

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-0153/2014**

**OMALLA GODFREY.....APPLICANT**

**VERSUS**

**1. BUTALEJA DISTRICT LOCAL GOVERNMENT COUNCIL**

**2. FRANCIS ODAP**

**3. BUTALEJA DISTRICT**

**SERVICE COMMISSION.....RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The applicant brought this application by Notice of Motion under section 33, 36, 37 and 38 of the Judicature Act (Cap.13) Rules 6 and 4 of the Civil Procedure (Amendment) Judicial Review Rules (SI No. 75 of 2003) sections 53, 54, 55, 63 and 64 of the Local Government Cap. 243 and Rules 3, 4, 5 and 6 of the Law Reform (Miscellaneous Provisions) (Rules of Court) Statutory Instrument No.74-1 seeking orders for declaration, certiorari, prohibition, injunction, mandamus and damages.

The brief facts of this matter are that applicant was appointed as Sub-county Chief on 9<sup>th</sup> July 2004 and was duly confirmed on 16<sup>th</sup> November 2007. On 6<sup>th</sup> May 2014 the Chief Administrative Officer of the first respondent, served him with a termination letter, for abandonment of duty.

The applicant by Notice of Motion and affidavit filed in support testified that the actions of the said CAO are ultra vires and unlawful because according to paragraph (d), “*The conduct of the Respondents terminating the applicant’s service is wrong in law, offensive to the principles of natural justice and has occasioned a grave miscarriage of justice,*” necessitating Judicial review by this court. He further averred in his motion that No Investigation Tribunal was ever constituted to investigate the said allegation, and the applicant was never offered a right to be heard; contrary to the principles of natural justice.

Though the Respondents were served they never put in appearance, and they never attended the trial.

Counsel for applicant filed written submissions in which he alluded to the law and the facts governing the said application.

I have carefully considered the above submissions and read through the pleadings and supporting affidavit and I do make the following findings and orders.

### **1. Application for Mandamus.**

This court has the jurisdiction to grant the said order subject to a number of cautionary considerations.

According to the principles stated in *John Jet Tumwebaze v. Makerere University Council and 3 Ors Civil Application No. 353 of 2005*(unreported) the orders of mandamus, certiorari and prohibition are discretionary in nature.

In exercising its discretion with respect to those prerogative orders, court must act judicially and according to settled principles which include:-

- Common sense and justice.
- Whether the application is meritorious.
- Whether the application is reasonable,
- Level of vigilance.

The aim of this prerogative order is to control the exercise and abuse of power by those in public offices, rather than providing final determination of private rights which is done in normal civil suits.

In this application it has been shown that the Chief Administrative officer of Butalejja, did issue a termination letter hereto annexed as 'B' against applicant. A close examination of that letter shows that it was not issued by the right authority in accordance with the provisions of the Local Governments Act. It does not attach the relevant law under which the decision was taken to terminate the applicant's service; neither does it attach the said Min No. 32/2014 (i) on the letter to provide further and better information regarding this decision to the affected applicant.

It is therefore correct and right for the applicant to complain that he was unfairly interdicted without following the law or the rules of natural justice.

The order of mandamus sought is aimed at directing the respondents to follow the law and hold an inquiry into the alleged abandonment of duty. I agree. Sufficient cause has been shown that there is not enough background information informing the action of the Chief Administrative Officer to interdict the applicant. The action

is hereby found to be *ultravires*, unlawful and contrary to the laws of natural justice as the applicant was never given a chance to defend himself.

For the said reasons, the application for an order of mandamus, compelling the Respondents to hold an inquiry into the said abandonment of duty is hereby granted as prayed.

## **2. Certiorari and Prohibition**

The prerogative order of certiorari is designed to prevent the excess of or the outright abuse of power by public authorities. While certiorari issues to quash decisions which are *ultravires* or vitiated by error on the fact of the record or are arbitrary and oppressive; prohibition serves to prohibit the happening of some act or taking of some decision which would be *ultravires*. See, *The King v. Electricity Commissioners Ex parte London Electricity Joint Committee 1924 1 KB 171* and in *Re An Application by Bikoba Gymkhan Club (1963) EA 473, Rv. Inland Revenue Commissioner Ex parte National Federation of Self employed and Small Business Ltd 1962 AC 617,*  
*R V. National Council for Dental Technicians, Ex parte Meatr (1935) 1 QB 704.*

The principle from all the cited authorities above is that certiorari and prohibition as prerogative orders are designed to control inferior courts, tribunals and administrative and statutory authorities, in the exercise of their power and authority.

The applicant prayed for an order of certiorari quashing minute 32/2014 (1) of the Butaleja District Service Commission, which purported to remove him from the

post of sub-county chief of Himutu Sub-county, Butaleja District without giving him an opportunity to be heard on the complaint against him.

In the case of *Kassibo Joshua and the Commissioner of Customs Uganda Revenue Authority HCT-MA44/2007*.

My brother **Hon. J. Kiryabwire** stated that the test to be applied is that stated by Hillary Delany in his book “Judicial Review of Administrative Act” 2001 Sweet and Maxwell at pages 5 and 6 that;

*“Judicial Review is concerned not with the decision but the decision making process. It involves an assessment of the manner in which the decision is made. It’s to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality.”*

The applicant argued in his submission by counsel that the decision making process by terminating the applicant’s employment was done *ultravires* by the Chief Administrative Officer. He was never accorded any time to defend himself which is unlawful under the principles of natural justice.

I agree. The purpose of justice is to ensure fairness. The Constitution of the Republic of Uganda under Article 28 (1) recognises the right to a fair hearing. It’s the principle of natural justice and enshrined in our basic law that no one should be condemned unheard. Clearly there is evidence to show that applicant was unfairly treated since nobody asked him to defend himself.

I find that applicant has proved in this application that the decision making process giving rise to his interdiction by the Chief Administrative Officer was *ultravires*

the law, and hence the applicant is entitled to the orders of certiorari quashing minute 32/2014 (1) of the Butaleja District Service Commission.

For reasons above the application is granted and applicant granted leave to appear and defend himself as prayed. I so order.

**Henry I. Kawesa**  
**JUDGE**  
**11.11.2014**