

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.205 OF 2018**

**DR. ELIZABETH KAASE BWANGA----- APPLICANT**

**VERSUS**

- 1. MAKERERE UNIVERSITY**
- 2. CHARLES BARUGAHARE**
- 3. ANDREW ABUNYANG**
- 4. BRUCE KABAASA----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application under Article 254, 50 & 42 and Section 101 (e) of the Pension Act, Section 3 of the Judicature (Amendment) Act and Section 98 of the Civil Procedure Act and Rules 3(1)(a), 5 & 6 of the Judicature (Judicial Review) Rules, 2009 and Order 52 rr 1 &3 for the following reliefs;

- (a) A declaration that the respondents are in contempt of the Orders of its Staff Appeals Tribunal to promote the Applicant.
- (b) A declaration that the respondent's decision to withhold and/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 of 45 days was illegal, unjust and discriminatory.
- (c) An Order of mandamus doth issue directing the respondents 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.
- (d) An Order doth issue that the applicant be paid all the accumulated salary and allowances due to her effective from the date ordered for her appointment by the Tribunal lapsed.
- (e) An order directing the respondents to pay the Applicant compensation for contempt of Court amounting to UGX 200,000,000/=.
- (f) The respondent be ordered to pay a fine of UGX 100,000,000/=.
- (g) General damages.

(h) Punitive and Exemplary damages

(i) Costs of the application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant by Dr. Elizabeth Kaase-Bwanga but generally and briefly state that;

- 1) The respondents acted and have continued to act in contempt of the orders of its Staff Appeal Tribunal and it is the High Court that is vested with unlimited jurisdiction to entertain matters of Contempt of Tribunal orders.
- 2) The applicant as a Lecturer in the 1<sup>st</sup> respondent's college of Humanities and Social Sciences, School of Women 7 Gender Studies, applied for promotion to the respondent's Appointments Board to the rank of Senior Lecturer.
- 3) The Appointments board refused to promote the applicant to the said rank despite the recommendation and the evidence of vast other research and supervision accomplishments she had accomplished which were all statutory set evaluating criteria under the 1<sup>st</sup> respondent's statutes.
- 4) The applicant appealed to the Staff Appeals Tribunal which took some time to consider and the applicant filed an application to this court for review of the respondent's actions.
- 5) The Tribunal delivered a ruling in the matter in favour of the applicant in the following terms;
  - (a) The appointments board is hereby directed to sit and consider the Appellant's application for promotion to the post of Senior Lecturer within 45 days from the date of the decision.
  - (b) There will be no order as to costs.
6. The applicant withdrew the application earlier filed and the court guided that the respondent should ensure the orders are complied with and nothing has been done to date.
7. The applicant seeks money that she would have earned as a Senior Lecturer as compensation-200,000,000/= and also wants the acts of the applicant be punished by payment of a fine of 100,000,000/=

The respondents opposed this application and the respondents filed an affidavit in reply through Andrew Abunyang- Director Human Resources of the 1<sup>st</sup> respondent.

The 3<sup>rd</sup> respondent contended the Staff Appeals Tribunal of the 1<sup>st</sup> respondent directed the Appointment's Board to sit and consider the applicant's application for the post of Senior Lecturer within 45 days from 14<sup>th</sup> June 2018.

The 3<sup>rd</sup> respondent in his capacity as the Secretary of the Appointments Board was advised by the Counsel to comply with the directive of the Staff Appeals Tribunal.

That according to them this matter is premature as the appointments board has not declined to implement the decision of The Staff Appeals Tribunal but is acting in accordance with its hectic schedule of business.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Three issues were framed by the applicant for court's determination;

1. *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.*
2. *Whether the Applicant is not entitled to the declarations and orders being sought in the Application?*
3. *Whether the Applicant is not entitled to the orders of Mandamus being sought in the Application?*
4. *Whether the Applicant is entitled to the remedies sought?*

I shall resolve this application in the order of the issues so raised. The applicant was represented by *Dr James Akampumuza* whereas the respondents were jointly represented by *Mr Hudson Musoke*.

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 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.

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.”

The applicant’s counsel opted to argue all the 3 issues together.

The applicant’s counsel argued that the respondent are in contempt of their Staff Appeals Tribunal ruling and its orders.

This was the respondent’s own Appeals Tribunal’s ruling which was made correctly, legally and was binding upon the Respondents as per **Sections 55-57 of the Universities & Other Tertiary Institutions Act (“the Act”) and Articles 28(1) and 42 of the Constitution**. But the Respondent simply defied it and tried to change the terms after having kept itself in contempt, shifting the deadlines among others.

The Respondent’s Staff Appeals Tribunal is a statutory body created by the Universities & Other Tertiary Institutions Act (“the Act”). It is a quasi-judicial body exercising judicial authority in the determination of Applicant’s civil rights and obligations and the Respondent had a constitutional and statutory duty to comply with its orders failure of which was contempt.

The role of the Tribunal is to ensure that a staff of the University is given a fair hearing under S.55 (2) (d) of the UTOA, 2001. The Tribunal headed by a person qualified to be a Judge is a quasi-judicial body, which has to follow the rules of natural justice in determination of Applicant’s rights in accordance with Articles 28(1), 42 and 44 (c) of the Constitution. Thus, the Respondent failed to comply with the mandatory statutory duty imposed on it to respect and implement decisions of its Staff Tribunal, a quasi-judicial body, to give staff such as Applicant a fair hearing.

The Applicant has proven 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 and fair treatment from the Respondents.

Further that the Board refused to consider her application to promote her to the said rank despite the recommendation and the evidence of vast other research and supervision accomplishments which were all statutory set evaluating criteria under the Respondent’s statutes.

The applicant's counsel contends that, the burden of ensuring that the Tribunal's Orders were respected lay with the Respondent's Appointments Board, officials of the Respondents such as the 2<sup>nd</sup>-4<sup>th</sup> Respondents and other authorities against whom the orders were targeted. Once the Applicant discharged the burden by Affidavit evidence to show that the Respondent's officials did not obey the Tribunal's Orders, the onus shifted to the Respondent to show that they complied with the Tribunal's orders. This they failed as they did not respond to the instant application.

He submitted that indeed the 45 days ended on 27<sup>th</sup> July 2018 without the Respondents complying and to date they have never purged the contempt.

The 1<sup>st</sup> Respondent's Appointment Board has defiantly not implemented the orders of the Staff Appeals Tribunal and the concoctions of a hectic schedule and keeping the matter as an unfinished agenda business appearing in paragraphs 7, 8 and 9 of the Affidavit in reply is further admission of contempt of the Tribunal. There is therefore no premature Application or abuse of court or Appointments Board due process and this is a proper and meritorious Application, which highlights the Respondent's refusal to comply with the orders, acting to defeat them and deny the Applicant her promotion and the protection accorded to her by the Staff Appeals Tribunal which is contempt of court enforced by this honourable Court. See **Dr Julliane Sansa Otim vs. Makerere University High Court Miscellaneous Cause No. 258 of 2016.**

The 1<sup>st</sup> Respondent has not furnished to this Court any lawful or reasonable justification for such failure and prolonged delay which is clearly out of the timelines set by the Tribunal. We invite this honourable Court to adopt the reasoning of the East African Court of Justice in the case of **Sitenda Sebalu v. Secretary General East African Community & 3 ORS EACJ Reference No. 1 of 2010 (First Instance Division)** where it was held that delay to act within the prescribed timelines contravenes the basic principles of good governance, democracy, rule of law, social justice and human rights.

My Lord, the decision of the Tribunal attached as "A" to the Application and "E" to the Respondent's Reply is instructive. On page 1, it shows the high qualifications the Applicant possesses to indeed be a Senior Lecturer. They are beyond reproach. It further found that she, in accordance with the widely accepted practice followed by the 1<sup>st</sup> Respondent initiated her Application for promotion at the College she is attached to. The College of Humanities and Social Sciences School of Women and Gender in Minute 03/03/2017 on 13/3/2017 meeting agreed that she meets the requirements as per the Fast Track requirement and went ahead to score on the basis of the scoring criteria for the post. It stated in extenso;

***"The meeting agreed to consider the following journals where the Appellant's works had been published:-***

- a) ***Elizabeth Kaase Bwanga and Consolata Kabonesa (2016) Research Funding at Makerere University and its Implications in Human Resource and Institutional Development: Does Gender Matter? In the Uganda Journal of Management***

*and Public Policy Studies, Vol 11. Number 1 November 2016. ISSN 2078-7049, Uganda Management Institute.*

- b) Bwanga E.K & Kabonesa C. (July 2015) the relationship between the Intra-Household Decision Making Dynamics and Household Savings –Investment Decisions: A Feminist Economics Perspective. International Journal of Economics and Finance (IJEf), Volume 1(3), 102-121. ISSN 21056008.*
- c) Bwanga E.K (Sep, 2015) Women Empowerment and Intra-Household Decision Making Dynamics Implications for policy makers and Practitioners in Uganda: International Journal of Social and Education Volume 1(4) Number 1 March 2016.*
- d) Elizabeth Kaase-Bwanga and Consolata Kabonesa (2016) Women in Academia Research Productivity, Career Advancement and its implications on Institutional Development of Makerere University, Volume 10 Number 1 March 2016.*
- e) Consolata Kabonesa and Elizabeth Kaase Bwanga (2014). Rethinking Leadership, Management and Career Advancement for 21<sup>st</sup> Century Deans in the Social Sciences and Humanities at Makerere University. JHEA.RESA Vol. 12 No.1, 2014, pp. 22-52 (ISSN 0851-7762).*

*The Appellant was scored by the meeting according to the criteria set out in the Human Resources Manual as follows:*

<i>i. Academic and Professional Qualifications</i>	<i>20 out of 20 points</i>
<i>ii. Publications</i>	<i>20 out of 25 points</i>
<i>iii. Teaching Ability and Experience</i>	<i>10.5 out of 13 points</i>
<i>iv. Research</i>	<i>5 out of 8 points</i>
<i>v. Supervision of Graduate Students</i>	<i>3 out of 10 points</i>
<i>vi. Other Academic Activities</i>	<i>4 out of 8 points</i>
<i>vii. Service to the University &amp; the Community</i>	<i>5 out of 5 points</i>
<i>viii. Membership of Professional Boards</i>	<i>2 out of 2 points</i>
<i>ix. Conduct</i>	<i>4 out of 5 points</i>
<i>x. Professional Practice and Outreach Services</i>	<i>2 out of 2 points</i>
<i>TOTAL</i>	<i>75.5 POINTS</i>

*The Appellant scored 75.5 points. The meeting recommended that “...Dr. Bwanga Kaase Elizabeth be promoted to the rank of Senior Lecturer on the basis of the score, her dedication and commitment to the University service and her expertise...”.*

*The Appellant submitted her application to the Director, Human Resources Directorate of the respondent for promotion to the rank of Senior Lecturer on 20<sup>th</sup> January, 2017 through the Principal, College of Humanities and Social Sciences and also through the Dean, School of Women & Gender Studies. The College of Humanities and Social Science, School of Women and Gender Studies considered the appellant’s application on 13/3/2017. However, ever since then the Board has not yet considered the*

*appellant's application for promotion. Aggrieved by the Board's delay to consider her application, the appellant appealed to the Tribunal. Her appeal was lodged in the Tribunal on 22/5/2017. There are 04 (four) grounds of appeal. However, a careful scrutiny of the appellant's grounds shows that the chief complaint is the failure by the Board to consider her application for promotion to the rank of Senior Lecturer. In its response to the Appellant's memorandum of Appeal, the Respondent case is essentially that it has not delayed to handle the appellant's application which will be considered by the Board at its regular meeting and its decision communicated to the Appellant.*

...

*It appears that neither the University Council nor the Board has put in place the timelines for performing the role relating to appointment, promotion, removal from services and discipline of all officers and staff of the academic and administrative service of the University. As a result of this gap, there have been some delays by the Board in carrying out the mandate given to it by the Statute. The result is that individual rights of some staff members may be affected. At the hearing of this matter the Respondent asserted that the Respondent's appointment Board sits once a month. Several months have passed since the Appellant's application was considered by the College which is supposed to present her matters to the Board. No communication has been given to the appellant about the status of her application. The Act mandates the Tribunal to consider all matters that may be brought before it in the discharge of its duties. The Tribunal cannot sit helplessly when a member of staff of the respondent has run to it genuinely raising concern about non consideration of her application for promotion by the Board. The Tribunal must execute its mandate of resolving disputes between members of staff and the Respondent relating to employment. This is one of them and although there has been no formal sitting by the Board at which a decision concerning the appellant has been made, the Tribunal considers that failure by the Board to consider the appellant's application for more than (07) seven months without a justifiable reason amounts to inordinate delay that warrants intervention by the Board. Although the Appellant has prayed to the Tribunal to appoint her to the rank of Senior Lecturer, the Tribunal cannot do so because it does not have powers to appoint the appellant to the post of Senior Lecturer. Those powers rest with the Appointments Board which must be exercised in accordance with its mandate given to it under the law.*

*The Tribunal has carefully studied the Appellant's appeal, the Appellant's submissions together with the prayers sought in the appeal. The Tribunal has also carefully studied the Respondent's reply together with its submissions. The Tribunal finds that this is a proper case for the Appellant's application for promotion to be considered by the Appointments Board. This Tribunal will, therefore, direct the Appointments Board to consider the Appellant's application on merit. In the opinion of the Tribunal, this is not*

***a case where costs should be awarded to the Appellant as the Appointments Board is yet to consider the Appellant's application for promotion.***

***In conclusion, there will be judgment for the appellant in the following terms;***

***1. The Appointments Board is hereby directed to sit and consider the Appellant's application for the post of Senior Lecturer within forty five days from the date of this decision.***

***2. There will be no orders as to costs."***

It is now trite law that with respect to educational institutions like the Respondent, the courts worldwide have always jealously safeguarded the integrity and authority of their administrative organs such as the Staff Appeals Tribunal because these Universities are responsible for the academic welfare of many people and the nation's human resource development. Hence, the act of insubordination of a top decision making authority of a University is severely censured and criticized by Court. This is the dictum in the Nigerian Supreme Court case of **University of Ilorin v. Stephen O. Akinola, Case No. 126/2008.**

The Application for judicial review, which among others includes the prayer for mandamus orders has been made without undue delay. The Applicant, who the Respondent is keen to continue exploiting and using her continues to be puzzlingly stagnated at the rank of Lecturer and this is despite the orders of the Staff Appeals Tribunal. This is illegal and irrational.

The Staff Appeals Tribunal is not vested with powers to punish the Respondent or its officials for contempt of the Tribunal. However, because the Tribunal is an inferior adjudicatory body subject to the supervision of the High Court, the High Court is empowered to punish the Respondent or its officials for contempt of the Tribunal using the mechanism of contempt of court powers.

The respondent submitted that the applicant applied to be promoted to the post of Senior Lecturer in the School of Women and Gender Studies of the First Respondent. Before the Appointments Board could determine her application, the Applicant appealed to the Staff Appeals Tribunal.

At the hearing, the Applicant sought for the Tribunal to order for her promotion to the said position. However, the Tribunal in its wisdom, refrained from doing so. The Tribunal noted, and rightly so, that the power and mandate to appoint or promote staff of the First Respondent is only vested in the Appointments Board of the First Respondent.

What the Tribunal therefore directed was for the Appointments Board to sit and "consider" the Applicant's application. The Tribunal did not order the Appointments Board to sit and "appoint" but rather to "consider". This meant that the Applicant's application was to be subjected to the normal rigorous process that an applicant for promotion to such a post has to go through.

Indeed the Applicant's application was included and considered at the Appointments Board meeting of the 22<sup>nd</sup> August 2018 as per Annexure "C" of the Affidavit in Reply by Andrew



Abunyang, the Secretary to the Appointments Board. The Applicant's publications were then referred to a vetting process through which they are now undergoing. The Internal vetters have successfully completed the exercise. What is remaining are the External vetters. These, none of the Respondents has any control over how and when they should conclude their vetting exercise.

The said Tribunal Order was extracted and served on the officials of the First Respondent in July 2018. The Second Respondent by directing the Third Respondent, who happens to be the Secretary of the Appointments Board to schedule the Applicant's application to be considered at the next sitting of the Appointments Board duly shows compliance with the Order. Being that the Board sits only once in a month, the next sitting fell on the 22<sup>nd</sup> August 2018. The Third Respondent complied by fixing it on the Agenda of the Board. The Fourth Respondent, who by then chaired the Appointments Board presided over the meeting that considered the Applicant's application. In effect the Applicant's application was considered within the prescribed time. The matter is now before external vetters over whom the respondents have no control.

By bringing this application, the Applicant seeks for this Court to "appoint" and or "promote" the Applicant to the post of Senior Lecturer, without going through the normal process. This would be for this Court to take over the statutory duties of the Appointments Board. They submitted that this would be illegal.

It is important to note that the term of the then Appointments Board expired on the 20<sup>th</sup> December 2018. The Third and Fourth Respondents are no longer officials of the Appointments Board. A new Appointments Board was approved by the University Council on 8<sup>th</sup> February 2019 and it will take appropriate action upon receipt of the external vetter's report in accordance with due University processes. The Applicant is well aware of all these processes and she has been routinely been kept updated of the progress of her application.

It was the respondent's counsel that the Respondents are not in contempt of the Tribunal Orders. The Respondents duly complied with the Order since they did whatever was within their means to determine the Applicant's application. As has been explained above, her application for promotion is now before external vetters who are vetting her publications to determine their authenticity and suitability to qualify for promotion.

Judicial Review is a process under which executive or legislative actions are subject to review by the Judiciary. This entails that there has to be a decision in the first place. That the decision was arrived at legally, fairly and rationally.

As rightly submitted by the Applicant, the Respondents have to date not yet taken any decision, in regard to the Applicant's application. This is so, in that the Applicant's application is still under consideration and the final outcome which will inform the decision, is still awaited. It could either be in favour of the Applicant or not.

Since the Respondents have not taken or made any decision, but have commenced the process, then this Court has no decision to review. The remedy of mandamus sought for is not tenable in the circumstances. Mandamus would be applicable to compel a public officer carry out his public duty. The public officers in this case are officials of a Public University.

The Second respondent is the University Secretary and Accounting Officer of the First Respondent. He, upon receipt of the Tribunal Order, directed the same to the appropriate body legally mandated to effect the same, viz, the Appointments Board. That was the public duty that he was legally mandated to do. He was not the appointing authority. He could not “consider” the Applicant’s application. More so, the Tribunal Order was not directed to him or his office, but to the Appointments Board. Such a remedy of mandamus is not suitable against the Second Respondent.

The Third Respondent is the Director Human Resources and Secretary to the Appointments Board of the first Respondent. He received the Tribunal Order through a letter dated 25<sup>th</sup> July 2018, written to him by the Second Respondent. The Second Respondent duly ensured that the Applicant’s application is included in the Agenda of the Appointments Board at its next sitting. The Third Respondent has no power or mandate to “consider” the Applicant’s application for appointment to the post of Senior Lecturer. This is the reserve of the Appointments Board. What the Third Respondent is mandated to do, he did. He could not do anything else other than that what he did. This Honourable Court cannot legally compel him to do anything further than that.

The Fourth Respondent was, as up 20<sup>th</sup> December 2018, the Chairman of the First Respondent’s Appointments Board. When the Applicant’s application was presented before the Board meeting that he chaired, he duly considered the same and referred it to the due vetting process through which such applications are subjected to. The Fourth Respondent had no other alternative other than to await the outcome of the vetting process. He was not expected to do anything further than that, until the vetting process is complete.

The Fourth Respondent, could not, in his personal capacity, consider and appoint the Applicant; as it is sought to be portrayed by this application.

All in all, the Respondents have each individually carried out what they are mandated to do. This remedy is not maintainable against them.

### **Determination**

The applicant’s counsel cited some Constitutional provisions relating to pension and cited the Pensions Act as one of the laws under which this application was brought and in his submissions he has not referred to any of them. It would appear that he found them irrelevant or superfluous to the application for judicial review.

The respondent submitted that the decision or power to appoint the applicant is vested in the Appointments board and any attempt by court to appoint would be illegal. I respectfully do not agree with the submission. A court of law vested with the prerogative powers can in special circumstances substitute an erroneous decision with its own and take a decision where a public decision maker has refused to take such a decision. For argument’s sake, assuming the Appointments board is presented with all the necessary documents for the consideration and it refuses to take a decision, should the court sit back to say it cannot make a decision. The Court can compel the appointments board to appoint or promote the applicant, if the circumstances warrant. See *Tribac (Pvt) Ltd v Tobacco Marketing Board [1996] 2 ZLR 52 (SC)*

The respondent's counsel has made a lot of submissions from the bar and they are not contained in the affidavit in support. This matter has dragged on for quite some time under the guise of seeking more time to enable them take a decision. It would appear that the respondents are using the system to frustrate the applicant under the reasoning made by counsel for the respondent that they have a lot of work to do.

Surprisingly, the same counsel for the respondent who was always reporting to court about the progress of the consideration of the applicant's case, has now submitted from the bar that the term of office of the Appointments board expired on December 28<sup>th</sup> 2018. The actions of the respondents are indeed made in bad faith with the sole purpose of delaying the applicant's consideration for appointment as a Senior Lecturer.

By the time the 1<sup>st</sup> respondent's tribunal made a decision that the applicant be considered for appointment as Senior Lecturer, they were satisfied with the evidence presented and indeed the application was made upon a recommendation from the School of Women and gender Studies. *Which noted that the applicant meets the requirements as per the Fast Track requirements and went ahead to score her to 75.5 points.*

*"The meeting recommended that..” Dr Bwanga Kaase Elizabeth be promoted to the rank of Senior Lecturer on the basis of the score, her dedication and commitment to the University Service and her expertise....”*

This court also notes the concerns raised in the ruling of the tribunal about timelines for performing certain roles in relation to appointment, promotion, removal from service and discipline of all officers and staff of the academic and administrative service of the University. As a result of this gap, there have been some delays by the board in carrying out the mandate given to it by the statute. The result is that individual rights of some staff members may be affected.

It is the duty of this court to fill the timeline gaps by ordering the Appointments board to take decisions within reasonable time in order to avoid abuse of authority due to lack of specific timelines.

In the case of **Dr Julliane Sansa Otim vs. Makerere University High Court Miscellaneous Cause No. 258 of 2016**, Justice Musota (as he then was) noted that;

*“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.”*

The Staff Appeals Tribunal gave a decision on 14<sup>th</sup> June 2018 which was to the effect that the applicant's application be considered for promotion within 45 days. The respondent's legal officers opted to advise the 3<sup>rd</sup> Applicant on 25<sup>th</sup> July 2018. This means that by the time they advised the respondent it was past 41 days just 4 days to expire.

The actions of the respondents or other officers of the respondent are a clear abuse of authority and they ought to be restrained. The respondents have not shown any reason why they continue to refuse to consider the applicant's application except for probably wrongful exercise of power.

Since Judicial Review is a process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions on inferior courts, Tribunals and other public bodies or persons of which the Appointments board of the 1<sup>st</sup> respondent is such a body, it is my finding that the 1<sup>st</sup> respondent's board and all its members are in contempt of the Staff Appeals Tribunal Orders and this is an illegality which has to be checked by this court.

*Whether the Applicant is entitled to the remedies sought?*

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558***, ***R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d) Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See ***Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016***

The applicant has satisfied the requirements for issuance of an Order of mandamus against the 1<sup>st</sup> respondent's appointments board to comply with the statutory duty and implement the orders of the Staff Appeals Tribunal and consider the appointment of the applicant to the rank of Senior Lecturer within 30 days from the date of delivery of this ruling.

The Appointments board should determine the application with an open mind and make an informed decision that is not shrouded with vindictiveness of the applicant for challenging their dilatory conduct in handling her application.

The applicant is granted costs of the application.

I so Order.

**SSEKAANA MUSA**  
**JUDGE**  
**25<sup>th</sup>/02/2019**