

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 266 OF 2016
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

KATUNGI TONY ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING:

This is an application for Judicial Review brought by Notice of Motion supported by an affidavit. The applicant brought this application under Section 36 (1) (b) & (c), 41 and 42 of the Judicature Act as amended by Act No. 3 of 2002 and Rules 3, 4, 5, 6 and 8 of the Judicature (Judicial Review) Rules 2009, Section 8 (10) of the Advocates (Amendment) Act No. 27 of 2002 and section 98 of the Civil Procedure Act, and Order 52 rule 1 and 3 of the Civil Procedure Rules.

The applicant seeks the following orders:-

1. A declaration that the applicant has fulfilled all statutory requirements under the Advocates Act of 1970 read together with the Advocates (Amendment) Act No. 27 of 2002.

2. A declaration that the applicant has worked and completed the required period of at least one (1) year of work under surveillance and/or supervision in Chambers approved by the Law Council for the purpose of enrolment as stipulated under Section 8 (1)) of the Advocates (Amendment) Act No. 27 of 2002.

3. A declaration that the applicant is a fit and proper person to be issued a Certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda and all Courts subordinate thereto.
4. An order of Certiorari to issue against the respondent bringing into this Court and quashing the decision to subject the applicant to an additional year of work under surveillance and/or supervision.
5. An order of Prohibition to issue and prohibit the respondent from subjecting the applicant to an additional year of work under surveillance and/or supervision.
6. An order of Mandamus to issue against the respondent compelling them to hear and determine within the shortest time possible as Court may deem fit the applicant's application for a certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda and all Courts subordinate thereto.
7. General Damages and Costs of this application be awarded to the applicant.
8. Any other relief deemed appropriate by this Honourable Court.

The grounds of the application are briefly stated in the Notice of Motion and in summary they are that the applicant is Eligible for enrolment as an Advocate of the High Court of Uganda since he has a Bachelor of Laws Degree from the Uganda Christian University, a Postgraduate Diploma in Law from the Kenya School of Law and experience of one year legal practice in Kenya plus one year of supervised practice in a Law Firm in Uganda. That the applicant applied for a certificate Eligibility for enrolment as an Advocate of the High Court of Uganda and all Courts subordinate thereto on 27th May 2015 and was issued with a Notice of Application for a Certificate of Eligibility to be inserted in the Uganda Gazette. That up to date the Law Council has never made a decision on his application. That the applicant in January 2016 inquired from the Secretary of the Law Council about the status of his application and he was told that they had

written to the Chief Registrar of the Judiciary of Kenya to verify the authenticity of the Applicant's credentials. That after three months of waiting the applicant on 25th April 2016 wrote to the Law Council requesting for an official communication from the Law Council on the status of his application but has never received the requested communication from the Law Council. That the continued silence of the Secretary of the Law Council in regard to the status of the applicant's application of issuance of a Certificate of Eligibility amounts to a refusal to issue the applicant with a Certificate of Eligibility. Further that the silence is irrational, unreasonable, procedurally improper and illegal. That the applicant is suffering a violation of his Constitutional Right to practice his profession in spite of the fact that he has fulfilled all the statutory requirements for eligibility for enrolment. That it is fair and just that this application be allowed.

The applicant filed an affidavit in support of the application dated 6th October 2016. The respondent filed an affidavit in reply opposing the application dated 15th November 2016 sworn by Bageya Motooka Aaron a State Attorney with the Law Council.

The thrust of the respondent's case is that the applicant is not yet qualified for enrolment because the Law Council did not approve Taremwa & Co. Advocates to supervise the applicant for purposes of fulfilling the one year statutory requirement provided for under section 8 (10) of the Advocates (Amendment) Act No. 27 of 2002. Further that the Law Council is handling the applicant's application among others and the final decision will be communicated to the applicant. That the application is premature, misconceived and a total abuse of Court process, and thus it should be dismissed with costs.

The applicant swore and filed an affidavit in rejoinder dated 4th January 2017. The gist of the rejoinder is that the Law Council never approved or rejected the applicant's application. That Taremwa & Co. Advocates is an approved Law Chambers for the years 2014 and 2015 as per annexure "A". That at the time of his application there were no particular Law Firms approved for the purpose of working under surveillance within the meaning of section 8 (10) of the Advocates (amendment) Act. That his Lawyers have informed him that there is no specific

procedure, guidelines, regulations, or criteria upon which the Law Council would approve a Law Firm for the limited purpose of section 8 (10) of the Advocates (amendment) Act. Further that the Law Council had a duty and opportunity to communicate their disapproval of the Firm of M/s Taremwa & Co. Advocates as soon as his application for a Certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda was received. That the fact that his application was accepted and advertised in the Gazette makes the Law Council estopped from subjecting the applicant to another year of work under surveillance or any other requirements. That for more than a year now the applicant's application has been ignored by the Law Council. That the conduct of the Law Council has rendered his enrolment to the Bar of Advocates of Uganda unnecessarily and unjustifiably difficult thereby defeating the intended purpose of the Advocates (Amendment) Act No. 27 of 2002 which was to inter alia provide for easier access to the Uganda Bar both in terms of qualifications for entry and procedures.

At the hearing of the application, Counsel David Mushabe appeared for the applicant and Geoffrey Madete State Attorney appeared for the respondent.

Both parties filed written submissions. The applicant filed on 6th February 2017 and the respondent filed on 20th February 2017. The applicant filed submissions in rejoinder on 27th February 2017.

I have considered the application, affidavits and the Law applicable as well as submissions of respective counsel.

It appears the applicant takes issue with the inaction of the Law Council rather than any decision made by it.

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. See: **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.

In this case there appears to be no decision. The applicant actually faults the Law Council for failing to make a decision on whether or not he is eligible for enrollment. In paragraph 10 of the affidavit in reply of the respondent it is stated that the application is premature and a total abuse of Court Process, and so it should be dismissed with costs. In their submissions the respondents also submit that there is no decision by the Law council not to enroll and/or admit the applicant as an Advocate of the High Court of Uganda and there is no decision upon which this Court can make a finding of illegality or otherwise. Further that this matter is speculative and absurd and an abuse of Court process. The applicant’s submissions however, aver that the case is proper for Judicial Review because the Law Council acted illegally, irrationally and in a manner falling short of procedural impropriety when it refused to consider his application for eligibility yet he is qualified to be enrolled.

I am inclined to find that this is a proper case for Judicial Review.

The general rule is that Judicial Review is all about the process leading to a decision and so where there is no decision then there can’t be Judicial Review. However, there are expectations. Generally a Government Agency’s failure to implement a Statute is considered an action not suitable for Judicial Review. The reason why this is so is because usually:

1. There is lack of a person harmed by a particular action or decision.
2. There is lack of a timeline within which the action has to or had to be taken.
3. There is inability of the Courts to analyse the problem.
4. Lastly that there is a presumed availability of political controls over general non-implementation.

Further this Court holds the view that unless the applicant shows in the application that the respondent has made a decision not to implement the Act then this court cannot exercise its prerogative power of Judicial Review.

According to Jack M. Beerman in his book *Administrative law at page 51* he states that if an agency (in this case the Government) answers a request for action with a firm statement that it has decided not to act, that decision can be a final agency action or decision subject to Judicial Review. However, if it has not answered a request for action or has explained its inaction as necessary to further study whether the action is appropriate, then inaction may not be treated as a decision to warrant being subjected to Judicial Review. In this case the Law Council has all the necessary material but there is still no decision and there is no explanation for this delay.

To make the judgment whether or not inaction can be treated as a final decision is a question of fact concerning the significance of the inaction in the particular context of the case. See the USA decision of *Oil Chemical Atomic Workers Union Vs OSHA, 145 F 3d 120 (3rd Cir 1998)*.

This court is aware that it should be reluctant to exercise Judicial Review power for excessive delay because such review infringes on the Government Agencies' discretion. However, in extreme cases in which an Agency has delayed excessively when it is statutorily required to act, a Court may treat the delay as a decision and find it amenable to Judicial Review and order the Government to act. See the case of *Public Citizen Health Research Group v. Chao , 314 F.3d 143 (3d Cir) 2002*.

I think this is the reason why this Court in the case of *General David Sejjusa Vs Attorney General, Miscellaneous Cause No. 176 of 2015* entertained the application and the Court exercised its power of Judicial Review. In that case the UPDF Act section 66 (2) provided that a

decision had to be made on the applicant's application to retire within 90 days and the approval of such application to resign shall not be unreasonably withheld. However in that case the applicant applied to be retired from Military service in 2014 but up until 2016 which was a period of almost one and a half years (1 and ½ years) later no reply or decision had been made on his application. So he filed the application for Judicial Review to challenge the inaction which was contrary to the Act. The Attorney General argued that the application was prematurely before Court because there was no decision. The Hon. Judge Oguli Oumo found that the case was one amenable to Judicial Review.

It is also my well considered opinion that if the Agency or Government body is required to act in an emergency, inaction might be treated as a final decision if a member of the public petitions for the action claiming that there is an emergency. See: **Environmental Defense Fund v. Hardin, 428 F 2d 1093, 1097 (D.C Cir 1970)** and **Environment Defense Fund Vs Ruckleshaus, 439 F. 2d 584 (D.C Cir 1971).**

It is also important to note that even if all the possible requirements for inaction to be amenable for Judicial Review exist the Court may decline to exercise that power, if the inaction occurs in an Agency's discretion unless the Act or the Agency's Statute contains a criteria under which the Agency is required to act like it did in the UPDF Act section 66 (2) *in the case of **General David Sejjusa Vs Attorney General, Miscellaneous Cause No. 176 of 2015.***

In this case I find that the application is one of those applications that should be entertained by this Court. Reason being that generally a Government Agency's failure to implement a statute is considered an action not suitable for Judicial Review but there are exceptions and this case falls in that category of cases. I say so because usually the case is not accepted in Court because:

1. There is lack of a person harmed by a particular action or decision. But in this case the applicant is seriously suffering too much anxiety because of this delay and has demonstrated this in his affidavit in support.
2. There is lack of a timeline within which the action has to or had to be taken which in this case there is none but over a year is a very long and unreasonable time. It is excessive given the fact that the Law Council has all the materials it needs to evaluate the applicant's eligibility.
3. In their reply the Law Counsel does not give a real explanation as to why there is no decision yet. All they say is that they are still considering the applicant's application. In my opinion, this comes out as if to say we are taking our time because we have the power to do so, so the applicant should just wait until we make up our mind. This doesn't make access to the Uganda Bar easier as envisaged in the Amendment Act and so offends the spirit of the Law.
4. There is inability of the Courts to analyse the problem, which in this case is possible because the applicant and the respondent have all explained the circumstances of the case and the qualifications for enrollment are clearly stated in the Act.
5. Lastly that there is a presumed availability of political controls over general non-implementation which in this case there is no option other than the Courts of Law. So this Court is the only option that the applicant has.

When it comes to whether or not inaction should be subjected to Judicial Review each case must be handled on its own circumstances and merits. In this case the decision whether or not to award a certificate of eligibility for enrollment as an Advocate of the High Court is not a very difficult one since the criteria, qualifications, and steps to be taken are very clear in the Act and the Regulations which are made by the Law Council itself. A one and a half year delay in making a decision is a very long time since this Court is aware that the Chief Registrar has enrolled Lawyers as Advocates approved by Law Council twice since the applicant made his application.

The section in contention here is **Section 7 of the Advocates (Amendment) Act** which states that:

“Replacement of section 7 of Principal Act

For Section 7 of the Principal Act there is substituted the following:

“7. Admission and Enrolment of Advocates

- (1) Subject to the provision of this section, a person to whom this section applies, shall be eligible to have his or her name entered on the Roll.***

- (2) Any person eligible to have his or her name entered on the roll may make application to the Law Council; and the Law Council, if satisfied that the applicant is so eligible and is a fit and proper person to be an Advocate, shall, unless cause to the contrary is shown to its satisfaction, direct the Registrar, on receipt of the prescribed fee, to enter the applicant’s name on the Roll, and the Registrar shall comply with the direction.***

- (3) *The secretary shall, within fourteen days from the date of the making by the Council of a decision under subsection (2), notify the applicant of the decision made by the Law Council.*
- (4) *Any person aggrieved by the decision of the Law Council on enrolment, may, within thirty days from the notification of the decision of the Law Council, apply to the High Court for a Review.*
- (5) *The Review of the decision shall be heard by a panel of three Judges.*
- (6) *The High Court may, upon a review under this section, confirm or reverse or vary the decision of the Law Council and make such other orders as the court may think fit.*
- (7) *Every application under this section shall be made and advertised in such manner as may be prescribed by regulations made by the Law Council.*
- (8) *This section applies to a person who –*
- (a) *is the holder of a degree in law granted by a University in Uganda; or*
 - (b) *is a Uganda citizen and*
 - (i) *a holder of a degree in law obtained from a university or institution recognised by the Law Council in a country operating the Common Law System.*

- (ii) *Has been enrolled as practitioner by whatever name called, in any country operating the Common Law System and designated by the Law Council Regulations.***
- (iii) *holds a qualification that would qualify him or her to be enrolled in any country operating the Common Law System and designated by the Law Council Regulations***
- (9) *In the case of a person to whom subsection (8) applies being a person who has not practised for a minimum period of one year, that person shall be eligible to have his or her name entered on the Roll unless he or she has complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience, as may be specified in regulations made by the Law Council.***
- (10) *In the case of a person whom paragraph (b) (ii) of subsection (8) of this section applies, being a person who has practised as a legal practitioner for one year or more, but less than five years, that person is not eligible for enrolment under this section unless he or she works under the surveillance of and in chambers approved by the Law Council for that purpose or he or she serves as a State Attorney for at least one year.***
- (11) *In the case of a person whom paragraph (b) (ii) of subsection (8) of this section applies, being a person who has practised as a legal practitioner for five years or more, that person may be enrolled without having to work in chambers approved by the Law Council for that purpose or serving as a State Attorney.***

(12) The fee mentioned in subsection (2) of this section shall be prescribed by the Attorney General by Statutory Instrument.

(13) Notwithstanding subsection (1), the Law Council may make regulations under which a person to whom this section applies other than a person referred to in subsection (8) (a), (10) or (11), may be required to undergo courses of study in such subjects relevant to the law in force in Uganda as may be specified in the Regulations and to satisfy examiners in those subjects.”

In this case the applicant obtained all the relevant qualifications and they are not disputed except for his one year practice under the surveillance of a Senior Advocate of the High Court in Chambers approved by Law Council for that purpose. The issue here appears to be that the Law Firm under whose surveillance he worked for the one year was not approved by the Law Council for that purpose. However, in their affidavit in reply the Law Council did not disclose to this Court whether or not there are any Chambers at all approved by the Law Council for this purpose. It is also not clear what the Law Council is trying to tell this Court. Their reply is simply that the applicant’s application is being dealt with and so he should be patient and wait but for how long? The Law Council was also not courteous enough to disclose to this Court how long on average an application of this nature takes which leave the applicant in such a desperate situation.

When I read through the law it clearly showed that the Law Council has the discretion to decide who is eligible for enrolment and who is not. It is important to note however, that it is now well settled that all discretion must be exercised judicially. In public law there is no such thing as absolute discretion as the Law Council seems to suggest in their affidavit in reply to this application. It is true that wide discretionary power is not incompatible with the rule of law.

This is so because all what the rule of law demands is not that wide discretionary power should be eliminated but that the law should be able to control the exercise of that discretion. This control is at two stages;

1. At the stage of self control where the public authority acts mindful that all power has legal limits, some statutory others by common law of the land and
2. At the stage of Judicial Review when Courts are dealing with the control of this power and must draw those limits in such a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen.

According to ***Wade on Administrative Law 7th Edition***, Parliament may constantly confer upon public authorities powers which on their face might seem absolute and arbitrary but this arbitrary power and unfettered discretion are what the Courts refuse to allow. So the Courts have come up with a network of restrictive principles which require Statutory Powers to be exercised reasonably and in good faith, for proper purposes only, and in accordance with the spirit as well as the letter of the Empowering Act. Courts have even gone further to impose stringent procedural requirements for the exercise of power. Discretion however is an element in almost all power as opposed to duty, so abuse of discretion is likely to arise in almost all administrative law actions. As such the Court must act in such a way that it must not expose itself to the charge of usurping the executive power or the discretion of the Public Authority on which Parliament has conferred power to act.

Courts all over the world have become a Constitutional Restraining Power. Whereas the Court's paramount duty is loyal obedience to Parliamentary Legislation, it is for the Courts to explain what Parliament means in those Legislations/Laws/Acts which are made. In preserving the Legal Principles of Control the Courts also in turn preserve the rule of law. If Legislation were more restrained the Courts would not be called upon to perform striking interpretations of the Law. Courts are some sort of legal antidote to the unqualified sovereignty of the Parliament, redressing the balance of forces in the Constitution.

Courts have nothing to do with mere decisions of policy but as soon as Parliament confers some Legal Power as it did on the Law Council in this case, it becomes the business of the Courts to see to it that the Power is not exceeded or abused. In requiring that the Statutory Powers be exercised reasonably, in good faith and on correct grounds the Courts are still within the bounds of the familiar principles of *ultravires*. In relation to discretion the Court assumes that Parliament cannot have intended to authorise unreasonable action which is therefore to that extent *ultravires* and void.

Lord Russell of Killowen CJ put it this way; he said that *if a Local Authority's byelaws were manifestly unjust, or oppressive, the Court might well say "Parliament never intended to give authority to make such rules, they are unreasonable and ultravires."* See: ***Kruse v Johnson [1898] 2 QB 91 at -100***; Lord Greene in the same spirit also stated that where an act was challenged as being unreasonable, the Court's only task was *"to see whether the Local Authority have contravened the law by acting in excess of the powers which Parliament has confided in them"* see: ***Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 K.B. 223***. So the actions and decisions of all Public Authorities must rest on these elementary principles. So if the action is found to be *intra vires* the Courts have no powers to interfere.

Further H.W.R. Wade and C. Forsyth, in their book ***Administrative Law 7th Edition at page 614*** state that discretionary power conferred upon Public Authorities is not absolute, even within its apparent boundaries, but is subject to general legal limitations. These limitations are expressed in a variety of different ways, such as:

1. that discretion must be exercised reasonably and in good faith.
2. that relevant considerations only must be taken into account.
3. that there must be no malversation of any kind.
4. that the decision must not be arbitrary or capricious.

All these can be summed up by saying discretion must be exercised in the manner intended by the Empowering Act of Parliament. Interestingly virtually all administrative decisions are rational in the sense that they are made with intelligible reasons, but here the question is not

whether any reasons were given, but rather whether those reasons or actions measure up to the legal standard of reasonableness.

The Powers of Public Authorities are essentially different from those of private persons. A man making his Will may subject to any rights of his dependants, dispose of his property just as he may wish. He may out of malice or a spirit of revenge decide to exclude them and this may not affect his exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land or release a debtor but a Public Authority may do none of these things unless it acts reasonably and in good faith upon lawful and relevant grounds of public interest.

In this case I find that the Law Council's delay is unreasonable and unfair to the applicant. This makes it *ultravires* and therefore illegal in as far as Parliament could never have intended that an applicant for enrollment can be left in the dark without a decision for almost two years. This delay also doesn't support the spirit of the Amendment Act. The spirit of the Act as clearly stated in the long title of the Amendment Act is to provide for easier access to the Uganda Bar both in terms of required qualifications for entry and procedures. It states that:

“An Act to amend the Advocates Act, 1970 to provide for easier access to the Uganda Bar both in terms of required qualifications for entry and procedures, to create a Committee for Legal Education and Training to supervise and control professional legal education; to revise sanctions and penalties; and to provide for other related matters.”

The fact that the chairperson has intimated to the applicant on the merits of his application and yet he has not received a decision on the same to date leaves the delay unexplainable. The Law Council as per annexure “A2” to their affidavit in support of the application received a letter from the Chief Registrar of Kenya on 9th May 2016 confirming that the applicant was indeed an Advocate of the High Court of Kenya but up to date has never made a decision. This is a very long time. This was the only reasonable explanation for the delay.

For the reasons in this ruling I will find merit in this application for grant of the following order;

An order of mandamus be issued compelling the Law Council to communicate a decision on his application within 14 (fourteen) days from the date of the next sitting of the Law Council. In the event that no decision is communicated within the stipulated time, the respondent shall pay the applicant UGX.100,000/= (one hundred thousand shillings) for each day that passes after 14 (fourteen) days.

The applicant prayed for the following orders which this Court cannot grant under the circumstances.

1. A declaration that the applicant has fulfilled all statutory requirements under the Advocates Act of 1970 read together with the Advocates (Amendment) Act No. 27 of 2002. This Court declines to grant this order on the ground that the power to make this declaration is by law the preserve of the Law Council. If Court to grants this order then it would be acting ultravires its Judicial Review Powers.
2. A declaration that the applicant has worked and completed the required period of at least one (1) year of work under surveillance and/or supervision in Chambers approved by the Law Council for the purpose of enrolment as stipulated under Section 8 (1)) of the Advocates (Amendment) Act No. 27 of 2002. This Court declines to grant this order as well on the ground that the power to make this declaration is a preserve for the Law Council by Law. For Court to grant this order it would be acting beyond its powers in Judicial Review by determining fundamental rights rather than procedural rights.
3. A declaration that the applicant is a fit and proper person to be issued a Certificate of Eligibility for enrolment as an Advocate of the High Court of Uganda and all Courts subordinate thereto. This Court declines to grant this order as well on the ground that the power to make this declaration is a preserve for the Law Council by Law. Doing so would be acting beyond Court's powers

4. An order of Certiorari to issue against the respondent bringing into this Court and quashing the decision by Law Council to subject the applicant to an additional year of work under surveillance and/or supervision. This Court declines to grant this order as well on the ground that there has been no decision made upon which Court can base to issue an order of Certiorari.
5. An order of Prohibition to issue and prohibit the respondent from subjecting the applicant to an additional year of work under surveillance and/or supervision. This Court declines to grant this order on the ground that there has been no official decision on which Court can base to make this order
6. General Damages. This Court is aware that the award of Damages is available as a remedy in Judicial Review in limited circumstances. However, compensation is not available merely because a public authority has acted unlawfully. For damages to be available, there must be either a recognized private law cause of action such as negligence or a breach of Statutory Duty or a claim under express written law or Human Rights Statute. I also do not find it proper to award General Damages in a matter proceeding on affidavit evidence. I decline to grant this prayer. The applicant is free to file a fresh suit with a clear cause of action to claim and prove award of Damages.
7. Any other relief deemed appropriate by this Court. I have not found any other appropriate relief for award under this head. I am of the view that the practice of leaving prayers to Court should be discouraged. The litigant should be sure of what he/she wants from Court.

The respondent shall pay the applicant costs of this application.

I so order.

Stephen Musota

J U D G E

20.04.2017