



3. Order for costs.

The application is supported by an affidavit of Catherine Ama the applicant wherein she deponed that;

1. *That she is the Secretary to Officer Equal Opportunities Commission;*
2. *That the respondent dropped the suspension letter dated 27<sup>th</sup> April 2016 at her home on 4<sup>th</sup> May 2016 while on sick leave asking her to hand over office;*
3. *That there are no grounds for her suspension and or removal from office as the Secretary to Equal Opportunities Commission;*
4. *That she was not given an opportunity to defend herself thus contravening the rules of natural justice;*
5. *That no lawful decision was reached to warrant a suspension or her removal from office as required by law;*
6. *That she is advised by her advocates M/S Nandaah Wamukoota & Co. Advocates which information she believes to be true that the procedure used for suspending or removing her as the Secretary to Equal Opportunities Commission was illegal and irregular as it offended the provisions of the Equal Opportunities Commission Act, the Public Service Regulations 2009 and the rules of natural justice;*
7. *That the respondents' decision is void abnatio as it is irrational, procedurally irregular contrary to the rules of natural justice and prejudicial to her as she was not given a fair hearing and thus offending her right to a fair hearing;*
8. *That as a result of the respondents' illegal acts she will be deprived of her office as Secretary to Equal Opportunities Commission;*

9. *That she has been working honestly and diligently and have never committed any wrong acts in the course of her work warranting suspension;*
10. *That the decision of the respondents dated 27<sup>th</sup> April 2016 has put her into disrepute and the allegations labeled against her have further tainted her integrity from which she seeks general damages;*
11. *That the suspension was made without investigative findings or audit thus prejudicing her right to just and fair hearing;*
12. *That it is fair, equitable and in the interest of justice that this application is granted with costs.*

The respondent filed an affidavit in reply sworn by Sylvia Muwemba Ntambi, the 2<sup>nd</sup> respondent and chairperson of Equal Opportunities Commission wherein she stated that the suspension was to allow investigations into allegations of financial mismanagement and Human Resource mismanagement during the period 2014-2016 which coincides with the applicant's tenure as secretary and accounting officer of the Commission. She further deponed that the investigation involve retrieval of documents from the office and interviewing of staff under the applicant which cannot be done efficiently and fairly whilst the applicant is in office.

At the hearing of the application, the applicant was represented by Mr. Allan Kikwe and Mr. Wamukoota while the respondents were represented by Mr. Nelson Nerima. Counsel for the parties filed written submissions as had been directed by this honourable court.

I have considered the application as a whole. I have related the same to the law applicable. I have also studied and comprehended the respective submissions by learned counsel. I will go ahead and decide this application as argued.

Substantially what is being challenged in this application is the decision by the respondents to suspend the applicant. It is this decision that the applicant wants prohibited and quashed by way of certiorari. These are prerogative orders. The law relating to grant of prerogative orders was summarized ably in the celebrated case of **R V Electricity Commissioners Ex Parte London Electricity Joint Committee Company [1924] 1 K.B. 171** that:-

***“whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the King’s Bench Division exercised in these writs.”***

In Uganda the said decisions are subject to the controlling jurisdiction of the High Court. In the instant application the applicant has sought for an order of certiorari and prohibition.

The issue for determination is whether in suspending the applicant the 2<sup>nd</sup> respondent breached the basic tenets of natural justice namely that the applicant was not afforded a fair hearing.

In his submission Mr. Allan echoed the averments in the affidavit in support of the motion and further submitted that it is not in dispute that the applicant was suspended by the respondents without being heard which was in total breach of the rules of natural justice and accordingly the applicant was condemned unheard.

He submitted that the respondents were the complainants, investigators, prosecutors and judges which was wrong.

Counsel for the respondents did not agree and submitted that suspension or interdiction in the Public Service is the temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out.

He further submitted that a hearing is given at an investigation stage, not before interdiction or suspension.

I do agree with the submissions of counsel for the respondents. As rightly submitted, the decision to suspend the applicant is a temporary removal not a dismissal while an investigation over a particular misconduct is being carried out.

The applicant if cleared will be reinstated. In my considered view, therefore the suspension of the applicant was lawful and within the law. Nobody acted in excess of authority in causing the suspension of the applicant.

At this stage it is not a requirement that the applicant is given a hearing before being suspended since police is investigating. When time comes, the applicant will be given a hearing as deponed in paragraph 7 of the affidavit in reply. What was done to the applicant is standard disciplinary procedure to maintain sanity and pave way for investigations at the Commission. It was thus premature to have come to court before completion of the investigations.

Consequently, I will order that this application for Judicial Review be and is hereby dismissed.

Since the applicant is still an employee of the respondent who is awaiting her fate, I will order that each party meets its own costs.

**Stephen Musota**

**J U D G E**

**10.11.2016**