

**(Arising from High Court Miscellaneous Civil Application No. 108 of 2018)**

fixing the date of interview as 27<sup>th</sup> July, 2018. This prompted the applicant on 18<sup>th</sup> July, 2018 to file an application for the prerogative orders of certiorari, prohibition, and mandamus which application is fixed for hearing on 16<sup>th</sup> August, 2018. He also filed an application for an interim injunction yet to be fixed for hearing, hence the current application for certificate of urgency,  
5 seeking to have that application fixed and heard during the current court vacation.

It is trite that urgency, involves mainly the abridgment of time prescribed by the rules and the departure from the established filing and sitting times of the Court. Once the court goes into vacation, it is only if an applicant cannot possibly wait for the hearing until after the end of the  
10 vacation, that the court may set the matter down forthwith for hearing at any reasonably convenient time within the court vacation. It should be noted that court will not grant a certificate of urgency as a matter of course. To merit consideration, the application should disclose exceptional circumstances of peculiar urgency. It should not generally involve a “self created” urgency by the applicant. A self created urgency covers situations where earlier action could  
15 have been taken by the applicant to seek a legal remedy. The test as to what constitutes urgency was articulated in the case of *Kuvarega v. Registrar General 1998 (1) ZLR 188* as follows:

What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is urgent, if, at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline  
20 draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been delay...” (as per Chatikobo J, as he then was at p 188 G-H).

It is for that reason that Rule 4 of *The Judicature (Court Vacation) Rules* contemplates that in applications of this nature, the applicant should explicitly set out the circumstances which he or she avers render the matter urgent, and the reason why he or she claims that he or she cannot be afforded substantial relief in a hearing in due course after the vacation, thus calling for the rules relating to the restriction on civil proceedings during the High Court vacation to be dispensed  
30 with. It is also trite that urgency does not only relate to some threat to life and liberty; urgency of commercial interests may justify approaching the Court on an urgent basis no less than other interests. To be treated as urgent the applicant must establish imminent danger, to existing rights and possibility of irreparable harm.

There are degrees of urgency and consequently the Courts deal with the question of urgency according to the merits of each case. A distinction necessarily has to be made between those matters that ought to be heard urgently and those to which some delay would not cause harm which would not be compensated by the relief eventually granted to such litigant. An applicant wishing the matter to be treated as urgent has to show that the infringement of such interest if not redressed immediately would be the cause of harm to him or her which any relief in the future would render an ineffectual legal judgment (*brutum fumen*).

The applicant's affidavit on the face of it establishes a case of urgency in so far as it discloses in paragraph 5 that it is on 16<sup>th</sup> July, 2018 (a day after commencement of the court vacation) that the applicant acquired knowledge of the respondent's decision to shortlist one candidate for that post and of the fact that the interview is slated for 27<sup>th</sup> July, 2017 (before the vacation comes to an end). The applicant clearly did not sit back and neglect other option there could have been for stopping or causing a rectification of a process he considers flawed. There is no evidence to show that he waited until the very last day when he could take advantage of the notion of urgency to steam roll this court into granting relief. From this perspective, the proceedings have been undertaken as a matter of special urgency to protect the applicant's position.

The matter, however, does not end there. The postulated urgency must be tested by reference to all the surrounding circumstances and facts to which the court is expected to have regard as gathered from associated pleadings in the underlying matters already pending before the court. In certifying the matter as urgent, the court is not supposed to take verbatim what the applicant says regarding perceived urgency but is required to apply its mind to the circumstances of the case and reach an independent judgment as to its urgency alongside the *prima facie* merits of the matter. The matter believed to be urgent must be a matter of substance rather than form. The court should be satisfied that the matter sought to be brought to its attention during the vacation *prima facie* has merit. There should be a realistic prospect that the matter intended to be brought before court is arguable.

In determining whether the applicant has a *prima facie* case, though open to some doubt, the court takes the facts set out by the applicant and considering them in a manner most favourable

to the applicant, determines whether, having regard for the inherent probabilities, the applicant could on those facts obtain final relief at the trial in the main action. If serious doubt is thrown upon the case of the applicant, the application cannot succeed. A matter clearly devoid of merit cannot be brought as one of urgency. Even in circumstances where court considers there to be  
5 special urgency but has serious reservations, on the information available, as to the merits of the case, the certificate ought not to be granted. The procedure for obtaining a certificate of urgency was not intended to be utilised for making applications based on mere technicalities, which merely increase costs. The applicant's affidavit cannot establish a case of urgency when for instance it fails to disclose, like in this case, dependable sources of information.

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This court has painstakingly considered pleadings filed on record in the matters from which this application springs and found that the applicant claims that the person who has been shortlisted for the impending interview lacks qualifications, but a striking feature of his affidavits in all matters is the sheer lack of disclosure of what the missing qualifications are and how the  
15 applicant, when, from where and from whom he acquired that information. No cited evidence is produced to support that far reaching allegation. Nowhere does the deponent also take the court into his confidence regarding his own qualifications justifying his application for the relief sought. Courts discourage applications for certificates of urgency which are characterized by material non-disclosure.

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It has repeatedly been held by courts that affidavits based on information must disclose the source of information (see *Patrick Premchand Raichand Ltd and another v. Quarry Services of East Africa Ltd and others* [1969] EA 514; *Corporative Bank Ltd. v. Kasiko* [1983] HCB 73 and *Re Kikoma Saw Millers Co* [1976] HCB 50). An affidavit in which the deponent's source of  
25 information is unknown is unreliable and can have no evidential value. It is not illustrated how the applicant is in a position to know those facts of alleged lack of qualifications as well as the outcome of meetings of the District Service Commission as are contained in paragraphs 4, 5 and 6 of the affidavit in support of the application. The latter set of facts should have best been deponed to by an official of the District Service Commission as he or she would be in a position  
30 to know them.

Secondly, the other party to the pending proceedings is a District Service Commission. Whereas under Article 200 of *The Constitution of the Republic of Uganda*, a District Service Commission has the power to appoint persons to hold or act in any office in the service of a district, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office, however, its decisions and recommendations as a selection panel are recommendations which do not bind the Chief Administrative Officer, and indeed the Commission does not have corporate existence. Section 54 of *The Local Governments Act*, establishing District Service Commissions, does not establish them as legal entities with capacity to sue or to be sued. By virtue of section 6 of the Act, corporate existence is conferred upon the Local Government Council by which the District Service Commission is constituted. A suit by or against a non-existing party is bad in law and ought to be rejected by court since it cannot be amended by replacing such a party with one that has legal existence (see *Fort Hall Bakery Supply Co. v. Fredrick Muigai Wangoe* [1959]1 EA 474 and *Auto Garage v. Motokov* [1971] EA 514).

The Court retains an overall discretion, which it must exercise in a judicial way, to grant or refuse an order, even if the other requirements for the granting of an order have been met. There can be no discernible benefit to be derived from granting a certificate of urgency in a matter where the substantive application to be brought before court has such a glaring and fatal flaw. There cannot be any demonstrable urgency in bringing before court a matter filed against a non-existent party. It follows that where a matter lacks the requisite degree of urgency, the Court can, for that reason alone, dismiss the application. Consequently, I am of the view that this application does not merit the grant of a certificate of urgency and it is accordingly dismissed with no order as to costs.

Dated at Gulu this 23<sup>rd</sup> day of July, 2018

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Stephen Mubiru  
Judge,  
23<sup>rd</sup> July, 2018.