THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS CAUSE/APPLICATION NO. 441 OF 2004

(ARISING OUT OF MISCELLANEOUS CAUSE NO. 60/2004)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF ANNEBRITT ASLUND :::::::: APPLICANT

VERSUS

THE ATTORNEY GENERAL :::::::::::::::::::::::::::::: RESPONDENT

RULING:

The applicant ANNEBRITT ASLUND herein after to be called "the applicant) brings this application under the provisions of section 3 of the Judicature (Amendment) Act No. 3/2002 and Rule 6 (2) (b) of the Civil Procedure (Amendment) (Judicial Review) Rules SI No. 75 of 2003.

She seeks the following reliefs:

1. A declaration that the report submitted to the minister of Finance, Planning and Economic Development or about 17/02/2004 by the Hon. Lady Justice Julia Sebutinde, the Chairperson of the

Commission of inquiry into allegation of corruption in the Uganda Revenue Authority (URA) is a nullity in law and/or not a report of the commission.

2. An order CERTIORARI removing the Sebutinde Report into the High Court for purposes of its being quashed and expunged from the archives of Public records of the Republic of Uganda.

3. An injunction prohibiting the minister or any other officer of government from implementing or otherwise taking action on the basis of the Sebutinde Report.

The grounds upon which the application is grounded run as follows:

1. That the Sebutinde Report was made in complete disregard and/or breach of the provision of Legal Notice No. 3 of 2002 and the commission of inquiry Act cap. 166.

2. The Sebutinde Report was made singularly by the chairperson of the commission of inquiry into allegation of corruption in the URA (herein after called "the commission") and submitted to the minister without any prior meeting and or approval by the commission.

3. Two out of the three commissioners have publically and in writing denounced the Sebutinde Report.

4. The Sebutinde Report contains unsubstantiated allegations against the applicant as findings that were made contrary to the principles of Natural Justice.

5. The Sebutinde Report contains materials that are injuries to the credit, character and reputation of the applicant and the applicant has thereby been greatly injured in her reputation, office and occupation and has been brought into public scandal, hatred, redicule and contempt.

6. That it is just and equitable that the orders sought be granted.

The application is supported by an affidavit sworn by the applicant on the 28th day of May 2004. It relevant parts run as follows:

1. That I am a female Swede of sound mind and the applicant above.

2. the I am currently employed as the Commissioner General of the Uganda Revenue Authority 9URA).

3. That I was one of the persons who appeared and testified before the commission and as such, I am directly interested in and affected by the Sebutinde Report.

4. That the Commission was established by Legal Notice No. 3 of 2002 and consisted of the following persons:

   a) Lady Justice Julia Sebutinde – chairperson.

   b) Mr. James Kahooza member.

   c) Mrs. Facon Cousens – member.

5. That originally, the secretary to the commission was Mr. Mike Chibita, but Mr. Geofrey Kiryabwire (as he then was) sub sequently replaced him pursuant to Legal Notice No. 8 of 2002....

6. That on 17th February 2004, the chairperson handed over to the minister copies of the report of the commission that did not bear the signature of the other two commissioners namely, Mr. James Kahooza and Mrs. Facon Cousens.

7. That the said Report had been made singularly by the chairperson without holding any meeting and/or getting the prior approval of the commission and it was publically disowned by the other two commissioners, namely Mr. James Kahooza and Mr. Facon

Cousens, at a press Conference held at Speke Hotel on or about the 17th February, 2004 .....

8. That by letter copy of which is hereto attached us "D" Mr. James Kahooza stated the grounds why he did not sign the report.

9. That likewise, the grounds why Mrs. Facon Cousens did not sign are contained in her letter hereto attached as "E".

10. That on 19th February 2004, I wrote to the minister requesting to be availed copies of the Sebutinde Report and/or Recommendations but he refused to do so. ....

11. That in the meantime, the wrint and electronic media appears to have obtained copies of the Sebutinde Report from the Government or its officers and made publication thereof including parts of the Sebutinde Report, which contain unsubstanted claims against me. ....

12. That I have since learnt from the said publication that the Sebutinde Report accused me of having frustrated the work of the commission. ....

13. That I have also learnt from the said publications that in her Report, the Hon. Lady Justice Sebutinde made a baseless biased

and false finding that I was incompetent to head a big financial institution like in URA.

14. That the same false and unsubstantiated claims have appeared to the whole world on such websites as www newvision co.ug and www monitor co.ug. ...

15. That to the best of my recollection, when I appeared before the commission, I was never asked my question or otherwise given any hearing in respect of my suitability for my job as a commissioner General Contrary to the principles of National Justice.

16. That I entered into the employment contract with the URA in June 2001 after successfully being subjected to a very rigorous and transparent procedure of recruitment and after satisfying my appointing authority that I was suitable and qualified to meet the challenges of the job.

17. That I know for a fact that ever since I started sensing URA its set revenue collections performance has been improving each successive financial year in the percentage shown below:

a) 2001/2002 - 12%

b) 2002/2003 - 15%

c) July 2003 – April 2004 –17%.

18. That in the last financial year (2002 – 2003) I and my team received commendation and a bonus payment for our having surpassed the net revenue target set for us of 139 billion Uganda Shillings.

19. That as regards my alleged frustration of the work of the commission, I categorically deny if and add that the chairperson of the commission never gave me any opportunity to defend myself against such a serious matter.

20. That I was personally very instrumental in the formation of the commission by among other others, seeking donor funding for its operation and being very supportive of the appointment of the Hon. Lady Justice Sebutinde as its chairperson.

21. That little did I know that the afore said appointment would instead of serving its legitimate purpose occasion a miscarriage of justice.

22. That the misconception on the part of the Hon. Lady Justice Sebutinde that I had frustrated the work of the commission may have arisen when I taxed her genuinely taxable income as related to emoluments earned from her work with the commission.

23. That my action were in accordance with the legal opinion of the Solicitor General which I duly communicated to the chairperson of the commission. ...

24. That by the time of making her report, the Hon. Lady Justice Sebutinde had already commenced court proceedings against me as the Commissioner General. ...

25. Furthermore, that I had already filed against Lady Justice Sebutinde with the Judicial Service Commission in respect of the rude language, name-calling and out right bias I had experienced when I appeared before her and my said complaint had already been served upon her. ...

26. That I verily believe that the above defferences between the Hon. Lady Justice Sebutinde and me might have led her to being biased against me.

27. That on 4th March 2004, the Attorney General wrote a letter to the minister stating that in his opinion what the chairperson of the commission handed to him, as the appointing authority, was not a Report of the commission and as such its recommendations could not be implemented without being successfully challenged in court.

28. That the said letter was subsequently taken out as the Attorney General's advert and published in the New Vision Newspaper of 18th March 2004 and Procurement News (March, 24-30, 2004) …

29. That the aforesaid not withstanding, the minister of Finance and other officials of Government are quoted in the monitor of April 3, 2004 as saying the Government spent a lot of money on the commission and that "It would be inconceivable for the findings to be brushed aside as useless" …

30. That I am not aware of any denials or rebuttals of the contents f the said articles by the concerned government officials.

31. That in view of the above government position, I promptly applied for leave to apply for judicial review to have a conclusive resolution of the matter.

32. That on 13th May 2004 the Hon. Mr. Justice J.B.A. Katutsi granted me leave to apply for judicial review as evidenced by the order hereto attached as "Q" …

33. That I make this affidavit in support of the application for the orders sought in the above matter.

34. That whatever is stated herein above is true to my personal knowledge and knowledge acquired from the documents afore referred to.

There is an affidavit in reply sworn by OLUKA HENRY of the Attorney General's Chambers. The relevant parts of that affidavit run as follows:

4. That I have read and understood the contents of the Notice of Motion and the supporting Affidavit of the applicant together with the annexture thereto.
5. That the applicant does not have locus to bring this application.
6. That the application is misconceived, premature and without merit.
7. That the contents of the affidavit of the applicant are taunted with falsehood and hearsay and disclose no basis for the writ of certiorari.
8. That the Report of the commission of inquiry into allegations of corruption in the Uganda Revenue Authority (hereafter called "the Sebutinde Report) has not occasioned any injustice to the applicant.

9. That the Sebutinde Report is legal and binding in as far as there is no other report to counter it by the majority of the commissioners.

10. That the Sebutinde Report satisfied the provisions of Legal Notice No. 3 of 2002 and the commissions of Inquiry Act cap. 166.

11. That the commissioners only disagreed on the recommendations and as such the evidence collected and finding made by the commission is a true reflection of the working at the commission.

12. That unless and until the other commissioners come up with a report countering the Sebutinde Report by way of majority, the Sebutinde Report remains the report of the commission.

13. That I swear this affidavit in reply to the affidavit made by the applicant and pray that the orders sought therein should not be granted.

14. That whatever is stated hereinabove is true to the best of my knowledge and belief.

I may here summarise the background leading to this application.

On 15th March, 2002, the Hon. Minister of Finance, planning and Economic Development issued Legal Notice No. 8 of 2002. That Legal Notice ran as follows:

THE COMMISSION OF INQUIRY ACT (CAP 56).

The commission of inquiry into allegations of corruption in the Uganda Revenue Authority Notice, 2002.

(under section 2 of the commissions of inquiry act, cap. 56).

IN EXERCISE of the powers conferred upon the minister by section 2 of the commissions of inquiry act, this Notice or issued this 12th day of March, 2002.

1. This Notice may be cited as the commission of inquiry into allegations of corruption in the Uganda Revenue Authority Notice, 2002.
2. There is established a commission of inquiry into the matters set out in paragraph 4 of this Notice.
3. (1) The Comission shall consist of the following persons –
    a) Lady Justice Julia Sebutinde – Chairperson.
    b) Mr. James Kahooza – member

c) Mrs. Facon Cousens – member

(2) Mr. Mike Chibita, Principal State Attorney shall be the secretary to the commission.

(3) Ms. Maureen Owor shall be lead counsel to the commission.

4. The commission shall, at any time be deemed to be duly constituted if any two of the members are present including the chairperson.

5. The terms of reference of the commission shall be –

a) to generally investigate allegations of corruption in the Uganda Revenue Authority:

b) to investigate specific allegations of corruption made against individual officers and to establish inter alia-

(i) those employees of the Uganda Revenue Authority who in course of their employment, have acquired significant wealth that cannot be shown to have been received from legitimate means;

(ii) those employees who have corruptly received gratification or inducement in the course of

their employment in the course of their employment in the Uganda Revenue Authority;

c) to inquire into any other appropriate matter incidental or relevant to the foregoing;

d) to make appropriate recommendations upon their fundings including-

(i) making recommendations concerning URA employees who should be dismissed from service or who should be subjected to criminal prosecution or both.

(ii) Making recommendations for improving the efficiency and effectiveness of the Uganda Revenue Authority.

5 (1) The Commission shall submit a report of its findings and recommendations under paragraph 4 to the minister responsible for finance, planning and economic development within three months after commencing its duties.

(2) The Commission may, at any time before the completion of its final report, submit to the minister an interim report on any matter within its terms of

reference. The Applicant was the employee of Uganda Revenue Authority in the capacity of Commissioner General (URA). On various and diverse occusions during the year 2002 she appeared and testified before the commission of inquiry into allegations of corruption in the URA. That Commission was chaired as indicated herein above by lady Justice Julia Sebutinde, a judge of this court. On 17th February 2004, the Hon. Lady Justice Sebutinde handed her report of finding and recommendations to the minister of Finance, Planning and Economic Development. (hereinafter called "the minister"), on 18th February the other two commissioners namely JAMES KAHOOZA and Mrs. FAWN COUSENS publically disassociated themselves from the report which Justice Sebutinde, the Chairperson had submitted to the minister as the report of the commission.

The applicant being aggrieved by the Sebutinde Report applied for leave to apply for review. Leave was granted. Hence this review.

I must confess that this application has caused me much anxiety and concern. The commission of inquiry under review was chaired by a judge of this court. The question that was nagging me was, about jurisdiction. Can a judge of this court review the report made by a commission headed by a judge of this court? I invited counsel to address one on this issue. Counsel on both sides undertook to file written submission. Learned Counsel for the applicant filed their written submission within the time frame given. Learned counsel from the Attorney Generals Chambers with their characteristic dereliction of duty did not. I can writing this ruling without their assistance. This is a matter of great public interest. One would have hoped that the chambers of the Attorney General would give this matter due consideration and anxiety it deserves. The response had been utter silence. This is regrettable.

OXLII A defines the words "lower courts" as any subordinate court established by law; the industrial

courts; tribunals established by law, and any other similar bodies. I think with respect that a commission of inquiry falls under "any other similar body" that is to say similar to tribunals. The commissions of inquiry act, does not provide for an appeal from the findings and recommendations made by the commission. That being so the only remedy an aggrieved party has, is to apply for review. An aggrieved party cannot get this form of redress from the court of Appeal. It is therefore only logical that such a party has to come to this court by way of an application for review under section 3 of the Judicature (Amendment) Act No 3 of 2002 and Rule 6 (b) of the civil procedure (Amendmet) (Judicial Review) Rules SI No. 75 of 2003. That being the view I take of this issue I now proceed to inquire into the application before me.

THE LAW:

The relevant sections of the commissions of inquiry act run as follows:

(3) Each commission shall specify the subject of inquiry and may, if there is more than one commissioner, direct which commissioner shall be the chairperson, and direct where and when the inquiry shall be made, and the report of inquiry rendered, and prescribe how the commission shall be executed, and may direct whether the inquiry shall or shall not be held in public.

6. The commissioners shall, after taking the oath or making the affirmation as provided in section 4, make a full, faithful and impartial inquiry into the matter specified in the commission, conduct the inquiry in accordance with the direction, if any, in the commission; in due course, report to the (president) in writing, the result of the inquiry, and also, when required, furnish to the (President) a full statement of the proceedings of the commission and of the reasons leading to the conclusion arrived at or reported.

7. If the commissioners are, in any case, equally divided on any question that arises during proceedings of the commission the chairperson of the commission, shall have a second or casting vote."

THE BURDEN OF PROOF:

The law on this subject may be found in sections 100, 101, and 102 of the evidence act. These sections 100 enact as follows:

"Whoever desires any court to give judgment as to any legal right or liability depending on the existence of facts which he asserts must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

101: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

102: The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

From the above sections of the evidence act it goes without saying that the burden of proof lies on the applicant.

EVIDENCE:

In this application evidence is by affidavits, and the documents supplied as annextures to the application.

GROUNDS OF APPLICATION:

1. That the Sebutinde Report was made in complete disregard and/or breach of the legal Notice No.3 of 2002 and the commissions of inquiry act cap, 166. Applicant submits that the Sebutinde Report is flawed to the extent of being declared a millity. Respondent swears that on the contrary the Sebutinde Report satisfied the provisions of Legal Notice No. 3 of 2002. In order for the Applicant to succeed on ground I she has to satisfy court that the Sebutinde Report was made in complete disregard of Legal Notice No. 3 of 2002. That Legal Notice appointed three commissioners one of the three namely Lady Justice Julia Sebutinde was named chairperson. She was a chairperson among equals. The only difference was that in case of a tie in voting she had a second or casting vote. In all other respects she was equal and a peer of the other two commissioners. She was not mandated to act unilaterally. Legal Notice No. 3 of 2002 in no uncertain terms stated that the commission was to "be deemed to be duly constituted if any two of the members are present." There was no room for one commissioner constituting the commission. Legal Notice No. 3

of 2002 said so. This requirement was to be adhering to whether the commission was gathering evidence, deliberating or doing anything that partined to the work of the commission. With respect this is what Legal Notice No. 3 of 2002 said. There is evidence to show that the other two commissioners did not sign the report that Lady Justice Sebutinde handed to the Minister of Finance, Planning and Economic Development. Section 5 (1) of Legal Notice No. 3 of 2002 stated:

> "(1) The Commission shall submit a report of its findings and recommendations under paragraph 4 to the minister ....."

The words "the commission shall" are a command and not a mere directive. The commission was to be deemed constituted when two members of the commission were present. One case safely say that the commission has never submitted a report to the minister. A chairperson is not the commission. It would be perverse to hold otherwise. The first ground succeeds. On the second ground that the Sebutinde Report was made singularly by the chairperson of the commission into allegation of corruption in the URA and submitted to the minister without prior meeting and/or approval bythe commission we have to turn to the letters written by the two

commissioner to the secretary and the minister of the commission of inquiry. I hasten to say that these are certified copies. In her letter to the secretary of the commission (undated) Mrs. Fawn wrote:

> "I refer to my review in December of the draft report of the Judicial Commission of Inquiry into corruption in the Uganda Revenue Authority. Although there was a written mention of a meeting to discuss this draft, neither I nor Mr. Kahooza received a formal notification to attend such a meeting."

In his letter to the minister dated the 18th February 2004, Mr. Kahooza inter alia wrote:

> "The real meetings of the commission are those where the commissioners would evaluate evidence, blame or defend those accused and make recommendations. No such meetings have ever taken place since Jane, 2002. .....
>
> A meeting has a definition: It is called, it is assembled, it is called to order, it is given an agenda, and minutes are taken. No such a thing has ever happened.
>
> .....

No only was the substance of the report changed, the changes were being made without consultations. When we made it clear that the report had to be a report of three people, the chairperson then decided that whenever she finished drafting a chapter, the draft of the chapter would be made available to the other commissioners so they could make their comments or suggested amendments on chits to be submitted to the chairperson who would determine how to incorporate those comments in the report. This suggestion amounted to an insult to the other commissioners."

Speaking for myself I could not agree more. The second ground succeeds. So does the third ground.

The fourth ground complains that the Sebutinde Report contains unsubstantiated allegations against the applicant as findings that were made contrary to the principle Natural Justice.

In paragraphs 12 and 14 of her affidavit in support of the application applicant swears that she was never asked any question or otherwise given a hearing in respect of the allegation and "findings" in the Sebutinde Report

that she frustrated the work of the commission. This is not rebutted. It stands unscathed. Not only that. In his letter to the minister Mr. Kahooza states:

> "It is stated in the report that the commissioner General attempted to frustrate the work of the commission by not cooperating with it. Such statements have no foundation at all."

In paragraphs 13 and 15 of her affidavit in support of the application applicant swears that she was never given any hearing before being condemned as incompetent in the Sebutinde Report. This is not rebutted and remains unscathed.

In her letter to the Secretary of the Commission Mrs. Fawn Cousens wrote:

> "In the report the chairperson attempts to slant the facts to cast doubt on the ability of the (Commissioner General) to manage the URA effectively and efficiently. I find this must unprofessional."

For his part Mr. Kahooza the other commissioner, in his letter to the minister wrote:

"Attacks on the persons of most top officers in URA appear in many parts of the report. What is difficult to comprehend is what is motivating these baseless attacks. There must be a huge motive."

There is in law a celebrated principle enshrined in the Latin words: AUDI ALTERAM PARTEM (Hear the other side.) My fore fathers had a similar warning. They said "DO NOT DECIDE THE COMPLAINT OF YOUR DAUGHTER BEFORE HEARIN FROM YOUR SON IN LAW." It simply means: That no one shall be condemned unheard. This is a principle of Natural Justice. "Hear the other side" is the more far reaching of the principles of natural justice. The learned authors of WADE – Administrative law at page 444 state the following:

"AN ANCIENT RULE.

According to one pictures judicial dictum, the first hearing in human history was given in the Garden of Eden:"

They then quote the case of R. UNVERSITY OF CAMBRIDGE (1723) 1 str.557 where FORTESCUE. J. said:

"I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam says, God, where at though? Hast thou not eaten of the tree, whereof I commanded thee that thou should it not eat." And the same question was put to Eve also."

The learned authors go on to say that in that case the university of cambridge had deprived a recalcitrant scholar of his degree on account of his misconduct in insulting the vice-chancellor's court; but he was reinstated on a mandamus from the court of the King's Bench, on the ground that deprivation was unjustifiable and that, in any case, he should have received notice so that he could make his defence, as required by 'The Law of God and man' This is a nice example of the old conception of natural justice as divine and eternal law. The fourth ground must surely succeed.

The fifth ground complains that "The Sebutinde Report contains materials that are greatly injurious to the credit, character and reputation, office and occupation and has been brought into public scandal, hatred, ridicule and contempt."

On the question of public scandal, hatred, ridicule and contempt, there is no iota of evidence to back up that complaint. There is no affidavit of a third party stating that on hearing the report he lost respect for the applicant. The complaint remains pure surmise, and I will leave it at that.

I have read the entire affidavit in support of the application and no where have found the applicant swearing that she has been brought into public scandal, hatred, ridicule and contempt. There is no doubt that the report contains some matters that are injurious to the applicant. To say of a professional person that she is incompetent and unfit to hold office is to injure the reputation of that person and to rain her prospect of getting a better job. Ground five partly succeeds.

The issues for the determination of this application have been well stated by the applicant. These are:

1) Whether or not the Sebutinde Report is legal and bingind.

2) Whether or not there are sufficient grounds to warrant the exercise of the power of judicial review by this Honourable court in the matter.

3) Remedies.

I also agree with the applicant that in order for her to succed she must prove:-

a) That the Commission acted without or in excess of its jurisdiction;

b) That the commission acted contrary to the principles of natural justice.

c) That there was bias.

In discussing the grounds of the application I have touched on these issues except the issue of bias.

THE LEGALITY OF THE SEBUTINDE REPORT:

To be legal the report had to be in conformity of both legal Notice No. 3/2002 and the commissions of inquiry act. Cap. 166.

I have already pointed out how the said report with in complete breach of Legal No. 3 of 2002 and in violation of the commissions of inquiry report. The report owed legality from the Legal Notice No. 3 of 2002 and the Commissions of Inquiry Act. Legal Notice No. 3 of 2002 set out the terms of reference for the commission. Any thing done outside those terms of reference was ultra vires and therefore invalid. The terms of reference given to the commission were:

a) to generally investigate allegations of corruption in the Uganda Revenue Authority;

b) to investigate specific allegations of corruption made against individual officers and to establish inter alia:-

(i) those employees of the Uganda Revenue Authority who in course of their employment, have acquired significant wealth that cannot be shown to have been received from legitimate means;

ii) those employees who have corruptly received gratification or inducement in the course of their employment in the Uganda Revenue Authority;

c) to acquire into any other appropriate matter incidental or relevant to the foregoing. (emphasis supplied)

d) to make ppropriate recommendations upon their findings. (emphasis mine).

(i) making recommendations concerning URA employees who should be dismissed from service or who should be subjected to criminal proceedings or both;

(ii) Making recommendations for improving the efficiency and effectiveness of the Uganda Revenue Authority.

Lastly the commission was to submit its report of its findings to the minister. In the case of the applicant the report went ahead to deal with issue of efficiency and competency which was not included in the terms of reference. Even it were to be argued that this could be covered by the last but one of the terms of reference there is overwhelming evidence to show that this assertion of innefiency and incompetence of the applicant was outrageously wrong to the extent of being false. In paragraph 17 of her affidavit in support of the application applicant swore:-

"17. That I know for a fact that ever since I started serving in the URA, its not collections performance has been improving each successive financial year in the percentage shown below:

a) 2001/2002 - 12%

b) 2002/2003 - 15%

c) July 2003 – April 2004 – 17%."

This averment is not contraverted. The law looks at it as being the truth. With the greatest respect and deference to say of a person who produces such results that she is unfit to the run the office is to state an utter absurdity.

The Legal Notice No. 3 of 2002 stated in no uncertain terms that the commission was to be deemed constituted when two of the commissioners were present. There is overwhelming evidence as shown herein above that this was flouted with impunity.

In my humble and respectful opinion this alone renders the report a nullity. A quorum is defined by the OSBORNS CONCISE LAW DICTIONARY 7th Edn. As: "The minimum number of persons which consititutes a VALID formal meeting. (emphasis supplied). In other words luck of a quorum

renders the meeting invalid. It does not need a scholar to say that whatever is done at that meeting is null and void ab initio.

"It is possible very effectually to poison the fountain of justice before it begins to flow. It is not possible to do so when the stream has ceased." I have no hesitation in declaring the Sebutinde Report a nullity. Applicant prayed for certiorari. The question here is whether the report was a result of an inquiry conducted with due regard to the rights accorded by the principles of natural justice to the applicant. In the case of RUSSEL V. DUKE OF NOFOLK (1949) IAU E.R. 109 TUCKER, L.J. at page 118 said:

> "There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the natural of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth."

In LOCAL GOVERNMENT BOARD, V. ARLIDGE (1915) AC 120, VISCOUNT HALDANE, L.C. said:

"I agree with the views expressed in an analogous case by my noble and learned fried LORD LOREBUR, In BOARD OF EDUCATION V.

RICE" (1911) AC at page 182 "he laid down that in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, in as much as that duty was a duty which lay on everyone who decides anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial."

In DE VERTEUL V. KNAGGS AND ANOTHER (1918) AC 557 at P. 560 lord parmoor SAID:

"Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make to correct or contravert any relevant statement brought forward to his prejudice"

And lastly in LOCAL GOVERNMENT BOARD V. ARLIDGE (1915) AC at P. 138 LORD SHAW OF DUNFERM LINE said:

".... Must do its best to act justly and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means."

Section 6 of the commissions of inquiry act provides inter alia as follows:

"The commissioners shall, after taking the oath or making the affirmation as provided in section 4, make a full, faith ful and impartial inquiry ...".

In as far as the applicant was condemned as inefficient and incompetent, unfit to run a body like URA, without being an opportunity to use LORD PARMOOR's words," to make to correct or controvere any relevant statement brought forward to (her) prejudice, her rights were flouted. Be that as it may, it is trite law that where proceedings are wholly void certiorari will not be granted, because the proceedings are not merely voidable but wholly void. Certiorari cannot issue to quash proceedings which are void and in law non extent. Certiorari requires the report to be sent up to the High Court, to have its legality inquired into, and, if necessary, to have the report quashed. I have already herein above declared the report a nullity. What then is there to quash?

It was also prayed that this court grants an injunction, prohibiting the minister or any officer of Government from implementing or otherwise

taking action on the basis of the Sebutinde Report. With respect I think this prayer is misconceived. To implement or not to implement, to take action or not to take action, is a political decision best left to politicians. Anything done under the report may attract litigation. But that is not my concern. Let that be left to the politicians. My duty here is to decide on the legal status of this so called report. I have endevoured to discharge that duty and so help me God!

PER CURIAM

I wish to state with respect that the report is not wholly useless. It may contain vital evidence. It may contain useful information to polical heads. It is in my humble opinion a report of some use.

The .....pg56 total of my ruling is that a declaration that the report submitted to the minister of Finance Planning and Economic Development on or about 17/02/2004 by The Hon. Lady Justice Julia Sebutinde, the chairperson of the commission of inquiry into allegations of corruption in the Uganda Revenue Authority (URA) is a nullity in law and not a report of the commission.

As the applicant has succeeded on one of the three prayers, she will get 1/3 of the costs of this application. I order accordingly.

J.B.A. Katutsi

JUDGE