

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 258 OF 2016

(Arising from Makerere University Staff Appeals Tribunal Appeal No. 4 of 2015)

**IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDERS BY WAY
OF JUDICIAL REVIEW**

BETWEEN

DR. JULIANNE SANSA OTIM.....APPLICANT

AND

MAKERERE UNIVERSITY..... RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

This application is brought by Notice of Motion under Articles 254, 50 & 42 of the Constitution, S.101 of the Pensions Act, Rule 3,4, 6,7 & 8 of the Judicature (Judicial Review) rules 2009 and rules 30 and 31 of the Pensions Act rules 2000. It seeks the following orders;

- i) A declaration that the respondent is in contempt of the orders of its Staff Appeals Tribunal to promote the applicant.
- ii) A declaration that the respondent's decision to withhold or refusal to implement the orders of its Staff Appeals Tribunal to appoint the applicant to the rank of Senior Lecturer within the ordered time frame was illegal, unjust and discriminatory.
- iii) An order of Mandamus doth issue directing the respondent to comply with the statutory duty and implement the orders of its Staff Appeals Tribunal and appoints the applicant to the rank of Senior Lecturer.

- iv) An order that the applicant be paid all the accumulated salary and allowances due to her effective the date for her appointment by the tribunal lapsed.
- v) An order of mandamus directing the respondent to pay the money decreed by its Staff Appeals Tribunal as taxed costs of UGX. 40,056,030/= with interest of 25% p.a from the date of the taxation ruling.
- vi) An order directing the respondent to pay the applicant compensation and a fine for contempt amounting to UGX. 200,000,000/=
- vii) Costs of the application.

The grounds of this application as stated by DR. JULIANNE SANSA OTIM are that;

- a) The respondent acted and has continued to act in contempt of the orders of the Staff Appeals Tribunal.
- b) That the applicant is Ag. Head of Department Networks and Lecturer in the respondent's College of Computing and Information Sciences.
- c) The applicant applied for her promotion to the respondent's Appointments Board to the rank of Senior Lecturer in 2012.
- d) The Appointments Board instead refused to promote the applicant to the said rank despite the recommendation and the vast evidence.
- e) The applicant appealed to the respondent's Staff Appeals Tribunal which heard the appeal and allowed it with clear orders for the respondent to take and effect the applicant's promotion.
- f) The applicant complied with the order timely but the respondent disobeyed and instead went into doing things to undermine the orders and the applicant continues to be stagnated at the rank of Lecturer despite the orders of the Staff Appeals Tribunal.

- g) That the applicant is aggrieved by the acts of the respondent and that the respondent should be ordered to pay compensation of UGX. 200,000,000/=.

The application is supported by the affidavit of the applicant which echoes the grounds in the Notice of Motion. Despite being served the respondent did not file any affidavit in reply.

The applicant was allowed to file written submissions.

In the submissions, counsel for the applicant stated that the respondent's appointments Board acted and continues to act in contempt of the orders of its Staff Appeals Tribunal. That the applicant is aggrieved by the acts of the respondent and that the respondent should be ordered to pay compensation of UGX. 200,000,000/=.

The following issues were raised for court's resolution.

- i) Whether the respondent is in contempt of its Staff Appeals Tribunal and if so whether this conduct should not be punished by the High Court as contempt of Court.
- ii) Whether the applicant is not entitled to the declarations and orders being sought in the application.
- iii) Whether the applicant is entitled to the orders of mandamus being sought in the application.
- iv) What remedies are available?

RESOLUTION OF ISSUES:

ISSUE ONE:

This court will treat issues 1, 2 and 3 as one issue since they are interrelated.

I have read the above submissions and the law cited by counsel for the applicant. I will go ahead and decide the issues. Article 42 under which this application is brought states that;

“Any person appearing before an administrative official or body has a right to be heard justly and fairly and shall have a right to apply to a Court of law in respect of any administrative decision taken against him or her.”

This same right has since been observed to be a non- derogable right under Article 44 (c) of the said Constitution. See the case of **Charles Kabagambe Vs UEB Misc. Application No.28 of 1999.**

It was held that:

“Judicial review is a process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior Courts, Tribunals and other Public Bodies or Persons.”

In deciding a Judicial Review application, the Court is not concerned with the merits of the decision in respect of which the application is made. *It is more concerned with the lawfulness of the decision making process.* The Court is more concerned with whether the decision constituting the subject matter of the application for Judicial Review was made through error of law, procedural impropriety, irrationality or outright abuse of Jurisdiction generally.

Using this wide Interpretation of Judicial Review, it can be observed that the High Court exercises its supervisory powers on decisions of inferior Courts or Tribunals and it is concerned with the lawfulness of the decision making process.

In this case, applicant’s papers were vetted and returned to the Appointments Board with the recommendation that she be promoted to the rank of Senior Lecturer. However, the Appointments Board refused to promote her to the said rank despite the positive recommendation. The applicant then appealed to the respondent’s Staff Appeals Tribunal which heard the appeal and allowed it with clear orders for the respondent to effect the applicant’s promotion.

The ruling and its orders to the respondent to effect the applicant's promotion which are annexed to the affidavit in support of the application are as follows;

1. *The appeal is allowed in part. The Tribunal hereby sets aside the decision of the Appointments Board not to promote the appellant to the position of Senior Lecturer.*
2. *The Tribunal hereby directs that the appellant selects two of the three publications that were not vetted and submit them to the secretary of the Board within two weeks from the date of this decision.*
3. *The Board should send the publications selected by the appellant to the same Vetter who vetted the appellant's earlier publications within two weeks from the date of submission of the publications by the appellant.*
4. *The same Vetter should vet the publications within thirty days from the date of receipt of the publications from the Board.*
5. *The Board shall within two weeks from the date of receipt of the Vetter's report, sit and consider the Vetter's report for the two publications of the appellant for the purpose of considering the application of the appellant for promotion to the rank of Senior Lecturer.*
6. *The respondent pays costs of the appeal.*

It is clear that the grounds upon which a grievance for Judicial Review is based are illegality, irrationality and procedural impropriety. For an applicant to succeed in an application for Judicial Review he or she must prove that the decision or the act complained of is illegal, irrational or procedural improper.

According to the case of **Hon. John Ken Lukyamuzi Vs AG & EC Constitutional Appeal No. 2 of 2007.**

“A Tribunal is defined as a Court or Forum for Justice, a Person or Body of persons having power to hear and decide disputes so as to bind the parties.... Any Government department, authority or person entrusted with the Judicial determination as Arbitrator or otherwise of questions arising under an Act of Parliament.”

In this case, according to sections 55-57 of the Universities & other Tertiary Institutions Act it states that the respondent is bound by the Tribunal's ruling. Furthermore, S. 55 (2) (d) of the Universities & other Tertiary Institutions Act, 2001 also ensures that a staff of the University is given a fair hearing. Article 42 of the Constitution and Article 28 (1) of the Constitution provides for natural Justice in the determination of the applicant's rights. Their Lordships in **General Medical Council Vs Spackman(1943) ALLER 627** set the minimum standard .

They stated thus;

“.....I do not think that they are bound to treat such questions as though it was a trial.....they can obtain information or use any way they best always use giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view’.”

The uncontroverted position here is that no any kind of hearing was afforded to the applicant. The respondent refused to effect the above orders as directed by the Tribunal and left them to lapse to the prejudice of the applicant without any outright reason not to uphold the orders. According to Annexure “A1”, applicant proves that the respondents Appointments Board sent the papers for vetting and the Vetter sent a positive review that the applicant be promoted to the rank of Senior Lecturer in 2012. The applicant has proved that she continues to be stagnated at the rank of Lecturer despite the orders of the Staff Appeals Tribunal and this is unfair and in breach of her right to a fair hearing from the respondent as an

Administrative Body and is in contempt of its Tribunal whose decisions had to be given effect.

Since Judicial Review is a process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior Courts, Tribunals and other Public Bodies or Persons of which the Appointments Board of the respondent is such a body, it is my finding that that the respondent Appointments Board is in contempt of the Staff Appeals Tribunal Orders and this is an illegality which has to be checked by this Court.

ISSUE 2:

What remedies are available?

Because of the above findings this court orders that;

- i) The respondent is in contempt of the orders of its Staff Appeals Tribunal to consider promotion of the applicant and for that should pay the applicant compensation of UGX 10,000,000/= (Ten Million).
- ii) A declaration that the respondent's decision to withhold or refusal to implement the orders of its staff Appeals Tribunal to consider appointment of the applicant to the rank of Senior Lecturer within the ordered time frame was illegal, unjust and discriminatory.
- iii) An order of Mandamus doth issue directing the respondent to comply with the statutory duty and implement the orders of its Staff Appeals Tribunal and consider the appointment of the applicant to the rank of Senior Lecturer.
- iv) An order of mandamus directing the respondent to pay the money decreed by its Staff Appeals Tribunal as taxed costs of UGX. 40,056,030/=.
- v) The applicant shall get costs of the application.

I so order.

Stephen Musota

J U D G E

20.02.2017

20/02/2017:-

Mr. Fox Odoi holding brief for Dr. James Akampumuza for the applicant.

Milton Court Clerk.

Mr. Fox Odoi:-

We are ready to receive the Ruling.

Court:-

Ruling read and delivered in the presence of the Applicant.

Ajiji Alex Mackay

DEPUTY REGISTRAR

20.02.2017