THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE No. 059 OF 2016

IGNATIUS LOYOLA MALUNGU :::::::::::::::::::::::::: APPLICANT

Versus

INSPECTOR GENERAL OF GOVERNMENT :::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

This is an application for Judicial Review brought under Rules 6, 7 and 8 of the Judicature (Judicial Review) Rules 2009, Section 33 (of the Judicature Cap 13 and 42 of the Constitution of the Republic of Uganda 1995

The applicant seeks the following orders that;

1. A declaration doth issue against the respondent that the report compiled by the respondent in Reference HQT/52/02/2013 was manifestly erroneous, prejudicial and contrary to the evidence on record.

2. An order of Certiorari doth issue to quash the erroneous report and all actions so far taken on the basis of the erroneous report.

3. An order of Mandamus doth issue against the respondent to review and publish a reviewed and correct report to the public office to which the erroneous report was published.

4. Costs of this application be provided for.

The grounds of the application are briefly stated in the application. They are that:

a. The applicant filed a complaint with the respondent about the financial mismanagement of the school where he was a teacher and his mistreatment by way of non-payment of his PTA allowances and unlawful transfer but the Respondent issued and published a report that was still erroneous, defamatory and prejudicial to the applicant.

b. The applicant requested the respondent for review of the report but the respondent maintained his erroneous report and refused a review.

c. The respondent's said refusal to correct the erroneous report amounts to a decision not to review the erroneous, defamatory and prejudicial report.

d. The respondent has no intention to correct the erroneous, defamatory and prejudicial report which he has published to the applicant's employer unless if compelled to do so.

e. That it is just and equitable that an order of certiorari doth issue to quash the report, and an order of mandamus to require the respondent to review the erroneous report and republish a correct report.

The application is supported by the affidavit of the applicant dated 3rd May 2016. The respondent filed an affidavit in reply dated 24th June 2016. The parties filed written submissions. The applicant filed on 21st March 2017, the respondent replied on 13th April 2017 and the applicant filed rejoinder on 21st April 2017.

The principles governing Judicial Review are well settled. Judicial Review is concerned with Prerogative Orders which are basically remedies for the control of the exercise of power by those in public offices. They are not aimed at providing final determination of private rights which is done in normal Civil Suits. The said orders are discretionary in nature and Court is at liberty to

refuse to grant any of them if it thinks fit to do so even depending on the circumstances of the case where there had been clear violation of the principle of natural justice: ***John Jet Mwebaze Vs Makerere University Council & 2 Ors Misc. Cause No. 353 of 2005.***

The discretion I have alluded to here has to be exercised judicially and according to settled principles. It has to be based on common sense as well as justice: ***Moses Ssemanda Kazibwe Vs James Ssenyondo Misc. Application No. 108 of 2004.***

Factors that ought to be considered include; whether the application has merit or whether there is reasonableness, vigilance without any waiver of the rights of the applicant. Court has to give consideration to all relevant matters of the cause before arriving at a decision in exercise of its discretion. It was held in the case of ***Koluo Joseph Andres & 2 Ors Vs Attorney General Misc. Cause No. 106 of 2010*** and I agree that:

> ***"It is trite law that Judicial Review is not concerned with the decision in issue per se but with the decision making process. Essentially Judicial Review involves the assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality."***

The purpose of Judicial Review was summed up by Lord Hailsham St Marylebone in ***Chief Constable of North Wales Police Vs Heavens [1982] Vol. 3 All ER*** as follows:-

> ***"The purpose of Judicial Review is to ensure that the individual receives fair treatment not to ensure that the authority after according a fair treatment reaches on a matter it is authorized or enjoined by law to decide from itself a conclusion which is correct in the eyes of the Court."***

This court agrees with the above principles.

This application raises two issued for this Court's determination.

1. Whether the application raises any grounds for Judicial Review?
2. Whether the applicant is entitled to the remedies sought in the application?

I have considered the application, the respective affidavits and submissions of parties. I have a concern with the action of the applicants to sue the Inspector General of Government directly. The proper party should have been the Attorney General as required under Article 119 (40 (c) and 250 (1) and (2) of the Constitution of the Republic of Uganda 1995. Section 10 of the Government Proceedings Act Cap. 77 makes it even clearer it states that:

> ***"10. Parties to proceedings.***
>
> ***Civil proceedings by or against the Government shall be instituted by or against the Attorney General."***

I still hold the view that until a law is enacted expressly conferring legal personality on the Inspector General of Government it is illegal for it to assume corporate status. See: ***Inspectorate of Government Vs Uvetiso Association Ltd & 3 Ors (Miscellaneous Application No. 536 of 2014)*** for that reason alone I would dismiss this application for suing the wrong party.

That notwithstanding, I will go ahead and determine the issues framed for completeness of this matter as if a proper party was sued.

Issue 1 whether the application raises any grounds for Judicial Review?

In ***Pastoli Vs Kabale District Local Government Council and Others [2008] 2 EA 300*** it was held while citing ***Council of Civil Unions Vs Minister for the Civil Service [1985] AC 2*** and ***An Application by Bukoba Gymkhana Club [1963] EA 478 at 479*** that:

> ***"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety ...***

Illegality is when the decision -making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission ….

"Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards ....

Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere [to] and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

I am finding it difficult to identify from the application the grounds for Judicial Review which the applicant is trying to put forward. At page 3 of the submissions of the applicant however, the applicant's counsel seems to suggest that the ground for Judicial Review is irrationality which I shall consider.

The respondent challenges the application also claiming that the application is not proper for Judicial Review since the applicant seeks to challenge the decision rather than the decision making process. I agree with the respondent on this. However it can be a ground for not granting the application but it doesn't mean that the application should not be entertained. I shall therefore bear this in mind when dealing with the grounds of the application.

Irrationality: on this Counsel for the applicant submitted that the respondent's report contained erroneous recommendations. That the recommendations were erroneous in as far as they recommended that the applicant be cautioned for resisting an unlawful transfer because that transfer was intended to victimize him. That the only reason why the applicant was transferred to Namutamba SS was because the applicant was reporting the Head teacher's financial impropriety to the IGG and the PPDA. That by ignoring vital evidence of victimization and revenge, that particular transfer of the applicant was illegal and irregular but the respondents intentionally refused to pronounce that the transfer was intended to victimize the applicant. That therefore the decision was irrational. For this submission Counsel relied on ***Council of Service Union Vs Master for Civil Service (1985) AC 374 where Lord Diplock*** held that:

> ***"A decision is irrational if it is so outrageous in its defiance of logic or of acceptable moral standards that no reasonable person who had applied his mind to the question could have arrived at it."***

and the case of ***His Worship Aggrey Bwire v Attorney General & Anor (Civil Appeal No. O9 of 2009).*** That in the reports of the respondent they discovered that there was no dispute between the applicant and the head teacher of his school. That the only reason for his transfer given by the head teacher is that he kept on reporting the school to the IGG and PPDA and according to him this is victimization. That it is irrational for the respondents to support the non-payment of PTA allowances to the applicant. That it was also irrational for the respondent to find that the transfer was anomalous and yet at the same time recommend that the applicant be cautioned which action had been done and dented the applicant's career.

Learned Counsel further submitted that the transfer of the applicant was contrary to Section A-1 (3) (i) of the Public Service Standing Orders which requires that transfers should be in public interest and not used as a punishment. Further Counsel submitted that it was irrational for the respondents to defend a transfer which violates the standing orders which he cites in the same report. That it was also irrational for the respondent to recommend that the applicant makes a complaint to the very persons he was complaining against.

In reply the respondent submitted that their investigations established that the applicant was transferred to Namutamba SS on 9th February 2013 from Our Lady of Good Counsel SS Gayaza but he did not report to his new duty station. That instead he wrote a letter of resignation to the Permanent Secretary which was of immediate effect and this resignation was not in accordance with the Public Service Standing Orders 2010 section A-n (11) which requires that a person who wishes to retire must give 30 days' notice. That the applicant even admits in paragraph 6 of the affidavit in support of the application that he resisted the transfer because he considered it illegal and therefore ought to be resisted. That the Ministry has an appeal process through which the applicant could have utilised to object to the transfer. That the applicant's action of resisting transfer is indiscipline on the part of the applicant and contravenes the Public Service Standing Orders 2010. That it is on this basis that the respondent made the recommendation that the applicant be cautioned against resisting transfers and also advised him to follow the procedures when dissatisfied with decisions made by the Ministry of Education and Sports. That the decision and recommendation was made in accordance with Article 230 (3) of the Constitution and Section 14 (6) of the Inspectorate of Government Act 2002 after careful consideration of several documents and correspondences. On the issue of the PTA allowances the respondents submits that their finding was that the applicant was not paid these allowances because he was not working at that time.

That the applicant's insistence on the fact that the respondent's observations were irrational is very unfortunate and stems from the fact that he is aggrieved with the manner in which the school manages and allocates PTA allowances. That as such he should take on the matter with the school administration of Our Lady of Good Counsel Gayaza or the Ministry of Education and Sports. That PTA allowances are a private initiative of the schools in which parents contribute money to supplement teacher's salaries. That the Inspectorate of Government therefore has no mandate to pronounce itself on it. That the respondent did not publish the report in any print, radio or television media and sending the report the Permanent Secretary did not amount to publishing. That the reasons for which the respondent made recommendations for cautioning the applicant have not been proved to be false or untrue so as to render them defamatory. That the applicant's claim that the caution has become a hindrance to his promotion is false since caution is never a reason to deny a public servant a promotion.

I have considered the submissions of both parties. The applicant seems to have expected the respondent to bring out a favourable report to him at all costs. The respondent did his investigations and made certain findings and basing on those findings made recommendations. These findings are as a result of the respondent's investigations. It is therefore difficult for this court to agree with the applicant that the said recommendations and the results of investigations contained in the reports are irrational. The respondent has explained with strong reasons why they decided the way they did. They also clearly showed that they considered all the evidence before them including correspondences, documents and letters. The applicant's actions and claim that the transfer to another school was a bad transfer and therefore deserved to be resisted is a very unfortunate statement coming from a public officer. In the Public Service such conduct of resistance is not expected and is very undesirable. Although the applicant claims that there was no finding that he had any long standing conflict with the Head Teacher of his school he again claims that he was victimised. Victimisation which the applicant claims to have caused his transfer cannot occur unless there is misunderstanding. Besides a transfer is not a demotion or disqualification from a job in Public Service. The applicant also skipped all the remedial steps available to him in the Public Service and School Channels and went on to file this application for Judicial Review under the pretext that he could not seek redress from the very people he was complaining against.

I also do not understand why the applicant sued the respondent. Most of the application is complaining about his transfer over which the respondent does not exercise control or power. It is also very disturbing that the applicant impulsively took a decision to resign and refuse to take on his new post. This tainted his own hands and became very difficult for his story to be believed. The respondent even entertained the applicant's complaints and reviewed the report but still did not have a different finding. It is therefore this court's view that the respondent did a good job and gave the applicant's complaint its due attention. Just because the result was not what the applicant expected does not in itself make the decision irrational or erroneous.

On illegality I have not found any form of illegality in the facts as presented by the applicant. I cannot, therefore, make a finding that the respondent committed any illegality.

The applicant has generally failed to convince this court to exercise its discretionary power and grant the prerogative orders prayed for in the application. He focuses much on the decision rather than the decision making process and appears to seeks this court's intervention in vindicating his right through this application. I agree with the respondent that the applicant should take on the complaint about his PTA allowances with the school.

Issue 2: ***Whether the applicant is entitled to the remedies sought in the application?***

Having found no merit in any of the grounds the applicant is entitled to the remedies sought.

For the reasons in this ruling I find no merit in this application and accordingly dismiss it with no order as to costs since the respondent was not a proper party to be sued and no ground for Judicial Review has been proved. Consequently, this application is dismissed. Each party shall bear their own costs.

I so order.

Stephen Musota
J U D G E

31.05.2017