

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MASINDI
MISCELLANEOUS CAUSE NO. 0009 OF 2023

OKWEE TONNY JUSTINE APPLICANT

VERSUS

10 1. MASINDI DISTRICT LOCAL GOVERNMENT
 2. SANYU PHIONA (The Chief Administrative Officer of Masindi District Local Government)
 RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma

RULING

20 This application was brought under *Section 33, 36(1), and 38 of the Judicature Act Cap 13, Rules 3(a), 5(1), 6, 7, and 8 of the (Judicature Review) Rules S.I NO.11 of 2009, Section 98 of the Civil Procedure Act Cap 71* seeking for the order that.

1. An order of mandamus doth issue compelling the Chief Administrative Officer of the 1st respondent to issue an appointment letter to the applicant for position of a pharmacist.
2. A declaration that the applicant acted unlawfully, illegally, and irrationally by refusing to issue an appointment letter to the applicant after the applicant emerged as a successful applicant for the position of pharmacist.
3. General damages for the applicant's suffering.
- 30 4. Costs for this application.



BACKGROUND

This application is supported by an affidavit – in - support deponed by the applicant and the grounds are reiterated briefly as hereunder.

- 1) That the 1st respondent posted an advert in the New Vision Newspaper on the 10th day of February 2022 inviting applications for the position of pharmacist to which the applicant replied by applying for the position and was the successful candidate.
- 10 2) That Masindi District Service Commission then directed the 2nd respondent to issue an appointment letter to the applicant but the second respondent without justified reason refused to issue the same despite demand from the applicant.

In contest to this application, the 1st respondent in her affidavit in reply contended that.

- 1) That the former officer holding the position of pharmacist appealed against his dismissal to the Public Service Commission.
- 2) That before the appeal was heard a new appointment for the same position could not go on thus the 1st respondent could not issue an appointment letter.
- 3) That the applicant did not exhaust internal processes by applying to the Public Service Commission before filing the instant matter with the court.
- 20 4) That the applicant has no contract with the 1st respondent and as such cannot force the 1st respondent to issue him with a contract of employment.
- 5) That any appointment into service and issuance of a contract of employment is a matter within the absolute unfettered discretion of the first respondent.
- 6) That any appointment is subject to the availability of funds and annual circular standing instructions from the Ministry of Public Service.
- 7) That a minute of the DSC lapses after six months and can be rescinded on administrative grounds or policy directives from government such as stoppage of recruitment.
- 8) That the position of pharmacist was indeed advertised by the 1st respondent at the
30 time when the former bearer had been dismissed from service on the 13th of July 2022 on grounds of abandonment of duty.

The applicant deponed affidavits in rejoinder whose contents I have put into consideration.



Issues

Each of the litigants framed their issues however, for clear analysis, I will modify their issues thus.

1. Whether the application has sufficient grounds for review?

2. What remedies are available to the parties?

Representation

10 The applicant was represented by Counsel Andrew Ojede Orem of M/S Center for Peace and Law and the 1st respondent was represented by Counsel Simon Kasangaki of M/S Kasangaki & Co. Advocates. The parties were granted leave of court to file written submissions and they all complied.

Determination of court

Appropriate consideration has been made as regards the submissions of the parties. My decision on the same is as below.

Factors considered by the court to grant an application for Judicial review are provided under *Rule 7A of the Judicature (Judicial Review) (Amendment) Rules* as follows.

1) The court shall, in considering applications for judicial review, satisfy itself of the following-


20 *(a) That the application is amenable to 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.

In his submissions counsel for the 2nd respondent majorly urged that the applicant brought this application without exhausting the available remedies. That the applicant ought to have first reported his complaint to the 1st respondent.

In response to this, the applicant contended that he had exhausted all the remedies available since he had physically demanded the appointment letter from the 2nd



respondent and further went ahead and wrote a demand letter which didn't yield success on his part. That after this step his only remedy was to apply to this court for justice.

According to various decided cases, this court has held that if there exist alternative remedies for an aggrieved person then this court should only be resorted to where the same have been exhausted. A court's inherent jurisdiction powers should not be invoked where there is a specific statutory provision that would meet the necessities of the case.

In the case of *Charles Nsubuga Vs Eng. Badru Kiggundu & 3 Others; HCMC No. 0148 of 2015*, Musota J. (as he then was) while citing with approval the case of *Benard Mulage vs Fine Serve Africa Ltd & 3 Others; Petition No. 0503 of 2014* relied on the following passage:

"There is a chain of authorities from the high court and court of appeal that where the statute has provided a remedy to a party, this court must exercise restraint and first allow 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 National Assembly versus Ngenga Karume (2008)1 KLR 425 where it was held that; In our view there is merit.... that where there is a clear procedure for the redress of any grievance prescribed by the constitution or an Act of Parliament that procedure should strictly be followed".

In the circumstances, the applicant pleaded that there was no alternative remedy other than bringing this application to court. In reply, the 2nd respondent contended that the applicant ought to have first taken his complaint to the 1st respondent before bringing this application to this honorable court. Then the question that comes up is why the applicant didn't seek redress from the body that had nominated him as suitable for the position as the 2nd respondent purports.

According to the *Local Government Act cap 243*, the District Service Commission has the mandate to recruit various public servants and send the names of the approved candidates to the Chief Administrative Officer to appoint the same for the position. The service commission has no mandate to force her to act as per its resolutions. As such, in the circumstances, the applicants only had to seek redress from this honorable court. The act only provides the remedy of seeking redress from the district service commission for employees of the district, yet one only becomes an employee upon being appointed



which chance was denied to the applicant. In her affidavit in reply, the 2nd respondent in paragraphs 9 and 11 clearly states the same.

In the circumstances, I find that this application was proper before this court.

According to her affidavit in reply, the 2nd respondent stated that her failure to give the applicant an appointment letter was because.

- a) The former bearer of office had appealed against his dismissal from office.
- b) And secondly there were no funds to facilitate his salary.

10 According to my knowledge of the dismissal and recruitment process, there are steps followed according to timelines that is to say; once a person is dismissed from work, there is a timeline within which to appeal their dismissal and if the person fails to appeal within the stipulated time, then the recruiting committee will go ahead to advertise the position as vacant hence recruit new employees.

To this effect *Regulation 37 of the Public Service Regulations* provides this.

37. Abandonment of Duty.

(1) where an officer absents himself or herself from duty without reasonable cause or fails to report his or her absence from office, the responsible officer shall-

(a) notify the officer to that effect within fourteen days from the date of absence from duty; and

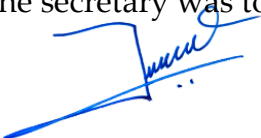
20 *(b) call upon the officer to explain his or her absence from duty within a period of fourteen days from the date of the letter of notification.*

(2) where the officer fails to show cause, the responsible officer shall-

(a) immediately stop payment of the salary of the officer.

(b) report to the secretary in a detailed memorandum including appropriate recommendations on abandonment of duty by the officer.

According to the affidavit in reply by the 2nd respondent, the former pharmacist was dismissed on the 13th day of July 2022. This date comes far after the date of the advert which was posted in February 2022. Even the purported appeal according to the letter of the secretary was to be handled in November 2022 far way after the recruitment process



was done. Reasonably there was enough time to halt the recruitment process at various stages with the appeal but if the same was not done by the 2nd respondent until the recruitment process was done then the 2nd respondent has no authority to deny the applicant an appointment letter or offer of appointment. Handling of the appeal is overtaken by time.

Secondly, the position of the pharmacist has been existent and is not a new position. It has been on the payroll and there has been salary for the former office bearer. What has been done is just a change of name of the occupant of office, but the rest remains the same inclusive of salary. It is my finding that the decision of the 2nd respondent in refusing to appoint the applicant as a pharmacist is irrational and illegal.

Issue No. 2

What remedies are available to the parties?

I have read the submissions of both counsels on this issue, and I agree with the submissions of counsel for the applicant. As such I grant the following orders.

- 1) An order of mandamus compelling the 2nd respondent to give the applicant an offer of appointment as a pharmacist within fourteen days from the date of this ruling.
- 2) General damages of UGX 5,000,000/= (Uganda Shillings Five Million) to be paid by the 2nd respondent in her capacity.
- 3) Costs of this application to be paid by both respondents.

I So Order.

DATED and Delivered this 29th Day of February 2024.



Isah Serunkuma
JUDGE