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

**MISCELLANEOUS CAUSE NO. 56 OF 2019**

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**IN THE MATTER OF ARTICLES 42 AND 44 OF THE  
CONSTITUTION, SECTION 36 OF THE JUDICATURE ACT, CAP.  
13 AS AMENDED BY THE JUDICATURE (AMENDMENT) ACT  
NO.3 OF 2002.**

**AND**

15

**IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW)  
RULES, 2009**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW  
BY WAY OF CERTIORARI, PROHIBITION, DECLARATION AND  
INJUNCTION**

20

**BY**

**SSEKIRANDA KIBIRIGE DAVID ::::::::::::::::::::**  
**APPLICANT**

**VERSUS**

**NAKASEKE DISTRICT LOCAL GOVERNMENT ::::::: RESPONDENT**

25

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**RULING**

Ssekiranda Kibirige David (*hereinafter referred to as the “Applicant”*)  
brought this application against Nakaseke District Local  
Government (*hereinafter referred to as the “Respondent”*) under

5 Articles 42 and 44 of the Constitution of the Republic of Uganda,  
Sections 36 and 38 of the Judicature Act Cap. 13 (as amended);  
Sections 98 of the Civil Procedure Act Cap 71; Rules 6, 7 and 8 of  
the Judicature (Judicial Review) Rules 2009; Order 52 Rules 1 and  
2 of the Civil Procedure Rules SI 71 -1; for judicial review seeking  
10 remedies that;

***1. An order of certiorari doth issue to move this court, quash,  
set aside and declare as invalid and illegal and or void and  
a nullity the directive and/or decision and/or decision  
making process of Nakaseke District Local Government  
under the hand of Katotorama John, its Chief  
15 Administrative Officer (CAO) contained in the letter dated  
14<sup>th</sup> February 2019, Ref. ADMIN./133/135/01 to the  
Applicant stating as hereunder;***

***(a) That the Applicant was convicted of two counts of  
20 embezzlement of UGX. 250,000/= (Two Hundred Fifty  
Thousand Shillings) and abuse of office.***

***(b) That as a convicted person, public office the Applicant  
is disqualified from office for a period of ten (10) years***

5                    ***as provided for under the Anti-Corruption Act 2019  
and under the Prevention of Corruption Act (Cap 121).***

***(c) That the payment of salary to the Applicant be stopped  
immediately.***

10                    ***2. A declaration that the disqualification of the Applicant by  
the Respondent vide its CAO, in the letter dated 14<sup>th</sup>  
February 2019, was void and is a nullity under the  
requisite laws.***

15                    ***3. A consequential order quashing the decision disqualifying  
the Applicant from his position as Cold Chain Assistant in  
the Respondent District.***

***4. A declaration that the action of the District CAO, acting  
under his office to disqualify the Applicant without  
according him a hearing/right to be heard, contravened the  
rules of natural justice and is unconstitutional.***

20                    ***5. Costs of the suit.***

The grounds of the application are briefly that the decision of the Respondent contained in the impugned letter dated 14/02/ 2019, is unconstitutional, illegal and unlawful, *ultra vires* and offends the rules of natural justice. That the Respondent in making its decision

5 contained in the impugned letter, acted unfairly and unjustly  
against the Applicant, contrary to Article 28, 42 and 44 of the  
Constitution when he did not give the Applicant the right to be  
heard, in contravention of the rules of natural justice and the  
applicable law. Further, that the Respondent in making its decision  
10 contained in the impugned letter committed deliberate and manifest  
errors, in contravention of the Constitution and the applicable law,  
in that the Respondent acted unfairly and unjustly in disqualifying  
the Applicant when they wrongly applied a repealed law to the  
detriment of the Applicant; did not give the him an opportunity to  
15 be heard and did not conduct a hearing in accordance with the  
rules of natural justice. That it is in the interest of justice that the  
declaration and orders of certiorari be granted as prayed for.

The above grounds are supported by the affidavit sworn by the  
Applicant. He essentially states that he has since 2002 been in the  
20 employment of the Respondent, in the position of a Cold Chain  
Assistant, until 14/02/2019, making seventeen years. That he was  
earning a monthly salary UGX.640,000/= (Six Hundred Forty  
Thousand shillings) and enjoying other privileges and rights. That  
on 31/08/2018, he was convicted and sentenced to a fine of

5 UGX.2,500,000/= on the counts of embezzlement and abuse of office. That following the said conviction and sentence, he continued in the said position and has since been earning his salary.

Further, that other than convicting and sentencing him, the criminal court of the Anti-Corruption Court of Buganda Road did  
10 not give any other reliefs or orders to do with disqualification of his services. That surprisingly, on 14/02/2019, the CAO of the Respondent under his hand in a letter, disqualified the Applicant from the Public Service and from his position, for a period of ten (10) years.

15 That the said letter was copied to him and various other offices namely; the District Chairperson, the Resident District Commissioner, the District Internal Auditor, the Secretary District Service Commission, the District Health Officer, Personal file, the Chief Finance Officer, the Head of Human Resource; all of the  
20 Respondent District.

That following the letter disqualifying him, his salary was forthwith stopped and he was no longer to be paid salary. That the said letter of his disqualification was premised on a repealed and non-existing law, code named “the Prevention of Corruption Act (Cap. 121); and

5 that the Anti-Corruption Act 2019, does not provide for the  
disqualification from public office of a convict, for the stated  
period of ten (10) years within the purview of Section 19 and 11 of  
the Act. That in addition, prior to the Respondent disqualifying him  
from service, he was not called or given a disciplinary hearing or  
10 any hearing in regard as to why he ought not to be disqualified or  
otherwise. That no reference was made to the Uganda Public  
Service Standing Orders prior to and/or upon his disqualification  
from service. That as such he has been put to ridicule and  
inconvenience for the untimely disqualification, without a hearing,  
15 and for the stated period for which he now seeks general and  
punitive damages commensurate with his salary and the ten (10)  
years period to wit, UGX.640,000/= for 120 months totaling to  
UGX.76,800,000/= .

The Respondent opposed the application in an affidavit sworn by  
20 Bigirwa Kaliisa Samuel, the Deputy CAO of the Respondent. He  
states that during his employment with the Respondent, the  
Applicant was charged before the Anti-Corruption Court for the  
offences of embezzlement and abuse of office, contrary to Section 19  
(a) (i-iii) and Section 11 (1) of the Anti-Corruption Act, respectively.

5 That the particulars of the offence were that, on 19/02/2012 at Nakaseke District Local Government, being employed by the District as a Cold Chain Assistant, stole refrigerator, cold box, and vaccine carrier all valued at US\$1,319.68 approximately UGX.3,233,216/= at the rate of 2,400/= per USD, the property of the Government of  
10 Uganda, being Ministry of Health, which he had access to by virtue of his office. Also, that as Cold Chain Assistant, in abuse of his office did an arbitrary act prejudicial to the interest of his employer to wit took in his possession Government stores meant for health services in the district. The deponent states that the Applicant was  
15 tried and convicted as charged and sentenced, on the 31/08/2018, for the said offences, respectively. He attached a copy of the judgment marked "A".

Further, that on 11/02/2019, the office of the CAO of the Respondent received a letter from Karugaba Collins D/SP (Head of  
20 Investigations into the Applicant's criminal case) informing them of the Applicant's conviction. (Attached is a copy of the letter marked "B"). That under Section 46 of the Anti-Corruption Act 2009, a person who is convicted of an offence under the Act (specifically Section 19 and 11) is automatically disqualified from holding public

5 office for a period of 10 years. Also, that under Regulation 39 of the  
Public Service Regulations 2009, where a Public officer has been  
convicted on a criminal charge, the responsible officer may, if he or  
she considers it to be in the public interest, suspend the officer  
from the exercise of the powers and functions of his or her office  
10 and may direct what proportion, if any, of the emoluments of the  
officer shall be paid to him or her pending consideration of his or  
her case under these Regulations. That acting under Section 46 of  
the Anti-Corruption Act 2009, and Regulation 39 of the Public  
Service Regulations 2009, the CAO of the Respondent directed  
15 stoppage of any further payment of salary to the Applicant until  
disposal of his case by the appointing authority, the District Service  
Commission.

In addition, that under Regulation 47 (1) of the Public Service  
Regulations 2009, if an officer to whom the regulations applies, is  
20 adjudged guilty of a criminal offence which is likely to warrant  
disciplinary proceedings, the responsible officer shall forward a  
copy of the charge and the judgment, together with the proceedings  
of the court, if available, and his or her recommendations to the  
Secretary District Service Commission, as was done in this matter.



5 That under Regulation 47 (1) of the Public Service Regulations, 2009, the Commission shall determine whether the officer shall be subjected to disciplinary punishment on account of conviction without the proceedings prescribed in Regulations 38, 39 and 40.

Further, that under the above mentioned provisions of the law,  
10 there was no legal requirement to conduct a hearing on whether a convict's (Applicant) salary from Public Service should be stopped, and that it was at the discretion of the Responsible Officer to do so. That as such, the decision to stop the Applicant's salary was within the precincts of the law relating to Public Service. The Respondent  
15 thus, denies that its acts have put the Applicant in ridicule or inconvenience, and maintains that the claim for general and punitive damages is misconceived. That since the Respondent's decision to stop the Applicant's salary was lawful, regular and proper, the Applicant is not entitled to the orders sought.

20 At the hearing counsel, Mr. Abbas Bukenya represented the Applicant while counsel Mr. Anaclet Turyakira, represented the Respondent. Both counsel filed written submissions on court record which have been taken into account in arriving at the decision herein.

5 The issues for determination are as follows;

***1. Whether the CAO of the Respondent was justified to terminate and disqualify the Applicant from employment in the manner he did.***

***2. What remedies are available to the parties?***

10

***Resolution of issues:***

***Issue No.1: Whether the CAO of the Respondent was justified to terminate and disqualify the Applicant from employment in the manner he did.***

15

The Applicant contests the decision of CAO contained in letter dated 14/2/2019 stopping the Applicant's salary and subsequent termination from Public Service, as procedurally improper, unlawful and *ultra vires*. Evidence of both parties shows that while in the employment service of the Respondent, the Applicant was charged in the Anti-Corruption Court for the offence of embezzlement and abuse of office contrary to section 19 (a) (i-iii) and Section 11 (1) of the Anti-Corruption Act 2009, respectively. He was found guilty as

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5 charged and convicted vide HCT-00-ACS-0012 in the Chief Magistrate's Court, Anti-Corruption Division of High Court.

Section 46 of the Anti-Corruption Act (supra) provides as follows;

10 ***“A person who is convicted of an offence under section 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 shall be disqualified from holding a public office for a period of ten years from his or her conviction.”***

15 It is not in dispute that the court which convicted and sentence the Applicant of the two offences listed under Section 46 (supra) is a competent court. Therefore, the Applicant, as a convict, squarely falls within the ambit of persons charged under Section 46 (supra) which ends up with a conviction. It follows, therefore, that the automatic operation of the provisions to the effect that such a convicted person “shall be disqualified” from holding a public office 20 for a period of ten years from his or her conviction, applies to the Applicant.

It must be emphasized, for the present and future reference, that Section 46 of the Anti-Corruption Act (supra) is quite independent,

5 and a stand – alone provision. It is self-regulating in procedure and  
effect, from the rest of the statute, and it operates as a  
“consequential order” upon every conviction under the specified  
provisions of the Act. Regardless of whether or not, a court issues a  
specific order disqualifying a person convicted person under the  
10 provisions, the effect of the conviction is that provisions of Section  
46 (supra) automatically apply to the convicted person, who is then  
barred from holding a Public office, for the period of ten years from  
the date of conviction. It does not matter that the convicted person  
ultimately serves a sentence of imprisonment or pays a fine. Still,  
15 the effect of the conviction is to bar him or her from holding a  
public office for the prescribed period. The provision is much more  
concerned with the effect of the conviction than of the sentence, if  
any is passed.

It is also noted that the Applicant faults the CAO of the Respondent  
20 for having written to him the impugned letter of 14/02/2019, by  
which the Applicant’s salary was stopped and he was subsequently  
disqualified from Public Service. The impugned letter is *Annexure*  
“D” to the Applicant’s affidavit in support and also *Annexure* “C” to

5 the Respondent's affidavit in reply. The reading of the letter shows that the CAO was acting pursuant to a letter from State House (Annexure "B" to the Respondent's affidavit) dated 11/2/2019. The letter states, in part, as follows;

10 ***"This is to inform you that the above mentioned person, a Cold Chain Assistant attached to Nakaseke District was on 31<sup>st</sup> August 2018 convicted and sentenced at the Anti-Corruption Court Kololo with crimes of embezzlement and abuse of office... In this regard, I bring to your attention section 46 of the Anti-Corruption Act, 2009, which***  
15 ***provides for automatic disqualification of a person who has been convicted under the Act, from holding public office for a period of ten (10) years...The purpose of this communication is to request you to take administrative action against the above named person."***

20 The letter was copied to RDC and Secretary, of the Respondent. Quoting from the said letter, the CAO then wrote to Head Human Resource, Nakaseke District, letter Annexure "C" dated 14/2/2019 and in the last paragraph wrote as follows;

5           ***“In view of the above, I direct you to stop payment of salary of Mr. Ssekiranda David Kibirige immediately until further instructions to you.”***

Still following upon the said letter *Annexure “C”* (above) the CAO wrote letter *Annexure “D”* also dated 14/02/2019, addressed to the  
10   Secretary, District Service Commission of the Respondent, submitting the Applicant for disqualification from office in accordance with the contents of letter *Annexure “B”* from State House, and attached the court judgment dated 31/8/2018.

From the above evidence of the various stated correspondences, it  
15   is quite certain that the CAO of the Respondent did what was legally required of him/her to do, in circumstances where a person employed in Public Service has been a subject of conviction of a criminal offence, pursuant to Section 46 of the Anti-Corruption Act, 2009.

20   Besides the above, the Public Service Commission Regulations (made pursuant to Section 27 of the Public Service Act, 2008) under Part IV thereof, prescribes the procedure for disciplining Public officers. Of relevance to this case, Regulation 42 thereof,

5 provides that if an officer to whom these regulations apply is  
adjudged guilty of a criminal offence which is likely to warrant  
disciplinary proceedings the responsible officer shall forward a copy  
of the charge and judgment together with proceedings of court, if  
available, and his recommendation to the secretary. In that case,  
10 the commission has discretion on whether or not to subject the  
officer to a punishment without an interdiction by the responsible  
officer, as provided under Reg.38; suspension by the responsible  
officer pending investigation into the officer's conduct as provided  
under Reg.39, and without a report to the secretary as to whether  
15 the officer has been interdicted, and without proceedings for  
dismissal being taken by the commission against the officer, as  
provided under Reg.40.

From the above elaborate procedure, a number of things are clear.  
Firstly, the CAO in this case is the "responsible officer". Secondly  
20 and most importantly, the commission has ultimate discretion to  
punish the officer without recourse to an inquiry, investigation  
and/or consideration of the officer's case. Thirdly, although the  
regulations do not define what a "criminal offence" is, in the instant

5 case, the offence of embezzlement and abuse of office under the Anti-Corruption Act (supra) are cognizable offences which are defined and sentences prescribed by law. Therefore, the CAO of the Respondent in writing the impugned letter was acting well within his/her legal mandate and as such never acted *ultra vires*.

10 Regarding the Applicant's contention that he was never accorded a hearing by the Respondent before being disqualified from holding Public office for 10 years and his salary stopped, court finds that the Respondent needed not to hold such a hearing in the circumstances. The inquiry into the Applicant's conduct had  
15 already been properly inquired into by a competent court of law which found him guilty and convicted him. As already stated, once a Public Servant is charged and found guilty of the offence of embezzlement and abuse of office under the Anti-Corruption Act (supra) it is automatic under Section 46 thereof, that such a person  
20 shall be disqualified from holding a public office for the specified period. Therefore, an inquiry by an administrative body, such as the Respondent, into the conduct of a convicted Public officer of the said offences adds no value. If anything, such an inquiry by the



5 administrative body would be pre-empted by the conviction of the Public officer of the said offences by court. The Respondent did not breach any principle of natural justice because they were not, in the circumstances, required to give such a hearing, or at all.

The Applicant also advanced the argument that decision to  
10 disqualify the Applicant was illegal because it was based on a wrong and/or non-existing law. That the CAO of the respondent in his letter referred to the Anti-Corruption Act of 2019 and that there is no such a law in existence and that the Applicant was terminated under non – existing law. This contention, however, has no merit  
15 for a number of reasons.

Firstly, it is quite evident that this was just a clerical error apparent on the face of the record, and it does not require extrinsic evidence to establish its correctness as such an error since, in any case, there is not such Act of 2019. Also, the citing of a wrong provision  
20 of the law or even failure to cite any such law, is not fatal to the outcome of any such proceedings. Therefore, merely citing the wrong law by the CAO would not have a bearing on the fact that the Applicant was duly disqualified by the automatic operation of the

5 Anti-Corruption Act (supra) from holding Public office. The  
Applicant was subjected to a proper and fair trial by court and  
convicted as charged. Accordingly, there was no illegality, or at all.  
The substance of the conviction remains with the same effect. Such  
a lapse is a technicality that can be ignored within the context of  
10 Article 126(2)(e) of the Constitution.

Secondly, the CAO's decision communicated in the impugned letter  
was premised on the letter from State House (supra) which correctly  
cited Section 46 of the Anti-Corruption Act as the correct law under  
which the Applicant as a Public officer was disqualified from Public  
15 Service for a period of ten years upon conviction of the offences  
under the relevant provisions of the law. Thus, the decision to  
disqualify the Applicant from Public service was based on the  
appropriate existing law. *Issue No. 1* is answered in the negative.

***Issue No. 2: What remedies are available to the parties?***

20 Having found as above, the application has no merit. It is dismissed  
with costs to the Respondent.

**BASHAIJA K. ANDREW  
JUDGE**

