

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

**HCT-04-CV- MA- 0092-2016  
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**1. MUGODA ABDU  
2. MULUGA HELLEN STIMA:::APPLICANTS  
VERSUS  
BUDAKA DISTRICT LOCAL COUNCIL::: RESPONDENT**

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

**RULING**

The Applicants made an application for Review (Judicial Review) under Rules 3, 4, 5, 6, and 7 of the Judicature (Judicial Review) Rules 2009. The application is supported by the affidavit of **Muluga Hellen Stima**, and affidavits in rejoinder by **Mugoda Abdu** and **Muluga Hellen**.

The application was opposed by the Respondents, through affidavits in reply filed and deponed by **Kwape Andrew, Mudenya Grace**.

The gist of this application is that applicants seek for reliefs of declarations, writs of certiorari and prohibition, permanent injunction and costs. Applicants challenge the Respondent's actions arising from the meeting of council held on 11<sup>th</sup> March 2015, whereupon the name of **Cornelius Nyago** was alleged to have been proposed and passed to fill a vacant post on the District Service Commission

whereas not. Applicants contend that the said matter was smuggled into the day's deliberations and was thereby null and void.

Respondents contend that there was an amendment of the order of Business of and Council and an amendment was done which made the procedure and deliberations lawful.

At the beginning of their submissions Respondents through their counsel raised a preliminary objection arguing that the application was improperly before court. This was premised on the argument that according to *Fuelex Uganda Ltd v. Attorney General & 2 Ors. Misc. Cause 4/48/2014* the applicant has to show that the decision complained of is tainted with illegality irrationality and procedural impropriety.

He argued that since Section 73, 75, 76, and 77 public documents should be proved by certified copies and section 55 and 56 of the standard Rules of procedure for local Government Councils in Uganda (2008), the Clerk to Council is the one mandated to keep the minutes and records of council. Applicant should have applied to the Clerk for a certified copy of the minutes. No such minutes were annexed and hence the Respondent's counsel argued that the application is premature and should be dismissed with costs.

In reply applicants' counsel argued that such a failure to annex the documents above is not fatal. He argued that the fact that Respondents refer to the same minutes to buttress their arguments and did not annex the certified minutes they refer to, it makes the attached minutes valid. They also raised issue with the approved minutes being illegally obtained since they done when the matter was

already in court. They therefore argued that there was no merit in the preliminary objection.

I have gone through the pleadings.

I agree that the right thing is to annex certified minutes. However I note that Respondents who are custodians of the “certified minutes” did not also offer court a copy of them. They based all their arguments on the “uncertified minutes” annexed by applicants to make their arguments. I do agree with counsel for applicant that given the peculiar circumstances of this case, the omission is not fatal and is excusable.

Also given the fact that there are arguments in the main application tending to explain why no certified copy is available I hold that the preliminary objection is without merit and is rejected.

On the merits of the application I have internalized the pleadings and submissions. I wish to point out from the onset that the concern of Judicial Review is not the decision *per se* but the decision making process. This court in ***Kachra Investments Co. Ltd v. Mbale District Land Board HCT-CV-MC-009/2014*** re-echoed the superior Court decisions of ***Aggrey Bwire v. JSC CCA.9/2009***, and ***Jet Tumwebaze v. MUK & Ors HCC Ap. 353/2005***, and held that for court to determine if the matter follows within the realm of Judicial Review, court has regard to common sense of justice, whether application is meritorious, whether there is no waiver of rights by the applicant. The grounds to consider are (i) illegality (ii) irrationality (iii) Procedural impropriety.

If the above is considered and proved by applicant, then the remedy of Judicial Review is available to him.

I have noted from the pleadings, affidavit evidence and submissions that both parties agree that on 11<sup>th</sup> March 2016, there was a Council sitting. However both applicants and Respondents have sworn affidavits giving different versions of what actually transpired regarding the events of that day.

Court therefore has to resort to the common sense rule, and examine the proceedings as are. I note from the affidavits in rejoinder sworn by **Mugoda Abdu** and **Hellen Muluga Stima**, some important revelations.

Am particularly swayed by the affidavit of **Mugoda Abdu** in rejoinder under paragraph 3, 4, 5, 6, 7, 8, and 9 which raise important evidence as to the effect that the said minute 19/3/DBLG/COU/16 was subject of debate and was the genesis of a lot of other discussions (paragraph 5). Also paragraph 6 raises an issue of falsehood in **Mudanya's** affidavit under paragraph 11- which is not rebutted. Paragraph 7, raised the fact that the same names were rejected by Ministry of Public Service.

This same evidence is contained in the affidavit in rejoinder of **Muluga Hellen Stima** paragraph 4, 5, 6, 7, 8, 9 and 10 of her affidavit.

The evidence by Respondents in affidavits of **Mudanya Grace** and **Ikwape Andrew**, has been sharply countered by the evidence that is in affidavits sworn by applicant in support and in rejoinder.

The evidence shows that there is an impasse in the district council between the chairperson and the Speaker. The impasse resulted in correspondences which applicants annexed as annexes to their pleadings in support and rejoinder. Indeed of interest is the letter from Public Service Commission dated 20.06.2016 which highlights various commissions and omissions by the Local Government rendering their submission incompetent. One of the issues highlighted therein is that *“procedure followed in appointing Mr. Nyago and Mr. Mbeiza Tembeza Owen seems to have been shrouded with irregularity...”*

From the above revelations, this court which is investigating the decision making process takes Judicial notice of all that background.

The concern here is, did the council regularly pass minute No.19/3/BDLG/COU/16?

My answer is a big No. The evidence from the applicant has shown that the process was flawed.

It has been further shown that attempts to regularize the process by Respondents were resisted by the applicants.

The purported minutes approved and sent to the Ministry of Public Service were also irregularly obtained. The alleged amendment of the order of business was done irregularly as shown by applicants in their pleadings in support and rejoinder.

I therefore on the strength of the above findings, rule that:

1. Min. No. 19/3/BDLG/COU/16 of 11<sup>th</sup> March 2016 is illegal, null and void.
2. Certiorari doth issue to quash the said minutes.
3. Prohibit the Respondent from acting on that minute.

4. An injunction doth issue to restrain the Respondent from acting on that illegality.

The application succeeds as above with costs to the applicants.

**Henry I. Kawesa**

**JUDGE**

**07.06.2017**