

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

HCT-04-CV-MC-005-2013

**OBORE GEORGE ALFRED.....APPLICANT
VERSUS**

- 1. THE INSPECTORATE OF GOVERNMENT**
- 2. THE ATTORNEY GENERAL.....RESPONDENTS**

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

RULING

The applicant brought this application for Judicial Review for the Writs of Certiorari and Prohibition and an injunction against defendants/Respondents.

The application is by Notice of Motion and is supported by the affidavit of **Obore George Alfred** the applicant.

The brief facts are that Applicant was charged at the Chief Magistrate's Anti-Corruption Court and convicted of abuse of office under Section 11 of the Anti-Corruption Act and theft c/s 253 and 254 of the Penal Code Act.

He was sentenced to imprisonment of 24 months or payment of a fine of Uganda shs. 1,500,000/= on abuse of office and 12 months or fine of shs. 500,000/= on theft. He paid the fines. He was also ordered to refund shs. 7,000,000/= to Malaba Town Council; which he claims he did. By letter annexed as 'A' the IGG wrote to the applicant to vacate office by directive issued to the Minister of Local Government, basing on section 46 of the Anti-Corruptions Act.

The applicant now complains that the said directive is illegal and contrary to the Local Government Act. He claimed that the IGG's directive is also contrary to natural justice since it did not arise out of a court order.

While submitting on behalf of the applicant, Counsel for the applicant argued that, one cannot be a Judge in his own cause. He argued that the IGG is not clothed with powers to order the applicant out of office after having successfully prosecuted the applicant and secured a conviction, but with no specific court order that the applicant vacates his office. He argued that it was improper for the Minister for Local Government to direct his vacation or removal from office. He referred to the case of John Ken Lukyamuzi v. A.G. and Electoral Commission Sup. Court Constitutional App. No. 2 of 2007, which held that:

*“If the IGG chooses to prosecute then IGG is bound by the court decision.
He argued that in view of the court decision it was irregular for the
Respondent to order the applicant out of office.”*

He further argued that the word “*disqualified*” in section 46 of Anti Corruption Act 2009 does not mean “*removal*”, or “*shall vacate*.”

He referred to Section 116 (1) of the Local Government Act to infer categories of people who are meant to be disqualified from being elected. His view that disqualification is at time of eligibility when seeking office, not when one is in office. He further argued that removal is provided for under section 14 of the Local Government Act.

The first Respondent (IGG) responded to the arguments, basing on the affidavit of **Salome Mwanja** the Senior Inspectorate Officer with Directorate of Legal Affairs.

He raised a preliminary objection that the application is incurably defective for violating Rule 6(1) (2) of the (Judicature Review) Rules 11/2009 and O.52 R.1 and 3 of the Civil Procedure Rules.

He argued that the application was filed in a wrong court; and ought to have been filed in the Criminal Court of the Anti-Corruption Division.

In rejoinder to the above, Counsel for applicant submitted that this court has the jurisdiction to hear the application.

I will first dispose off this preliminary objection, then divulge into the other questions raised.

In my view it is erroneous for the Respondent to equate a Division of the High Court, to the High Court, represented by a circuit.

The law which creates High Court circuits provides under Section 19 of the Judicature Act as follows:

“The High Court shall hold sessions in various areas of Uganda to be designated High Court Circuits for the trial of civil and criminal causes and for the disposal of other business pending at such time and place as the C.J may in consultation with the P.J appoint.

(2) For the purposes of this section the C.J. may by S.I declare any area to be a High Court Circuit.”

From that law the Mbale High Court Circuit was created to preside over all cases including applications akin to the current application before this court.

The creation of Divisions at the High Court in Kampala did not abolish or interfere with the conduct of business in High Court Circuits.

The arguments raised in defence of the preliminary objection are therefore misconceived and are a misunderstanding by counsel of the conduct of business in the High Court. The preliminary objection is accordingly overruled. Counsel is also warned to desist from using derogatory language that imputes contempt for this court. He is ordered to expunge the last paragraph of his argument from the record. People came to court for redress. This court takes exception to such use of derogatory language whose import is akin to indiscipline. It is my finding that this application is properly before this court. This court now proceeds to determine it on merit as herebelow:

The issue for determination is whether the directive/order by the first respondent to the Minister for Local Government to remove the applicant from office when court did not order so, was

proper and regular. OR whether the IGG can after a successful prosecution order removal from office of the convict, basing on the provisions of Section 46 of the Anti-Corruption Act.

While applicant argues that IGG has no such powers, the 1st Respondent's counsel, argues that the IGG has the power so to do.

Counsel argued that the 1st Respondent was not guilty of any excessive use of power, or error in law by ordering the Minister to remove applicant under Section 46 of the Act. He argues that there is a court judgment which the 1st Respondent was prosecutor and successful party with a right to enforce the same against the applicant vide Article 225 of the Constitution, and S. 8 of the IGG Act.

Both parties had sought for the interpretation of Section 46 of the Act, with Applicant inviting this court to refer it to the Constitutional Court while Respondent states that the interpretation should be by the Anti-Corruption Court Division at Kololo which heard the matter.

A look at Section 46 provides thus:

“A person who is convicted of an office under section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 and 25 shall be disqualified from holding a public office for a period of 10 years from his or her conviction.”

The above provision in my view is clear and does not require any specialized interpretation by the Constitutional Court.

Whenever courts are faced with a statutory provision for interpretation, there are three rules of interpretation. These are the literal rules (which is informed from the intention of the writer from his words only). There is the rational interpretation, which refers to instances when his words do not express his intention perfectly; but either exceed it or fall short of it. So that we are to collect it from probable or rational conjectures only. The third is the one where his words though they do express his intention, are themselves of doubtful meaning and we refer to like conjectures to find out in what sense he used them, then this is referred to as a mixed interpretation.

The wording of Section 46 of the Anti-Corruption Act, in my view is unambiguous. It is possible to adduce the meaning of the words used without recourse to other conjectures. It is such a provision that one can apply the literal rule of interpretation, and confidently obtain the right interpretation.

The use of the words; “A person who is convicted of an offence under Section 2, 3, to Section 25” refers to anybody who is charged under those Sections of the Act, and ends up with a conviction. The applicant is in this category of a person. A convict. “Shall be disqualified.”

The “Black’s Law Dictionary” 6th Edn defines “shall” as used in statutes that:

“This word is generally imperative or mandatory..... the word “shall” is a word of command; and one which has always or which must be given a compulsory meaning, as denoting obligation. The word in ordinary usage means “must” and is inconsistent with a concept of discretion.”

The use of the word “Shall be disqualified” from holding a public office for a period of 10 years from his or her conviction,” imposes a statutory ban on any convicted person under the said sections from holding a public office from the time of conviction to the time frame of 10 years thereafter. It is a self regulating order in built within the statute itself to accompany every conviction meted out against all convicts under this law. It is a standalone provision which comes into operation upon conviction, whether court makes a specific order re-emphasizing its provisions or not.

Given the above interpretation of this section of the law therefore it is true that the applicant was charged under section 11 of the Anti-Corruption Act and convicted. The consequence of that conviction as rightly argued by the 1st Respondent brought Section 46 of the Act into play. Once convicted, the law bars him from holding a public office from date of conviction, irrespective of whether he serves the sentence or pays the fine.

The 1st Respondent, as a prosecutor and interested party in the enforcement of the provisions of the Anti Corruption Act, was right and justified to apply the provisions of Section 46 of the Act, to ensure that the applicant vacates office.

This court at this stage need not go into the merits and demerits of that action, since the application before it is for judicial Review.

The purpose and concern of Judicial Review is to check the correctness of a decision taken by any public body or person that affects the rights of others. The court is not concerned with the correctness of the decision, but with the procedure that is used to reach the decision.

In decided cases, the position agreed on is that, Judicial Review is concerned with establishing whether the decision complained of is;

- (i) Illegal,
- (ii) Irrational,
- (iii) tainted with procedural impropriety and was unfair. (See Fr. Francis Muntu & 15 Ors v. Kyambogo University MSC. APP. 643/2005.

From the pleadings, the applicant relies on the last factor of procedural impropriety by arguing that the 1st Respondent did not stick to the orders of court, when it ordered for the removal of applicant from office. He relied on John Ken. Lukyamuzi v. A.G. and Electoral Commission Const. Appeal. 2/2007, to infer that IGG cannot move out of what court ordered, and make its own orders to remove the applicant.

The respondent says the orders arose out of Article 230 (1) (2) of the Constitution giving 1st Respondent mandate to prosecute, and Articles 227, and 230 (2) of the Constitution and Section 10 and 14 (6) of the IGG Act, which confer the power to the IGG to act as he did. The Respondent argued that applicant was tried by the Anti Corruption Court; was found guilty and he even exercised the right of appeal. The 1st Respondent further argues that as a consequence of the judgment and conviction the applicant was removed from office.

In my assessment of the record before me I find for a fact that the applicant was subjected to a fair trial before an independent court which convicted him of the charges. There was therefore no illegality in the trial before the Anti Corruption Court.

Secondly the Anti Corruption court found appellant guilty and convicted him, and also sentenced him. He paid the fine and even concedes so in his pleadings. He was fairly treated and no irrationality was meted against him upto that stage.

As a consequence of the trial, the IGG invoked section 46 of the Act to require him to vacate office. In doing this I see on record Annexures 'A' and 'B' which were letters written about applicant's removal from office. He was notified of the reasons, and the section of the law which was being enforced under Annex 'B'.

The entire effect of Annex 'B' was to inform the applicant that by virtue of his conviction the law requires him to be disqualified from holding a public office. The authority which prosecuted him chose to exercise that power as it did and he was dully informed of this. He was therefore not a victim of any procedural impropriety meted against him by Respondents for which this court can be called upon to correct.

In my view Section 46 of the Act is couched in mandatory terms. Once convicted for any of the listed offences therein, you automatically cease to hold any public office under the law for 10 years from date of conviction. It would therefore be a mockery of justice if after conviction, the IGG waited for the respondent to be disqualified at "nomination" as argued by the applicant.

In the result therefore, none of the grounds for Judicial Review that is illegality, irrationality and procedural impropriety have been proved by the applicant.

For all reasons discussed, I do not find merit in this application. It is accordingly dismissed with costs to the 1st Respondent who argued the application.

I so order.

Henry I. Kawesa

JUDGE

14.05.2015