

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

**MISC. CAUSE NO. 223 OF 2019**

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

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND PREROGATIVE  
ORDERS OF PROHIBITION CERTIORARI AND INJUNCTION**

**REV. DR. GRACE LUBAALE ::APPLICANT**

**VERSUS**

**KYAMBOGO UNIVERSITY :: RESPONDENT**

**BEFORE: HON. JUSTICE ESTA NAMBAYO**

**RULING**

The Applicant brought this application under **Article 21, 28(1) and 44 (c) of the Constitution of Uganda, sections 33, 36, 37, 38, 41 and 42 of the Judicature Act Cap 13 and rules 3(1) (a), 5, 6(1) and 7 of the Judicature (Judicial Review) rules, 2009** against the Respondent seeking for: -

- 1. A declaration that the decision of Kyambogo University Staff Tribunal dated 18<sup>th</sup> July 2019 upholding the various decisions of Kyambogo University Council is null and void for having failed to properly evaluate the evidence relating to the appointment/removal of the Applicant from office of Head of department, Teacher Education and Development Studies and his subsequent transfer as Senior Lecturer of Professional Education Studies from the faculty of Education to the faculty of Arts and Social Sciences.**

- 2. A declaration that the appointment of the Applicant dated 18<sup>th</sup> December 2017 as Head of Department is still valid and subsisting.**
- 3. A writ of prohibition stopping the Respondent from unlawfully interfering with the substantive appointment and duties of the Applicant as the Head of Department.**
- 4. A writ of prohibition stopping the Respondent from unlawfully interfering with the substantive appointment and duties of the Applicant as a Senior Lecturer of Professional Education Studies (PES) in the Faculty of Education.**
- 5. A declaration that it was illegal for the Respondent through its staff Tribunal to uphold the decision of the University Council to the effect that the Department of Teacher Education and Development Studies was abolished whereas not.**
- 6. A further declaration that the Department of Teacher Education and Development Studies has never been abolished but restructured.**
- 7. A Declaration that the Vice Chancellor who is an employee and servant of the Respondent acted ultra vires when he replaced the Applicant as a substantive Head of Department at Teacher Education and Development Studies with an appointment as acting Head of Department of Development Studies.**
- 8. A declaration that the action of the Respondent on the 4<sup>th</sup> June 2018 of constructively removing the Applicant as head of Department of Teacher Education and Development Studies was illegal, irregular, unlawful, abuse of power and therefore ultra vires.**
- 9. A Declaration that the Respondent did not have power to write to and order the Applicant to be removed from office as a substantive Head of Department of Teacher Education and Development Studies without following the established procedures under the relevant laws of Uganda.**

10. **A declaration that by reducing the rank of the Applicant to an acting Head of Department of Development Studies and removing him from office as a substantive Head of Department of Teacher Education and Development Studies unjustifiably and without giving him a hearing was in contravention of the Constitution and the principles of natural Justice relating to protection of the right to a fair hearing.**
11. **A permanent injunction restraining the Respondent from interfering with the substantive appointment of the Applicant as head of Department before the end of his four years' contract.**
12. **A writ of certiorari quashing the action of the Respondent replacing the Applicant as a substantive head of the Department of Teacher Education and Development Studies to acting Head of the Department of Development Studies hence reducing him in rank.**
13. **A Declaration that the Applicant is still a substantive Head of Department in Kyambogo University until his four-year contract period comes to an end on 3<sup>rd</sup> March 2022.**
14. **A Declaration that the process of transferring/redeploying the Applicant who is substantively appointed as a Senior Lecturer of Professional Education Studies in the faculty of Education to the faculty of Arts and Social Sciences did not follow the established procedures and therefore it is null and void.**
15. **A Declaration that the Applicant is still a Senior Lecturer of Professional Education Studies (PES) at the Faculty of Education.**
16. **An order that the Respondent pays general damages to the Applicant for the inconveniences, mental anguish and embarrassment caused to him by removing him from office as a substantive Head of Department and**

reducing him in rank to acting Head of Department of Development Studies.

**17. Costs of this application be provided for by the Respondent.**

The grounds of this application are set out in the affidavit of Dr. Grace Lubaale, the Applicant but briefly are that: -

- i. In 2003, the Respondent undertook a restructuring process where it transformed the Department of Teacher Education and Extension to Teacher Education and Development Studies.**
- ii. Upon this transformation there was no change of leadership of the previous Department of Teacher Education and Extension, therefore the previous Head of department retained his position even after the Department had been transformed to Teacher Education and Development Studies.**
- iii. The Applicant was elected and duly appointed a substantive Head of the Department of Teacher Education and Development Studies on the 18<sup>th</sup> day of December 2017.**
- iv. On the 27<sup>th</sup> March 2018, the University Council never abolished but approved review of the establishment of the department of Teacher Education and Development Studies into four Departments, namely; Teacher Education and Extension, Development Studies, Curriculum Teaching Instructions and Media Studies and Early Childhood Development.**
- v. On the 4<sup>th</sup> June 2018, the Applicant received a letter written by the Respondent's Vice Chancellor removing him from office as a substantive head of Department of Teacher Education and Development Studies and appointing him as acting Head of Department of Development Studies purportedly that the department had been abolished whereas not.**

- vi. **Subsequently, without following the established procedures, and in total disregard of the Applicant's specialization and substantive appointment as a Senior Lecturer of Professional Education Studies in the faculty of Education, he was transferred/redeployed to the faculty of Arts and Social Sciences.**
- vii. **The actions of the Respondent violated the laws of Uganda including the Uganda Public Service Standing Orders, 2010 and Kyambogo University Human Resource Manual 2014 and therefore the process was marred by illegalities, irrationality and procedural irregularity which is unacceptable in the circumstances.**
- viii. **The removal of the Applicant from his position as substantive head of department of Teacher Education and Development Studies and subsequent transfer to the faculty of Arts and Social Sciences was arbitrary and illegal.**
- ix. **The orders are necessary for the ends of justice to be met.**

Mr. Charles Okello, the University Secretary of the Respondent has filed an affidavit in reply opposing this application.

Briefly, the facts of this case are that the Applicant is employed by the Respondent and currently deployed to the Department of Development Studies as Senior Lecturer. On the 18<sup>th</sup> December 2017, he was appointed as Head of the Department of Teacher Education and Development Studies. On the 16<sup>th</sup> March 2018, the University council resolved to restructure the Department of Teacher Education and Development Studies and to create four separate Departments to wit; Teacher Education and Extensions, Curriculum Teaching Instructions and Media Studies, Early Childhood Development and Development Studies. Following the restructuring, on the 4<sup>th</sup> June 2018, the Vice Chancellor appointed the Applicant to the position of Acting Head of the Department of Development Studies. The Applicant declined the appointment

alleging that he had been unlawfully removed from office and that the new appointment was a demotion which was illegal and irregular. He complained to the Appointments Board.

The Appointments Board in a letter dated 9th January 2019, informed the Applicant that the Department that he previously headed was abolished and it ceased to exist; that since the Applicant had specialty in the field of Development Studies, his redeployment to the Department of Development Studies was in accordance with the Human Resource Manual of the Respondent.

The Applicant appealed to the University Tribunal against the decision of the Appointments Board and the Tribunal dismissed his appeal, hence this application.

### **Representation**

Learned Counsel George William Bwanika represents the Applicant while the Respondent is represented by Counsel Nakazibwe Geraldine.

### **Issues for trial are: -**

- i. Whether the application is amenable to judicial review?**
- ii. Whether the Respondent lawfully ended the fixed headship contract of the Applicant?**
- iii. Whether the Respondent lawfully redeployed the Applicant from the faculty of Education to the faculty of Arts and Social Sciences?**
- iv. What remedies are available to the parties?**

After the 1<sup>st</sup> issue, I will address the 2<sup>nd</sup> and 3<sup>rd</sup> Issues jointly and then consider the remedies.

## Submissions

### ***Issue 1: Whether this application is amenable to judicial review.***

Counsel for the Applicant submitted that judicial review is an arm of administrative law which involves an assessment of the manner in which a decision is made. That judicial review is not an appeal and jurisdiction is exercised in a supervisory manner to ensure that public power is exercised in accordance with the basic standards of legality, procedural fairness, and rationality. He explained that where court finds that anybody holding public office acted illegally, irrationally and or faulted the lawful procedure, it intervenes to put matters right. He relied on the cases of ***Namuddu Hanifa –v- The Returning Officer, Kampala District and 2 Others Misc Cause No. 57 of 2006, Yustus Tinkasimire & 18 Others –v- Attorney General and Dr. Malinga Stephen Misc. Cause NO. 35 Of 2012, Nanzari Punjwani – v- Kampala District Land Board and section 56 of the Universities and Other Tertiary Institutions Act 2006.***

Counsel submitted that S. 57 of the Universities and Other Tertiary Institutions Act, 2001 (as amended) provides that anyone not satisfied with the decision of the Tribunal may apply to the High for Judicial Review in a period of 30 days from the date of the decision. He explained that the Applicant received the decision of the staff Tribunal on the 24<sup>th</sup> of July 2019 and applied to this Court for Judicial Review on the 30<sup>th</sup> July 2019 which renders the instant application competent before this court for Judicial Review. He prayed that this court finds this application to be tenable to Judicial Review.

In reply, Counsel for the Respondent submitted that for the Applicant to succeed in an Application for Judicial Review, he must satisfy Court that the matter complained of is tainted with illegality, irrationality and procedural impropriety. He relied on the cases of ***Namuddu Hanifa vs. Returning Office 7 Others HMC 69 of 2006, Council of Civil Service Union Vs. Minister for the Civil Service [1985] AC 2 and also High***

**Court Miscellaneous Cause No. 152 of 2006: Twinomuhangi Pastoli Vs. Kabale District Local Government Council and 2 Others** and submitted that the instant application is not amenable to Judicial Review for failure to prove the existence of any illegality, irrationality and/or procedural impropriety.

### **Analysis**

***S. 57(3) of the Universities and Other Tertiary Institutions Act, 2001 (as amended) provides that a member of staff aggrieved by the decision of the Tribunal under subsection (2) may within thirty days from the date he or she is notified of the Tribunal's decision apply to the High Court for Judicial Review.***

In this case, annexure "v" to the Applicant's affidavit in support of the application shows that the Applicant received the decision of the staff Tribunal on the 18th of July 2019 and filed this application on the 30th July 2019, which falls within the stipulated period of 30 days provided for under S. 57 (3) of the Universities and Other Tertiary Institutions Act, 2001(as amended). Therefore, this application is properly before this Court and it is amenable to judicial review.

***Issues 2 & 3 considered jointly.***

In the case of ***Koluo Joseph Andres & 2 Ors –v- Attorney General Misc. Cause No. 106 of 2010***, Court held that: -

***"Judicial Review is not concerned with the decision in issue per se but with the decision making process. Essentially Judicial Review involves the assessment of the manner in which the decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality."***

***In Twinomuhangi –v- Kabale District and Ors. [2006] HCB Vol.1 at page 131***, Court noted that the purpose of Judicial Review is to ensure that the individual is given a



fair treatment by the authority to which he has been subjected and that in order to succeed in an application for Judicial Review the Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

In the case of *Council of Civil Service Union –v- Minister for the Civil Service [1985]AC P.410*, Lord Diplock, J, laid out the grounds that the Applicant for Judicial Review has to satisfy in order to succeed, when he noted that: -

*“One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’....*

*By ‘illegality’ as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*

*By ‘irrationality’ I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. ‘Procedural impropriety’ is failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. Judicial Review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.”*

In this case, the Applicant's complaint is that his removal from being Head of Department of Teacher Education and Development Studies to being Ag. Head of the Department of Development studies was illegal, irregular and procedurally improper.

## **Submissions**

Counsel for the Applicant submitted that the Applicant was appointed and confirmed substantive head of the Department of Teacher Education and Development Studies on the 18<sup>th</sup> December 2017 for a period of four years ending on the 31<sup>st</sup> March 2022. That on the 4<sup>th</sup> June 2018, the Vice Chancellor wrote to the Applicant terminating his appointment. He referred this Court to annexure "H" to the Applicants affidavit in support of the application and explained that the Applicant took the matter before the Appointments Board which on the 9<sup>th</sup> January 2019, wrote notifying the Applicant that he was deployed as Senior Lecturer to the Department of Development Studies. Counsel referred this court to annexure "U" and submitted that both decisions do not arise from the minutes as a resolution. He referred Court to the minutes of the University Council dated 15<sup>th</sup> and 16<sup>th</sup> of March 2018 marked as annexure "F1" and the minutes of the 8<sup>th</sup> November, 18<sup>th</sup> and 20<sup>th</sup> December, 2018 marked as annexures "R", "T1" and "T2" respectively. He emphasized that there is no evidence of any decision abolishing the Department of Teacher Education and Development Studies and as such, the decisions of the Vice Chancellor and the Appointments' Board should be quashed and set aside.

In reply, Counsel for the Respondent submitted that the decision of the Appointments Board delivered on the 9<sup>th</sup> January 2019 which upheld the action of the Vice Chancellor of the 4<sup>th</sup> June 2018 and 16<sup>th</sup> January 2019 was arrived at legally and in accordance with Section 50(3) of the Universities and Other Tertiary Institutions Act, 2001 (as amended).

Counsel explained that the Appointments Board properly decided that the Applicant's appointment as Head of Department at the Department of Teacher Education and Development Studies ceased to exist upon restructuring of that Department and that the Applicant's re-deployment as the acting Head of the Department of Development

Studies was proper. That the Respondent's University Council on the 16th March 2018 resolved to split the Department for Teacher Education and Development Studies and created four separate Departments which abolished the Department of Teacher Education and Development Studies.

Counsel averred that even though the minutes do not expressly state that the original Department of Teacher Education and Development Studies was abolished, the Applicant in his letter dated 10th April 2018 which is annexure "G" to his Affidavit in Support of the application, wrote to the Respondent's Deputy Vice Chancellor indicating that he was grateful and thankful for the decision to split the Department of Teacher Education and Development Studies, which is a clear indication that he was aware of the abolition of the former Department.

Counsel explained that the Applicant has never been terminated from his employment, but that he was only redeployed to the Department of Development Studies in accordance with Section 54(2) of the Universities and Other Tertiary Institutions Act 2001 as amended and Regulations 6.2.4 and 6.1.2 of the Human Resource Manual basing on his qualifications that made him best suited for the Department of Development Studies. She relied on the Applicant's CV which is annexure "W" to the Applicants Affidavit in support of this application. Counsel averred that the Applicant's redeployment was legally done and it did not contravene the Constitution of Uganda, the Public Service Standing Orders, the Employment Act and/or the Universities and Other Tertiaries Institutions Act, 2001 (as amended).

## Analysis

***S. 41 (e) of the Universities and Other Tertiary Institutions Act of 2001 (as amended), provides that the University Council shall, in relation to its functions establish faculties, departments, boards and courses of study and approve proposals for the creation or establishment of constituent colleges.***

From the evidence on record, on the 15<sup>th</sup> and 16<sup>th</sup> March, 2018, Council decided in its 75<sup>th</sup> Council meeting, to restructure the department of Teacher Education and Development Studies so as to allow the Department of Teacher Education to focus on its core mandate. It was agreed that 4 departments would be established out of the department of Teacher Education and Development Studies as follow;

- a) The Department of Teacher Education and Extensions. This would also take care of Primary Education.
- b) The Department of Development Studies. This was to be shifted to the faculty of Arts to enable the Department Teacher Education focus on its core mandate
- c) The Department of curriculum, Teaching Instructions and Media Studies
- d) The Department of Early Childhood Development. The minutes of this meeting are attached to the affidavit in support of the application as annexure "F1".

The Ag. Deputy Vice Chancellor AA was informed. See annexure "F2" to the affidavit in support of the application.

On the 10<sup>th</sup> April, 2018, the Applicant after chairing a meeting where a comprehensive concept paper on the operationalization of the University Council decision was drawn, wrote to the Deputy Vice Chancellor Academic Affairs updating him on what had transpired. In paragraph four of his communication, he states that;

*"We are grateful and thankful to the University Council for this decision which will enhance more effective coordination, efficiency, streamlining, proper resource allocation and managing the Ministry of Education National Mandate"*

He attached the operationalization plan which was to take effect from 1<sup>st</sup> July, 2018 and prayed for resource allocation in the financial year 2018/2019 Budget. (see annexure "G" to the Applicant's affidavit in support of the application).

In view of the above, it is my finding that the restructuring of the Department of Teacher Education and Development Studies was within the law.

All the newly established departments required the same number of different categories of staff which included one (1) Prof.(M3), 2 Assoc. Prof. (M2), 4 Senior Lecturers (M5), 7 Lecturers (M6), 2 Asst. Lecturers (M7), 2 Teaching Assts. (M8) bringing a total of the number of academic staff required per department to 18. This means that all the newly established Departments were at the same level and that the department of Teacher Education and Development Studies that was headed by the Applicant and where his contract was running up to 2022 ceased to exist after the restructuring.

***S. 54. (1) of the Universities and other Tertiary Institutions Act, 2001 (as amended), provides that the Head of Department in each faculty, institute, college or other academic body shall be elected by the academic staff of the department concerned and recommend to the Appointments Board for appointment;***

***Under S.54 (2); in the case of a department in the process of being established the Vice Chancellor shall appoint an acting head of that department to hold office for a period of one year after which the Head of Department shall be elected under subsection (1).***

Evidence on record shows that on the 4<sup>th</sup> June, 2018, the Ag. Vice Chancellor wrote to the Applicant informing him that he was appointed as Ag. Head of the Department of Development Studies for a period of one-year w.e.f 1<sup>st</sup> June, 2018 to 30<sup>th</sup> May, 2019. The Applicant declined the appointment stating that he would remain a member of staff and the substantive Head of the Department of Teacher Education and Extension; after creating new Departments of Development studies, Early Childhood Development and Curriculum, Teaching and Media. (see annexure "J" to the affidavit in support of the application). He then appealed to the Appointments Board on the 25<sup>th</sup> June, 2018 against his redeployment on grounds that the Vice Chancellor appointed Mrs. Ruth Kyambadde a lecturer as acting head of Teacher Education and Extension Department replacing him and yet he is the substantive head of the Department and that he was instead transferred on demotion to a newly created department of Development Studies as Acting Head.

The Board examined the Applicant's complaint. According to annexure "S" to the affidavit in support of the application, the Applicant interfaced with the Board on the 12<sup>th</sup> September, 2018.

Minute 543.2 (page 23), shows that the Vice Chancellor excused himself from the meeting when the Board was to interface with the Applicant (see Annexure "T1"). Under Minute 543.3 on page 24, all the staff in the Department of Teacher Education and Development Studies were to be validated by the Board for re-deployment to the new departments.

Under paragraph (a) it is indicated that members of the Board agreed to grant Rev. Dr. Grace Lubaale a final hearing with a view to validating him for purposes of redeploying him on transfer of service as Senior Lecturer to an appropriate department. In paragraph (b), Dr. Lubaale's qualifications were considered. It was noted that Dr. Lubaale holds a Doctor of Philosophy in Development Studies, a

Masters of Arts in Development Studies and a Bachelors in Education with his teaching subjects being Economics & Religious Education. Details of subjects that he studied were also considered (see pages 24 & 25 of annexure T1). Based on his qualifications, the Appointments Board decided to redeploy the Applicant to the Department of Development Studies (see page 32, paragraph 10).

The Applicant appealed to the Staff Tribunal where he was represented by Counsel Ssemwanga Fredrick. The Tribunal after hearing the matter, dismissed the appeal for lack of merit. The ruling of the Tribunal is annexure "V" to the affidavit in support of the application.

***Regulation 6.1.1 of the Human Resource Manual provides that internal transfer is encouraged by Kyambogo University as it gives employees opportunities to widen their exposure and pursue development in other streams within the University.***

***Under Regulation 6.1.2 of the Human Resource Manual, transfers also enable the University to deploy employees to areas where they can best contribute to and meet the staffing requirement and changing priorities of the University.***

***Under paragraph 6.2.4, it is provided that: -***

***"employees may be transferred from one Department to another for career development or operational and structural reasons. "***

I have already established that the department of Development Studies to which the Applicant was deployed is not at a lower level compared to the other Departments that were established after the restructuring of the Department of Teacher Education and Development Studies. Therefore, the Applicants allegation in his complaint against the Vice Chancellor that he was removed from office and demoted by being posted to the departed of Development Studies is baseless and lacks merit.

The proceedings before the Appointments Board show that the Board accorded the Applicant a right to be heard. When the Applicant was scheduled to appear before the Board for the hearing of his complaint, the Vice Chancellor recused himself from the sitting of the Board. This, in my view shows, in the absence of any other evidence of bias against the Board, like it is in this case, that the Applicant appeared before an independent Board. The Board after considering the qualifications of the Applicant found that the Applicant was best suited to serve in the department of Development studies.

Basing on the above evidence, I find that there were no illegalities, irregularities and/or any procedural impropriety committed by the Respondent in handling the Applicant's re-deployment to the department of Development studies or in the management of his complaint against the Vice Chancellor. All that was done by the Vice Chancellor was within the law and it was procedurally right; the Applicant was lawfully deployed to the Department of Development Studies. Therefore, I find no merit in this application and it is hereby dismissed with costs.

**I so order,**

**Dated and delivered at Kampala this 23<sup>rd</sup> day of March, 2021.**

**Esta Nambayo**

**JUDGE**

**23/03/2021**