

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. CAUSE NO. 128 OF 2016

SSENTONGO HENRYAPPLICANT

AND

1. UGANDA MEDICAL & DENTAL PRACTITIONERS COUNCIL

2. DR. KATUMBA SENTONGO.....RESPONDENTS

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicant, who appeared in person, applied for judicial review of the respondents' decision declining to fully register him as a medical practitioner .

The respondents were represented by Ms Nanvule Doreen, Legal Officer of the 1st respondent.

Counsel for the respondent filed written submissions with authorities that I have carefully considered.

The applicant filed written arguments that I have carefully considered .

The applicant's case.

With respect to the applicant, it is not disputed that he qualified as a medical doctor with a Bachelor of Medicine and Bachelor of Surgery from Makerere University in 2014. He was deployed in August 2014 to a full time Internship Contract with Mbarara University that ended in 2015. When he applied to the 1st respondent for registration on 16th May 2016, he was denied full registration by the respondents.

The applicant availed annexures B(e) and B(f) as proof of completion of internship . Annexures collectively marked B (e) are pre-registration employment certificates by Mbarara regional Hospital in respect of General surgery, Internal Medicine and Obstetrics and Gynaecology . Annexure B(f) is a list of medical professionals who are certified as having completed their internship in 2015 . The list , dated 11.8.2015, was issued by Dr. Doreen

Birabwa Male Secretary of the National Internship Committee. The applicant is listed as No. 300.

The respondents' case

The 1st respondent is established by section 2 of the Uganda Medical and Dental Practitioners Act Cap 272 whose functions are , among others, to

'Monitor and exercise general supervision and control over and maintenance of professional medical and dental educational standards including continuing education.'

Section 8 (1) (a) mandates the Registrar of the 1st respondent to keep and maintain on behalf of the Council , registers of medical and dental practitioners in the forms set out in the 2nd schedule.

The 2nd respondent in his affidavit in reply affirms that it is a requirement that before a medical practitioner is fully registered, he must undergo internship training which is organized by the National Internship Committee of the Ministry of Health . He affirms that the same Committee oversees the deployment and supervision of the health practitioners undergoing internship.

After considering the applicant's application for registration, the respondents registered him provisionally for the reason that he had not done internship in pediatric and child health .

The respondents' decision was based on the applicant's failure to produce a form showing that he had completed internship in pediatrics and child health.

It was the respondents' contention that it is consultants and senior consultants who supervise the medical practitioners and each of them must sign off the intern doctor for every discipline indicated on the internship form.

Whether the second respondent was rightly sued.

With respect to the objection to joining the 2nd respondent as a party, counsel for the respondent cited the correct position of the law ,i.e, **SCCA 4 of 2007 Charles Twagira v AG** . It was held in that case that where a person acts in his official capacity, he need not be sued personally unless it is pleaded that the official acted maliciously beyond the scope of his duties.

The applicant in the notice of motion, pleaded that the respondents have abused their office, grossly neglected their duty, and maliciously denied him full registration.

Therefore, the 2nd respondent was properly sued.

The enabling law on judicial review.

Counsel for the respondents ably summarized the enabling law.

Article 42 of the Constitution as amended confers on every person who appears before any administrative official or body a right to be treated justly and fairly and a right to apply to a court of law for redress.

This case is properly before the court because it seeks redress against the 1st respondent , an administrative body established by law.

The Judicial Review rules give the procedure for seeking judicial review as well as the orders that a court can give. These include injunctions, declarations, prohibitions, mandamus and certiorari.

Jurisprudence has over time evolved through decisions of the High Court and appellate courts on the principles that guide judicial review .

It is now well established that decisions that are illegal, irrational, or tainted with procedural impropriety will be subject of judicial review. The case of **Jet Tumwebaze v Makerere university Council & three others HCMA 353 of 2005** refers.

As held by Kasule J as he then was, orders made in judicial review

*‘look to the control of the exercise and abuse of power by those in public office,
....’*

Resolution of the case.

The issue for determination is whether the respondents were justified in declining to fully register the applicant on account of failure to produce a proof that he had undergone training in pediatrics and child health.

The respondents based their decision on the failure by the applicant to secure a form indicating that he had completed internship in pediatrics and child health.

An evaluation of the affidavit in reply of the 2nd respondent reveals two centres of supervision of interns. The first one is the National Internship Committee(NIC) that is authorized by section 39 of the MPD Act. The section empowers the 1st respondent to appoint Committees for the better carrying out of its functions.

According to the 2nd respondent, NIC oversees the deployment and supervision of health practitioners undergoing internship.

Although this Committee listed the applicant as having completed the internship at Mbarara Regional Hospital in 2015, the 2nd respondent reasoned that it is not a substitute for internship completion forms.

This brings me to the second centre for supervision of interns and this is the Consultant or senior consultant at the hospital where the intern is based.

The requirement for the supervising Consultant to confirm that the intern underwent to the training is a good practice .

Although this requirement establishes another level of supervision, it does not override NIC that has the statutory mandate to clear interns who have completed internship. Moreover, this Committee is appointed by the 1st respondent that means it is its agent and acted with full authority of the Council when it published names of interns who completed internship including the applicant.

The respondents are therefore estopped from denying the assurance of NIC to the whole world that the applicant completed his internship.

The gist of the principle of estoppel as defined by section 114 of the Evidence Act Cap. 6 is that where a person has by act, declaration , omission intentionally caused or permitted another person to believe a thing as true and act upon it, that person cannot be permitted to deny that thing.

Therefore, as NIC was acting with authority of the 1st respondent, the latter is estopped from denying the assurance by NIC that the applicant completed his internship. It is irrational for the respondents to deny the report of their own Committee and instead demand for further proof that the applicant had completed his internship after clearance by NIC , evidence of which demand has not been availed.

The applicant affirms in his affidavit in rejoinder that he has never been asked for extra clearance documents. There is no evidence that such communication was ever made to the applicant . Indeed the only document attached to the affidavit in reply is a provisional registration certificate for the applicant issued on 30.5.2016.

From the affidavit in reply and affidavit in rejoinder, it emerged that the applicant is embroiled in another dispute(CS. No. 139 of 2015) with Mbarara Regional Hospital over the form that was demanded by the respondents among other complaints.

The pendency of that suit notwithstanding, what is pertinent at this time is the clearance of the applicant by NIC , the body legally tasked with supervision of interns.

The decision to ignore the report of NIC that cleared the applicant, and the demand that the applicant avail further proof of completion of internship, amounts to unfair treatment by an administrative body charged with a public duty.

Remedies

The applicant prayed for prerogative orders of mandamus requiring the respondents to fully register him and prohibition of any proceedings against him.

Having found that the respondents acted irrationally in ignoring the confirmation of completion of internship by NIC, and that the unsubstantiated demand for further clearance by the applicant amounted to unfair treatment, the respondents are hereby directed to fully register the applicant as a medical practitioner immediately.

With respect to prohibition, the applicant has not laid a factual basis for possible persecution by the respondents. It is therefore not possible to give a general order of prohibition without specifics.

Damages

The applicant prayed for general damages, special damages , and punitive damages for the lost opportunity to find employment during the period when he was not entered on the register .

That period runs from 16.1.2016 when he applied for full registration to date .

Under the law of tort, damages are compensatory in nature for a loss suffered by a person following a tort, breach of contract or breach of a statutory duty. **Osborn's Law dictionary 9th edition.**

In Kibimba Rice Ltd v Umar Salim SCCA 17 of 1992 ; and Robert Coussens v AG SSCA No. 8 of 1999 , the Supreme Court reiterated the principle that damages are intended to place the complainant in the same position he was in if he had not been injured.

The applicant prayed for 300,000,000/ being income he would have earned had he got employment. This assertion is purely speculative and therefore cannot be a reason for awarding damages.

That the applicant has been treated unfairly is a ground for an award of damages. In the premises, I shall award a sum of 5,000,000/ as general damages for the unfair treatment and inconvenience suffered as a result thereof.

The applicant claimed for punitive damages which are damages awarded where the action was oppressive, arbitrary, or unconstitutional by servants of government. There was no evidence to that effect.

In the premises, I make the following orders.

1. An order of mandamus will issue directing the respondents to fully register the applicant as a medical practitioner immediately and without any delay.
2. General damages of 5,000,000/ awarded to the applicant to be paid by the 1st respondent.

3. The award will carry interest at 12 % p.a from date of ruling until payment in full.
4. Costs of the application to the applicant to be paid by the 1st respondent.

For clarity, the applicant is only entitled to disbursements as he appeared in person.

DATED AT KAMPALA THIS 14TH DAY OF OCTOBER 2016.

HON. LADY JUSTICE H. WOLAYO