



(c) to consider the Applicant's long overdue application for promotion from the post of Research Fellow to Senior Research Fellow.

- ii. A declaration that the failure or refusal by the Respondent's officers and staff to implement the above mentioned orders of the Tribunal within the ordered time is illegal, unjust, discriminatory and amounts to abuse of power and misfeasance in public office;
  - iii. An order of mandamus compelling the Respondent to comply with its statutory duty and implement the above-mentioned orders of its Tribunal.
  - iv. General, aggravated and punitive damages.
  - v. Costs of this application.
2. Mr. Isaac Semakadde of M/s. Centre for Legal Aid represents the Applicant and the Respondent is represented by Mr. Musoke Hudson from its Directorate of Legal Affairs.
3. The application is supported by the affidavit of the Applicant. The grounds of the application are briefly that the Respondent is in continuous breach of a series of statutory obligations, having failed to implement the decisions and orders of its Tribunal concerning the status, privileges, procedures and responsibilities of the Applicant. As a result of the unjustifiable behavior and misfeasance in public office by members of the Respondent's Appointment Board, and by responsible officers and staff, the Applicant has suffered and is likely to continue suffering irreparable harm through impairment of personal and vocational growth, disruption of family welfare, violation of her fundamental rights to dignity, equality and non-discrimination at the work place, stress, humiliation, hurt feelings and loss of reputation and social standing. It is just and equitable to grant the relief sought to enhance the independence and accountability of the Respondent's governance structure.
4. The application is opposed by the Respondent through the affidavit in reply of Mr. Andrew Abunyang;- its Director Human Resource and secretary to the Appointments Board (herein after the Board). He averred that he would raise a preliminary objection to the application on grounds that it was raised out of time in respect of the orders made by the Tribunal dated 16<sup>th</sup> October 2017 and is therefore barred in law as no application for extension with good

reasons was filed by the Applicant and that it is premature. In addition, the Applicant was paid and is still being paid despite the fact that she is on suspension.

5. He further averred that the Respondent advertised the position of Research Fellow through the Monitor newspaper dated 19<sup>th</sup> December 2011 to which the Applicant responded. The tenure of appointment for the position of Research Fellow is a five year renewable contract according to the advert and section 6.2 (table 1.4) of the Respondent's human resource manual. The Applicant was interviewed and appointed to the position of Research Fellow on 6<sup>th</sup> June 2011 and she accepted the terms of employment which refer to the Respondent's human resource manual. On 31<sup>st</sup> March 2017, the Applicant was suspended for allegations of misconduct which she appealed against to the Tribunal in appeal No. 8 of 2017. While on suspension, her contract expired and has never been renewed, varied or extended and there has never been any process to change her employment terms.
6. On 2<sup>nd</sup> October 2018, the Tribunal made a decision after her contract expired. In order 6, the Tribunal ordered that the Respondent conducts disciplinary proceedings if any against the Applicant and conclude the same within 30 days from the date of the decision. The Board summoned the Applicant to attend a disciplinary hearing on 23<sup>rd</sup> October 2018 but she did not attend. During the said session, it was decided that the Board moves the Tribunal to study the matter and review its decision to give proper guidance and orders to the Board. The Board prayed that the Tribunal stays their order of 2<sup>nd</sup> October 2018. On 3<sup>rd</sup> December 2018, the Tribunal directed that the matter concerning the Applicant's employment falls within the jurisdiction of the Board.
7. There is no record or evidence of renewal of the Applicant's employment as provided under section 16.3 of the Respondent's human resource manual. As such, the Board was constrained to implement the decision of the Tribunal to reinstate the Applicant to a non-existent vacancy. The Respondent had implemented whatever was implementable in accordance with the Applicant's contract and there had not been any contempt by the Respondent or its officers. The Respondent had acted fairly and within the law.

8. In rejoinder, the Applicant contended that that the averments in the affidavit in reply were false, misconceived, contumacious and aimed at misleading court. She denied the averments that her contract expired and was not renewed, varied or extended by the Board during her suspension from the Respondent. Mr. Abuyang did not possess first hand, accurate and unbiased knowledge of the numerous procedures and processes to which the Applicant was subjected before his appointment. He therefore failed to inform court that upon her application and subsequent interviews, she was unmistakably offered a contract of a permanent and pensionable employee which she accepted. Her appointment into the Respondent's service on permanent terms was confirmed on 28<sup>th</sup> October 2013 after protracted, high level consultations among the relevant authorities of the Respondent. It was not true that she was non responsive throughout the proceedings of the Board.

9. The issues for determination are:

1. Whether the Respondent acted in contempt of the orders of the Staff Tribunal.
2. What remedies are available to the parties?

**b) The law**

10. Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions/duties/acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law. It is different from the ordinary review of the Court of its own decisions, revision or appeal in the sense that in the case of ordinary review, revision or appeal, the Court's concerns are whether the decisions are right or wrong based on the laws and facts whereas for the remedy of judicial review, as provided in the orders of mandamus, certiorari and prohibition, the Court is not hearing an appeal from the decision itself but a review of the manner in which the decision was made. See **Kuluo Joseph Andrew & Ors v. Attorney General & Ors Misc Cause No. 106 of 2010.**

11. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374.**

12. In **Semwo Construction Company v. Rukungiri District Local Government HC MC 30 of 2010** Justice Bamwine (as he then was) explained that: “... mandamus is a prerogative writ to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body’s office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review.”

**c) Analysis**

13. I have considered all the pleadings and submissions of the parties. At the oral hearing, the parties brought out so many issues. However my determination of this application shall remain strictly within the parameters of judicial review which was the application brought to court.

14. It is not in dispute that the Applicant challenged a decision of the Respondent before the Staff Appeals Tribunal. After hearing both sides, the Tribunal returned its decision on 16<sup>th</sup> October 2017. The Respondent sought clarification of this decision from the same Tribunal and it returned its ruling in this regard on 2<sup>nd</sup> October 2018. Both of these decisions are consistent in regard to the Applicant.

15. It can easily be inferred that after failing to get their desired end from the Tribunal process, the Respondent officers resorted to finding ways of circumventing it. This can be seen for example from the subsequent claim by the Respondent that the Applicant held a five year contract which expired. This issue had already been clarified by the Tribunal in its second decision. The Respondent's officers had to work on this clarification objectively and in good faith. However in the circumstances of this case, the Respondent officials appear to have acted in defiance of the Tribunal decision. This was irregular, irrational and unreasonable.
16. The purpose of an Appeals Tribunal in an institution like the Respondent is to give a forum to staff members to challenge the decisions of their employers before an impartial body within the institutional structure. It is used in the same way to protect the employer. Such right of appeal is a cardinal tenet for the principles of fairness and justice. The Tribunal is one of the institutional structures to prevent impunity.
17. It is therefore wrong for the Respondent which set up the appeals Tribunal for this purpose to be the one that disregards or circumvents the Tribunal's decisions. The Respondent has an overarching duty to implement the decisions of its Staff Appeals Tribunal. It is not within its powers to cherry pick which ones it implements and which ones it circumvents. The Respondent officers who overtly or covertly refused to implement the Tribunal decisions were in contempt of the Tribunal. Issue one is therefore resolved in the affirmative and the Applicant is entitled to remedies.
18. I am satisfied that the Respondent's continued contemptuous disregard of the Tribunal's decision has caused the Applicant embarrassment, inconvenience and psychological torture for which she is entitled to general damages. However in my discretion, I am disinclined to award aggravated and/or punitive damages. Costs follow suit.
19. Overall, I consider that this was a proper case of judicial review and the application is allowed with the following orders and declarations:
  - i. The Respondent was in contempt of the ruling and orders of the Staff Appeal Tribunal as listed in paragraph one above.

- ii. An order of mandamus is issued compelling the Respondent officers responsible to comply with their statutory duty to implement the decision of the Tribunal to the letter.
  - iii. Any timelines set in the Tribunal decision that have since lapsed should be treated to take effect from the date of this decision.
  - iv. The Applicant is awarded general damages of Ug. shs: 120,000,000/= (Uganda shillings one hundred twenty million only).
  - v. Interest of 10% p.a on (iv) above is awarded from the date of this ruling till payment in full.
  - vi. The Applicant is awarded costs of this application.
- I so order.

**Lydia Mugambe.**  
**Judge.**  
**11 June 2020.**