a sum of shs 6,500,000/=. That in the month of April 2023, the Respondent without any justification whatsoever, reduced his monthly gross salary to shs 1,728,077/=.

3. That all attempts to get an explanation from the Respondent did not yield any efforts. That the reduction of his salary was without accord to the due process and as such it was illegal as it contravened the Public Standing Orders.

4. That the deductions literally meant that he was demoted which is a disciplinary action under the Public Service Standing orders which could only be sanctioned after an officer was found guilty of misconduct. That he was not aware of the disciplinary action that led to the sanctions by way of reducing his salary.

5. That he was servicing a loan on the understanding with the Respondent per the enhanced salary which has caused him hardship after the reduction in salary and he thus lives under stressful conditions. That the reduction was detrimental to his wellbeing and occasioned him mental stress. That as such the application should be granted.



The application was strongly opposed by the Respondent through an affidavit in reply deponed by Mr. Makune William Abwooli, the Chief Administrative Officer of the Respondent who asserted as follows:

1. That the application at hand was filed outside the statutory time (three months) and was not amenable for judicial review, thus it ought to be rejected for having been filed outside the three months.

2. That in a bid to regularize salary of public servants, the Respondent sought technical guidance from the Permeant Secretary Ministry of Public Service.

3. That the office of the Permanent Secretary, Ministry of Public Service responded by providing guidance regarding the applicant that his salary fell under U3 per schedule 2 of the Circular Standing Instructions No. 1 of 2022. That the applicant's salary was not reduced but it was regularized in accordance with the Public Service Salary Structure.

4. That the Respondent was still meeting the statutory duty to pay the applicant's monthly salary.

5. That the applicant did not exhaust all available administrative remedies before coming to Court.

Representation & hearing:

Mr. Patrick Nyakaana appeared for the applicant while ***Ms***. ***Atumanyire Racheal*** appeared for the Respondent. Both parties proceeded by way of written submissions which I have considered.

Issues:

1. **Whether the application is time barred.**
2. **Whether the application is amenable for Judicial Review.**
3. **Whether this is a proper application for grant of judicial review remedies.**
4. **Remedies available to the parties.**

Submissions:

1. Whether the application is time barred.

Learned Counsel Atumanyise submitted that rule 5(1) of the Judicial Review Rules 2009 is to the effect that an application for Judicial Review should be brought promptly and in any case within three months from the date the grounds arise unless there is sufficient cause to extend the period within which to bring such applications. She cited a number of authorities that stress the fact that when a law sets timelines within which to do any act, such timelines are matters of substantive law and thus must strictly complied with. (***Dawson Kadope V Uganda Revenue Authority HCMC No. 040 of 2019, Muhumuza Ben V Attorney General & 2 others, HCMC No. 212 of 2020 & Re Application by Mustapha Ramathan for orders of Certiorari, Prohibition and Injunction, Court of Appeal Civil Appeal No. 25 of 1996***).

Learned counsel contended that an application brought outside the period stipulated under Rule 5(1) contravenes rule 5 (1) of the Judicature (Judicial Review) Rules 2009 and as such is barred in law save if leave was granted to commence such applications out of time. (***IP Mugumya v Attorney General HCMC No. 116 of 2015 &Muhumuza Ben v The Attorney General & 2 others, HCMC No. 212 of 2020***). Learned counsel contended that the current application was filed on 28th July 2023 after the expiry of three months and no leave was sought prior to institution of the same. She thus asked me to strike out the same on that ground.

Mr. Nyakaana had asked for time to file a rejoinder and he was given a week within which to do so but he failed to adhere to the time given.

CONSIDERATION BY COURT:

Section 36 (7) of the Judicature Act Cap 13 as Amended and Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009 provides for the time frame within which an application for Judicial Review should be presented and provides thus: ***"An application for judicial review shall be made promptly and in any case within three 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 above law limits the time within which an application for review is to be presented in Court to three months from the time the grounds which call for review

arose. The connotation "***from the date when the grounds of the application arose"*** under section 36 (7) of the Judicature Act and rule 5 (1) in my view clock back to the purpose of judicial review. Since judicial review is primarily concerned with the legality, propriety and fairness of a decision made by a public body or administrative body mandated to take administrative decisions, the time when the grounds a rose relate to the time when the decision was taken. (***See Male H. MabiriziKiwanuka v Uganda Revenue Authority, HCMC No. 84 of 2021 and Sustainable Development Capital Llp, Regina (on The Application of) v. Secretary of State 5 for Business, Energy and Industrial Strategy and Another [2017] EWHC 771).***

It is thus my view that a cause of action for judicial review accrues when there is a decision taken by any public or administrative body which is alleged either to be against the law or which is tainted with illegalities. Therefore, the three months start running from the time the alleged decision was made or taken by a public or administrative body.

Decision making and the communication of a decision is a process. Going by the pleadings, the applicant claims that the decision to reduce his salary was taken in April 2023. Per the pay slip attached as annexure C to the application, the reduced salary was ***paid on 28th April 2023***. In annexure B to the Respondent's affidavit in reply, it is asserted by the Respondent that they received guidance from the Permanent Secretary, Ministry of Public Service clarifying on the salary scale for the Applicant being U3 and this accounted for the reduction in his salary. The said clarification was issued on 13th May 2023. The Application was filed on 28th July 2023. I am inclined to find that the application was filed within the three months

provided for under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009. I therefore overrule the point of law.

2. Whether the application is amenable for Judicial Review.

It was submitted for the Respondent that the applicant did not satisfy Court that this application is amenable for judicial review. Learned counsel contended that the applicant did not exhaust the existing remedies within the public body under the law since it involves an administrative body as provided for under Rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2009.

Learned counsel asserted that in ***Kihunde Sylvia & Anor v Fort Portal Municipal Council, HCMA No. 0061/2016*** Court held thus: *"Whereas I agree that the High Court has unlimited jurisdiction, it does not mean that the High Court should also involve itself in administrative matters and its lodged up with many serious cases to handle of serious magnitude. High Court should be the last resort having explored and exhausted all internal mechanisms put in place."* It was thus submitted that the applicant did not exhaust the existing administrative remedies available within the public body or under the law and as such this application is not amenable for Judicial Review and should be dismissed with costs.

CONSIDERATION BY COURT::

Rule 7A (1) of the Judicature (Judicial Review) Rules 2009 provides thus:

The court shall, in considering an application for judicial review, satisfy itself of the following—

(a)that the application is amenable for judicial review;

(b)that the aggrieved person has exhausted the existing remedies available within the public body or under the law; and

(c)that the matter involves an administrative public body or official.

A party must exploit or resort to all available and effective remedies available under the law before recourse is made to Court. This requirement is hinged on the known administrative principle of creating effective dispute resolution mechanisms within the public bodies which have the knowledge and expertise to handle the disputes that arise in different public institution/bodies. The broad contours of this principle were well sieved and brought out by Musota J (as he then was) in ***Charles Nsubuga vs Eng. BadruKiggundu& 3 Others, HC MC No. 148 of 2015***, citing with approval the position of High Court of Kenya in the case of ***Bernard Mulage vs Fineserve Africa Limited & 3 Others Petition No. 503 of 2014***, thus: ***"There is a chain of authorities from the High Court and the Court of Appeal that where a statute has provided a remedy to a party, this court must exercise restraint and first give an opportunity to the relevant bodies or state organs to deal with the dispute as provided in the relevant statute. This principle was well articulated by the Court of Appeal in Speaker of 12 National Assembly versus NgengaKarume [2008] 1 KLR 425 where it was held that: In our view there is merit … that where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed"***.

From the reading of rule 7A (1), where there is an alternative remedy provided for under the law, Courts should be reluctant to interfere unless and until those alternative remedies are fully exploited. This position is in tandem with the dicta of the Court of Appeal in ***Leads Insurance Limited vs Insurance Regulatory Authority & Another, CACA No. 237 of 2015***, where it was held thus: ***"The remedy by way of judicial review is not available where an alternative remedy exists. This is a preposition of great importance. Judicial review is collateral challenge; it is not an appeal. Where Parliament has provided by statute appeal procedures, it will only be very rarely that the court will allow the collateral process of judicial review to be used to attack an appealable decision. See: Breston Vs IRS 1985 Vol. 2 … Land Reports pg 327 at page 330 Per Lord Scarman".***

There are however permissible exceptions where Court can admit and entertain an application for judicial review even in the currency of the alternative remedies. This was put is clear context by Justice Musa Sekaana in ***Salim Alibhai& Others vs Uganda Revenue Authority, HC M.C No. 123 of 2020,*** he observed thus: ***"The rule of exhaustion of alterative remedies is not cast in stone and it applies with necessary modifications and circumstances of the particular case … When an alternative remedy is available, the court may refrain from exercising its jurisdiction, when such alternative, adequate and efficacious legal remedy is available but to refrain from exercising jurisdiction is different from saying that it has no jurisdiction. Therefore, the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of alternative remedy, the High Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies,***

namely, (i) where the application seeks enforcement of any of the Fundamental rights; (ii) where there is failure of natural justice; or (iii) the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged..."

The learned judge also gave a persuasive position as regards exhaustion of alternative remedies in in ***Water and Environment Network (U) Limited and 2 Others v National Environmental Management Authority and Anor (Consolidated Miscellaneous Cause No. 239 of 2020) [2021] UGHCCD 30 (7 May 2021),*** thus***: The Court must have good and sufficient reason to bypass the alternative remedy provided for under the statute. To allow litigants to proceed straight to court would be to undermine the autonomy of the administrative processes….."***

Further in ***Dr. Badru Ssesimbwa v Nakaseke District Service Commission & Anor, HCMC No. 16 of 2018,*** it was observed that: ***'This court has noted that in some cases, it is not a requirement that a party should exhaust the available remedies but it is advisable to explore all such alternative procedure to get the same remedies. The Court has the discretion to give remedies in Judicial Review even if alternative remedies exist."***

It is therefore deducible from the above, that court may in exceptional circumstance grant remedies in judicial review even where the alternative remedies exist and before their exhaustion. These exceptions however should be applied on a case by case basis.

It is my view that where the law provides clear alternative remedies at law which better serve the nature of complaints in issue, the Court should be reluctant to play the role of the wise man who knows it all. I believe by the frames of the law putting in place those alternative mechanisms; they thought it wise to have such issues first addressed in a more convenient manner in line with the prevailing policies and the resources available.

In this case, the complaint by the applicant is that his salary was reduced from the enhanced sum of shs 6,500,000 to shs 1,728,077 which he contends was illegal. I have examined the Public Service Standing Orders 2021 as regards to salary. Section B part (B-a) items 2,5,6,7 and 8 provide that:

> ***2. A public officer who has been appointed, deployed and has assumed duty of the post, has a right to receive a salary in return for the services he or she renders to Government.***
>
> ***5. The salary structure for the Public Service shall be determined in accordance with the pay policy of the Public Service.***
>
> ***6. The Salary Structure shall indicate salaries attached to each salary scale in the Public Service and shall be issued by the Responsible Permanent Secretary through Circulars issued from time to time.***
>
> ***7. Salaries shall be fixed at annual rates and paid in twelve (12) equal instalments. Salaries shall be paid correctly, promptly and as a lumpsum in accordance with the approved salary structure for the Public Service.***
>
> ***8. No increases in salaries may be implemented without the approval of the Responsible Permanent Secretary, except the prescribed annual increment***

for which a public officer may be eligible in accordance with the provisions of subsection B-c.

It is apparent from the above provisions that the power to determine salaries for public servants is vested in the Permanent Secretary through a circular issued from time to time in accordance with the structures in the letters of appointment as may be enhanced from time to time. Therefore, what a public servant is entitled to as salary is determined by the Permanent Secretary through a salary structure issued out in form of a circular every financial year specifying the salary attached to each salary scale. In this case, whereas the applicant contends he was receiving shs 6,500,000/= as his gross monthly salary, he did not furnish a relevant circular issued by the Permanent Secretary Ministry of Public Service, reflecting the salary scale and the said pay as the salary for the position he held.

Secondly whereas the applicant claims his salary was enhanced, he did not attach evidence for Court to confirm that he was indeed among the categories of those whose salaries were to be enhanced, supported by the relevant salary structure or circular.

It is evident from the clarification sought from the Permanent Secretary attached as annexure B to the affidavit in reply, that the science scale only applied to persons appointed as ***Statistician or Senior Statistician in the Planning Unit***. The applicant did not adduce evidence to contradict the said letter or that his salary fell within the said category. Going by item section B of the Public Service Standing Orders 2021, the power to issue a salary structure is vested in the Permanent Secretary Ministry

of Public Service who clarified that the applicant was not a beneficiary of the enhancement in salary. It is not the duty of Court to determine salary enhancements and pay scales for public servants. The remedy by the applicant herein squarely falls with the remedies provided for under the Public Service Act and the Standing Orders.

The Public Service Standing Orders provide for a **Public Service Grievance Procedure under Section (G - C)** which provides as follows:

1. ***The procedures set out in this Section provide for non unionised public officers in dealing with their grievances or complaints.***
2. ***A public officer who has a complaint may raise the complaint with the immediate supervisor. If the complaint is dealt with satisfactorily, that should be the end of the matter.***
3. ***If in the opinion of the complaining public officer, the matter has not been disposed of to his or her satisfaction, he or she may appeal to the public officer next in rank. The complaining public officer may repeat the process until the matter reaches the Responsible Officer.***
4. ***Any public officer with whom a complaint is raised whether verbally or in writing must deal with the matter expeditiously, either by taking action directly or referring the matter to another public officer for whom, in his or her opinion, whose usual responsibility is to deal with such matters. The process of referring the complaint to the next higher level may, if necessary, be repeated until the matter reaches the Responsible Officer.***
5. ***If the complaining public officer has appealed up to the Responsible Officer and in his or her opinion the conclusion of his or her case has***

not been satisfactory or the Responsible Officer has not taken timely action on the matter, he or she may:-

(a) appeal to the Ministerial or Departmental or Local Government Consultative Committee if the matter is not concerned with terms and conditions of service; or

(b) send an appeal to the Responsible Permanent Secretary, if the matter concerns terms and conditions of service. The public officer may, while observing proper channels of communications, send an advance copy to the Responsible Permanent Secretary.

6. Where a public officer is not satisfied with the decision of the Ministerial or Departmental or Local Government Consultative Committee under paragraph 5(a), he or she may appeal to the Responsible Permanent Secretary.

7. Where the public officer's appeal to the Responsible Permanent Secretary under paragraphs, 5 (b) or 6 above fail, he or she may send a petition to the Head of Public Service whose decision in the matter shall be final.

8. Notwithstanding the provisions of paragraphs 2-7 above, nothing prevents a public officer from petitioning the Courts of Law.

As already stated, it is not the duty of Court to determine salary enhancements and pay scales for public servants. For this reason, although nothing prevents the public officer from petitioning the courts of law, in the circumstances of this case, I find that the remedy for the applicant lay, first, in exhausting the above procedure provided for under the Public Service Standing Orders. This application was filed in court 28th July 2023. In a rejoinder for the applicant filed in court on 12th October

2023 while court was considering this ruling, an opinion of the Attorney General dated 11th May 2023, addressed to the Minister of Public Service titled "***Legal Opinion on the Downgrading of Salaries of Some Employees of Ministry of Health"*** is attached. Another opinion on the same subject dated 3rd August 2023 after this application had been filed in court is attached. This in itself demonstrates that existing remedies available within the relevant public bodies or under the law have been invoked and efforts are ongoing to address the concerns of the applicant as well as many others affected. It is recalled that the law requires that the aggrieved person has exhausted the existing remedies available within the public body or under the law before coming to court.

Accordingly, I find that this application was prematurely brought before Court. I will thus not consider the remaining issues. I dismiss the application at this stage with no orders as to costs. It is so ordered.

Vincent Wagona

High Court Judge

FORTPORTAL

DATE: 13/11/2023