

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
HCT-12-CV-CR-005-2016

KYOGONZA FRED.....APPLICANT

VERSUS

- 1. MR. ABDALLAR KIGANDA }
2. MASINDI DISTRICT LOVAL GOVERNMENT }.....RESPONDENTS**

RULING

This is an application for judicial review brought under S. 36 of the Judicature Act and Rules 6, 7 and 8 of the Judicature (Judicial Review) Rules.

The application seeks the following.

- A. An order of certiorari quashing the decision of the Masindi D.S.C. for wrongful removal of the applicant from office and the P.S.C. decision which upheld the same decision.
- B. A writ of mandamus, compelling the applicant back in office and grant of studies as was in the earlier decision and rightfully guaranteed by the Constitution of the Republic of Uganda.
- C. A writ restraining all District Officials from intimidating the applicant in any way; which intimidation may arise from this suit.
- D. A declaration that District Service Commissions across the country to always communicate their decisions independently as provided for in the constitution of Uganda not through the office of the CAO in so far as this can prejudice public servants.
- E. A declaration that the procedure used by Masindi district to retire the applicant was unreasonable, biased, and in bad faith in so far as the decision before the year 2015 were taken twice, not communicated to the applicant but expected the applicant to act on them but were rescinded in April, 2015 to retire the applicant.
- F. A declaration that for Masindi district Local Government to take 2 years before communicating its decision to the applicant was too inordinate in so far as determination of workers grievances are concerned.

- G. An order for the award of general damages, special damages and punitive damages arising from mental torture, psychological torture and emotional stress caused to the applicant.
- H. An order that the applicant obtains his salary from the date it became due up to the time of full determination of this suit at an interest of 30% p.a.
- I. Any other relief this honourable court may find just and befitting to meet the ends of justice.

The application was supported by the affidavit of the applicant Kyogonza Fred. One Tivu Mark the Chief Administrative Officer (CAO) of the 2nd respondent filed an affidavit in reply. The complaint arose from the decision of the Masindi District Service Commission (MDSC) terminating the services of the applicant on the recommendation of the then CAO who was named as the 1st respondent.

At the commencement of the hearing Mr. Kasangaki learned Counsel for the respondents raised preliminary points of law for determination. 1st was that the application was time barred in so far as the applications for judicial review are directed to be filed within 3 months from the time when matter complained of first arose. The decision of the MDSC was taken on 19/05/2015, and the appeal by the applicant to the Public Service Commission (PSC) was dismissed on 11/12/2015. The application for judicial review was filed on 15/03/2016. The cases of Adinani Kawoya v. Jinja Municipal Council MA No. 56 of 2011, and Guma Wawa v. The Attorney General & 2 others MA No. 164 of 2012 were cited in support.

The 2nd objection was that the application was incurably defective in so far as it sought remedies for a class of persons who were not in court and were not parties to the suit, yet no representative order was taken out before filing the suit.

The 3rd objection was that the suit against the 2nd respondent was defective as it sought to impose liability on him for the acts of the PSC. Lastly it was submitted that the suit sought orders of a futuristic nature for himself and unnamed persons. The court could not make such orders as they are not enforceable, making the application defective.

In reply, Mr. Kyogonza who represented himself told court that the suit was filed within the time allowed. He told court that the decision of the PSC was received on 25/1/2016 and the suit was

filed on 25/01/2016 and on 15/03/2016 the suit was filed. He told court that being a civil servant, he was entitled to ask for a remedy which could have the effect of ameliorating the problems of other civil servants. He submitted that the relief he sought were from the problems he was facing as a result of the actions of the respondents. Last, the suit arose from the acts of MDLG. So they were a proper party to the suit.

Applications for judicial review are governed by inter alia, The Judicature (Judicial Review) Rules, 2009. Rule 5 thereof provides for time for applying for judicial review. Sub rule (1) states thus;

‘An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.’

The decision of the MDSC to terminate the applicant from the services of MDLG was made on 19/05/2015. This was after a series of ping pong correspondences between the CAO and the applicant on one hand, and the CAO and the MDSC on the other. The applicant appealed that decision to the PSC as was his right. The decision of the PSC was taken on 11/12/2015. By that decision, this was final information to the CAO of MDLG that the decision of the MDSC terminating the employment of the applicant was correct. The time for applying for judicial review in the circumstances of this case started to run on this date.

The suit was filed on 15/03/2016 which was clearly outside the three months period allowed under the law cited above. The law gives court discretion to extend the time where it considers that there are good reasons for doing so. But before court does so, the ‘good reasons’ must be brought to its attention. There was no application to court whether oral or formal to extend the time to file the application for judicial review. I would for that reason dismiss the application.

But I will briefly comment on another point of law raised by the respondents. It was argued that the suit was brought for representative orders when leave for the same was not applied for or granted.

The application sought in paragraph D ‘a declaration that DSC across the country to always communicate their decisions independently as provided for in the constitution of Uganda not through the office of CAO in so far as this can prejudice civil servants’. This was a prayer for persons who were not named or identified in the suit. They were not part of the suit. This was not a public litigation suit. It was moreover a prayer based on speculation that civil servants would be prejudiced if communication to them of decisions of DSC were channeled through their respective CAO’s. For a party to institute such a suit, one needed to involve the others of like mind. That is where O.1.r8 of the CPR comes into play.

O.1 r.8 provides thus;

(1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. But the court shall in such case give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other case, such service is not reasonably practicable, by public advertisement, as the court in each case may direct.’

There must be application to court for representative action, and when so granted, court directs on the mode of notice or service to all those involved. These are mandatory requirements of the law. There was no such application in the present suit. That made the suit⁵ defective in so far as it sought to involve civil servants across the country in a matter in which they were not parties. That ground would be upheld and the application would be dismissed.

Having decided as I have herein, I did not find it necessary to go into the remaining points of objection. The application for judicial review is accordingly dismissed with costs to the respondents.

Rugadya Atwoki

Judge

22/11/2017.

Court: The Ag. Ass. Registrar of the court shall deliver this judgment to the parties.

Rugadya Atwoki

Judge

22/11/2017.