THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

MISC. APPLICATION NO. 003 OF 2023
(Formerly MSD Review Application No.04 of 2020
(Arising from H.C.Misc. Cause No. 001 of 2020)

KARAMAGI SIMON :: APPLICANT

VERSUS

HOIMA CITY COUNCIL
(FORMERLY HOIMA MUNICIPAL COUNCIL) :::::::::::::::::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

[1] This application is brought under **O.46 r (1) (b) & (8) CPR** and **Ss. 82 & 98 CPA** for orders that the Ruling in **Misc. Cause No.001/2020** be reviewed substituting the order directing the District Service Commission to hear and determine the complaints as raised by the Respondent against the Applicant and to afford the Applicant the opportunity to be heard with an order that the Respondent issues an offer letter to the Applicant for the position of Principal treasurer.

[2] The application was supported by the affidavit of the Applicant, **Karamagi Simon** and opposed by **Ahimbisibwe Innocent,** the Respondent's Town Clerk.

Background

[3] In the year 2019, Hoima District Service Commission advertised a number of positions/posts to be filled in the then Hoima Municipal Council and one of the positions advertised was that of Principal Treasurer.

[4] The Applicant applied for the position of Principal Treasurer and was shortlisted for interviews with other three people. The Applicant emerged as the successful candidate for the position and the Respondent was notified and directed by the District Service Commission to issue an appointment letter to the Applicant. The Respondent however rejected the Applicant's appointment with several allegations which were not limited to his bad record from his previous station to wit; incompetence, then causing financial loss and insubordination.

[5] The Applicant filed **M.A No. 001 of 2020** against the Respondent challenging the rejection of his appointment and Ruling in the matter was made with orders among others, that **the District Service Commission hears and determines the complaints as raised by the Respondent against the Applicant and afford the Applicant the opportunity to be heard.**

[6] It is the contention of the Applicant that it was *an error or mistake* by the court to make the said order because the complaints that were raised by the Respondent against the Applicant had already been considered by the District Service Commission and all the information was already on court record. That *an error, mistake on the face of the record* calls for the review of the orders of court since the order of court as it is cannot be enforced, hence the present application.

[7] The Respondent on the other hand contend that in **Misc. Cause No.01 of 2020** instituted by the Applicant, this court made a declaration and orders inter alia, directing Hoima District Service Commission to hear and determine the complaints as raised by the Respondent against the Applicant and to afford the Applicant an opportunity to be heard. That as such, this was not an error as alleged by the Applicant since court took cognisance of the fact that Hoima District Service Commission was the appointing Authority with the mandate to hear and resolve administrative complaints of this nature.

Preliminary Objection

Affidavit in reply filed out of time

[8] Counsel for the Applicant submitted that the affidavit in reply filed by the Respondent on the 23/3/2022 should be struck out for having been filed out of time in violation of **O.12 r.3(2) CPR**.

O.12 r.3(2) CPR provides thus;

> *"Service of an interlocutory application to the opposite party shall be made within fifteen days from the filing of the application, and a reply to the application by the opposite party shall be filed within fifteen days from the date of service of the application and be served on the Applicant within fifteen days from the date of filing of the reply."*

[9] In the instant case, I find that as per the affidavit of service dated 18/2/2022, service of the application in this matter was duly effected upon the Respondent on the 14/2/2022 and the Respondent filed her affidavit in reply on the 23/3/2022 late more than a month.

[10] Counsel for the Respondent relied on the case of **Edward Byaruhanga Katumba Vs Daniel Kiwalabye Musoke, Election Petition Appeal No.2 of 1998** and **Sot Enterprises Ltd Vs Agatha Rukeribuga, HCMA No.157 of 2016** for the proposition that:

> *"Except where there are specific statutory provisions, failure to adhere to timelines should not be fatal to proceedings especially where the offended party has suffered no injustice or extreme hardship thereby.....prefer not to shut out vital evidence of a litigant and rather have them exercise their constitutional right to be heard."*

[11] In the premises, counsel implored this court to find the affidavit in reply filed by the Respondent valid and that the failure to adhere to the timelines under **O.12 r. 3(a) CPR** be found not fatal to the proceedings in the application.

[12] In the first instance, I must point out that this application is not in the class of interlocutory applications as defined by Black's Law Dictionary 8th Edition,

> *"a motion for applications equitable or legal relief sought before a final decision."*

O.12 r. (3) CPR is therefore not applicable to the instant case.

[13] However, as was held in **Stop and See (U) Ltd Vs Tropical Africa Bank (U) Ltd, HCCS No.333 of 2010,**

> *"These pleadings follow the same pattern as that of a plaint and a written statement of defence....A reply or defence to an application has to be filed within 15 days. Failure to file within 15 days would put a defence or affidavit in reply out of time prescribed by the rules. Once the party is out of time, he or she needs to seek that leave of court to file the defence or affidavit in reply outside the prescribed time."*

[14] I am persuaded by the above decision rather than **Sot Enterprises Ltd Vs Agatha Rukeribuga** preferred by counsel for the Respondent. This authority may be good authority for service and filing of proceedings, submissions and witness statements but not filing and service of court process whose timelines are statutorily provided for. The applicable rule in this case is **O.49 r. 2 CPR** which provides that all orders, notices and documents required to be served upon the opposite party must be served in a manner provided for service of summons. It is now trite that applications whether by chamber summons or Notice of Motion and/or Hearing Notices are by law required to be served following after the manner of procedure adopted for service of summons under **O.5 r. 1(2) CPR,** see also **Kanyabwera Vs Tumwebaze, SCCA No.6 of 2004 [2005] EA 86.** It follows therefore that the service of the instant application and affidavit in reply had to comply with the procedure of filing and service of the plaint and WSD.

[15] In conclusion, I find that the Respondent's affidavit in reply filed out of time prescribed by the rules without leave of court is incompetent before court. The incompetent affidavit in reply is accordingly struck out of these proceedings. The Applicant ought to have applied for leave to file the reply

out of time and no reasons have been advanced for the Applicant's non-compliance with the rules of procedure for timelines, see **Revici Vs Prentice Hall incorporated & Ors [1969] 1 All ER 772.**

Merits of the Application

Issue: Whether the application is proper for review

[16] The law on review is set out in **S.82 CPA** and **O.46 CPR. O.46 CPR** provides thus:

> *"1. Application for review of judgment*
> *(1) Any person considering himself or herself aggrieved*
> *a) by a decree or order from which an appeal is allowed,* ***but from which no appeal has been preferred;*** *or*
> *b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or order made* ***or on account of some mistake or error apparent on the face of the record,*** *or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order."*

[17] In the instant case, the Applicant is relying on the ground that there is a *mistake or manifest mistake or error apparent* on the face of the record.

[18] In the case of **Edson Kanyabwera Vs Pastori Tumwebaze (supra)**

> *"In order that an error may be a ground for review, it must be one on the face of the record, that is, an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on record. The "error" may be one of fact but it is not limited to matters of fact and includes also error of law."*

[19] In the instant case, the Applicant contends that the complaints which were raised against him by the Respondent were heard and determined by the District Service Commission and that this fact was brought to the attention of court. That under **Minute 133/2019** the commission rejected the proposal to rescind the minute appointing the Applicant as reflected in the letter authored by the chairperson Service Commission. The letter by the chairperson Service Commission which followed the complaint by the Respondent against the Applicant dated 13/11/2019 read in part as follows:

> *"The Commission sat to deliberate on the matter and under DSC Min.133/2019, the request by the Town Clerk - Hoima Municipal Council to rescind the appointment of Mr. Karamagi Simon was rejected by the commission."*

[20] Clearly, the above is proof that the grievances of the parties were considered by the District Service Commission, the appointing Authority with the mandate to hear and resolve administrative complaints of this nature. As per the court's order, the Applicant was referred back to the District Service Commission that had already considered and determined the parties' grievances.

[21] The impugned order dated 16/3/2021 being sought for review is as follows:

> ***"IT IS HEREBY ORDERED AS FOLLOWS***
>
> 1. *The Respondent's decision rejecting the appointment of the Applicant by Hoima District Service Commission as the Principal Treasurer was illegal and unjust.*
> 2. *An order of Certiorari quashing the decision of the Respondent rejecting the appointment of the Applicant as the Principal Treasurer of the Respondent is hereby issued.*
> 3. *An order is hereby issued directing the District Service Commission to hear and determine the complaints as raised by the Respondent against the applicant and to afford the applicant the opportunity to be heard.*
> 4. *.....*
> 5. *....."*

[22] It is apparent that the above order was made by court while well aware of the existence of the letter authored by the chairperson District Service Commission which was to the effect that complaints raised by the parties were heard and determined by the District Service Commission. The making of the impugned order No.3 must have depended on how the Judge construed the chairman's letter of which he was alive to as he arrived at the orders he made. The Judge must have construed the letter as being not enough proof that the commission sat and before deliberating on the matters, as raised by the parties had given the parties adequate hearing of their grievances. It all depended on how he interpreted the letter. The question therefore whether the Judge rightly interpreted the letter or misconstrued it to arrive at the impugned order is a matter for appeal so that the appellate court pronounces itself on its construction and not a matter for review whereby this court would act as an appellate court over itself.

[23] In conclusion, I find that there is no evidence of any *error or mistake apparent on the face of the record* to warrant review of the impugned order. What the Applicant is seeking this court to do is to review a decision taken by court on basis of how the Judge construed the District Service Commission chairperson's letter to arrive the impugned order. That is a ground of appeal and not for review. This is therefore not a proper ground for review. The Application is dismissed with costs to the Respondent.

Dated this 31st day of **May, 2024.**

.....

Byaruhanga Jesse Rugyema
JUDGE.