

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT-01-CV-MA-0061 OF 2016**

- 1. KIHUNDE SYLVIA**
- 2. KEMBABAZI MARGRET.....APPLICANTS**

**VERSUS**

- 1. FORT PORTAL MUNICIPAL COUNCIL**
- 2. OMOKO PAUL.....RESPONDENTS**

**BEFORE: HON. MR. JUSTICE OYUKO ANTHONY OJOK**

**RULING**

The applicants by way of notice of motion instituted an application for Judicial Review under S. 36 (c) of Judicature Act, Rules 3 (1) (a), Rules 5,6,7 & 8 of the Judicature Act (Judicial Review) Rules; 2009 seeking for orders of certiorari be issued, quashing and setting aside the decision of the second respondent, the Town Clerk of the 1<sup>st</sup> Respondent in a letter dated 22<sup>nd</sup> June 2016, an order reinstating them in their respective positions, compensation for damages to a tune of over 400M for their arbitrary victimization, high handedness, pain, misery, frustration, torture and mental anguish.

Before the beginning of the proceeding, the Respondent's counsel applied for consolidation of the 2 suits since the issues, remedies and the respondents were the same and counsel for the applicant agreed and the 2 suits were consolidated.

Counsel James Ahabwe represented the applicants, while Richard Bwiruka appeared for the Respondents. Both counsel agreed to submit orally hence this submission.

The grounds of the applications are;

1. That the applicants were on the 6<sup>th</sup> September 2005 and on the 25<sup>th</sup> October 2005 appointed on promotion under minutes 1/9/2005 and min119/2005 to the position of Senior Accounts Assistant and Senior Assistant Treasurer by the District Service Commission Kabarole District.
2. That the Applicants have all along been hard working persons in their positions and performing their duties diligently.
3. That on the 5<sup>th</sup> July, 2016 the Applicants received their letters written by the 2<sup>nd</sup> Respondent titled Staff Re-organization transferring the applicants from West Division to East Division and South Division to Municipal Council on the 22<sup>nd</sup> 06 2016 demoting the applicants from the position of Senior Accounts Assistant to Accounts Assistant and from Senior Assistant Treasurer to Accounts Assistant
4. That the Respondent's action to demote the applicants were unfair, an act to victimize the applicants.
5. That the Respondent's action to demote the applicants in ranks was unlawful and amounts to punishment.
6. That the applicants were never accorded any opportunity by the 2<sup>nd</sup> Respondent before their demotion.
7. That the 2<sup>nd</sup> Respondent did not have powers to demote and deploy the applicants.
8. That all these contravenes Art. 28 (1) 42 and Art. 173 (a) of the 1995 Constitution, S. 55 and 59 of Local Government Act Section F-t Rules; regulations 2 & 3, 9 10 & 11 of the Local Government (financial & Accounting) Regulations 2007.
9. That it is therefore fair, prudent, reasonable, just and equitable in the circumstances and in the interest of substantive justice that the Judicial Review Orders be issued against the Respondents.

Further and more grounds were contained in the affidavits of Kihunde Sylvia and Kembabazi Margret.

The applicants filed in many annexures namely Annexure

- A. Appointment Letter
- B. Staff Re-Organization letter.
- C. Staff Re-organization by 2016/17
- D. Internal Transfers.
- E. Job description for Town Clerk.

F. Job Description for Principal Treasurer.

G. Photographs of closed Municipal office for Kembabazi Margret.

The applicants also put in their supporting affidavits in reply and affidavits in rejoinder, while the Respondent put in their affidavit in reply and supplementary affidavit and a letter dated 18/July/2016 referenced Staff Re-organization 2016.

According to the applicants, the letters of transfer were to take immediate effect (Annexure C) from 22<sup>nd</sup> June 2016, a letter in contention was dated 22<sup>nd</sup> June 2016 and yet the 2<sup>nd</sup> Respondent attached a letter dated 18/July/2016 as the date of transfer of the applicants. According to the applicants this was in bad faith and the letter dated 18/7/2016 did not exist and came into place after the applicants went to court.

According to the applicants the reason to go to court was because of the decision of the 2<sup>nd</sup> Respondent which would affect their salary scales and other benefits attached to rank and also the 2<sup>nd</sup> Respondent did not have powers to make such decision of demoting them and transfer them.

According to the applicants, it was supposed to be the head of Finance I.e Principal Treasurer that had powers to transfer them according to the law. Counsel quoted S. 11 (1) paragraph 2 of the Local Government Finance & Accounting Regulations of 2007, S. 65 (2) of the Local Government Act Cap 243, para 19 of the affidavit in rejoinder of Sylvia, para 6 of the affidavit of Margret, paragraph 13 of affidavit in rejoinder and prayed that this application be granted with all the prayers sought.

Counsel of the Respondents vehemently opposed the application and stated that the 2 applications do not disclose a cause of action and the letter dated 22/06/2016 which is the letter of contention was not attached on both affidavits in para 3 when the applicants came to court and yet it was incumbent on them to attach not to smuggle it in the rejoinder. He also attacked the application that Under S. 173 of the Local Government Act the Town Clerk is immuned he cannot be personally sued for actions in his official capacity because he did not transfer the applicants to his personal gardens but to a Government Department or offices.

He submitted that, the applicants were not demoted because they still earn the same salary. The letter was just a normal transfer titled re-organization and although there was an error which was later rectified that there was no demotion.

He stated that S. 65 (a) (d) of the Local Government Act says that the head of administration is the in charge with powers to supervise and coordinate all activities of all offices seconded to council. He went further and stated that where as the District Service Commission sends minutes to the Town Clerk, who then appoints officers and the respective heads of department deploys, supervises and appraises them. He cited Local Government Finance and accounting Regulation 9(2) f that gives the Town Clerk powers as the Chief Executive and accounting officer, the power to ensure the appointment of competent and qualified personal and other staff as necessary to carry out the accounting and management of the council. This alone gives the power to Town Clerk to deploy. He distinguished regulation 1) (9) quoted by counsel of the applicants that the head of department only supervises and ensure that the applicants are allocated duty and perform them effectively. He submitted that the Town Clerk has powers to transfer any officer in the Municipality including the applicants.

Counsel of the Respondent further stated that the Principal Treasurer is below the Town Clerk and the Town Clerk has over role supervisory role in the Municipality.

Counsel submitted that the circular referred to (Annexure f) spells out the key out puts specifically bullet xi does not mention that the principal Treasurer transfers apart from saying that he/she deploys, supervises and appraises staff under him where as the Town Clerk does the over role supervision and coordination.

Lastly he quoted the case of **Namuddu Haniffa Vs The Returning Officer Kampala District and 2 others HCMC 69/06** where court held that

*“an application for Judicial Review must show that the decision sought to be quashed is tainted with illegality and or irrationality and or procedural impropriatory ”*

Counsel pointed out that this application does not prove the 3 elements and therefore is unfounded. Applicants are just refusing transfer, sign of disobedience and big headedness and therefore this applications should be dismissed with costs.

**In rejoinder**, Counsel of the applicant maintained that, the applicants have a cause of action and the Respondent does not deny this in his later dated 18<sup>th</sup> July 2016 and does not deny the transfer he made.

On immunity Counsel cited S. 133 Local Government Act to support his submission and stated that the 2<sup>nd</sup> Respondent never acted in good faith in his official capacity and within the

law and as such the 2<sup>nd</sup> Respondent acted illegally irregularly and without following the procedure. Counsel of the applicant still reiterated his earlier prayer that this application be allowed with all the prayers. On smuggling the letter dated 25/5/2016 in the rejoinder counsel submitted that a rejoinder forms part of the pleadings and as such the letter is attached

I have carefully, internalized, appraised myself with all the necessary authorities and allow me to address the pertinent issues raised in this application. But to begin with whether the application discloses a cause of action and immunity of the Town Clerk.

**1. Discloses a cause of action**

In judicial review, what is important is for the applicants to show/prove that the decision sought to be quashed is tainted with;

1. Illegality,
2. Irrationality,
3. Procedural impropriety.

Which shall be discussed below;

**2. Immunity**

The Town Clerk being the accounting Officer of the Municipality and in an attempt to re-organize the Municipality acted in his official capacity since he had the power under the Local Government Act to ensure efficient and effective running of the Municipality acting in his official capacity though his motive was not clear. I therefore see no reason for him to be sued in his individual capacity.

Be it as it may, even if he was not sued individually, still he would have been the responsible officer to be brought to court as the responsible officer in-charge of the Municipality and who signed the re-organization letter. If every officer is to be sued individually, then officers would fear to make decisions. However such decisions must be in good faith and in line with the terms and conditions of employment, regulation and standing orders.

The gist of this application is that;

The applicants through the letter dated 22/06/2016 or 18/07/2016 whichever that the 2<sup>nd</sup> Respondent who he does not deny through his affidavits demoted, transferred and as such

would miss on their benefits attached to their previous position. According to them, the 2<sup>nd</sup> Respondent did not have authority or mandate to do so.

Whereas I agree that High Court has unlimited jurisdiction, it does not mean that High Court should also involve itself in administrative matters and yet its clogged up with many serious cases to handle of serious magnitude. High Court should be the last resort having explored and exhausted all internal mechanism put in place. I believe this is an administrative matter that can best be handled by the Permanent Secretary Ministry of Local Government for guidance, even District Service Commission and or Public Service Commission.

I entirely agree that the Town Clerk has no power to demote somebody but can recommend demotion to the relevant authorities but also agree that the Town Clerk being the accounting Officer has all the powers to transfer anybody working within the municipality under the Local Government Act. Transfer therefore is not a punishment and even the Town Clerk can even assign additional tasks as envisaged in the appointment letters of the Applicants. The applicants never shown any proof that their salaries were reduced apart from being speculative. In any case the Town Clerk made it clear before submission that it was an error on the issue of demotion though never communicated to the applicants in writing.

According to the Local Government Act, Public Service standing order and regulations there are mechanisms of handling grievances and complaints.

It would be absurd for this court to set a bad precedent to allow every person working in offices/organizations e.t.c not to exhaust all internal mechanism put in place. Court should be a last resort to run to.

It would be wrong and unfair for a town clerk not to have powers to transfer anybody working within the Municipality and it does not mean that the person transferred must first be consulted. I see no problem whatsoever by the town clerk transferring the applicants in any position and if done on the same terms and conditions without lowering their scale.

The demotion therefore was irregular, illegal, unconstitutional and unwarranted , the town clerk can still transfer the applicants and incase the applicants are not satisfied then internal mechanism can still be explored, exhausted and if it does not work upon showing proof, then the parties can still come to court.

Counsel of the applicants never proved the justification of 220M and 200M respectively as compensation for damages for their arbitration victimization, high handedness, pain, misery, frustration, torture and mental anguish apart from mentioning it. Damages are not meant to enrich the parties but to put them in the position they would have been. It is not shown anywhere that the salaries of the applicants were affected, actually what counsel said was mere speculative. This case can be distinguishable with that of **Sejjusa David VS AG Misc. Cause No. 176/2015** where Lady Justice Margret Oguli made it very clear that damages must be actual not speculation. In Sejjusa's case it is actual damage and court took into consideration the fact that David was constructively discharged from the army, not going to receive any terminal benefits, soldiers were received from him, he was not deployed, guns and escorts taken away from him and many others unlike in the instant case. I therefore find no reason(s) whatsoever to award any damages to the applicants who are still working, their salary have not been reduced, still earning same allowances and benefits.

Regarding costs, S. 27 (1) clearly states that award of costs is discretionary but must be exercised judiciously.

Under S. 27 (2) of Civil Procedure Act clearly states that if costs are not awarded, then reasons must be given in writing. However this is not mandatory but discretionary.

In the case of **Prince J.D.C Mpuga Rukiidi Versus Prince Solomon Kioro and others Civil Appeal No. 15 of 1994 (SC)** it was held that

*“That however, were court is of the view that owing to the nature of the suit, the promotion of harmony and reconciliation is necessary, it may order each party to bear his/her own costs”*

In the circumstances each party shall still bear its own costs no award of damages and in the spirit of harmony each party should work together to promote the growth of Fort portal Municipality since the suit was consolidated it applies to both applications.

Dated this 29 Day of August, 2016.

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**OYUKO. ANTHONY OJOK**

## **JUDGE**

Delivered in the presence of;

1. Richard Bwiruka for the Respondents.
2. James Ahabwe for the Applicants.
3. All parties present.
4. Court clerk James present