

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS APPLICATION NO. 068 OF 2016

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BY

JOHN K. WANJALA WABWIRE:..... APPLICANT

VERSUS

KYAMBOGO UNIVERSITY :..... RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

The applicant, John K. Wanjala Wabwire brought this application by Notice of Motion under Articles 28(1) and 44(c) and 50 of the Constitution; Sections 33, 36 and 38 of the Judicature Act, SS 64 and 98 of the Civil Procedure Act and The Judicature (Judicial Review) Rules for Judicial Review relief of Certiorari and mandamus.

The applicant is represented by M/S Byamugisha Gabriel & Co. Advocates. The respondent Kyambogo University is represented by M/S Kalenge, Mwanika, Ssawa and Co. Advocates.

The grounds of the application are that:

1. The applicant responded to an advert in the New Vision of 13th July 2015 and applied for the post of University Secretary of the respondent.

2. He was duly short listed and attended the interviews and was one of the two who qualified for the final interview.

3. He did the final interview and was informally informed that he emerged winner.
4. He learnt that his name was forwarded by the Appointments Board to the University Council for formal appointment.
5. The applicant was shocked to see the post re-advertised in the New Vision of 25/1/2016.
6. The applicant is aggrieved by the decision not to offer him the job but instead re-advertise it.
7. That the failure to appoint him and re-advertising the post is arbitrary and illegal.

The application is supported by the affidavit of the applicant which reiterates the grounds of application and emphasises that the remedies of certiorari should be issued to quash the decision of the respondent to re-advertise the position of University Secretary.

In their affidavit in reply deponed by Patrick W. Wadaya the Ag. University Secretary of the respondent opposed the application.

Respective counsel were allowed to file written submissions in support of their respective cases.

I have considered the application as a whole, the law applicable and the respective submissions.

It is trite law that for an application for Judicial Review to succeed, the applicant has to show that the decision or Act complained of is tainted with illegality, irrationality and procedural impropriety.

And for an order of certiorari to issue, the decision complained of must have been ultravires, arbitrary, oppressive and out rightly illegal. It is worthy noting that prerogative orders of mandamus, certiorari or prohibition are discretionary which discretion is exercised by court judicially and according to well settled principles

See: **John Jet Tumwebaze Vs Makerere University Council and 3 Ors MC. 353 of 2005.**

In the instant case, the applicant deponed an affidavit in support of his application. In paragraph 7 thereof he states that he informally learnt that he emerged winner in the interviews and that his name was thereby forwarded by the Appointments Board to the University Council for formal appointment. This averment which is the benchmark for this application amounts to hearsay and cannot in law be relied upon since such evidence is inadmissible. The applicant has not adduced any proof of his purported appointment and cannot be seen to rely on the presumption that he passed to assume that he has an existent legal right.

As rightly submitted by learned counsel for the respondent, Section 59 of the Evidence Act is to the effect that hearsay evidence is not admissible for purposes of determining any matter before court. Court cannot rely on hearsay to decide upon a matter.

The applicant further contends that the decision to re-advertise the post of University Secretary when he had allegedly passed the interviews is ultravires, arbitrary and illegal.

In Judicial Review, this court cannot be concerned with the decision made to re-advertise.

Judicial Review is only concerned with the decision making process and not the decision itself. This court cannot act as an appellate venue against an administrative decision.

Under Section 50 of the Universities and other Tertiary Institutions Act, the law establishes the Appointments Board of the respondent. This is a committee responsible for appointments of all officers of the respondent.

Under section 50 (3) thereof, the decisions of the Appointments Board are subject to the University Council. All complaints regarding appointment should be referred to the University Council first.

The applicant sought for an order of certiorari quashing the respondent's decision to re-advertise the position of University Secretary and also sought for an order of mandamus. But as rightly submitted by learned counsel for the respondent, the decision was legally proper and was not ultravires. The same goes for the remedy of mandamus. Mandamus cannot legally issue unless an applicant shows a clear legal right to have the thing sought by it to be done.

In the instant case, mandamus cannot issue because one cannot say that the applicant had a legal right to be appointed or to expect to be appointed before a final decision was reached and communicated. It is a legal principle that an employer cannot be forced to take an employee that it does not wish to engage. See: ***Bank of Uganda Vs Betty Tinkamanyre SCCA 12 of 2011.***

Consequently, and for the reasons outlined in this ruling, I will find that the applicant has not proved any right that has been violated by the respondent to persuade one to grant the orders sought in this application. The applicant is as a result not entitled to any damages since only victims of wrongs are entitled to be compensated. The respondent's actions were legally proper.

This applications stands dismissed. Since the applicant was seeking employment I am of the view that each party meets its costs.

I so order.

Stephen Musota
J U D G E

09.02.2017

09.02.2017:-

Mr. Byamugisha Gabriel for the applicant.

Mr. Isaac Mpanga for the respondent.

Milton Court Clerk.

Ruling read in chambers in the presence of the above counsel.

Ajiji Alex Mackay
DEPUTY REGISTRAR

9/02/2017