THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HIGH COURT CIVIL SUIT NO. 94 of 1999

JOHN KASHAKA MUHANGUZI ::::::: PLAINTIFF

vs

CHRISTOPHER CHEPKURUI SONGHOR ::::::: DEFENDANT

BEFORE: HON. JUSTICE D. N. MANIRAGUHA

JUDGMENT

The plaintiff, John Kashaka Muhanguzi, has been occupying the office of the office of the Chief Administrative Officer of Kapchorwa District Council, whereas the defendant holds the office of the Chairperson of the same District Council.

By his letter dated 1st November, 1999 the defendant wrote to the plaintiff purporting to interdict him from the said office, put him on half pay, restricted his movements to within Uganda, and required him to hand over the office and other government property in his possession to the Deputy Chief Administrative Officer. The defendant pursuant to the said letter Marked "MA/A" took further steps to ensure that the plaintiff stopped performing any functions of a Chief Administrative Officer of Kapchorwa District.

Thus the plaintiff aggrieved by the actions of the defendant brought this suit in order to challenge the authority under which the defendant was claiming to be acting, and his actions thereof.

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL

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DEPUTY REGISTRAR

5/11/04

The plaintiff claims that under the Local Government Act, the 1995 Republican Constitution , and other provisions to be considered later the defendant had no legal authority

carry out the actions that he did. The defendant claims he had the authority so to act.

When the parties appeared before court for hearing with their counsels, it was agreed that court proceeds under Order 13 rule 7 of the Civil Procedure Rules whereof the parties with the assistance of their advocates came up with agreed framed issues of law and fact which agreement was put on record on 27th January,2000 forming the basis of this decision.

The questions of law agreed to were as follows:-

1. Whether the plaintiff is the substantive Chief Administrative Officer of Kapchorwa District.
2. Whether a District Chairperson has power to interdict a Chief Administrative Officer.
3. Whether the plaintiff's interdiction by the Defendant was lawful in the circumstances.
4. Whether the Defendant as a District Chairperson could put in force a resolution of a former District Council without a fresh mandate.
5. Whether the defendant is not estopped in the premises .
6. Whether the defendant abused his powers and office in thus interdicting the plaintiff.
7. Whether the defendant is personally liable for the acts hereina admitted.

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All the relevant documents were admitted as part of the record and comprise the relevant evidence.

It was further agreed that under Order 13 rule 6 (a) of the Civil Procedure Rules if court makes affirmitive findings on the above, the Defendant shall forthwith abstain from interdinting the plaintiff and a sum of money payable in damages to the plaintiff shall then be ascertained by this court on evidence.

As an alternative the court may direct such other course of action as it deems fit, and that the court will provide for costs at its discretion.

Court did consider the provisions of Order 13 rule 7 of the Civil Procedure Rules and was satisfied that this was case to handly in this manner before proceeding with the submissions of both counsels, and now I turn to the questions of law as agreed upon.

On the first issue as to whether or not the plaintiff is the substantive Chief Administrative Officer of Kapchorwa District, Mr. Wegoye learned counsel for the defendant has argued that he is not such an officer. That he has not produced any appointment letter that he was appointed there by the Public Service, nor any from Kapchorwa District Service Commission. He denies the Ministry of Local Government Posting Instructions No. 7 of 1995 being such a document saying that the Permanent Secretary Ministry of Local Government (Exhibit 1) is not an appointing officer.

Thus we turn to the provisions of law under which the plaintiff is said to have found himself posted to Kapchorwa by the said Posting Instruction No. 7 of 1995 dated 10th April,1995 dated 10th April,1995 and signed by the Permanent Secretary Ministry of Local Government - T. Kinalwa by name.

Among other officers to whom the same was copied was the R.C. IV Kapchorwa of whom the defendant is successor in the office of L.C. V chairperson by virtue of the operation of the law namely the Local Governments Act, 1 of 1997 which is recognised by the defendant in his letter of interdiction of the plaintiff when he relied on section 7 of the Act.

Therefore the postinf instruction of the plaintiff to Kapchorwa was at all material times within the knowledge of the defendant.

That document (Exh. 1) in content states that the plaintiff was by then of the designation of Under-Secretary and was posted from Headquarters to " Kapchorwa District as District Executive Secretary " and this took immediate effect. As an Under Secretary there is no doubt that he had been properly appointed by the Public Service Commission from the time of 20th July,1979 as his C.V. states (Exh. 11) until he was promoted to Under Secretary a post he held until he was posted to Kapchorwa. If his appointment were to be challenged then no evidence has been adduced to cause court to doubt that he was properly appointed and later promoted to

under secretary. I have no reason to doubt his post as designated on Exh. 1.

Hence when he was posted to Kapchorwa the local Government posting Officer must have known of this hence the assginment. This holds untill the contrary is proved.

Consequently the plaintiff was received in Kapchorwa District as the District Executive Secretary and allowed to carry out all the functions attached to that office as established under sections 30 and 31 of the Local Governments (Resistance Councils) Statute 15 of 1993.

The change in names to the Chief Administrative Officer, from the District Executive Secretary, came about as a result of the 1995 Constitution whereby Article 176 created the structures of Local Government based on the district as a unit, then under Article 188 (1) it was provided that " There shall be a Chief Administrative Officer for every district."

Noteworthy is the provision of Article 188 (2) which provides that " The Chief Administrative Officer shall be appointed by the District Service Commission and shall be the Chief accounting officer for the district."

This takes me to the issue raised by Mr. Wegoye that the plaintiff has no appointment letter from the Public Service Commission or the District Service Commission.

But both the 1995 constitution and the Local

Governments Act 1997

do hold an answer to this. For Under Article 268 (1) it is provided that " Subject to the provisions of this article, every person who immediately before the coming into force of this Constitution held or was acting in any office established or by virtue of the Constitution held or was acting in any office established or by virtue of the constitution then in force, so far as is consitent with the provisions of this Constitution, shall be taken to have been appointed as from the coming into force of this constitution, to hold or to act in the equivalent office under this Constitution. " Emphasis added.

This constitution came into force on 8th October,1995 and by Exh. 1 the plaintiff was holding the post of District Executive Secretary Kapchorwa District, so by the operation of the above provision was " taken to have been appointed" as from that day " to hold or to act in the equivalent office under this constitution." In otherwords he did not need any fresh letter appointing him to the office of the Chief Administrative Officer which was the equivalent of the office he then held.

Furthermore, anybody who was holding the office of the District Executive Secretary under Section 30 of Statute 15/93, when the Local Governments Act 1/97 came into force on 24th March, 1997 the said position under Section 64 (1) of the Act became known as Chief Administrative Officer. Then to provide for continuity of service in the transitional period section 179 (2) of the Act provides that :- " Any person being an officer or employee of a council immediately before the commencement

of this Act shall be deemed to have been appointed under this Act and shall hold office until removed from office under this Act. "

An objection reading of the provisions quoted above shows that there was no need to carry out fresh appointments by the District Service Commission where an equivalent post of the Chief Administrative Officer was already held by a qualified person, and there is no reason to show that the plaintiff was not one as I am proceedings to consider hereafter.

To take this first issue to its logical conclusion, I intend to consider the conduct of the defendant towards the plaintiff as to whether or not he is not estopped from denying that the plaintiff is the substantive Chief Administrative Officer Kapchorwa District.

The authorities quoted by Mr. Majanga, learned Counsel for the plaintiff on issue No. 5 are of great assistance even now.

First in the case of Akisoferi Michael Ogola Vs Akika Othieno Emmanuel and another Parliamentary Election Petition No. 2 of 1996 (unreported) Mr. Justice A.O. Ouma talking of the doctrine of estopped by election stated that " where a man has an option to choose one of other of two inconsistent things, when once he has made his election, it can not be retracted, it is final and

can not be altered. " He cited the case of Scarf Vs Jordine [1882] 7 App. Cases 345 at 360.

Further that " a party can not say at one time that the transaction is valid and at another say it is invalid / void for the purpose of securing some further advantage."

In Uganda Millers Ltd Vs Batende Agencies (U) Ltd [1970] EA 387 p. 391 Russel, J held that " It is well established that under certain conditions silence or inaction may constitute as much as positive language or conduct for the purposes of estoppel"

Though the circumstances were different from the ones before court, the principle remains the same, That a person can not by his conduct accept the circumstances as alright and then turn around in order to gain an advantage say they are not acceptable when he has been accepting them all along. Even mere silence can amount to consent - " Qui tacet consentive videtur ".

For example in the case of Akisoferi Ogola his conduct (positive) was held to amount to such estopel, and the learned Judge had this to say :-

" In my view, in this present petition under the doctrine of estoppel by election, it is difficult to understand how the petitioner who on 28.6. 1996, after the declaration after the declaration of the election results, raised no objection, was satisfied with the election results,

elected tp concede and actually conceded defeat before the congregation, shook hands with the winner 1st respondent whom he congratulated and promised to co-operate with in the development of their constituency South Budama, could on 29.7.1996 present this petition in court, May be he lacked advice ".

Considering the circumstances of this case the plaintiff was accepted in 1995 as the District Executive Secretary and was allowed to work as such. The defendant worked with him in this capacity as the Chief Administrative Officer for two years without challenging his appointment. He allowed him to carry out all the functions including controlling funds.

In the defendant's letter to the plaintiff Exh. P.2 dated 1.11.1999 the defendant addressed him as " The Chief Administrative Officer (Mr. Kashaka John Muhanguzi) Kapchorwa Local Government."

The minutes of 2nd December,1997 relied on by the defendant talk of Mr. Muhanguzi J.Kashaka C.A.O. meaning Chief Administrative Officer (Exh. 2) Throughout the plaintiff was so referred to. Exh. 2 (b) by the chairperson Kapchorwa District Service Commission refers to the plaintiff as the Chief Administrative Officer. Those and other examples on record are clear indicators that the plaintiff was rightly accepted as the C.A.O. Kapchorwa until 1st November,1999 when the defendant wrote the letter interdicting him. He is estopped from denying that the plaintiff was the substantive

Chief Administrative Officer all the time, he recognised and dealt with him as such. And from my first conclusion on the law he still is the substantive Chief Administrative Officer Kapchorwa District.

Going to the second issue of whether the chairperson L.C.V. V has power to interdict a Chief Administrative Officer, Mr. Wegoye learned Counsel for the defendant has not shown court any specific legal provision that a chairperson L.C.V. can interdict a Chief Administrative Officer.

I have looked at the Constitution, The local Government Act and the Public Service Commission (Amendment) Regulations but have not seen where it is specifically provided for such powers.

In absence of a specific provision Mr. Wegoye has referred me to a pamphlet called Human Resources Management Manual for Local Governments in Uganda March,1999 paragraph 4,5.1 appearing at page 48. It reads:-

" Interdiction Procedure In the case of a CAO, aletter interdicting him or her shall be written by the District chairperson as a result of a resolution supported by two thirds of the Council members."

In appendix 12 it provides for the application of the Local Governments Act 1997 Section 15 and 69. Thus:-

" where a Council Considers that public interest requires that a Chief Administrative Officer ceases to exercise powers and functions of his/her office, the

the Chairperson, District Council after a resolution supported by two thirds of the council members should interdict on half pay the Chief Administrative Officer from exercusuhg those powers and functions ."

From a careful analysis of provisions of Sections 15 and 69 of the Local Governments Act it is clear that interdiction is a temporabary measure stopping an officer from performing his functions until investigations into his case are complete. These investigations are geared towards disciplinary action being taken where necessary as stipulated under Regulation 2 of the Public Service Commission (Amendment) Regulations 34/1993. Thus before any interdiction could be taken in the case of a Chief Administrative Officer, the responsible Officer should have first considered that " public interest requires that a public officer ceases to exercise the powers and functions of his office ... and it proceedings are being taken against him."

In order for there to be a dismissal of such an officer Section 69 of the Local Governments Act is specific on 2/3rds resolution of the Council members.

Whether the defendant is such a responsible officer with powers to interdict was dealt with in Mbarara High Court Misc. Appl. No. 63 of 1999 In the Matter of the Interdiction of Bukeni Gyabi Fred and in the matter of an application for an Order of Certiorari by Bukendi Gyabi Fred (unreported) Justice V.F. Musoke - Kibuka had this to say :-

" Article 200 of the Constitution and Section 56 (1) and 59 (1) of the Local Governments Act tend to lead

conclusion that the matter of interdiction being part of exercise disciplinary control, would fall under the purview of the District Service Commission which can not be directed by the Council or the Executive Committee in that regard..."

In the present case I have found no specific provision empowering the chairperson District Council to interdict a Chief Administrative Officer.

Although the manual quoted to me by Wegoye Esq. says that the chairperson is empowered to write the letter of interdiction it does not mean that he has the power to first interdict the C.A.O. without considering public interest, then without on going steps for the dismissal of the C.A.O. or steps being taken to initiate criminal proceedings write to police to start the same. His role even then would only be write the letter to the C.A.O. The same must be based on a resolution of two thirds of the Council members, so the District Chairperson's role is to convey this to the C.A.O. in the form of an " Interdiction letter " which is not saying that by virtue of his position he is vested with powers to interdict a C.A.O. He does not. I am pursuaded by the decision of my learned brother above, and a look at the provisions of Statutory Instruments 1993 No. 34 namely The Public Service Commission (Amendment) Regulations 1993 relied upon by the defendant, read together with the Principal Regulations S. 1 277 - 3 The Public Service Commission Regulations, and the 1st Schedule first

column a doubt arises whether the defendant is such " a responsible officer " .... any way.

Concerning the thirst issue of whether the plaintiff's interdiction by the defendant was lawful in the circumstances.

As I have concluded above that the District Chairperson has no powers vested in him to interdict a C.A.O. if this second question is to be answered we look at the letter of Interdiction Exhibit 2. I will at the same time deal with issues 4 and 5 as they were argued together.

The letter talks of the District Council Resolution No. 3/97 of 2/12/97 and the District Service Committee Min. 3/97 dated 4.12.97 which asked the plaintiff to step aside so as to pave way for investigations labled against him as per attached schedules 1 and 11

Looking at the above, the letter from the District Service Commission dated 4/12/97 the plaintiff was " to proceed on an indefinite forced leave with effect from 2nd December,1997 during which time the Council shall make investigations into allegations made against the officer and furnish a final report thereafter to the commission." There was no reference to interdicting the said officer at all. In Exh. 4 Mr. P. Cheptoet, the predecessor, denied " forced leave "

to mean interdiction. Secondly immediate investigations were to be carried out regarding the issues and a final report made to the District Service Commission (for action) So the action was to be by the District Service Commission not the chairperson.

The grounds that led to the said resolution of the Council in 1997 were the question of the Local Council elections, the conduct of the plaintiff and the position of the Kapchorwa District Accounts for the year 1995-1996.

I make the following observations:- that on 15th October, 1998 a report of the Auditor General was made over the said Accounts. So there is nothing anymore to investigate in those accounts. Secondly regarding the conduct of the plaintiff there is no indication that it is still in question and thus deserving to be subject to investigations. Thirdly on the Local Council Elections they were completed and that question was no longer of any relevance to what was prevailing when the letter of interdiction was written in 1999. The defendant never considered this as to whether the conditions in 1997 were still prevailing in 1999.

Fourthly there is no proof that the Council which made the earlier resolution is still the same council with the same ideas and having 2/3 rds support that any inquiry is still necessary seeing that the circumstances have been overtaken by events. That is why one can observe that since the recommendation of indefinite leave in December, 1997 somehow some day the plaintiff resumed

and continued exercising his duties under the present District Chairperson's very presence and without any questions. The Defendant has recognised him as the C.A.O. for these two years and has wofked with him . It would appear that none of the Councillors who had been privy to the resolution objected to the continued work of the plaintiff, and the District Service Commission seems to have taken no further action after investigations were carried out and the actions of the council castigated by the Minister of Local Government for being irregular. So that resolution in my view was waived by allowing the plaintiff to resume work unhampered after the indefinite forced leave.

If the defendant wanted to act on the resolution, which had been waived by conduct of accepting the plaintiff back into office after the indefinite leave, he should have sought a fresh mandate or at least held some consultations with the councillors but not to take a unilateral step of resurrecting what was buried by necessary implications.

In Exhibit 2 the defendant says :-

" I have, however, perused through your defence on the subject matter attached and marked schedule 3 but do feel investigations should have taken place to have you exonerated of any wrong doing." Further down after listing other grounds he relies on, the defendant says, " Against this background and in line with section 7 of the local Governments Act 1997 (which enjoins me

perpertual succession of decisions taken by my priecessors) I now uphold the council and District service Committee's decision of December, 1997 to have you step aside so asto allow investigations be carried out."

Analysing the whole tone of Exh. 2 this was a one man show. Despite the reliance on perpertual succession, it can not be relied upon blindly and unilaterally to resurrect what the movers of the resolution had abandoned for two years which as Mr. Majanga has indicated to court had been condemned by the Hon. Minister of Labour as unjust since the plaintiff had been condemned unheard. Reliance has been placed on the cases of Seraphin Obwolo Vs Barclays Bank of Uganda [1992 - 93] H.C.B. 179 and Mumira Vs N.I.C. [1985] H.C.B. 110 on the principle of natural justice that nobody should be condemned unheard. In both cases the High Court held that the principle of natural justice audi alteram partem must be observed by both judicial and administrative tribunals, and where the decision is arrived at in utter disregard of this principle of natural justice, that decision is justifiable by the courts.

This principle was adopted in the case of the court of Appeal, Matovu & Ors Vs Muhamadi Sevili & another C.A. No. 7 of 1978 relying on the case of General Council.. Vs Sparkman [1943] 2 All E.R. 337 at P. 345 . That the courts will not believe that parliament intends an Administrative Agency to come to a decision in

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such a manner as would flour natural justice. Therefore, if a particular body does so act it must be exceeding the powers conferred upon it by parliament.

Looking at the 1997 resolution which was arrived at in contravention of the above principle hence its condemnation by the Minister, and most likely the reason why the plaintiff was allowed to continue working, the resolution could not have been allowed to stand before a court of law.

Again for the defendant to rely on such a defective resolution of a past council whose composition has not been shown to be the same and having the same consencus ad idem that the plaintiff be investigated, it was not proper here for the defendant to make a wholly unilateral decision in this case, since he had to act on being moved by 2/3 rds of the council . The Press Release by some councillors (dated 3.11.1999) gives a list of councillors difference from those who signed the 1997 Resolution. So it would have been appropriate to seek the new council's mandate to put into effect what had been resolved in different circumstances and overtaken by events. He thus failed to consider whether in the light of the lapse of time from 1997 up to December 1999 the circumstances having changed it was still in the public interest to require the plaintiff to vacate his office. This was fatal to any such an act even if it were accepted that the defendant was such a " responsible officer " which is doubtful. Even S. 7

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of the Local Governments Act talks of the Local Government Council and not the Chairperson L.C. V . So his action is unsupportable in these circumstances. Moreover, as dealt with above, the defendant having accepted to work and worked with the plaintiff for two years aware of these circumstances he is estopped from danying that the plaintiff had been allowed to resume his office unconditionally as no investigations were carried out and ended against the plaintiff, and the resolution had been overtaken by events and lost meaning.

See:- Uganda Millers Ltd Vs Batende Agencies (U) Ltd Ltd [1970] E.A. 387 at p. 391, and

and Akisoferi Michael Ogola (supra)

I also repeat that the earlier resolution was not to interdict the C.A.O. but to send him on forced leave This was explained by the defendant's predecessor to the Minister in Exh. 4. That letter accepted that the decision was by the D.S.C. and not the Council.

From the contents of that letter it is clear that the resolution was not to interdict Muhanguzi the C.A.O. thus:- " You might (have) mistaken forced leave to mean Interdiction In our case these two are different things. You have been talking of interdiction which was never the case. " Now for the successor to come out with interdicting the C.A.O. contrary to the resolution he purported to rely on was clearly utra vires. He purported to put the earlier resolution in force but acted contrary to its original intent. The principles of estoppel do apply in the circumstances of this case, and so the defendant acted outside his powers in thus purporting to interdict the plaintiff contrary

to the resolution relied upon.

Whether the defendant abused his powers or office i,e. whether he used authority entrusted to hom for his own benefit or the benefit of another person of his choice or to the detriment of his employer, learned counsels did not adequately address the court on this point. The said issue was vague and confusing.

But from a limited view of what action it refers to (interdiction) the view of court is that in exercising his powers as analyssed above his actions were ultra vires and therefore have no legal effect, since in law any decision made without authority is null and void from the start.
See:- Tomasi Musoke Vs Joseph Mpiiga Civ. App. 85/74
It was held that where the Chief Magistrate acted beyohd the scope of his powers his order is a nullity in the eyes of the law and void ab initio. That such an order does not become valid or operative if no appeal is filed against it. It will remain a nullity for all purposes and can be ignored by the respondent. An invalid order does not attain finality in the eye of the law ....."
The general principle applies to this case where an act is done ultra vires.

So the interdiction was null and void as such, and I leave the issue of abuse of office aside simply because there is no enough material to base a judicious decision upon, and it is out of the scope of these proceedings.

Lastly whether the Defendant is personally liable for the acts admitted, this takes me to the provisions of Section 174 of the Local Governments Act. This protects any such a person as the defendant from being personally liable to any civil action claim or demand.

In the present case it was agreed, inter alia, that on making positive findings " the Defendant shall forthwith abstain from interdicting the plaintiff and a sum of money payable in damages to the plaintiff shall then be ascertained by the honourable court on evidence" " Alternatively the court may direct such other course of action as it deems fit."

In my view it is the duty of this court to decide whether or not the defendant is liable for the actions he took and its hands are not tied by the temms of the agreement mentioned above.

In the case of Gokaldas Laximdas Tanna Vs
1. Sr. Rosemary Muyinza
2. Departed Asians Property Custodian Board Supreme Court Civil Appeal No. 12 of 1992 a similar clause was considered. This is what was stated :-

" Another irregularity worthy of note is that at the commencement of the trial the parties purported to agree in the following terms:-

" we therefore severally bind ourselves that upon finding the issue in the positive

(i) Judgment should be entered in favour of the plaintiff.

ii) AND UPON finding the issue in the negative Judgment should be entered in favour of the Defendant." We found such agreement objectinable on at least two grounds.

The first is that by doing so the parties sought to bie in advance the hands of the learned trial Judge in his judgment. The parties alsc appeared to have attempted to oust the functions of the court to arbitrate fairly the dispute between the parties and come out with decisions that appeared just in the opinion of the court. This, in my opinion, parties cannot and should not do.

The second objection is that the agreement would have the effect of asking for a judgment in favour of one or the other of the parties whether or not such judgment was contrary to any legal provisions." Oder, J.S.C. (as he then was).

A retrial was considered but the court decided to resolve the ommitted issue by the trial judge,

It is my opinion that the said observation equally applies here, and this court takes the above into consideration.

In the present case, however, the parties have provided that as an alternative the court may direct such other course of action as it deems fit.

Having found as above on the issues dealt with so far, the court will proceed to consider in detail whether or not

the defendant is liable to pay any damages to the plaintiff, before proceeding to assess the reasonable amount on evidence as per the agreement.

I now turn to the question of whether or not the defendant can rely on the provisions of section 174 of the Local Government Act to claim that his actions are protected thereof and he has immunity from being sued for such.

That section provides that :-

" 174. No act, matter or thing done or omitted to be done by-

(a) any member of a Local Government or Administrative Council or a Committee of a Council;

(b) any member of staff or other person in the service of a council; or

(c) any person acting under the directions of a council

shall , if that act, matter or thing was done or omitted in good faith in the execution of a duty or under direction, render that member or person personally liable to any Civil action claim or demand."

The lead words in order to enjoy such immunity are that first the said person must be acting in the execution of a duty or under direction. Then he must have been acting in good faith.

In considering a Statutory Immunity provision S. 46 (2) of the Judicature Act, 1967 in the case of Semakula Vs Musoke & 2 ors. [1981] H.C.B. 46 at p. 48

Allen J. as he then was, held inter alia as follows:-

> 2. With regard to Counsel's submission that the 1st and 2nd defendants, as court brokers, were protected by S. 46 (2) of the Judicature Act,1967, the protection only applied " In respect of any lawful act done" and there was no such protection where the court officer did an unlawful act."

In the case of Paulo Kalule Kagcdo vs Kaloriba Kyagaza [1979] 7 H.C.B. 136 Manyindo J., as he then was, went further in a similar case to state that " A court broker loses this immunity only if he acts unlawfully."

Applying similar principles to S. 174 of the Local Governments Act, it is my considered opinion that such an officer would be protected only if he acted under a valid lawful duty, or acted under a legally applicable direction, as well as his action having been done in good faith.

The phrase " good faith" connotes the attitude of the mind and this can not be seen by the human visual perception.

However, looking at the surrounding circumstances such an attitude whether it exists or not the actions can give an inidcation of the same.

As I have discussed above the defendant did act arbitrarily and unilaterally to the extent of going beyond the scope of his duties and functions in order to get rid of the plaintiff. His actions were hurried,

not properly researched not well considered. The tone of Exh. 2 The defendant's letter of interdiction dated 1.11.1999 shows that the defendant seemed to have been actuated by some personal ulterior motive in his actions. Mr. Majanga has suggested that it is because the plaintiff is not a native of Kapchorwa and the defendant thus does not want him to serve there.

The circumstances show that the matter had been in limbo for two years when the plaintiff was working unfettered. The defendant abruptly without any justifiable cause just came out unilaterally with the letter of interdiction without direction from the Council.

The action was taken in the absence of the plaintiff, and to wnsure that the plaintiff would not step in the office the same was locked and the keys taken away before his return. All these are indicators that the defendant was not acting in good faith and so he loses the immunity of S. 174 of the Act.

Thus the defendant is personally liable for his actions which were arbitrary, inconsiderate, oppressive and done in excess of his jurisdiction. So he is liable to pay the damages that will be assessed by court as per agreement.

Lastly as per agreed facts and issues it is found that before court can pronounce the final judgment evidence should be led on proof of damages so that one judgment can be pronounced.

As agreed, the court having found that the interdiction was purportedly ordered without lawful authority

and it can not stand, thus " the Defendant shall forthwith abstain from interdicting the plaintiff ".

Going to the question of damages sicne special damages were dropped court concentrates on other damages claimed.

Mr. Majanga learned counsel for the plaintiff submitted that the plaintiff seeks a claim for general damages for inconvenience. He has relied on the statements made in Buleen and Leak and Bacon's Precedents of Pleadings 12th Edn. at P. 384. then the case of Bank Consult Ltd Vs China Palace Restaurant H.C.C.S. No. 458 BIF 1990 (27/5/94) [1993] V KALR 58 . Mr. Wegoye, learned counsel for the defendant has submitted that such damages for inconvenience are only known in tort but not administrative law. But if extended to this case, then they should be norminal.

Mr. Majanga has asked court to award shs. 3,000,000 on that head.

Mr. Wegoye, however, has conceded that where government bodies are concerned, and where somebody in authority behaves unwarrantably appressively the proper damages are wither exeplary or punitive .

He has aruged that in the present case they have not been asked for.

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On the question of the principles of law on exemplary or punitive damages I totally agree with Mr. Wegoye, but with due respect to learned counsel I don't agree with him that such damages have not been asked for here.

First on those principles of law, they were discussed in detail in the case of Rookes Vs Barnard [1964] 1 All E.R. 367. especially at P. 411 . This case was applied in Joseph Musumba Vs Haji M. Kasaka & anor. Civil Suit No. 172 of 1970. -

1) Their object is to punish or deter (such officers or bodies)
2. There are two categories of cases in which an award of exemplary damages could serve a useful purpose viz; in the case of oppressive, arbitrary or un constitutional action by servants of the government, and in the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff. In the latter case where the conduct was high handed aggravated damages were awarded.

In the present case the court has above found that the acts of the defendant were arbitrary and oppressive and even ultra vires . So they fall in the category of cases where such damages should be awarded, since the plaintiff clearly was a victim of the punishable behaviour of the defendant.

As for whether such damages have been asked for here or not, the plaintiff in his pleadings paragraph 12 (f) did pray for exeplary damages, and in the agreement it is stated that on making affirmitive findings a sum of money payable in damages to the plaintiff shall then be ascertained by court on evidence.

This court has found on evidence that the acts of the defendant fall in the category of cases where such damages should be awarded, so court should duly assess the amount fitting in the circumstances of this case as there is no other/further evidence needed to prove how much to punish such acts which is left entirely in the court's hands.

Regarding general damages for inconvenience, Mr. Wegoyr concedes they exist in tort but disputes them being extendable to adminhistrative law. He says that his learned brother has not adduced any authority to show that they apply to administrative law, but I say nor has he brought any to show that they don't.

In the case of East African Airways Vs Knight [1975] E.A. 165, there was a claim for loss of career and it was accepted that it was properly brought claiming general dmages.

Halsbury's Laws of England Third Edition Vol. 11 at P. 216 par. 383 deals with damages as inter alia " Damages may be defined as pecuniary compensation which

the law awards to a person for the injury
sustained by reason of the act or default of
or put more shortly, damages are the recompe
by process of law to a person for the wrong
has done to him. "

In my opinion this definition is of general ap.
whether it be in tort, contract or even administrative wr.

In the present case the plaintiff was wrongly interdicte.
as found above. Since his interdiction he has sufferred
the agony of being without a job and his full salary.
He has definitely been put out of work alll this time, he has
shown how his family has suffered due to the cut in his
salary which has led to his failure to meet his financial
obligations including schoold fees for his children. All
this must have been an inconvenience to him andthat injury
deserves to be compensated for. This has gone on for eight
months on end. I believe that the cummylative effect of his
wrongful interdiction is an injury that deserves compensation
and court will dully proceed to assess the appropriate
amount of damages under this head.

On the head of exemplary damages, considering that
the acts of the defendant were high handed, arbitrary
and oppressive, and the manner in which the whole exercise
was conducted , not oblivious of the current purchase
power of the shilling, I deem an award of shs. 1,000,000 -

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adequate as exemplary damages. I duly award that sum against the defendant.

On the question of general damages for the inconvenience suffered during these right months of uncertainty, lack of work, and the rest, an amount of shs. 1,500,000 - (One million five hundred thousand) would be adequate in these circumstances. I duly award the plaintiff a sum 1,500,000 - under that head. He is also awarded the costs of this suit.

The first wo items shall carry an interest at court rate from the time of judgment, while the costs carry the same from the dateof assessment till payment in full.

Henceforth the interdiction is declared nill and void ab inition, and the defendant shall forthwith abstain from interdicting the plaintiff. Right of Appeal explained.

D.N. MANIRAGUHA,

JUDGE.

06.07.2000

5/4/04.