IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Application No. 165 of 2018

In the matter between

AROP SIMON PETER **APPLICANT**

And

AMURU DISTRICT LOCAL GOVERNMENT **RESPONDENT**

Heard: 5 March 2019

Delivered: 1 April 2019

Summary: Judicial review of respondent's failure to swear in an elected leader.

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] This application is made under articles 28 and 44 of *The Constitution of the Republic of Uganda, 1995* section 36 of *The Judicature Act*, and rules 3 - 8 of *The Civil Procedure (Judicial Review) Rules, 2009*. The applicant seeks the prerogative order of certiorari quashing the decision of the respondent's Chief Administrative Officer not to swear him in as the male Councillor representing workers on the District Council; an injunction restraining the Chief Administrative Officer from implementing his decision not to swear in the applicant as the male Councillor representing workers on the District Council; an order of prohibition restraining the Chief Administrative Officer from implementing his decision not to swear in the applicant as the male Councillor representing workers on the District

Council; an order of mandamus directing and compelling the Chief Administrative Officer to swear in the applicant as the male Councillor representing workers on the District Council; general damages and costs.

[2] The grounds advanced in support of that application are that; the decision by the Chief Administrative Officer not to swear in the applicant in as the male Councillor representing workers on the District Council is *ultra vires*. The decision was based on the applicant's alleged failure to tender in his resignation before vying for that office, an allegation he was never given a chance to defend himself against and therefore was denied his right to a fair hearing. There is no lawful justification for the decision by the Chief Administrative Officer not to swear in the applicant as the male Councillor representing workers on the District Council.

[3] In his affidavit in reply, Mr. Oluka Francis Andrew the respondents Chief Administrative Officer opposes the application contending that the application was filed out of time and should be dismissed. In his letter of 6th August, 2018 he only recommended disciplinary proceedings to be undertaken against the applicant and that letter has nothing to do with the applicant's being sworn in. It is the duty of the Speaker to arrange the swearing in and not that of the Chief Administrative Officer. Therefore, there is nothing to show that the applicant was ever prevented from being sworn in and the application should consequently be dismissed with costs.

Background to the application:

[4] The background to the application is that the applicant was at all material time employed by the respondent as an askari at Pogo Health Centre III. In accordance with guidelines issued by the Uganda Electoral Commission, the applicant was on 9th May, 2018 nominated, vied for and won an election on 29th May, 2018 at an electoral college to serve as the male Councillor representing workers on the District Council. On 29th May, 2018 the applicant's name together with that of the successful female Councillor representing workers on the District

Council were submitted by the District Returning Officer to the respondent's Chief Administrative Officer. The plaintiff's name was published in the Uganda Gazette on 17th July, 2018. His election to that position was not challenged by any person.

[5] On 6th August, 2018 the respondent's Chief Administrative Officer wrote a letter contending that the applicant was not validly elected since he never resigned his position as askari before vying for election and that he should thus be subjected to disciplinary proceedings. On 20th August, 2018 the respondent's Chief Administrative Officer swore in the successful female Councillor representing workers on the District Council but never invited the applicant to be sworn in and he has never been invited since then to be sworn in as the successful male Councillor representing workers on the District Council.

The parties' arguments;

[6] Appearing *pro se* at the hearing of the application, the applicant submitted that he won elections for Councillor representing Workers of Amuru District. His counterpart was sworn in on 20th August, 2018. The Chief Administrative Officer told him he had not resigned his position as a civil servant and hence was not to be sworn in but would instead be subjected to disciplinary proceedings. That allegation was not correct because the guidelines from the Electoral Commission did not require him to resign. He therefore applied to court to direct the respondents to cause his being sworn in by the Chief Administrative Officer since other contestants have not complaint concerning his election.

[7] In reply, counsel for the respondent Mr. Walter Okidi Ladwar argued that there is nothing in the letter of 6th August, 2018 that the respondent's Chief Administrative Officer said about swearing in the applicant. The letter is only about submitting his case to disciplinary committee. The applicant has never presented himself to the Speaker for swearing in. A date for searing in was organised for 20th August,

2018 and he never turned up. He claimed the letter prevented him but it does not. The application was filed on 20th November, 2018 which is beyond the statutory three months provided for by the rules. His application is time barred and ought to be dismissed with costs.

The general principles;

[8] In exercise of the power of judicial review, the court is mindful of the principles that guide the limits within which courts may review the exercise of administrative discretion which were stated in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1947] 2 ALL ER 680: [1948] 1 KB 223*, which are;- (i) illegality: which means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. (ii) Irrationality: which means particularly extreme behaviour, such as acting in bad faith, or a decision which is "perverse" or "absurd" that implies the decision-maker has taken leave of his senses. Taking a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it and (iii) Procedural impropriety: which encompasses four basic concepts; (1) the need to comply with the adopted (and usually statutory) rules for the decision making process; (2) the common law requirement of fair hearing; (3) the common law requirement that the decision is made without an appearance of bias; (4) the requirement to comply with any procedural legitimate expectations created by the decision maker.

[9] The order of certiorari sought by the applicant is a means of quashing decisions of public authorities where there has been an excess of jurisdiction, an *ultra vires* decision, a breach of natural justice or an error of law on the face of the record. The order will issue to control administrative decisions only to statutory authorities or where the administrative authority has acted in excess of its statutory power. It will also issue to ensure that a statutory tribunal or body applies the law correctly. Simply put the order is available to ensure the proper

functioning of the machinery of Government (see *In Re: Application by Bukoba Gymkhana Club [1963] EA 478*). The writ of certiorari is discretionary and issues only in fitting circumstances (see *Re- An Application by Gideon Waweru Gathunguri [1962] EA 520* and *Masaka District Growers Co-operative Union v. Mumpiwakoma Growers Co-operative Society Ltd and Four others [1968] EA 258*). Certiorari is concerned with decisions in the past.

[10] On the other hand, the order of prohibition is directed to a public authority which forbids that authority to act in excess of its jurisdiction or contrary to the law. Prohibition will lie as soon as it is established that such a body is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to be brought up and quashed on certiorari (see *Thorne v. University of London [1966] 2 All ER 338*). Prohibition is concerned with those in the future. While Certiorari looks at the past as a corrective remedy, prohibition looks at the future as a prohibitive remedy. Certiorari is sought to quash the decision and prohibition to restrain its execution (see *Wheeler v. Leicester City Council [1985] 2 ALL.ER 1106*).

[11] An injunction is an order of a court addressed to a party requiring that party to do or to refrain from doing a particular act. Hence an injunction may be prohibitory or mandatory. A final injunction granted on a claim for judicial review is normally indistinguishable in its effect from a prohibiting or mandatory order (see *M v. Home Office [1994] 1 A.C. 377 at 415E*). Injunctions may be granted to prevent *ultra vires* acts by (see *R. v. North Yorkshire CC Ex p. M [1989] Q.B. 411*) public bodies and to enforce public law duties (see *R. v Kensington and Chelsea RLBC Ex p. Hammell [1989] 1 Q.B. 518*). In general, a mandatory injunction will not issue to compel the performance of a continuing series of acts which the court is incapable of superintending (see *Attorney General v. Staffordshire C.C. [1905] 1 Ch. 336 at 342*).

[12] Lastly, the order of mandamus is directed at ordering the public body to properly fulfil its official duties or correct an abuse of discretion. The order of mandamus is the classical means of compelling the performance by a public body of a duty imposed on it by law. While the duty must be a public one, it may be either of common law or statutory origin. Mandamus will also lie to review the exercise of discretion by administrative bodies. If, in arriving at a decision, the authority takes irrelevant factors into account, it can be ordered to hear and determine according to law. It is an extraordinary remedy designed to compel official performance of a ministerial act or mandatory duty where there exists a clear legal right in the applicant and a corresponding duty in the respondent and where there is no other adequate remedy at law.

First issue; Whether the application is barred by limitation.

[13] It is argued by the respondent that this application is barred by limitation. Rule 5 (1) of *The Judicature (Judicial Review) Rules, 2009* provides that an application for judicial review should be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made. "Grounds of the application" in this context is in essence the cause of action. It is that aggregate of operative facts which give rise to one or more legal relations of right-duty enforceable in the courts. Three elements must accrue before "grounds of the application" may be said to exist; (i) a primary right; (ii) a corresponding duty; and (iii) a wrong. Combined they constitute the cause of action in the legal sense of the term.

[14] The court, in determining when an action accrues, is concerned with the existence of the facts giving rise to the entitlement to commence proceedings. Neither the knowledge nor the belief of the applicant as to an entitlement to bring proceedings is relevant to the question of when a cause of action accrues. The cause of action usually accrues on the date that the injury to the plaintiff is

sustained. The statute of limitation clock is intended to tick solely from the time of the wrongful act, not from the time harm is realised. The cause of action accrues when the infringement first occurs, regardless of whether the damage is then discovered or discoverable. Where the operative facts instrumental in bringing into being and shape the legal controversy are a series of acts or events, a cause of action may not arise until the last one of the bundle of acts occurs, or a new cause of action may arise with each new occurrence of each act, whereupon accrual may be held to occur up until the last occasion of a violation.

[14] It is trite that in judicial review, the court exercises control on the lawfulness of all acts or conduct and decisions of administrative authorities. It is necessary first to analyse the pleaded claim and identify the precise interest infringed by the alleged unlawful act or omission. A reviewable decision is the ultimate determination required or authorised by statute rather than merely a step taken in the course of reasoning on the way to the making of the ultimate decision. It denotes a decision having the character or quality of finality, an outcome reflecting something in the nature of a determination of an application, inquiry or dispute or, effectively resolving an actual substantive issue. On the other hand, for an act or conduct to be reviewable, it must be part of the decision making process and involve something which is procedural, and not substantive. While "decision" refers to administrative activity that is substantive and final or operative, "conduct" refers to administrative activity preceding a decision that may reveal a flawed procedural processes, as opposed to substantive issues.

[15] The bundle of facts giving rise to the cause of action in this application was triggered by the letter of 6th August, 2018 which then set the series of operative facts in motion. It was followed by the failure to fix a date for the applicant's swearing in, the failure to invite him to be sworn in and the sequence culminated in the swearing in of his counterpart on 20th August, 2018. The cause of action did not arise with the occurrence of each act but rather upon the last act in the series of violations, i.e. 20th August, 2018. Inaction by a public official that

deprives a private citizen of a legal entitlement gives rise to a cause of action. The respondent's inaction crystallised when it treated the applicant differently from the other successful candidate at the same election. That is what concretised the cause of action. The application having been filed on 20th November, 2018 was therefore filed within time. The application is not time barred.

Second issue; Whether the respondent's failure or refusal to swear in the applicant is illegal.

[16] The applicant argues that the decision not to swear him in is illegal. It is trite that decisions made without the legal power (*ultra vires*) include; decisions which are not authorised, decisions taken with no substantive power or where there has been a failure to comply with procedure; decisions taken in abuse of power including, bad faith (where the power has been exercised for an ulterior purpose, that is, for a purpose other than a purpose for which the power was conferred), where power is not exercised for the purpose given (the purpose of the discretion may be determined from the terms and subject matter of the legislation or the scope of the instrument conferring it), where the decision is tainted with unreasonableness including duty to inquire (no reasonable person could ever have arrived at it) and taking into account irrelevant considerations in the exercise of a discretion or failing to take account of relevant considerations.

[17] Illegality may also be as a result of failure to exercise discretion, including acting under dictation (where an official exercises a discretionary power on direction or at the behest of some other person or body. An official may have regard to government policy but must apply their mind to the question and the decision must be their decision).

[18] The nature of illegality alluded to by the applicant in the instant application is by way of the respondent having taken into account irrelevant considerations in the

exercise of its discretion or failing to take account of relevant considerations. Where in the exercise of its discretion on a public duty, an authority takes into account considerations which the courts consider not to be proper, then in the eyes of the law it has not exercised its discretion legally.

[19] Section 116 (5) and (6) of *The Local Governments Act* as amended in 2006 requires that under the multiparty political system, a public officer, a person employed in any Government department or agency of the Government, an employee of a local council or an employee of a body in which government has a controlling interest, who wishes to stand for election to a local council office should resign his or her office at least thirty days before nomination day in accordance with the procedure of the service or employment to which he or she belongs. Accordingly, under section 139 (d) of *The Local Governments Act*, among the only grounds upon which the election of a candidate as a member of a council may be set aside, is included the fact that the candidate was at the time of his or her election not qualified or was disqualified from election.

[20] In the instant case it was contended in the respondents' later of 6th August, 2018 that the applicant did not resign his position in accordance with that provision, which allegation the applicant refuted in his affidavit and submissions. According to section 138 (3) and (4) of *The Local Governments Act*, the mode of challenging the election of a candidate as a member of a Council is by the a person aggrieved by a declaration of the results of a councillor, petitioning the Chief Magistrate's Court having jurisdiction in the constituency, within fourteen days after the day on which the results of the election has been notified by the Electoral Commission in the Gazette. The right to challenge the election is reserved to; (a) a candidate who loses an election; or (b) a registered voter in the constituency concerned supported by the signatures of not less than five hundred voters registered in the constituency. The declaration of the results was made on 17th July, 2018 (annexure "D" to the affidavit in support of the motion) and

accordingly the period for challenging the applicant's election elapsed on 31st July, 2018 without any challenge to his election having been filed.

[21] Regulation 2 (1) of *The Local Government Councils Regulations*, (Third Schedule to *The Local Governments Act*), requires a person elected a local government councillor, before taking office of a councillor, and before the first meeting of a local government council, to; (a) take an oath as prescribed in the Eighth Schedule administered by the Chief Administrative Officer or the Town Clerk, as the case may be; and to (b) make a written declaration addressed to the Chief Administrative Officer or the Town Clerk accepting the office of Councillor. According to section 22 of *The Interpretation Act*, where any Act confers any power or imposes any duty, the power may be exercised and the duty shall be performed from time to time as occasion requires. It follows that where a statute does not expressly, or by necessary implication, fix any time for the performance of an act, reasonable time will be inferred by court.

[22] The successful female contestant at the same election where the applicant emerged the successful male contestant was sworn in on 20th August, 2018. There is no evidence to show that the applicant received any invitation, formal or otherwise, to be sworn in on that or any other day. To-date he has never been sworn in. Instead, he received a letter dated 6th August, 2018 from the respondent's Chief Administrative Officer notifying him of the respondent's intention to subject him to disciplinary proceedings for having participated in that election. In the absence of any explanation for the failure to swear the applicant in, six months after the swearing in of his counterpart, it can only be reasonably inferred from the facts that this is because the respondent's Chief Administrative officer believes that the applicant was not qualified or should have been disqualified from election for failure to resign his office, at least thirty days before nomination day. That is a reason that sounded only as regards an election petition against his victory. The fourteen days after the day on which the results of the election were notified by the Electoral Commission in the Gazette having

elapsed without any petition challenging his election, that became an irrelevant consideration for purposes of his being sworn in.

[23] Contrary to the respondent's Chief Administrative Officer's contention in his affidavit in reply that the duty of swearing in the applicant is that of the Speaker, Regulation 2 (1) of *The Local Government Councils Regulations*, (Third Schedule to *The Local Governments Act*), requires a person elected a local government councillor, before taking office of a councillor, and before the first meeting of a local government council, to; (a) take an oath as prescribed in the Eighth Schedule administered by the Chief Administrative Officer or the Town Clerk. There is no evidence to show that any of the said officers has to-date invited the applicant to be sworn in and no explanation for that failure has been furnished. Inaction by a public official that deprives a private citizen of a legal entitlement, any rights, privileges or immunities gives rise to a cause of action in judicial review. Judicial review of administrative action extends to situations of a public authority's failure to act (see *State (Modern Homes Ltd) v. Dublin Corporation, [1953] I.R. 202*).

[24] To the extent that it does not confer discretionary but rather ministerial powers, Regulation 2 (1) of *The Local Government Councils Regulations*, (Third Schedule to *The Local Governments Act*), creates a duty imposed on the Chief Administrative Officer or the Town Clerk to administer an oath of office to a successful Councillor, before taking office of a Councillor. In the instant case, the respondent has demonstrated deliberate indifference towards that duty as a consequence of which the applicant has been deprived of the privilege of serving as the duly elected male Councillor representing workers in the Amuru District Council by the respondent's inaction. This inaction has been occasioned by the respondent's Chief Administrative Officer's failure to take into account relevant considerations, or by taking into account irrelevant considerations, to direct the appropriate conduct mandated by statute. The respondent's inaction therefore is illegal.

Third issue; Whether there is any procedural impropriety in the respondent's failure or refusal to swear in the applicant.

[25] The decision maker must demonstrably use a fair decision making procedure and must be free from the appearance of bias. The decision maker needs to come to a decision in a procedurally "fair" way otherwise, the decision may still be unlawful. Procedural impropriety may arise from one of three possible sources; either from (i) failure to adhere to procedural rules laid out by statute, or (ii) failure to observe the principles of natural justice; or (ii) failure to act fairly. Following the correct and fair procedure is important because it is not just the substance of a decision that matters. If procedural requirements in a decision making process are followed, they are likely to secure a just outcome and demonstrate compliance with the rule of law.

[26] The Principles of natural justice apply equally to an administrative enquiry which entails civil consequences as much as they apply to quasi-judicial processes. The principles should be observed when administrative decisions likely to affect rights or the status of an individual are to be taken. The application of the principles of natural justice varies from case to case depending upon the factual aspect of the matter. Unfairness may occur in the non-observance of the rules of natural justice or the duty to act with procedural fairness towards persons affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision (see See *Council of Civil Unions v. Minister for the Civil Service [1985] AC 2*; *An Application by Bukoba Gymkhana Club [1963] EA 478 at 479* and *Pastoli v. Kabale District Local Government Council and Others [2008] 2 EA 300*).

[27] The essence of fairness is good conscience in a given situation (see *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others, 1978 AIR 851, 1978 SCR (3) 272*). Fairness has also been described as

"openness, or transparency in the making of administrative decisions" (see *Doody v. Secretary of State for the Home Department [1993] 3 All E.R. 92*). It is usually unfair for an administrator to make a decision that adversely affects someone without giving reasons**.** Even where there is no statutory requirement, the decision maker must still give reasons where the decision appears to be inconsistent with previous policy, or with other decisions in similar cases. In such cases, some explanation for the difference is needed. Giving reasons helps demonstrate that all relevant matters have been considered and that no irrelevant ones have been taken into account. The concepts of fairness, justice and reasons are interchangeable and one cannot be achieved without the other. Reasons are the link between the decision and the mind of the decision maker.

[28] As the facts stand now, the applicant was treated differently from his counterpart, the female Councillor elected to represent workers on the same Council. No reason has been given to him to justify the difference in treatment. There are two forms of discrimination and this is akin to one of them: direct discrimination (treating one person less favourably than others on the basis of some characteristic); and indirect discrimination (failing to treat differently people whose characteristics call for different treatment, without a proportionate justification). By treating the applicant differently and less favourably, yet at the same time failing to give the applicant reasons for that, the inaction of the respondent smacked of unfairness. The respondent's inaction affected the reputation of the applicant in a matter of importance to his electorate. Fairness required that the inaction should not be allowed to go unexplained.

Fourth issue; Whether the applicant is entitled to the relief sought.

[29] 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 v. Aston University Senate Exp Roffey [1969] 2 QB 558* and *R v. Secretary of State for Health Exp Furneaux [1994] 2 All ER 652*). The grant of remedies under judicial review is at the discretion of the court. Although the power is discretionary, it is not arbitrary. For a number of reasons, the remedies available under judicial review may be inappropriate, even where the court has subject matter jurisdiction. The court must take into account a number of considerations in weighing whether or not it should exercise its discretion to grant relief.

[30] Judicial review is a discretionary remedy of last resort, all other appeal options ordinarily must be exhausted first. Delay as a ground on which the court may withhold a remedy is expressly recognised in Rule 5 (1) of *The Judicature (Judicial Review) Rules, 2009*. Delay is thus relevant both at the preliminary stage and in relation to the grant of relief after the court has determined the merits of the applicant's case. The court regards these as distinct stages and in relation to the latter, delay is a factor to be considered in deciding whether or not to withhold a remedy only if to grant relief would be likely to cause substantial hardship to, or substantial prejudice to the rights of, any person or would be detrimental to good administration. It has been observed that "there is an interest in good administration independently of hardship, or prejudice to the rights of third parties (see *R. v. Dairy Produce Quota Tribunal Ex p. Caswell [1990] 2 A.C. 738; R. v. Monopolies and Mergers Commission Ex p. Argyll [1986] 1 W.L.R. 763 at 774; Coney v. Choyce [1975] 1 W.L.R. 422 at 436*; and *R. v. Panel on Takeovers and Mergers Ex p. Guinness Plc [1990] 1 Q.B.146 at 177*). The court may also exercise discretion not to provide a remedy if to make an order would serve no practical purpose, for example where events have overtaken the proceedings.

[31] Whereas a minor technical breach of statutory requirement may be too insignificant to justify relief, except where the difficulty caused to the decision

maker is more than inconvenience, and approaches impracticability or where there is an overriding need for finality and certainty, a remedy should not be refused solely upon this basis that to quash the decision would cause the decision maker administrative inconvenience (see *R. v. Monopolies and Mergers Commission Ex p. Argyll Group [1986] 1 W.L.R. 763*; *R. v. Governors of Small Heath School Ex p. Birmingham CC [1990] C.O.D. 23, CA*; and *Bradbury v. Enfield LBC [1967] 1 W.L.R. 1311 at 1324*). The court though may take into account the fact that the public authority would have made the same decision even if the legal flaw had not occurred (*see Cinnamond v. British Airports Authority [1980] 1 W.L.R. 582*; and *R. (on the application of Jones) v. Swansea City and C.C. [2007] All E.R. (D)191 (Feb) at [31]*.

[32] Whereas the applicant sought the order of certiorari, a quashing order will not lie unless something has been done that a court can quash. The applicants grievance having been founded on the respondent's inaction, this remedy is inappropriate. Similarly, a prohibiting order to prevent the public body from continuing to exceed its jurisdiction. If want of jurisdiction is apparent, a prohibiting order may be applied for at once. In the instant application, the applicants grievance being founded on the respondent's inaction with nothing done in excesses of jurisdiction, this remedies of prohibition and injunction are inappropriate too.

[33] The applicant has proved that the respondent's inaction is illegal both in substance and procedurally, yet there is no alternative remedy available to him. He is not guilty of any delay and to grant relief is not likely to cause substantial hardship to, or substantial prejudice to the rights of any person, and neither would it be detrimental to good administration. He is therefore entitled to an order of mandamus directing the respondent's Chief Administrative officer to swear in the applicant as the male Councillor for workers of the respondent's Council, within one month from the date of his release from custody, and it is so ordered.

[34] Lastly, the applicant seeks an ward of general damages. Generally, a person who seeks a ruling that an administrative decision is invalid and damages for loss consequent upon that decision has the burden of proving that the damages claimed would have been awarded in a private law action. According to Rule 8 (2) (b) of *The Judicature (Judicial Review) Rules, 2009*, the court may ward such damages when satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages. Therefore an individual who wishes to recover damages must also establish the existence of a cause of action in private law. The applicant must establish that the unlawful action also constitutes a recognisable tort or involves a breach of contract. In practice, three private law actions are principally used by individuals seeking damages from public bodies: misfeasance in public office, breach of statutory duty and negligence.

[35] For misfeasance in public office, public officers will be liable where they perform or omit to perform an act with the object of injuring the claimant. It must be shown that the public officer knew of, or was subjectively reckless with regard to, the illegality of his or her proposed course of action and that he or she knew of, or was subjectively reckless with regard to, the probability that the course of action will cause loss to the claimant (see *Three Rivers District Council v. Bank of England (No. 3) [2003] 2 AC 1*).

[36] The second possible cause of action is found in the tort of breach of statutory duty. It is however well established that breach of a statutory duty is not in itself sufficient for the recovery of damages. There is a considerable reluctance on the part of the courts to impose upon local authorities any liability for breach of statutory duty other than that expressly imposed in the statute (see *T. v. Surrey County Council, [1994] 4 All ER 577 at 597*). Parliament must be shown to have intended the statute to confer an enforceable right of action in damages on those injured by breach. Where a claim for breach of statutory duty has failed, or where

the act complained of was not carried out in the exercise of a statutory duty, the obvious alternative claim in private law is in the tort of negligence.

[37] Ordinary principles of negligence apply to determine whether a claim against a public body acting in performance or non-performance of its public law duties and powers can succeed. The claimant must establish three things: that the public body owed him or her a duty to take care not to cause him or her the loss suffered, that the public body breached that duty by failing to take reasonable care, and that the breach caused the loss. An administrative act carried out in the exercise of a statutory discretion can only be actionable in negligence if the act is so unreasonable that it falls outside the proper ambit of that discretion.

[38] In the instant application, by reason of the conduct of the respondent's Chief Administrative Officer, the omission to swear in the applicant is an act of abuse of public power. It constitutes misfeasance in public office by way of an act whose object was to injure the applicant. As a result, the applicant ceased receiving salary yet he is not performing his duties as councillor. He is yet to be subjected to the disciplinary proceedings he was notified of. At the same time he has been denied an opportunity to serve. The Chief Administrative Officer acted illegally, knew he was doing so, and knew or should reasonably have known that the applicant would suffer loss as a result. Having received salary only up to June, 2018 and denied income since then, the applicant is awarded general damages of shs. 3,000,000/= He is also awarded the costs of the application.

Order :

[39] In the final result, The application is allowed with the following orders, namely;-

a) An order of mandamus directing the respondent's Chief Administrative officer to swear in the applicant as the male Councillor for workers of the respondent's Council, within one month from the date of his release from custody.
b) General damages of shs. 3,000,000/=

c) The costs of the application.

_____

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the applicant : Applicant appeared *pro se*.

For the respondents: Mr. Walter Okidi Ladwar.