

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.11 OF 2019**

1. **HON. SSALI ISAAC KEITH**
2. **HON NTALE KALEMA KURAISH===== APPLICANTS**

VERSUS

1. **H.W MAYOR REGINA BAKITTE NAKAZZI MUSOKE**
2. **NANSANA MUNICIPAL COUNCIL===== RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this application under Articles 2, 28(1), 42 and Sections 33, 36, 37,& 38 of the Judicature Act and sections 64 and 98 of the Civil Procedure Act, Rules 3(1)(2), 6 & 8 of the Judicature (Judicial Review) Rules, 2009 and Order 52 rr 1&2 of the Civil Procedure Rules for the following judicial review relief orders;

- a) An order of Certiorari doth issue against the 1st and 2nd respondents quashing their decisions terminating the applicants from their respective office positions, work and service as *Deputy Mayor and Secretary for Finance; Secretary for Production, Marketing, Environment and Cooperation.*
- b) A declaration that the 1st and 2nd respondent acted and are acting ultra-vires the 1995 Constitution as amended and the Local Governments Act, Regulations and Principles of Administrative law in so far as;
- c) The 1st respondent unlawfully, illegally and irregularly made a decision terminating the applicants Executive positions at Nansana Municipal Council on the 8th day of November 2018.
- d) That the 1st respondent did not adhere, comply and adopt the Administrative principles of law of fair trial and hearing in reaching and making the termination decision.

- e) That the 1st respondent in the course of her termination failed to conduct its proceedings and termination in accordance with the 1995 Constitution, Local Government Act and the principles of Administrative law.
- f) That the 1st respondent acted arbitrarily and unconstitutionally in terminating the applicants from their respective position and works.
- g) That the 1st and 2nd respondents and their agents have usurped and continued to abuse the rights and privileges of the applicants contrary to the law.
- h) That the 1st and 2nd respondent lacked jurisdiction, mandate and justification of law and fact, to terminate the applicants for their respective offices and works and therefore lacked legal mandate to terminate their positions.
- i) That the 2nd respondent failed to prevail over the 1st respondent as it ought to do when it came in the know of the decisions made by the 1st respondent which were prima facie unlawful, irregular and against the principles of natural justice and administrative law.
- j) The 1st respondent irrationally, unlawfully, illegally occasioned procedural impropriety when she passed the termination decision terminating the applicants from their respective offices.
- k) A further declaration that the respondents do not possess the mandate to terminate the applicants without due and legal proceedings of the law.
- l) Prohibition Orders stopping the 1st and 2nd respondents, their agents or servants from implementing the impugned decision of terminating the applicants from their respective office positions and work.
- m) A further declaration that the applicants have a clear right and that the respondents had a corresponding duty to enforce the right but they did not.
- n) General, Exemplary and Punitive damages.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of *Hon Ssali Isaac Keith and Hon Ntale Kalema Kuraish* but generally and briefly state that;

- 1) The applicants have are directly elected councillors to the Municipal Council of Nansana Municipality and were offered and appointed to positions of Deputy Mayor and Secretary

Finance and Secretary for Production, Marketing, Environment and Cooperatives to the 2nd respondent.

- 2) The 1st respondent on the 8th day of November 2018 passed a decision terminating the applicants from the offices and positions and further terminating the applicants from being Executive members and further terminating them from their work and services.
- 3) That the 1st respondent and her decisions was a flaw of procedure and failed to adhere to the mandated procedures, laws and regulations governing administrative offices and local Governments Act and cardinal principles and doctrines of natural justice.
- 4) The applicants had a legitimate expectation to appear and be heard by a competent and legitimate dully constituted committee if at all there was any case against them before the impugned decisions were made as the law of natural justice dictate and demand.
- 5) The applicants ought to have been granted a fair hearing and trial as required by law and/ or ought to have been informed of nay complaint against it, any complaint (if at all any), any infringement, or offence by the 1st and 2nd respondent or their respective mandated committees but all this was omitted and in so doing, the 1st respondent breached the rules of natural justice.
- 6) The 1st and 2nd respondents and their executive have continuously usurped and abused the powers, the Constitution and Local Governments Act for selfish and sinister financial motives and for the ends that do not promote the interest of public administration and local governance.

The 1st and 2nd respondent opposed this application and filed an affidavit in reply through Regina Bakitte Nakazzi Musoke The Mayor of 2nd respondent while the 2nd respondent filed an affidavit in the names of Ambrose Jimmy Atwoko-Town Clerk.

1. The 1st and 2nd respondent contended that the applicants are councillors who were appointed to the executive by the Mayor Nansana Municipality.
2. That the applicants served as Executive Committee members for over two and half years until 8th November 2018 when the 1st respondent terminated or removed them from the respective positions.
3. That 1st applicant wanted to give a chance to other people to bring in new ideas, skills and knowledge and have more balanced representation in the Municipality hence the removal of the applicants after serving two and half years.

4. That the 1st applicant exercised the mandate given to her under the law to revoke, remove or bring to an end the applicants' appointments already having served a for a very reasonable time and indeed in the Council sitting of the 2nd respondent held on 29th January 2019, Kato Paul Yiga was presented to serve as Deputy Mayor and Secretary for production, Marketing Environment and Cooperatives.
5. That the Mayor's decision is in compliance with the law and done in good faith and for the good of Nansana Municipality, a huge Municipality with four Divisions of Gombe Division, Busukuuma division, Nabweru Division and Nansana Division all of which must develop and time and again, new people bring new ideas and skills.

The applicant raised four issues for determination and the court in the interest of time directed the parties to file written submissions which I have considered accordingly.

LEGAL ISSUES

1. ***Whether or not the 1st Respondent followed procedure in terminating the Applicants from holding the executive positions in Nansana Municipal Council.***
2. ***Whether or not the termination was lawful.***
3. ***Whether or not the 2nd Respondent is liable for the actions of the 1st Respondent.***
4. ***Whether or not the Applicants are entitled to the reliefs sought in the application.***

The applicants were represented by *Mr Nsamba Geoffrey* whereas the 1st and 2nd respondent was represented by *Mr Nkwasiwe Robinson*.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.***

For one to succeed under Judicial Review it is trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public. In the case of *Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)*, Court noted that;

“Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.”

ISSUE ONE

Whether or not the 1st Respondent followed procedure in terminating the Applicants from holding the executive positions in Nansana Municipal Council.

The applicants’ counsel submitted that the respondent did not follow the procedures before terminating them. The applicant has cited extensively on the right to be heard as derived from the Constitution.

The Applicants’ counsel contended that the 1st Respondent in total disregard of the provisions of the constitution contravened the Constitution by way of failing to provide a fair and speedy trial or hearing for the Applicants before an independent or impartial tribunal/ or committee.

It was the Applicants submission that the 1st Respondent failed to comply with administrative principle of public governance, failed to adhere and comply with the principles of natural justice and doctrines of equity and contravened the provisions of the constitution and the law thereby occasioning procedural irregularity and illegality and reaching an unlawful decision.

The Applicants contend that they were never accorded any opportunity to be heard and in so doing the Respondents treated the Applicants unjustly and unfairly contrary to the above provision and case law and as a result the 1st Respondent occasioned procedural impropriety.

The Applicants further submit that the Administrative decision taken by the 1st Respondent arising out of a procedural impropriety ought to be quashed by court.

The Applicants’ counsel submitted that it’s very evident from the above wording of the Termination letter by the 1st Respondent that there was no process and/or procedure followed in the termination of the Applicants from holding the executive office positions apart from an instant Termination.

The respondents’ counsel submitted that the Constitutional provisions cited by the applicants’ counsel are not applicable to the present case and they do not in any way assist the applicants in this application.

Section 18 of the Local Government Act provides for appointment of vice chairperson (deputy mayor) and secretaries. Section 18(1) of the Local Government Act, the vice chairperson/deputy mayor shall be nominated by the chairperson (mayor) from among the members of the council and approved by two-thirds of all the members of the council, while section 18(3) Local Government

Act stipulates that the *secretaries shall be nominated by the chairperson* from among the members of the council and shall be approved by the majority of all the members of the council and indeed the 1st respondent did that.

It was the respondent's counsel's contention that the applicants' did not apply for the positions stated but rather the first respondent performed her statutory duty in section 18 above to 'nominate' them from among the very many elected councilors of Nansana Municipality.

The 1st respondent's affidavit in reply, she deposes that upon assuming office of the mayor, by virtue of the authority granted to her, she identified and presented the applicants to serve as members of the Executive Committee and were approved by the 2nd respondent's council as required by law and in paragraph 6 of the affidavit, the 1st respondent further states that indeed the applicants served for over 2 and a half years until 8th November 2018 when she removed them from their respective positions.

Section 20(a) of the Local Governments Act provides for vacation of office of a member of the executive committee and it is to the effect that, "*The office of a member of the district executive committee shall fall vacant if the appointment of a member is revoked by the chairperson...*". The law doesn't give reasons for revocation but in exercising her powers under the Local Governments Act, the 1st respondent in her affidavit in reply states that for the good and development of Nansana Municipality, she revoked the applicants' appointments in order to give chance to other people to bring in new skills, ideas and knowledge and have a more balanced representation in the municipality hence the removal of the applicants after serving for over two and a half years in the said positions.

The respondents' counsel to drive the point home compared the powers of the President of Uganda in appointment of the Ministers to that of the Mayor/Chairperson; He exercises his power by the Constitution to select ministers who have to be vetted and over the years he revokes the said appointments. Should such affected ministers also rush to court?

Determination

The applicants challenge the 1st respondent's decision on one ground that the said decision to terminate/voke their appointment was illegal, irrational and procedurally improper and ultra vires since they were not accorded a hearing in accordance with the provisions of the Constitution.

Illegality as a ground of review looks at the law and the four corners of the legislation i.e its powers and jurisdiction. When power is not vested in the decision maker then any acts made by such a decision maker are ultra vires.

In the case of *R v Lord President of the Privy Council, ex parte Page [1993] AC 682* Lord Browne-Wilkinson noted;

"The fundamental principle (of judicial review) is that the courts will intervene to ensure that the powers of a public decision-making bodies are exercised lawfully. In all cases... this intervention... is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury

sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is wednesbury unreasonable, he is acting ultra-vires his powers and therefore unlawful.”

In addition, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion.

There is no set procedure that ought to be followed in the circumstances. According to the Local Governments Act-section 18(3), the chairperson/1st respondent can appoint by nominating from members of the council and shall be approved by majority of all members of the council.

In addition, Article 187 of the Constitution and section 20 of the Local Governments Act provides for vacation of office of a member of the district executive committee;

“The office of a member of the district executive committee shall fall vacant if-

(a) The appointment of a member is revoked by the chairperson.”

The actions of the 1st respondent are clearly within the four corners of the Local Governments Act, although she may have been arbitrary or unfair in her decision for the alleged selfish reasons by the applicants. Such exercise of authority and power may not be brought into question in any court of law but rather in the court of public opinion of the voters during the next round of elections.

In the area of administrative exercise of power, the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely- that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

The law requires that statutory power is exercised reasonably, in good faith and on correct grounds. The courts assume that Parliament cannot have intended to authorise unreasonable action, which is therefore ultra-vires and void.

The 1st respondent should be mindful that the power to appoint and revoke is conferred by Parliament and the same should never be equated to the powers conferred by the Constitution to the President as a Fountain of Honour. It should not be assumed that the Chairperson has or exercises the same or similar power like the President of the Republic of Uganda.

The powers of the 1st respondent are equally derived from the Interpretation Act and are exercisable in accordance with what the Parliament envisaged in enactment of the law;

“Section 24 of the Interpretation Act provides;

Where, by any Act, a power to make any appointment is conferred, the authority having the power to make appointment shall also have power (subject to limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint, or reinstate any person appointed in the exercise of the power.”

The actions of the 1st respondent of revoking the appointment of the applicants could not be treated as an ordinary decision making process since it is equally political which may not be directly put into question by applying the standard of taking decisions outside the political realm.

The Local Governments Act under which the applicants were appointed does not envisage according the applicants a hearing before the revocation/termination of their appointment or above all being given reasons for the termination/revocation.

This issue is resolved in the affirmative.

Issues 2 & 3

Whether or not the termination was lawful.

Whether or not the 2nd Respondent is liable for the actions of the 1st Respondent.

The determination of the above issue resolves the above issues in this matter.

Whether or not the Applicants are entitled to the reliefs sought in the Application?

The applicants are not entitled to any of the reliefs sought in this matter.

This application is dismissed with no order as to costs since it was a matter of public interest.

I so Order.

SSEKAANA MUSA

JUDGE

12th/07/2019