THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS CAUSE NO. 005 OF 2023

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS BY WAY OF JUDICIAL REVIEW

KIRUNGI ANNET PAMELA :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

FORT PORTAL CITY COUNCIL ::::::::::::::::::::::: RESPONDENT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This application was made under the provisions of sections 36, 37, and 38 of the Judicature Act, section 98 of the Civil Procedure Act, Rules 3 & 6 of the Judicature (Judicial Review) Rules of 2009, as amended, seeking the following orders:

a) A declaration that the purported extension of the applicant's interdiction by the respondent's Town Clerk dated the 13th of February 2023, is illegal, irrational, ultra-vires, null and void.
b) An order of certiorari quashing the purported extension of interdiction of the applicant by the respondent's Town Clerk.
c) An order of mandamus directing the respondent to re-instate the applicant to her duty with full remuneration and allowances for the period of interdiction.
d) A prohibitory injunction restraining the respondent or any other person or body from undertaking any further investigations against the applicant based on the allegations that are the subject of these proceedings.

e) Costs of this application be provided for.

Background

The applicant is an employee of the respondent in the capacity of Senior Finance Officer. On the 5th day of August 2022, the applicant was interdicted from office by the then respondent's Town Clerk, to allow investigations into the allegations of diversion of funds and incompetence. According to the interdiction letter, it was alleged that the applicant had wrongly caused a transfer of UGX. 180,674,186 to institutions that were not planned beneficiaries.

On the 15th of February 2023, the applicant's lawyers wrote to the respondent's Town Clerk demanding that the interdiction be lifted on account of having been in existence for more than six (6) months as required under the Public Service Standing Orders. To her dismay, on the 17th day of February 2023, the applicant received a letter, from the respondent's Town Clerk informing her of the extension of interdiction. The applicant was aggrieved by the decision of the respondent's Town Clerk to extend her interdiction, hence filing this application.

The grounds in support of the application are set out in the application and supporting affidavit deponed by the applicant, which are that; -

1. The applicant is an employee of the respondent in the capacity of Senior Finance Officer under the direct supervision of the City Town Clerk

2. On the 5th day of August 2022, Moses Otimong, the then city Town Clerk, interdicted the applicant from office to allow investigations into the allegations of diversion of funds and incompetence.
3. The particulars of the allegations are that the applicant wrongly transferred the capitation grant of UGX. 180,674,186/= to institutions which were not planned beneficiaries.
4. The Public Service Standing Orders set interdiction to last for a maximum 6 months which is a period within which the investigations of a public officer would be completed.
5. The said interdiction of the 6 months elapsed.
6. The decision of the respondent to extend the interdiction in a letter dated 13th February 2023 was illegal, irrational, unfair and tainted with procedural impropriety.
7. That the decision of the Town Clerk is intended to keep the applicant out of office illegally.

The respondent, by way of affidavit deponed by its Ag. Town Clerk, Kagaba R. Ndora, opposed this application on the following grounds:

(a) That a submission was made to the City Service Commission notifying and recommending that the applicant's interdiction be lifted in accordance with the law.
(b) That the interdiction is rather a temporary removal of a public officer from exercising his or her duties while an investigation over a particular matter is being carried out.

(c) That if the applicant is aggrieved by the continued interdiction, there are other available remedies which the applicant should first exhaust prior to filing the application for judicial review.

(d) That this application is not amenable for judicial review as the applicant has not exhausted the administrative remedies available to her under the law, and as such, the application is premature.

The applicant filed an affidavit in rejoinder in which she reiterated that the City Service Commission cannot lift an illegal interdiction; that the interdiction should be lifted since it lapsed after 6 months; and that she exhausted all the administrative remedies.

Representation and hearing

The applicant was represented by counsel Nyakaana Patrick from Nyakaana-Mubiiho & Co. Advocates while the respondent was presented by Counsel Racheal Atumanyise from the Attorney General's Chambers. Both parties filed written submissions which have been considered by this court.

Issues

Each party raised its issues for this court's resolution. However, for proper adjudication of the issues before this court, I will proceed to resolve the following issues: -

1. Whether this application is amenable to judicial review.

2. Whether the decision of the Ag. Town Clerk of the respondent to extend the applicant's interdiction after six months was illegal, irrational, or tainted with procedural impropriety?
3. What remedies are available to the parties?

Resolving issues

Issue 1: Whether this application is amenable to judicial review.

Counsel for the respondent submitted that it is trite law that when considering an application for judicial review, Court must satisfy itself that the aggrieved person has exhausted the existing remedies available within the public body or under the law. Counsel referred this court to rule 7A of the ***Judicature (Judicial review) (Amendment) rules, 2019.***

Counsel for the respondent submitted that the applicant has a remedy to appeal the decision of the respondent's Town Clerk which she did not explore. Counsel cited regulation 38(9) of the Public Service Regulations, 2009 which stipulates that where there is a failure to conclude investigations within the time stipulated, the officer shall be free to appeal to the commission to have his or her interdiction lifted, the commission being Public Service Commission.

Counsel the respondent referred this court to the case of ***Associate Professor Jude Ssempebwa and Another Vs Makerere University and Another Msc. App No 21 of 2021*** where Justice Ssekaana Musa stated thus:

"The high court cannot allow the constitutional jurisdiction to be used for disputes, for which remedies, under the general law, civil or criminal are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The object underlying this rule is that the High court should not be made a substitute for all other remedies available to an aggrieved party for the redressal of his or her grievances… The exhaustion of internal remedies avoids wasting the courts time with complaints like the present one that could be settled sooner and more cheaply by officials chosen specifically for the purpose with their expertise and experience. Therefore, to allow litigants to proceed straight to court would be to undermine the autonomy of the administrative process, more so where administrators have specialized or technical knowledge or easier access to the relevant facts and information. An aggrieved party must take reasonable steps to exhaust internal remedies."

Counsel for the respondent also referred this court to the case of ***Fuelex Uganda Ltd vs Attorney General & Others Msc Cause No 48 of 2014*** where Justice Stephen Musota (as he then was) quoted with approval the case of ***Preston Vs IRC (1995) 2 ALL ER 327 at 330*** thus*:*

"My fourth position is that a remedy by way of judicial review is not available where there are alternative

remedies that exist. This is a position of great importance. Judicial review is a collateral challenge; where parliament has provided appeal procedures, as in the taxing state, it will only be very rarely that the court will allow a collateral process of judicial review to be used to attack an appealable decision.”

Counsel for the respondent further submitted that where there exists an alternative remedy through statutory law, then it is desirable that such statutory remedy should be pursued first. It was the argument for the respondent's counsel that a court's inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. That is the only way institutions and structures will be strengthened and respected.

On the other hand, counsel for the applicant submitted that the principal law governing public officers employed by a local government is the Local Government Act. Counsel for the applicant argued that section 55 of the Local Government Act vests the power to appoint, exercise disciplinary control and remove persons from public office in the District Service Commission.

Counsel further cited section 59(2) of the Local Government Act which provides that:

“A person aggrieved by a decision of the District Service Commission may appeal to the Public Service Commission, but the ruling of the District Service Commission shall

remain valid until the Public Service Commission has ruled on the matter."

Counsel submitted that the decision to interdict was made by the Town Clerk of the respondent and therefore, there was no decision by the City Service Commission to appeal against.

Counsel for the applicant stated that Regulation 38(9) of the public service regulations relied on by the respondent's counsel does not apply to the employees of Local Governments where there are independent commissions that can handle matters of indiscipline of the public officers. It was the counsel's submission that the law cited by the respondent's counsel applies to public officers directly recruited through the Public Service Commission.

Counsel for the applicant also cited regulation 11(1) of the Public Service Commission regulations which provides that:

"An employee of the local government may appeal to the public service commission only after his or her case has been handled by the relevant district service commission to her dissatisfaction."

It was the counsel's argument that there was no indication that this matter was handled by the City Service Commission. Counsel argued that the appeal could only become available after the City Service Commission had pronounced itself on the matter. And that since there has never been such a pronouncement, there was no alternative remedy that the applicant could explore.

Counsel for the applicant cited section F-s paragraph **14(g) of public service standing orders** which is to the effect that:

> ***"After investigations, the responsible officer shall refer the case to the relevant commission with the recommendation of the action to be taken and relevant documents to justify or support the recommendations should be attached."***

Counsel for the applicant submitted that the letter dated 29th March 2023 written by the Town Clerk of the respondent recommending the lifting of the interdiction to the City Service Commission was self-defeating in that it recommends uplifting of the interdiction and at the same time advises that the applicant should not be in the office until investigations are concluded.

Consideration by the court on issue 1

It is trite law that for an application for a judicial review to be entertained, court must satisfy itself that the aggrieved person has exhausted all existing remedies within the public body or under the law. This is the import of section ***7A (1) of the judicature (judicial review) rules*** as amended which states thus:

"7A: Factors to consider in handling applications for judicial review

The court shall in handling applications for judicial review, satisfy itself of the following –

a) That the Application is amenable to judicial review

b) <u>That the aggrieved person has exhausted the existing remedies available within the public body or under the law</u>

c) The matter involves an administrative public body or official."

In the case of ***Associate Professor Jude Ssempebwa (supra)***, Justice Ssekana Musa quoting with approval the case of ***Sewanaya Jimy Vs Kampala International University HCMC No. 2017 of 2016*** held thus:

> ***"Where there exists an alternative remedy through statutory law then it is desirable that such statutory remedy should be pursued first. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision which should meet all necessities of the case. This is the only way institutions, and their structures will be strengthened and respected. It is a settled principle that where there is an effective alternative remedy under the statute, the high court does not exercise its jurisdiction as a self-imposed restriction. But then, there may be circumstances when the high court may interfere***."

In his book, ***Jurisdiction, Exhaustion of Administrative Remedies, and Constitutional Claims (2008) published by New York University School of Law, at page 1242,*** Peter A. Devlin argues that the judicial origin of exhaustion serves two main purposes. First, to protect administrative agency's authority and autonomy based on the understanding that agencies, not courts, have primary responsibility over the affairs they administer. This, according to the author, helps agencies to ***"exercise their discretion and also a chance to correct their mistakes, for example through an internal appeals process, and discourages people from avoiding the agency's procedures."*** Second, exhaustion promotes judicial efficiency. This is the case where an agency can correct its mistakes thus avoiding the need for litigation or in cases where exhaustion helps the court with its own record and expertise.

To determine whether this application is amenable to judicial review or whether the applicant exhausted the existing remedies available within the public body or under the law, this court must refer to the events that led to her interdiction, what followed and the law on interdiction of public servants in Uganda.

As per the affidavit in support of the application, the applicant, a Senior Finance Officer of the respondent was interdicted on the 5th day of August 2022 on allegations of causing diversion of funds and incompetence. On 13th February 2023, after six months, the Ag. Town Clerk of the respondent wrote to the applicant informing her

that her interdiction was "encumbered" due to the ongoing investigations. The applicant was advised to stay away from the office so as not to interfere with the investigations.

The applicant's lawyers, in a letter dated 15th February 2023, wrote to the city's Acting Town Clerk informing him that the six (6) months of interdiction had expired and that the Town Clerk should cause the lifting of the interdiction in accordance with the Public Service Standing Orders.

It is not clear whether the Ag. Town Clerk responded to the Applicant's lawyer's letter dated 15th February 2023 informing them of the actions taken. Nevertheless, the Ag. Town Clerk wrote to the City's Service Commission on the 29th of March 2023 recommending to the Commission to lift the interdiction since the mandatory six months of interdiction had lapsed. In the same letter, the Ag. Town Clerk brought to the attention of the City Service Commission that the matter was still being investigated and that the Permanent Secretary, Ministry of Local Government had, in a letter dated 31st January 2023, advised that the applicant should stay out of office pending the conclusion of the investigations.

Under the definition section of the Public Service Standing Orders, a "responsible officer" is defined to mean***: "in relation to a public officer, means the Permanent Secretary of a Ministry or a Department under which the public officer is serving, or head of Department as defined in the Public Service Act, 2008 or Chief Administrative Officer or <u>Town Clerk of a Local</u>***

Government." Therefore, in the instant case, the responsible officer is the city's Town Clerk or anyone acting in his or her capacity.

The Public Service Standing Orders provide for an appeal mechanism for a public officer who is subjected to disciplinary action. Section F-s paragraph 23 of the Public Standing Orders Provides thus:

> ***"If a public officer subjected to disciplinary action has reasonable ground to believe that the due process of the law and the principles of natural justice have not been followed, he or she may appeal in accordance with the Grievance Procedure for public officers in Section G – c."***

Section G-c paragraph 5(a)and (b) of the Public Service Standing Orders provides that:

> ***"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.***
>
> ***(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."

Counsel for the applicant argued that Regulation 38 (9) of the Public Service Commission regulations does not apply to the applicant since she is an employee of the Local Government, in this case, Fort Portal City Council. Section 11(1) of the Public Service Commission regulations provides that:

> ***"An employee of a Local Government may appeal to the Public Service Commission only after his or her case has been handled by the relevant District Service Commission to his or her dissatisfaction."***

In the instant case, the decision under judicial review is the decision of the Ag. Town Clerk. There is no decision of the Fort Portal City Service Commission that the applicant could appeal against in line with Regulation 11 (1) of the Public Service Commission Regulations. Therefore, the argument of the counsel for the respondent that the applicant had a remedy under Regulation 38(9) of the Public Service Commission Regulations is rejected.

The foregoing notwithstanding, exceptions to the general rule of exhaustion exist. Before exceptions are invoked, Court must weigh the applicant's interests in prompt access to justice against the countervailing institutional interests favouring exhaustion ***(See McCarthy v. Madigan 503 U.S. 140 (1992).***

According to ***Peter A. Devlin (supra) at page 1241,*** there are instances where individual interests would outweigh institutional interests, hence creating equitable exceptions to the general exhaustion rule. These instances include: (i) where requiring exhaustion might occasion undue prejudice to subsequent assertion of court action; (ii) in cases where the agency's power to provide effective relief is questionable either because it lacks the institutional capacity to resolve the dispute (such as the constitutionality of the statute, a challenge as to the adequacy of the agency's procedure itself or where the agency lacks jurisdiction to grant the type of relief that is being sought); and (iii) ***where the agency is biased or has predetermined the issue such that exhaustion would be futile (emphasis added)***.

In the instant application, the applicant could appeal to the responsible Permanent Secretary, being the Permanent Secretary of the Ministry of Local Government in line with Section G-c paragraph 5(b) of the Public Service Standing Orders. However, this court takes note of the fact that the responsible Permanent Secretary had, in a letter dated 31st January 2023 Ref HRM/6/104, advised that the applicant should not be in the office until investigations are concluded. It is evident that the responsible Permanent Secretary had expressed prejudicial views on the matter in question. Such expressions of bias raise legitimate concerns about the Permanent Secretary's ability to exercise fairness and impartiality on this matter if an appeal had been instituted.

The bias exhibited by the Permanent Secretary shows that there was predetermination of the applicant's grievance, and this creates a case for relaxation of the principle of exhaustion. I am also cognizant of the fact that the Public Service Grievance Handling Procedure still affords the right of the aggrieved person to petition the courts of law. Section G-c paragraph 8 of the Public Service Standing Orders provides that: ***"Notwithstanding the provisions of paragraphs 2-7 above, nothing prevents a public officer from petitioning the Courts of Law."***

In the premises, given the administrative bias exhibited by the responsible Permanent Secretary, I find that the applicant's interest in retaining prompt access to justice outweighs the countervailing institutional interests favouring exhaustion. Therefore, this application is amenable to judicial review.

Issue 2: Whether the decision of the Ag. Town Clerk of the respondent to extend the applicant's interdiction after six months was illegal, irrational, or tainted with procedural impropriety?

Counsel for the applicant submitted that the acts of the respondent Ag. Town Clerk to extend the applicant's interdiction created a case for judicial review. Counsel referred this court to the case of ***Pastoli Vs Kabalae District Local Government and others (2008) EA, 300*** where it was held that for an applicant to succeed on judicial review, he or she must demonstrate to court that the decision

complained of is tainted with illegality, irrationality, and procedural impropriety.

Counsel submitted that the actions of the respondent's Town Clerk contravened provisions of Section F-s paragraph 14(b) which requires the responsible officer to conclude investigations within 6 months. Counsel for the applicant referred this court to the case of ***Mpiima David Vs Uganda Cancer Institute and Another HCMC No. 182 of 2020*** where Justice Ssekaana Musa held thus:

> ***"...failure by the 1st respondent to conclude investigations within the prescribed period as well as communicate the decision to lift the interdiction caused the interdiction of the applicant to be unlawful to that extent. The 1st respondent from their evidence show that there were investigations being carried out over the period the applicant was interdicted however this does not cure the fact that the interdiction had exceeded the prescribed period without any justifiable reason."***

Counsel argued that the fact that the applicant was arbitrarily kept on interdiction for more than 6 months without justification was an abuse of authority by the Town Clerk and should not be condoned. Counsel further argued that the decision of the Town clerk to escalate the matter to the City Service Commission was a perpetuation of illegality because such a decision is not known in the law.

Consideration by Court on Issue 2

Section F-s Paragraph 14(b) of the Public Service Standing orders provides that:

> ***"Where a public officer is interdicted, investigations shall be concluded expeditiously within 3 (three) months for cases that do not involve the Police and Courts, and 6 (six) months for cases that involve the Police and courts of law."***

Section F-s paragraphs 14(f) and (g) of the same provide that:

> ***"(f) the case of a public officer interdicted from exercising the powers and functions of his or her office shall be submitted to the relevant Service Commission to note; and***
>
> ***(g) after investigations, the Responsible Officer shall refer the case to the relevant Service Commission with recommendations of the action to be taken and relevant documents to justify or support the recommendations should be attached."***

On the other hand, section F-s paragraph 15 of the same orders states that:

> ***"Where the Responsible officer is unable to conclude an investigation within six (6) months, the interdiction may be lifted on condition that the matter will be revisited when further evidence by the investigating bodies is adduced."***

In the case of ***Mpiima David (supra)***, Justice Ssekaana Musa quoted with approval the South African held that for interdiction to be valid, it must meet the requirements of substantive and procedural fairness. This is so because suspensions and interdictions as administrative acts have a detrimental effect on the employee's reputation, advancement, job security and fulfilment."

As regards illegality and irrationality, Justice Boniface Wamala in the case of ***Birimbo Aaron Vs Uganda Human Rights Commission HCMC NO. 76 of 2022*** held thus:

> ***"Illegality has been described as the instance when the decision-making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality."***

In all cases, the question of illegality is for courts of law to determine. In the case of ***Council of Civil Service Unions v Minister for Civil Service (1985) AC 375***, lord Diplock had this to say:

> ***"By 'illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the***

event of a dispute, by those persons, the judges, by whom the judicial power of the state is exercisable."

Lord Diplock went on to state that:

"By "irrationality" I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system."

In the instant application, the applicant was interdicted on the 5th of August 2022. More than 6 months after interdiction, in a letter dated the 13th of February 2023, the Ag. Town Clerk of the respondent wrote to the applicant informing her that the matter was being investigated jointly by the Directorate of Criminal Investigations and the Statehouse Anti-corruption Unit. The same letter concludes in part as follows:

"... as such lifting your interdiction is encumbered. Hence, you are further required to stay away from the office in order to allow smooth investigations of these new charges to take place without interference."

Thus, the letter of the Ag. Town Clerk dated 13th February 2023 was by all measure an indefinite extension of the applicant's interdiction. While the law on interdiction envisages investigations, such investigations are supposed to be carried out expeditiously, in any case, within 3 (three) months for cases that do not involve the Police and Courts, and 6 (six) months for cases that involve the Police and courts of law.

If the investigations are not concluded within the stipulated timelines, then the interdiction should be lifted on the basis that the investigation may be revisited if investigative bodies obtain further evidence, in accordance with section F-s paragraph 15 of the Public Service Standing Orders.

In the instant application, the decision of the Ag. Town clerk of was in contravention of section F-s paragraph 15 of the Public Service Standing Orders which requires him to lift the interdiction on condition that investigations may be reinstituted if further evidence by the investigating bodies is adduced.

Additionally, extending the interdiction indefinitely citing ongoing investigations was in total defiance of logic and acceptable standards since the applicant, through her lawyers, had prayed for the interdiction to be lifted citing the relevant law.

I will not address the question of procedural impropriety since this matter is not concerned with the proceedings of an administrative tribunal. Nonetheless, the decision of Ag. Town Clerk to escalate the matter to the Fort Portal service commission did not help the

situation for several reasons. Firstly, it was procedurally improper since the investigations had not been concluded (cases of interdiction are referred to the relevant service commission where investigations are completed as provided for under Public Service Standing Orders under Section F-s paragraph 14(g)). Secondly, the applicant was never informed of the progress of investigations, and thirdly, there is no indication that the Fort Portal District Service Commission dealt with the matter.

In the premises, I find that the decision of the Ag. Town clerk of the respondent to extend the interdiction of the applicant after six months was illegal to the extent that it contravened section F-s paragraph 15 of the public service standing orders.

Issue 3: What remedies are available to the parties?

The applicant prayed for the issuance of an order of certiorari, a consequential order of mandamus, damages, and an injunction stopping further investigations of the applicant on matters that are the subject of this application.

The grant of judicial review remedies is discretionary. Under Section 36(1) of the Judicature Act, the High Court has discretionary powers to grant prerogative remedies which include prohibition, certiorari and mandamus. Further, Section 38 of the Judicature Act empowers this court to issue injunctions to restrain any person from doing any act as may be specified by the court. These are the remedies prayed for by the applicant in addition to a declaration, damages and costs.

An order of certiorari issues to quash a decision which is illegal, ultra vires or vitiated by an error on the face of the record. In the instant case, the respondent Ag. Town Clerk's decision to extend the interdiction of the applicant beyond the statutory time was illegal. Therefore, an order of certiorari doth issues quashing the decision of the Ag. Town Clerk which purported to extend the interdiction of the applicant.

Courts grant orders of mandamus to compel a public authority or official to perform a legal duty they have failed or refused to execute. The rationale is to ensure that public officials act within their legal obligations and uphold the rule of law. In the instant case, since court has made a finding that the decision of the Ag. Town clerk was illegal, it is very crucial to rectify the illegal decision and ensure that the applicant is not deprived of her employment rights without proper cause and due process. In the circumstances, an order of mandamus doth issues reinstating the applicant in her position as a Senior Finance Officer of the respondent with full payment of her salary and emoluments during the period of interdiction.

On the prayer of damages, rule 8 of the Judicial Review Rules allows the applicant to claim general damages. In the case of ***Rusoke Johniey Bosco Vs. Fort Portal City Council and another Msc. Cause No. 11 of 2022*** this court noted that an award of damages is discretionary and in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the

nature and extent of the breach or injury suffered ***(see Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305).***

In the case of Mpima David (supra) Justice Ssekaana Musa citing with the approval the case of ***Ochengel & Anor v Attorney General (Miscellaneous Cause-2019/274)*** stated thus:

> ***"Not every delay to lift the interdiction would be construed to be a violation of rights for one to seek damages. The nature of delay must be such as the court would construe to have been deliberate and intended to violate the rights. The nature of damages sought by the applicant is general damages. Under judicial review proceedings, damages are awarded in the rarest of the rare cases upon court being satisfied of a possible tort of misfeasance. Otherwise, judicial review proceedings will turn into ordinary proceedings for damages and yet it is not intended for that purpose. It is confined to correcting public wrongs through prerogative orders under the Judicature Act."***

Counsel for the applicant submitted that the illegal extension of the applicant's interdiction was a clear case of malfeasance. Counsel contended that it was intentional for the Ag. Town Clerk to act unlawfully which action occasioned psychological and monetary harm to the applicant. Counsel referred this court to the case ***of Mauda Atuzarirwe Vs Uganda Registration Services Bureau & 3 others HCMC No. 249 of 2013*** where the court awarded UGX. 100,000,000 based on aggravating factors. Counsel urged that the

applicant was a senior officer with the respondent and that the actions to extend the interdiction and preferring charges against her portrayed her as a fraudulent person and subjected her to public ridicule. Counsel prayed for a sum of UGX. 400,000,000/= as general damages.

As noted earlier, interdiction has a detrimental effect on the employee's reputation, advancement, job security and fulfilment. This is especially the case where interdiction is extended illegally. In this case, the applicant has been out of office for more than a year now by virtue of an illegal decision by the Ag. Town Clerk of the respondent. I also take note that she was a senior officer of the respondent and no doubt her continued stay out of office subjected her to mental anguish and distress.

Also, counsel for the applicant, in a letter dated 11th April 2023, brought to the attention of this court the Solicitor General's guidance on staff serving interdiction pending investigation, addressed to the Permanent Secretary, Office of the Prime Minister, which I have addressed my mind to. It is rather unfortunate that Counsel for the respondent chose to defend this application instead of giving the same guidance to the respondent whose net effect would be to lift the applicant's interdiction.

I am inclined to believe that the decision of the Ag. Town clerk to extend the interdiction of the applicant was a clear act of malfeasance. In view of the aggravating factors, the applicant is

awarded **UGX 5,000,000/= (Uganda shillings five million only)** as general damages.

On the prayer of injunction stopping any further investigations against the applicant in respect to charges that are a basis to this applicant, counsel for the applicant argued that six months had elapsed since the investigation against the applicant commenced and that any continued investigations were a violation of the law. Counsel referred this court to the case of ***Atimango Immaculate Vs Adjumani District Local Government & Another HMCA No. 68 of 2019.***

The allegations against the applicant are that she wrongly transferred the capitation grant of UGX. 180,674,186/=, being public money, to institutions which were not planned beneficiaries. The provision requiring investigation to be concluded expeditiously, in any case within (three) 3 months for cases that do not involve the police and courts and 6 months for cases that involve the police and courts of law, is only applicable to public officers under interdiction. Once interdiction is lifted, nothing stops the reinstitution of investigations if the investigative bodies produce further evidence. In each case, however, investigations should be carried out lawfully and in accordance with the due process.

The rationale for allowing investigations to proceed is multifaceted and crucial to upholding the principles of justice and accountability. First and foremost, investigations are necessary to preserve justice and ensure that public officers are held accountable for their actions

while in office. Second, these inquiries also serve as a powerful deterrent against future misconduct, sending a clear message that such actions will not be tolerated within government institutions.

In the instant application, it would be imprudent for this court to stop investigations involving allegations of a wrongful transfer of public funds to the tune UGX. 180,674,186/= without reasonable justification, provided the applicant is reinstated in her position. In the premises, this prayer is not granted.

On the issue of costs, it is a trite law that costs follow event and are awarded to a successful party. In the case of ***Kivumbi Paul Vs. Namugenyi Zulah Civil Revision NO. 10 of 2014***, Hon Lady Justice Elizabeth Musoke (as she then was) citing ***Kiska Ltd Vs De Angelias [1969] EA 6***, noted that ***"a successful party can only be deprived of his costs when it is shown that his conduct either prior to or during the course of the suit has led to litigation, which, but for his own conduct might have been averted."*** Costs of this application are therefore awarded to the applicant.

In conclusion, this application succeeds with the following orders:

a) The decision of the Ag. Town clerk of the respondent dated 13th February 2023 purporting to extend the interdiction of the applicant after six months is illegal, ultra vires, null and void.
b) An order of certiorari doth issue quashing the decision of Ag. Town clerk of the respondent purporting to extend the interdiction of the applicant.

c) An order of mandamus doth issue directing the respondent to reinstate the applicant into her position as a Senior Finance Officer with payment of her salary and emoluments during the period of interdiction.

d) A sum of UGX. 5,000,000/= is awarded to the applicant against the respondent as general damages.

e) Costs of this application shall be borne by the respondent.

I so order.

Dated at Fort Portal this 23rd day of October 2023

Vincent Emmy Mugabo

Judge