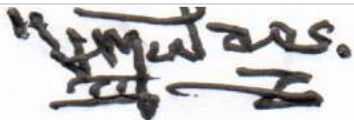
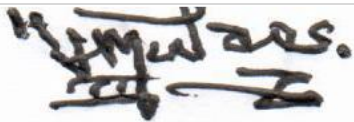


4. A declaration that the decision of the 1st Respondent allowing the Vice Chairperson of the 2nd Respondent to table issues to the 1st Respondent before the Public Service Commission on the 30th day of November 2022 was irregular, illegal null and void.
- 5 5. An order of certiorari be issued quashing the decision of the 1st Respondent allowing the Vice Chairperson of the 2nd Respondent to table recruitment issues to the 1st Respondent before the Public Service Commission.
- 10 6. In the alternative without prejudice to the above, a declaration that the decision by the vice chairperson of the 2nd Respondent to table the issue of recruitment of the applicant for consideration by members of the Public Service Commission was procedurally improper, irrational, null and void.
- 15 7. An order of certiorari quashing the decision of the chairperson of the 2nd Respondent to table matters of recruitment of the applicant before members of the Public Service Commission for discussion.
8. An order of Mandamus directing the 2nd Respondent to appoint the applicant to the position of Senior Assistant Town Clerk, having presented the required academic qualification.
- 20 9. Exemplary damages of shs 50,000,000/=.
- 10.General damages of shs 30,000,000/= and costs of the suit.

The application was supported by the affidavit of Mr. Bright Emmanuel (the applicant) who averred as follows:



1. That in August 2020, the 1st Respondent in New Vision Newspaper advertised for vacant positions with Kabarole District Local Government including the position of Senior Assistant Town Clerk. That he applied, was shortlisted, interviewed and was successful and was appointed on probation by the 1st Respondent under DSC Minute 128/2020(b).
5
2. That for reasons unknown to the applicant, the 1st Respondent rescinded DSC Minute 128/2020(b) under DSC Minute 83/21 without according him a right to fair hearing. That he later learnt that the Chief Administrative Officer of the 2nd Respondent queried his academic qualification and made an inquiry from the Mountains of the Moon University the issuing institution which verified his qualification.
10
3. That the applicant later filed High Court Misc. Application No. 83 of 2021 which quashed the DSC 83/2021 and Court directed that he is afforded a right to fair hearing. That consequent to the decision of the High Court, on 12th July 2022, he was invited for a hearing by the 1st Respondent. That during the hearing, some members of the Commission questioned the capacity of the Mountains of the Moon University to verify his academic qualifications and guided that the applicant gets confirmation from the National Council for Higher Education (NCHE) on whether his Bachelor of Business Management (Finance) degree obtained from Mountains of the Moon University was equivalent to Bachelor of Business Administration (Management) for suitability of the position of Senior Assistant Town Clerk and he was to keep the 1st Respondent updated.
15
20
4. That he took his Decree certificate and transcript to NCHE for purposes of equating his qualification with Bachelor of Business Administration (Management) and by a letter dated 23rd August 2022, NCHE confirmed that
25



the course units for both courses were the same. That after receipt of the letter from NCHE, he wrote to the Secretary of the 1st Respondent and waited for issuance of an appointment by the 2nd Respondent but received none. That having delayed to receive feedback, he wrote on 13th January 2023 inquiring about his delayed appointment.

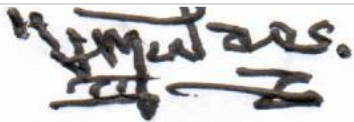
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5. That on 24th January 2023, the 1st Respondent replied informing him thus:

(a) When they convened on 12th July 2022, members unanimously maintained their position that he did not meet the required academic qualification for the post of Senior Assistant Town Clerk.

10 (b) The Vice Chairperson of the 2nd Respondent, one Kyorampe Stella tabled his appointment issues before the Public Service Commission (PSC) and that they were awaiting a feedback from PSC and he was asked to be patient.

15 6. That he was not aware of the meeting of 12th July 2022 save for the meeting that was meant to give him a fair hearing and what was decided was contrary to what was contained in the reply of the 1st Respondent. That if the matter was settled on 12th July 2022, then there was no point of tabling it before the Public Service Commission on 30th November 2022. That on 14th April 2023, he received a letter from Public Service Commission which was to the effect
20 that the 1st Respondent maintained their decision of rescinding DSC Minute No. 83/2021 on condition he was accorded a right to be heard since he did not have the required academic and professional qualifications.

25 7. That whereas the said guidance was communicated to him, he was not given a copy of the minutes of the alleged fair hearing. That the participation of the Vice Chairperson of the 2nd Respondent in the recruitment process was irregular, irrational and illegal and any resultant decision arising there from is



null and void. That it was irregular for his issues to be tabled before the Public Service Commission for consideration contrary to what had been agreed upon in the meeting.

- 5 8. That it was irregular for the Vice Chairperson of the 2nd Respondent to get involved in the 1st Respondent's process as he was not a member. That the consequent decisions were null and void and this court has power to subject them to judicial review. That the actions of the Respondents were irrational, ultravires and accordingly null and void on account of procedural transgressions and an abuse of power and it is just and equitable that the application is allowed.
- 10

The applicant was opposed by both Respondents through the affidavit of Mr. Mwirumubi Elizabeth, the Secretary Kabarole District Service Commission (1st Respondent) and Kahunde Stella, the Principal Assistant Secretary Kabarole District (2nd Respondent who averred as follows;

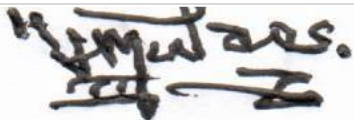
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(1) That the applicant had filed a similar application before this Court vide Misc. Application No. 088 of 2022 where court issued several orders interalia, an injunction stopping the Respondent from advertising as vacant the said position of Senior Assistant Town Clerk and from carrying out any recruitment process for the said position until the applicant is accorded an opportunity to be heard within the rules of natural justice.

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(2) That the 1st Respondent went ahead and executed the orders of court and afforded the applicant the right to be heard on 12th July 2022. That in the said meeting where the applicant was accorded a right to be heard, he was informed that he did not have the required qualifications.

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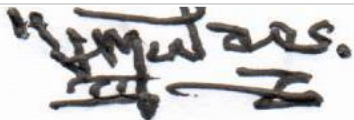
(3) That the 1st Respondent communicated to the applicant that he possessed a Bachelor of Business Administration (Finance option) yet the vacancy required a honors Bachelor's Degree in Social Sciences, Development Studies, Social Work and Social Administration or Law or Commerce (Management option) or Business Administration (Management option) or Business Studies (Management option) or Management science, Urban planning and Administrative Law from a recognized institution of which the applicant did not qualify.

(4) That the Public Service Commission also guided in a letter dated 8th February 2023 that the applicant did not qualify for the said vacancy. That the meeting with the Public Service Commission was a consultative meeting by the 1st Respondent and the District Executive Committee, Heads of Departments who were invited as stake-holders to the Public Service Commission routine monitoring and supervision exercise of which the applicant was not privy.

(5) That following the ruling in Misc. Cause No. 008 OF 2022, a bill of costs was taxed and allowed at shs 11,153,500/= and part of the same was paid. That the current application is an afterthought as this matter has since been adjudicated upon in Misc. Application No. 08 of 2022 and thus there should be an end to litigation.

(6) That the current application is not amenable for judicial review and has been brought out of time. That this application is premature, baseless and is not premised upon any valid cause of action, is not sustainable in law and as such should be struck out.

25 Representation and Hearing:



The applicant was represented by M/s Nyakaana – Mabiho & Co. Advocates at filing and later changed instructions to M/s Mugabe – Luleti & Co. Advocates on 30th October 2023 per the notice of change of instructions filed in court on the same date. Therefore Mr. Mugabe Robert appeared for the applicant while Ms Atumanyise Rachael of Attorney General’s Chambers, Fort Portal Regional Office appeared for the Respondents. Both counsel addressed Court by way of written submissions which I have duly considered herein.

10 **Issues:**

After due consideration of the pleadings and the submissions of both counsel, I find the following issues pertinent for resolution of the application:

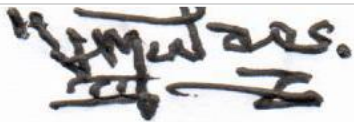
1. Whether the application is time barred.
- 15 2. Whether the application meets the test for grant of judicial review remedies sought.
3. Remedies available to the parties.

Resolution:

20

1. Whether the application is time barred.

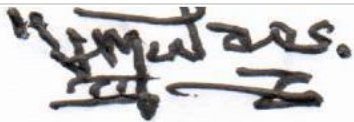
Learned Counsel for the Respondent contended that Rule 5(1) of the Judicature (Judicial Review) Rules is to the effect that an application for Judicial Review must be brought within three months from the date when the grounds of the application



arose unless court considers that there is good reason for extending the period within which the application shall be made. Learned Counsel invited me to the decision of *IP Mugumya v Attorney General HCMC No. 116 of 2015* where Hon Justice Stephen Musota, (High Court Judge as he was) dismissed an application filed on 11th August 2015 challenging his interdiction of 6th July 2011 on ground that it was filed out of time contrary to rule 5 (1) of the Judicial Review Rules.

Counsel further drew my attention to the case of *Muhumuza Ben v Attorney General & 2 others, HCMA No. 212 of 2020* where court emphasized that the time set by legislation are matters of substance which ought to be considered in the circumstances of each case. I was further referred to *URA V Uganda Consolidated Properties Ltd, CACA 31 of 2000* where the Court of Appeal held that the limits set by statute are matters of substantive law and not mere technicalities and must be strictly complied with. That a similar position was handed down in *Re application by Mustapha Ramathan for orders of certiorari, Prohibition and Injunction CACA 25 of 1996*. That in *Muhumuza Ben* (supra) Sekaana J emphasized that a party who desires to invoke the jurisdiction of court should come at an earliest opportunity or seek leave of court to file their application outside time but not to file the same as of right after the expiry of the time set by law of three months.

It was pointed out that in the present suit, the application filed Misc. Cause No. 001 of 2023 for Judicial Review on 13th July 2023 after three months from the time the grounds for review arose. Counsel thus persuaded me to be pleased to reject the application for being barred by time and consequently strike out with costs to the Respondents. There was no response from counsel for the applicant on this issue.



DECISION:

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 it 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.”

10

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. (*Nelson Basaija v Fort Portal Tourism City & Anor, HCMA No. 6 of 2023*).

In Uganda Revenue *Authority Vs Uganda Consolidated Properties Ltd (1997 – 2001) UCL 149 Justice Twinomujuni JA* stated: *“Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.”* In *Francis Nansio Michael Vs NuwaWalakira (1993) VI KALR 14* which decision has been with approval in *Speke Hotel (1996) Ltd v URA, HCT-00-CC-OS 3 of 2009*, the Supreme Court held that *“...clearly if the action is time barred then that is the end of it.”*

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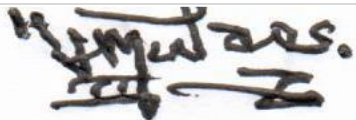
The rule grants this court the discretion for good reason to extend the period within the application shall be made. But where a party wishes to rely on any exemption to the periods of limitation it must be specifically stated in the pleadings. If it is not the 25
plaint or application should be rejected. See *Iga Vs Makerere University (1972) EA*

65 and Speke Hotel (1996) Ltd v URA (HCT-00-CC-OS 3 of 2009) [2009] UGCommC 31 (20 September 2009).

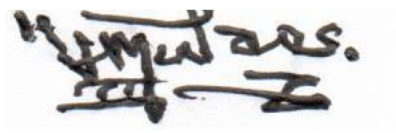
In the current application, the applicant sought orders inter-alia:

- 5 9. A declaration that the decision by the 1st Respondent of **12th July 2022** to **rescind DSC Minute 128/2020(b)** by which the applicant was offered appointment on probation as Senior Assistant Town Clerk is irrational, ultravires and tainted with procedural illegality and therefore null and void.
- 10 10. An order of certiorari be issued quashing the decision of **12th July 2022** to **rescind DSC Minute 128/2020(b)** contained in the letter dated the 11th day of April 2021(sic).

In this application, the decision that the applicant sought to be quashed by this court is one made on 12th July 2022 which rescinded DSC Minute No. 128/2020(b) where
15 he was offered appointment on probation as a Senior Assistant Town Clerk. Therefore, the ground to challenge the said decision by way of judicial review arose on 12th July 2022 and the three month started running from 12th July 2022 and lapsed on 12th October 2022. The current application for Judicial Review was filed on 13th July 2023 after almost a year. The applicant did not plead any permissible exception
20 why the application would be considered outside the three months provided for under the Judicature (Judicial Review) Rules 2009 and section 34 of the Judicature Act neither was leave sought as provided for under rule 5 of the Judicial Review Rules and Section 34 of the Judicature Act. This application was therefore brought outside the three months provided for under the law without seeking leave as
25 provided for under rule 5(1) of the Judicial Review Rules and Section 34 of the

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Judicature Act. This renders the application barred by time and thus it is rejected and struck out by court on that account with no order as to costs. I so order.



Vincent Wagana

5 **High Court Judge**

FORTPORTAL

DATE: 30/11/2023

