

- 5 **2. An order of certiorari doth issue quashing all the proceedings and decisions, if any, of the Respondent and its Disciplinary Committee against the Applicant.**
- 3. An order of mandamus doth issue compelling the Respondent to open the Applicant's office and allow him to**
- 10 **perform his security duties without any further interference.**
- 4. An order of prohibition doth issue prohibiting the Respondent from any further interference with the Respondent's work as Head of Security of the Respondent.**
- 5. General damages be awarded to the Applicant.**
- 15 **6. The costs of this application be provided to the Applicant by the Respondent.**

The grounds of the application are elaborated in the supporting affidavit, but are briefly that;

- 1. The Applicant's right to fair hearing was derogated.**
- 20 **2. The Respondent stopped paying the Applicant without any disciplinary proceedings or interdiction.**

5 **3. The Respondent purported to summon the Applicant for fair hearing after making the decision and punishing him without any hearing.**

4. The actions of the Respondent have caused the Applicant serious mental and emotional stress, confusion and
10 **inability to fulfil his personal and family obligations.**

5. It is fair and equitable that the application is allowed.

The application is supported by the affidavit sworn by the Applicant. He states that he is a Security Officer in the Respondent body. That on 24th November 2018, he was arrested and detained by Uganda
15 Police at Central Police Station Kampala, on recommendation of officials of the Respondent on claims that some people who had been arrested stealing some iron bars from the Respondent's sub-standard goods' yard had stated that he had also earlier done the same only that he was not caught. That on being arrested, he
20 maintained his innocence and he was granted police bond after staying in detention for one day and upon the file being sent to the Resident State Attorney, he was not charged in court on account of

5 lack of evidence and hence his bond lapsed. *A copy of the Police Bod Form is attached and marked "A".*

That on going back to work, he could not access his office because the Respondent had deleted him from its computer access system and his protests were without success. That the Respondent has
10 since not paid him both his salary and other entitlements for the month of January and February 2019, yet he was neither interdicted nor dismissed from his work. *A copy of my Bank Statements is attached and marked "B".* That the above shows that without hearing from him, the Respondent made a decision to
15 punish him by stopping to pay him hence condemning him unheard.

That when he enquired from the Respondent's Human Resource Manager as to why he was not receiving his payment and why he was being denied access to the office, no clear answer was given, but on 2nd January 2019, the Respondent's Human Resource
20 Manager gave him a memorandum seeking for explanation. *A copy of the memorandum is attached and marked "C".*

That in the memorandum, it was alleged that he had absconded from work and that he would show cause why a disciplinary action

5 could not be taken against him. That above memorandum clearly shows that although the Human Resource Manager was claiming to call upon him to show cause why disciplinary proceedings should not be taken against him, a decision had already been made that he should hand over my office without any hearing from him. That on 10 8th January 2019, he responded to the above memorandum maintaining his innocence and making it clear that there was no basis for him to handover his office without an interdiction or termination. *A copy of his response is attached and marked "D".* That on 23rd January 2019, he was invited to appear before the 15 Respondent's disciplinary committee on Wednesday 30th January 2019 after filing his defense on Monday 28th January 2019. *A copy of the Invitation to the Respondent's Disciplinary Committee is attached and marked "E".* That at the disciplinary hearing he raised an objection against conducting a hearing when a decision had 20 already been taken against him as evidenced by the fact that his January salary had already been withheld and his internet communication already disconnected but his objection was overruled by the Chairman of the disciplinary committee on ground that the hearing was not in any way connected with salary. That it

5 is also in the last paragraph of the disciplinary committee's letter
that at the time of invitation, there was already a decision that he
had absconded from the duty; the reason why he was requested to
go with the permission given for his purported stay out of office.
That on 28th January 2019, he filed his defense where he
10 maintained his innocence and maintaining that he never absconded
from duty. *A copy of my response is attached and marked "F"*. That
he indeed attended the disciplinary committee proceedings as
scheduled where hearing was concluded on the same day and the
decision was reserved to be delivered soon. That whereas the
15 disciplinary hearing took place on 30th January 2019, almost two
months now, the committee's decision has never been delivered, yet
he has been denied access to his office and he is not receiving any
payment despite his employment not having been terminated. That
the above actions of the Respondent have caused him serious
20 mental and emotional stress, confusion and made him unable to
fulfil his personal and family obligations. That he swears this
affidavit in support of this application.

5 The Applicant further filed a supplementary affidavit in support of
the application. He states that on 5th March 2019, he filed an
application for judicial review against the Respondent in the High
Court of Uganda challenging the decision of interfering his work of
providing security to the Respondent when he was deterred from
10 entering his office and his salary stopped on allegations of
absenteeism. That on serving the Respondent with court documents,
management decided to convene a meeting and made a decision to
dismiss him from work, in total disregard of the pending suit
against them in the matter. *(Copy of dismissal letter hereto attached*
15 *and marked as Annexure "A")*. That on receipt of the dismissal
letter the Applicant, through my lawyers of M/s. Ojok & Co.
Advocates, decided to write a letter to the Respondent complaining
against their decision to dismiss him without giving him a right of
appeal, why they disregarded the court documents and why they
20 refused to pay him his January and February salaries in total
contravention of provisions of the Constitution, employment laws
and principles of natural justice. That in the same letter, his
lawyers also requested for the UNBS Human Resource Manual,
minutes of management meeting that established the disciplinary

5 hearing, minutes of the disciplinary hearing and the report of the
disciplinary hearing, but the letter was just ignored. (*Copy of letter*
written to the Respondent by my Lawyers hereto attached and
marked as Annexure “B”). That he has been informed by his said
lawyers that the act of the Respondent of dismissing him without
10 giving me a right of appeal and after he had sued them, was illegal,
irrational, a violation of the rules of natural justice and hence
unconstitutional. That he has also been informed by his said
lawyers that the act of the Respondent of dismissing him was done
in bad faith and was intended to defeat justice. That his contract
15 with the Respondent before dismissal had been renewed effective 3rd
August 2018 and was to run for three years expiring on 2nd August
2021 (*Copy of the renewed contract hereto attached and marked as*
Annexure “C”).

That since he had a subsisting valid contract with the Respondent
20 for three years (36 Months) that was renewed on 3rd August 2018
and terminated on 06 Mach 2019, he had only served the
Respondent for seven months leaving a balance of twenty-nine (29)
months on the contract. That he was being paid a basic salary of

5 UGX.2,304,536/- and a monthly allowance of UGX.1,195,464/-
totaling to UGX.3,500,000/- as gross monthly pay (*Copy of UNBS
payroll for December is attached and marked as Annexure "D"*). That
by the time the Respondent dismissed him from work, he had
missed salary for the month of January and February totaling to
10 UGX.7,000,000/-. That the actions of the Respondent of framing
cases of theft against him, causing his arrest and detention,
conducting illegal disciplinary hearings and dismissing him from
my work without notice, without following their own policy manual,
without remorse and without following rules of natural justice
15 greatly affected him and his family, caused him great
embarrassment and shame and both physical and Psychological
torture to which this court should order the Respondent to pay him
general damages of UGX.400,000,000/-.

The Respondent filed an affidavit in reply sworn by David
20 Livingstone Ebiru, the Deputy Executive Director – Management
and Financial Services of the Respondent. He states that the
contents of the affidavit in support and supplementary affidavit of
the Applicant are expressly denied and the Applicant shall be put to

5 strict proof thereof. That on 31st December 2018, the Human Resource Department of the Respondent received a complaint from the Finance and Administration Manager to the effect that the Applicant had not been reporting to work since 24th November 2018. *[A copy of the complaint dated 31st December 2018 is annexed as*
10 *“A”].* That the Applicant’s conduct complained of contravened Section 7.20.3 (b) of the Respondent’s Human Resource Policies and Procedures Manual of 2014 (the “Manual”) which provides that a staff who remains absent from duty without prior permission for a period of at least five (5) days shall be deemed to have absconded
15 from their position; *[A copy of an extract of the Manual showing Section 7.20.3 (b) is annexed as “B”].* That by a letter dated 2nd January 2019, the Respondent requested the Applicant to respond to the allegations of abscondment and explain why disciplinary action should not be taken against him. *[copy of the Respondent’s*
20 *letter of 2nd January 2019 is Annexure “C”].* That given the sensitive nature of the Applicant’s duties as a Security officer, there was need for someone to perform his duties in his absence hence the request for a handover in the letter of 2nd January 2019. That it is expressly denied that by requesting the Applicant to handover, a

5 decision had already been taken in respect of his employment. That
in his response of 8th January 2019, the Applicant stated that his
absence from work was due to being detained by the police on the
25th of November 2018. That he was released on bond on 29th
November 2018 and ordered by the CID of Police not to come near
10 the Respondent's offices. *[A copy of the Applicant's letter dated 8th
January 2019 is annexed hereto as "D".* That the Applicant did not
inform the Respondent that he had been ordered by police not to
report to work and in any event the Respondent never stopped him
from reporting to work between 27th November 2018 and 2nd
15 January 2019.

That the Respondent was at all material times unaware of the
Applicant's whereabouts and reasons for his not reporting to work.
That on 22nd January 2019, the Respondent appointed a
disciplinary committee whose terms of reference were to, inter alia,
20 hear the allegations of abscondment from work levelled against the
Applicant, receive an explanation from the Applicant and
subsequently identify whether the Applicant's absence from work
amounted to abscondment under the Manual.

5 That by letter dated 22nd January 2019, the Respondent requested the Applicant to submit a written defence by close of business 28th January 2019 and also invited him to appear before its disciplinary committee on 30th January 2019 in order to defend himself against the allegations of abscondment from work. *[A copy of the*
10 *Respondent's letter dated 23rd of January 2019 is attached hereto as "E"]*. That in his reply, the Applicant by his letter of 28th January 2019, gave a written defence to the allegations levelled against him. *[A copy of the Applicant's letter dated 28th January 2019 is attached hereto as "F"]*. That in February 2019, the disciplinary committee
15 convened and deliberated on the allegations of abscondment levelled against him and the Applicant who was present was given an opportunity to respond to the allegations, which opportunity he took. That following the hearing, the disciplinary committee, upon review of the Applicant's oral explanation and written defence, made
20 a recommendation that the Applicant should be dismissed from work pursuant to Section 10.3.4.10 of the Manual having absconded from work, abscondment being a grave offence under Section 10.3.3.18 of the Manual.

5 That subsequent to the said disciplinary hearing, the Respondent in its management meeting held on 4th March 2019 upheld the recommendations of the disciplinary committee to dismiss the Applicant. *[A copy of the Management meeting minutes is annexed as "I"]*.

10 That on 6th March 2019, the Respondent informed the Applicant of its decision to dismiss him and the procedures through which the said decision had been arrived at. *[A copy of the dismissal letter dated 6th March 2019 is annexed as "J"]*. That owing to the Applicant's abscondment from work since 27th November 2018, 15 there was no justification to pay him salary during the period that he did not provide any services to the Respondent. That that notwithstanding, the Respondent paid the Applicant's salary for the months of January and February 2019 and the claim for salary for those months is misconceived. That the Applicant's claim that his 20 dismissal on 6th March 2019 was a retaliation against his filing of this action on 5th March 2019 is clearly unfounded because the said dismissal was a result of an elaborate disciplinary process clearly set out in the Manual and highlighted above which started on 31st

5 December 2018 with a complaint about the Applicant's
abscondment from work. That Applicant was actively involved in the
disciplinary process through writing letters and physically
appearing before the disciplinary committee to defend himself and
his claim of procedural impropriety is without merit. That the
10 Respondent accorded the Applicant a fair hearing prior to his
dismissal and paid him all his dues upon the dismissal. The claims
for unpaid salary and allowances and general damages of
UGX.400,000,000/- are misconceived and the Applicant shall be
put to strict proof thereof. That the Respondent has not made any
15 decision that is harsh and arbitrary to merit judicial review.

Further, that the Respondent is entitled and permitted in law to
conduct disciplinary proceedings against its employees and where
there is just cause, to dismiss the said employees. That this claim
of judicial review is therefore misconceived and should be struck
20 out with costs. That at the time this application was filed on 5th
March 2019, there was no final decision on the fate of the Applicant,
which was made on 6th March 2019. That this Application was
therefore premature and should be struck out with costs. That in

5 any event, the Applicant reserves his rights to file an action of
unlawful termination before the Labour Officer/Industrial Court.

In addition, that upon instituting this action, the Applicant never
served the Respondent with a copy of the Notice of Motion and the
affidavit in support. That the Respondent only retrieved copies of
10 the pleadings from the court record. That the affidavit in support
and supplementary affidavit thereof are tainted with falsehoods and
should be struck out with costs.

The counsel for the parties filed submissions which are on court
record. The following are the issues for determination;

- 15 ***i) Whether the Applicant's grievances are a matter for
judicial review.***
- ii) Whether the Applicant was given a fair hearing by the
Respondent.***
- iii) Whether there are any remedies available to the
20 Applicant.***
- a) Whether the Applicant's grievances are a matter for
judicial review.***

5 ***Resolution of the issues:***

Court will start the resolution with issue No.4 as it is the basis of the other issues.

Issue No.1: Whether the Applicant’s grievances are a matter for judicial review.

10 In ***Omalla Godfrey vs. Butaleja District Local Government Council & 2 O’rs HCT-04-CV-MA-0153/2014***, Kawesa J., stated the basic principle that underpins judicial review that;

15 ***“Judicial review is concerned not with the decision but the decision making process. It involves an assessment of the manner in which the decision is made. It’s to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality.”***

The Applicant brought this application for orders under judicial against his employer, the Respondent. According to his affidavits, 20 the Applicant was an employee of the Respondent as Head Security. On 24th November 2019 he was arrested on recommendation by his employer on the allegations of theft when he had gone to Police to

5 check on the security personnel who had been arrested for stealing
iron bars from the sub-standard goods yard. The Applicant was
later released on Police bond but directed by Police to be reporting
to Police until further notice. On realizing that the Applicant had
been released, the Respondents through the head CID at the
10 Respondent's premises called the Applicant telling him to come and
hand over office as investigations continue, which the Applicant
refused to do but reported to office for work. On reporting to office,
the Applicant was denied physical access, his computer was
blocked and his supervisor told him to report to the Human
15 Resource Manager. On reporting to the Human Resource Manager,
he was told to make a response in writing to allegations of refusing
to hand over office and abscondment. (*See Annexure "C" dated 2nd*
January 2019). After making his response (*Annexure "D" dated 8th*
January 2019) still his office was not opened. The Applicant then
20 received a letter -*Annexure "E"*, inviting him for a disciplinary
hearing. By the time of holding the disciplinary hearing, the
Applicant raised the issue of holding the hearing against him when
he had already been constructively dismissed by being denied
salary and entry to office without interdiction, but the committee

5 flatly told him that the reason for convening a disciplinary hearing
was abscondment not issues of salary. According to the Applicant,
the decision to conduct a disciplinary hearing was done when he
had already been constructively dismissed and removed from office
without interdiction, as he was denied salary and he claims that he
10 was not given a fair hearing, and that the decision was made
irrationally, and the that management acted with bias. Clearly, his
prayer seeks an order for certiorari to quash the decision made by
both disciplinary and management committees, mandamus
compelling the Respondents to reinstate him back to his office and
15 for prohibition prohibiting the Respondent from interference with
his work. This case is therefore appropriate for judicial review.

***Issue No. 2: Whether the Applicant was given a fair hearing by
the Respondent.***

The right to fair hearing is rooted in Article 42 and 44 (c) of the
20 Constitution. It is a non derogable right. In the case of ***Isaac
Nsereko vs. MTN Uganda Ltd HCCS No. 156 of 2012;*** court
defined a right to a fair hearing as follows;

5 ***“It is an elementary principle in our administration of
justice that a fair hearing, within a reasonable time, is
ordinarily a judicial investigation and listening to evidence
and arguments, conducted impartially in accordance with
the fundamental principles of justice and due process of
10 law of which a party has had reasonable opportunity to
prepare, at which he is permitted to have the assistance of
a lawyer of his choice as he may afford and during which
he has a right to present his witnesses and evidence in his
favour, a right to cross-examine his adversary’s witnesses,
15 a right to be appraised of the evidence against him in the
matter so that he will be fully aware of the basis of the
adverse view of him for the judgment, a right to argue that
a decision be made in accordance with the law and
evidence.”*** Court further quoted

20 the case of ***Kanda vs. Government of Malaysia [1962] AC 322-
337*** where it was held that;

***“If the right to be heard is to be a real right which is worth
anything, it must carry in the accused man, the right for***

5 ***him to know the case against him. He must know what
evidence has been given and what statements have been
made affecting him, and then, he must be given a fair
opportunity to correct and contradict them.”***

From the affidavits of the Applicant, it is claimed that he never got a
10 fair hearing. That claim appears to be justified based on a number
of reasons. Firstly, the decision to terminate him was made even
before the hearing could be conducted. This is easily discernible in
paragraphs 4-13 of the Applicant’s affidavit in support, where it is
uncontrovertibly stated that by the time the disciplinary hearing
15 was held, the Applicant’s communication with the Respondent
through internet had already been disconnected, he was denied
physical access to his office and he was not being paid salary yet he
had never been interdicted. It was not until after he refused to
hand over office that the HRM established disciplinary hearing. In
20 paragraph 12 of his affidavit in support, it is also clear that when
the Applicant objected to being subjected to a disciplinary hearing
when he was not being paid, he was overruled by the Chairman on
ground that the hearing was not in any way connected with salary.

5 Further, in paragraph 17 of the Respondent's affidavit in reply, the Respondent admits that indeed they never paid the Applicant's salary giving a reason that he was no-longer working. The disciplinary hearing was therefore held merely to rubber stamp the decision to dismiss which was already taken.

10 The other instance that validates the Applicant's claim is that during the hearing, he was neither informed of the necessity of witnesses nor given a chance to cross-examine them, if any. In the report of the disciplinary hearing (*Annexure "G" to the Respondent's affidavit in reply*) it is claimed that the committee interviewed six
15 witnesses in relation to the hearing. It is not known who those witnesses were as no copy of the minutes of the hearing were attached other than the report. In his affidavit in rejoinder (paragraphs 9-11), the Applicant insists that he never interacted with any of the said witnesses before, during, or after the hearing.
20 He states that he never knew and was never informed that there were any witnesses. There was no response to this. In light of those facts, the Applicant was never given a fair hearing. He never cross-examined the witnesses who are said to have testified against him.

5 The other instance that validates the Applicant claim is that he was
never given any chance to challenge the decision of the
management committee either through defending himself or
appealing against its decision. Whereas the management sat as an
appeal committee, it never gave the Applicant a chance to present
10 his case. As if that refusal to accord the Applicant a chance to
present his case on appeal was not bad enough, the management
committee never gave the Applicant a chance to appeal its decision.
This was invariably contrary to *the Respondent's Human Resource
Management Policies and Procedures Manual (HRM & PM)*
15 paragraphs 11.3.2 and 11.3.3; which give a right of appeal.

Apart from the above, it is also noted that the management
committee that made the decision to dismiss the Applicant was not
properly constituted. Some of the members who sat on the
management committee which recommended the dismissal of the
20 Applicant are the same members who sat on the management
committee and upheld the decision of the disciplinary committee to
dismiss the Applicant. A cursory look at *Annexure "G"* the report of
the disciplinary hearing, with the minutes of the management

5 committee, shows that the members who participated in decision
making on both committees are; David Livingstone Ebiru who
chaired the disciplinary committee and Timothy Sekandi the
Internal Auditor. A decision made by such a committee is highly
likely to be biased due to the failure to comply with principles of
10 natural justice. Therefore, such a decision cannot be allowed to
stand. In the case of ***Kamusa & Sons Enterprises vs. Koboko
District Local Government (Civil Suit No. 0010 of 2008)***; court
quoted *H.W. R. Wade* in his book *Administrative Law 5th Edition*
Chap.15 at page 43; and held as follows;

15 ***“Judgments dealing with administrative decisions
therefore proceed on the footing that the presence of bias
means that the tribunal is improperly constituted so that
it had no power to determine the case and accordingly its
decisions must be void and a nullity.”***

20 Adopting the above same reasoning, the decisions made by both the
disciplinary and disciplinary management committees of the
Respondent were made in total disregard of the right to a fair
hearing and contrary to the principles of natural justice and

5 therefore they cannot be left to stand in the eyes of the law and equity. They are null and void.

Issue No.3: What remedies are available to the parties?

Having found as above, the application succeeds and it is allowed. In his affidavit in support, the Applicant prayed for an order of, 10 certiorari to quash the decision made by both disciplinary and management committees, mandamus compelling the Respondents to reinstate him back to his office and for prohibition, prohibiting the Respondent from interference with his work. Since the Applicant has ably proved that this is a proper case for judicial 15 review, his prayers are therefore granted save for the prayer of an order of mandamus compelling the Respondents to reinstate him back to his office and for prohibition, prohibiting the Respondent from interference with his work.

It is noted from paragraph 3 of his supplementary affidavit that the 20 Applicant contends that after serving the Respondent with court documents intended to quash the proceedings of the disciplinary committee, the Respondent hurriedly convened the Management Committee which hurriedly and without first filing an affidavit in

5 reply, affirmed the decision of the disciplinary committee to dismiss and denied the Applicant the right to appeal. By this action, it is clear that the Respondent was ready for any decision of court other than the one that grants the Applicant a right of reinstatement.

Section 98 of the Civil Procedure Act bestows inherent powers on
10 the High Court to make such orders as may be necessary for the ends of justice. Therefore, pursuant to Sections 14 and 33 of the Judicature Act and Section 98 of the Civil Procedure Act, this court orders for the compensation of the Applicant, in line with Section 71 (5) of the Employment Act and principles in the case of
15 ***Omunyokol Akol Johnson vs. Attorney General SCCA No. 06 of 2012*** where the Supreme Court stated;

“The provisions of this Section give powers to a court to order reinstatement of an employee in the circumstances set therein. The same section sets out circumstances under which an employee may not be reinstated in his job. One of such circumstance is where the employee has been wrongly dismissed. The appellant was wrongfully dismissed from

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5 ***his job. He could only be reinstated if there was evidence
that the employer was ready and willing to take him back.***”

In that case court then ordered for compensation. Like was in the case of ***Omuniyakol Akol Johnson vs. Attorney General*** (supra) the applicant herein was wrongly dismissed and the Respondent
10 did everything possible not to allow him to come back in his office. The best option in the circumstances, therefore, would be compensation.

Under paragraphs 8-10 of the Applicant’s supplementary affidavit and *Annexure “C”* to the *supplementary* affidavit the employment
15 contract, the Applicant had a three- year running contract that he had served seven months only; i.e. from 3rd August 2018 – February 2019 remaining 29 months. The Applicant was earning a gross salary of UGX.3.5M/=. $3.5M/= \times 29 \text{ months} = 101,500,000/=$.
The Applicant should therefore be paid One hundred and one
20 million five hundred thousand shillings only, which is the amount equivalent to the remaining part of the contract.

5 Also in paragraph 12 of the contract of employment (*Annexure “C” of the supplementary affidavit*) the Applicant is entitled to gratuity of 25% of the total annual gross salary; 25% of 126m/= which is UGX 31.5m/=. This court orders that the Respondent pay the amount to the Applicant as his gratuity.

10 In paragraph 12 of his supplementary affidavit, the Applicant claims UGX.400 million in general damages; which court considers rather on a higher side in the circumstances. Considering the physical and psychological torture he was subjected to after being framed with cases of theft, Police detention and the shame he was
15 subjected to among fellow workers, friends and family not forgetting illegal disciplinary hearings against him, the Applicant is awarded UGX.60 million as general damages in the circumstances.

All the above awarded amounts of compensation, gratuity and general damages shall attract interest at a rate of 10% from the
20 date of this judgment till payment in full. The Applicant is also awarded cost of this application.

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BASHAIJA K. ANDREW

JUDGE

06/03/2020

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