

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

**MISCELLANEOUS CAUSE NO. 100 OF 2020**

**TUMUHIMBISE HELLEN HANNAH.....APPLICANT**

**VERSUS**

- 1. UGANDA DEVELOPMENT CORPORATION**
- 2. DR. PATRICK BITONDER BIRUNGI ..... RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application was made for judicial review concerning the respondents' decision not to renew the applicant's contract of service with the 1<sup>st</sup> respondent seeking for a declaration that the decision is illegal, irregular, discriminatory, irrational and ultra vires and characterized by procedural irregularity, orders for certiorari, prohibition, mandamus, general and exemplary damages and costs for the application.

The applicant worked with the 1<sup>st</sup> respondent since 2009 and gradually rose through the ranks to the rank of Senior Procurement Officer joined the 1<sup>st</sup> respondent as an assistant procurement officer in 2009. Later she was promoted to the rank of Manager Procurement but the 2<sup>nd</sup> respondent has since deliberately refused to renew her contract of service and promote her to the said position and rank without reason despite renewing other employee contracts and irregularly promoting them.

The 2<sup>nd</sup> respondent acting in his capacity as the Executive Director to the 1<sup>st</sup> respondent has irregularly, illegally, irrationally and ultra-viresly activated and filled vacancies at the levels of managers, made promotions and external hiring without involvement of and approvals from the Executive

Committee of the 1<sup>st</sup> respondent and due regard to the Human Resource Manual.

The applicant like all other employees has always had a renewable 3(three) years contract from 31<sup>st</sup> August 2016 ending the 31<sup>st</sup> August, 2019 which ought to have been renewed basing on her appraisals and PPDA Audit reports. The 2<sup>nd</sup> respondent has since deliberately refused without reason to renew the said contract despite the fact that the applicant has no disciplinary or any hindrance whatsoever for the renewal of the said contract.

The 1<sup>st</sup> respondent through the Corporation Secretary Hope Atuhairwe Kisitu stated that the applicant's performance appraisal for 2018-2019 was being considered when she lodged a complaint against the Executive Director of the 1<sup>st</sup> respondent on 26<sup>th</sup> February 2020. A meeting was convened with the applicant together with other senior officers for purposes of addressing her grievance.

That 2<sup>nd</sup> respondent recused himself from taking a leading role in the management of the grievance and instead constituted a committee to handle the same comprising of the Director Finance and Administration, the Human resource and Administration Manager and the Corporation Secretary. Before the committee would sit to resolve the matter, the country went into a nationwide lockdown for over 2 months.

The 2<sup>nd</sup> respondent never acted illegally and contrary to Human Resource Policies Manual by undertaking an external recruitment process as an alternative to internal recruitment for the position of Manager Procurement. The external recruitment method is one of the modes of recruitment provided for under the Human Resource Policies Manual along with internal recruitment among others.

The 2<sup>nd</sup> respondent in his reply contended that he never deliberately refused to renew the applicant's contract, however during the process of

undertaking the applicant's performance appraisal for the year 2018-2019 together with the Human Resource and Administration Manager, the applicant became rude and belligerent and the same could not be completed. Therefore, the applicant's personal record therefore remained incomplete in terms of her performance for the year 2018-2019.

The applicant remained in her role and continued to receive all her contractual benefits including salary, salary advance recoverable up to January 2021 and annual leave.

The external recruitment process is one of the methods recognized in the Human Resource and Policies Manual and the decision to open up the recruitment exercise for Manager Procurement was an executive decision sanctioned by the Board to ensure that the 1<sup>st</sup> respondent attracted the best possible talent in the market considering the sensitivity of the role and the strategic risks that it could pose if not well managed.

That it is not true that by 26<sup>th</sup>/2/2020 other employees' contracts were already renewed save for that of the applicant. In fact a number of staff contracts were still being considered for the renewal up until post Covid-19 lock down in June 2020.

The application is premature to the extent that the internal mechanisms of the 1<sup>st</sup> respondent are yet to be fully exhausted and further that there is yet to be a decision of the respondent to be subjected to judicial review.

The applicant was represented by *Mr. Kabega Musa, Mr. Bukenya Abbas and Mr. Kakeeto Siraj* whereas the 1<sup>st</sup> and 2<sup>nd</sup> respondents were represented by *Mr. Ssegawa Moses*

The parties proposed the following issues for determination by this court.

- 1. Whether the application is properly before this court.*
- 2. Whether the actions of the respondents are illegal irrational and unlawful.*

### *3. What remedies are available to the parties?*

The parties were ordered to file written submissions; all parties accordingly filed the same. All parties' submissions were considered by this court.

#### *Preliminary Points of Law.*

##### *Whether the 2<sup>nd</sup> respondent was wrongly added to the proceedings?*

The respondents' counsel contended that no action for judicial review can be brought against an individual in his private capacity. The action against Dr. Bitonder Birungi as a private citizen cannot be entertained since section 16 of Uganda Development Corporation Act provides that;

*"a member of the board or officer of the corporation is not personally liable for any act or omission done or omitted to be done in good faith in exercise of functions under the Act."*

The applicant's counsel in response submitted that the 2<sup>nd</sup> respondent is shielded from anything done in good faith. In the present case, the acts complained of were perpetrated by the 2<sup>nd</sup> respondent in his capacity as the Executive Director of the 1<sup>st</sup> respondent in bad faith. It is only proper that the 2<sup>nd</sup> respondent is added on the application to defend his alleged actions in bad faith.

The applicant's counsel contended that the 2<sup>nd</sup> respondent acted in bad faith when he renewed the contracts of several employees and without justifiable reason deliberately refused and neglected to renew the contract of the applicant and consider her for promotion when the expression of the renewal of her contract was made on 8<sup>th</sup> August 2019.

#### *Analysis*

Sometimes a public official is added in order to account for his/her actions if challenged for acting in bad faith or *malafide*. The decision maker who takes decisions which are questionable has a duty to account for their exercise of power whether it was within the law or outside/*ultra vires*.

Whenever such allegations are made against a public official it is only fair that such a person is added in order not to be condemned without a

hearing. However, the person added must be described by the title held for the organization or entity in order to avoid extending liability beyond the position held.

The power vested in the hands of the public official is held in public trust and must be exercised in the interest of the people. The office holder or decision maker has a duty to account for exercise of such power and this is usually achieved by adding such a person to the court proceedings where the decision under challenge is premised on bad faith or *malafide*.

Under the doctrine of public accountability, the court applies the theory of 'lifting the corporate veil' in order to fix accountability on persons who are the actual decision makers. Such persons should not be shielded by the corporate veil and the same should never be used to commit illegality and abuse of authority. The court should be able to look at the reality behind the corporate veil so as to do justice between the parties. The court should be able to establish whether misdeeds of the public servants which are not only beyond their powers and authority but done with *malafide* intent would bind them personally or the public body will be vicariously liable.

The public servant/ official is ultimately responsible and accountable unless special circumstances exist to absolve him/her from the accountability. The head of the entity/organisation or any designated officer is ultimately responsible and accountable unless special circumstances absolving him of accountability or if someone else is responsible for the action, he or she needs to bring it to the attention or notice of the court. This object is to ensure compliance with the rule of law.

The 2<sup>nd</sup> respondent was properly added as a party to these proceedings as the decision maker to answer allegations and actions allegedly taken in bad faith.

*Whether the application was filed out of time?*

Secondly, the respondent also argued that the application for judicial review was filed out of time stipulated under *Rule 5 (1) of the Judicature (Judicial Review) Rules*. The decisions that the applicant seeks to challenge were taken as far back as September 2019 and yet the applicant filed this application in July 2020.

The applicant submitted the applicant never slept on her rights and this argument is an afterthought. The respondent attempted to challenge the applicant for not exhausting alternative remedies and that the application was brought prematurely. The applicant has waited for some time for a decision to be taken but the respondent has delayed and refused to take a decision. Therefore the application is not time barred in anyway as alleged by the respondent.

### *Analysis*

The respondent in their affidavit in reply contended that a decision has been delayed due to the lock down when they were unable to hear the applicant's case against the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent specifically contended that the application is premature and that a decision has not yet been taken.

The respondent's conduct and delay has left the applicant with no option but rather to seek court redress. It would be very wrong for the very respondents who have refused to take a decision to turn around and contend that the application is time barred. The respondent is using a wrong date to infer that a decision was taken in 2019 September and yet the deponents are categorical in their evidence that no decision has been taken. This application is not time barred as alleged.

### **DETERMINATION OF ISSUES**

#### *Whether the application is properly before this court.*

The applicant's counsel submitted that the factors to consider is whether the application has merit or whether there is reasonableness, vigilance without any waiver for the rights of the applicant. The court must be

satisfied that the respondent is amenable to judicial review and is a public body. The court should be satisfied that the decision making process for a particular decision is unfair and led to unjust treatment of the applicant.

The applicant has tried to seek redress from the available mechanism a resolution of the disputes or grievance and the respondent under the excuse of Covid has refused to give a response or renew the applicant's contract.

The respondent's counsel submitted that the 1<sup>st</sup> respondent is only able to exercise its statutory mandate through the sphere of private law mostly through the mode of contracting with third parties and not by statutory powers. Counsel cited *Judicial Remedies in Public Law 5<sup>th</sup> Edition Sweet & Maxwell 2015* to buttress his argument thus;

*"There may be cases where, notwithstanding the statutory origin of a body and its powers, the functions that the body performs may not be regarded as sufficiently public by the court to merit subjecting the body to judicial review. Attention has recently been focused on whether the activities of a body could be said to be public."*

The respondent contended that the applicant's complaint can hardly be regarded as arising from the exercise of government power and authority that is exclusive to the 1<sup>st</sup> respondent or any other public body. Therefore, any employer in the private sphere would routinely be faced with decisions of contract renewal and promotion of staff and external recruitment which by no means would inject an element of public law in their affairs.

It was further submitted that, not every act of a statutory body such as the 1<sup>st</sup> respondent necessarily involves an exercise of statutory power. Statutory bodies like private individuals may have common law powers to contract or deal with property and such activities may raise no issues of public law.

The applicant in rejoinder contended that the applicant is not claiming private rights under the contract but rather claiming against the irrational

deliberate refusal by the 2<sup>nd</sup> respondent to renew her contract having renewed other employees. Secondly, the applicant is challenging respondent for not complying with the law and internal rules and mechanisms of the 1<sup>st</sup> respondent in arriving at the decisions to make the impugned appointments.

### *Analysis*

Judicial review can be properly brought against a public official or body that took a decision which is complained of as having been improperly reached procedurally. It was noted that the rule of law does not treat with exclusion individuals or public entities as long as the matter concerns rule of law (see: **Dunsmuir v New Brunswick [2008] 1 SCR 190**).

Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall.

The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. For one to succeed under Judicial Review it is trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment. See *Article 42 of the Constitution*

This court is in agreement with the submission of counsel for the respondents to the extent of the quotation cited *Judicial Remedies in Public Law 5<sup>th</sup> Edition Sweet & Maxwell 2015* to buttress his argument thus;

*“There may be cases where, notwithstanding the statutory origin of a body and its powers, the functions that the body performs may not be regarded as sufficiently*



*public by the court to merit subjecting the body to judicial review. Attention has recently been focused on whether the activities of a body could be said to be public.”*

However, the facts of this case clearly show that the nature of the dispute is about wrongful exercise of power which ought to be regulated and checked through judicial review rather than labour laws. The dispute is not about the contract of employment rather the due process that is protected under the supervisory powers of the Court under the Constitution.

The exercise of public powers attracts the protection of administrative law as well as labour laws, irrespective of the context, so that remedies are simultaneously available in both branches of the law in cases of public-sector employment. Indeed, there may be cases where there is no need to use administrative law to advance labour rights derived from a contract of employment. See *Anny Katabaazi Bwengye v Uganda Christian University HCMC No. 268 of 2017*.

The exercise of power in this case to renew contracts had been vested in the 2<sup>nd</sup> respondent who was required to exercise it in the public interest and to exercise it not in a discriminatory manner and not in total abuse of authority which would have to be interrogated under judicial review. Such exercise of power is public and is subservient to the Constitution which enjoins any administrative official or body to treat fairly and justly any person in exercise of such power or authority.

There is nothing incongruous about individuals having more legal protection rather than less, or of more than one fundamental rights applying to one act, or of more than one branch of law applying the same set of facts. Usually, dismissal from employment is contractual in nature and may not necessarily entail the exercise of public power except where the power to appoint is wholly derived from the legislation.

The applicant’s case is properly before this court even if it appears as a labour dispute.

This issue is resolved in the affirmative.

## **Issue 2**

*Whether the actions of the respondents are illegal, irrational and unlawful.*

Counsel for the applicant submitted that in the Human Resource Manual, under **Section 1.2(a)i**, it is stated that one of the purposes for the Human Resource Manual is to enable the attraction and retention of an effective labour workforce. Under **Section 2** of the Human Resource Manual, it discusses the retention policies of the 1<sup>st</sup> Respondent, it provides that the employment policy of the 1<sup>st</sup> Respondent is meant to provide guidelines that should enable the 1<sup>st</sup> Respondent identify, attract and retain suitable employees and that the 1<sup>st</sup> Respondent will be guided by principles of natural justice, equality, and transparency in its relationship with its employees.

Under **Section 2.2(e)ii** of the Human Resource Manual, it is provided that the 1<sup>st</sup> Respondent shall ensure equal opportunity is provided towards recruitment, placement, promotion, training, and rotation, and under **Section 2.2(e)iii** of the Human Resource Manual, employment and promotion decisions of the 1<sup>st</sup> Respondent are to be based on merit and the requirements to be imposed in filling a position and will be those that validly relate to the job performance required.

The Applicant stated in her affidavit in support that the 2<sup>nd</sup> Respondent acting in his capacity as the executive Director to the 1<sup>st</sup> Respondent, who also doubles as her immediate supervisor, has without reason deliberately refused to renew her contract that should have been considered basing on the said appraisals and her audit reports. She testifies that she does not even have any disciplinary action or other hinderance disqualifying her from qualification for the renewal of her contract or promotion and that

before the expiry of her said contract, she applied to the 2<sup>nd</sup> Respondent for renewal of her contract on the 8<sup>th</sup> day of August, 2019.

The 2<sup>nd</sup> Respondent for intent and purpose has since irregularly, illegally and irrationally deliberately without reason delayed, ignored and or refused to renew the Applicant's contract even after expiry of the same on the 1<sup>st</sup> day of September, 2019 despite the lawful legitimate expectations of the Applicant to have the same renewed.

The applicant testifies to the effect that the said 2<sup>nd</sup> Respondent went ahead to renew contracts of employees only two days to his reporting on duty without ever requiring the appraisals for the year 2019/2020 and yet selectively, when it came to the renewal of the Applicant's contract and consideration of her promotion, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent are now raising the issue of staff appraisals as a hinderance to the said renewal and promotion in violation of principles of fairness and equity. This is a clear manifestation of bias by the 2<sup>nd</sup> Respondent as against the Applicant.

The applicant's counsel further submitted that the unfairness of the 2<sup>nd</sup> Respondent is further manifested when he renewed contracts for other employees whose contracts had expired, and even promoted some of them except the Applicant's and did not timely consider the renewal request for the Applicant where no renewal has ever been made and her application for a promotion was not considered and accepted without reasonable justification from the 1<sup>st</sup> or 2<sup>nd</sup> Respondents. This is clear improper exercise of powers conferred unto the 2<sup>nd</sup> Respondent, improper motives or bad faith, ultra vires and or exercise of excess jurisdiction.

Further, **Section 9.2.9** of the Human Resource Manual in so far as it regulates the ending of contracts, specifically under **Section 9.2.9 (a)**, provides that were a decision not to renew a contract has been made, the employer, herein the 1<sup>st</sup> Respondent is mandatorily required to inform the said employee whose contract is to expire, in writing in accordance with the terms of the contract. That notice in writing must state that the

employees' services shall no longer be required and that his or her contract will not be extended. This has never been done, and further elaborates on the irrationality of the Respondents.

In the present case there is clear abuse of law, clear error, and improper exercise of discretion in bad faith and deliberate refusal to exercise statutory authority by the 2<sup>nd</sup> Respondent. Whereas it could be true that the Respondents reserve the discretion to renew or not to renew the Applicant's contract but failing to so renew the contract while having renewed contracts of other employees yet alleging that the appraisals of all employees are pending the basis of acting as such cannot be ascertained but can only be rendered unlawful and illegal and thus a misuse of authority and thus stand to be challenged.

It was also submitted that under Paragraph 13(a) of the 2<sup>nd</sup> Respondent's affidavit in reply, he refers to the Applicant as **rude** and **belligerent**, this clearly demonstrates that the actions of the 2<sup>nd</sup> Respondent in refusing to renew the Applicant's contract and refusal to renew her contract was informed by an underlying personal issue or resentment against the Applicant which is an act in bad faith and the same should not be condoned by this Honourable court.

The 2<sup>nd</sup> Respondent violated every process of the 1<sup>st</sup> Respondent's Human Resource Manual including failing to consider an internal recruitment first to select suitable Applicants like the Applicant herein before resorting to the external recruitment process without any reason or justification whatsoever.

**Section 4** of the 1<sup>st</sup> Respondent Human Resource Policies Manual (herein Human Resource Manual) specifically under the subheading "Procedure" provides that;-

*“Whenever vacancies arise, Heads of Divisions/Department and/or Executive Committee **shall** consider the possibility of promoting from within before recruiting externally.” (Emphasis added)*

The section further adds that qualifying Applicants may express interest in the vacancies by responding to internal vacancy announcements made by the 1<sup>st</sup> Respondent, and that to be considered for the promotion to the next higher position, employees need to have demonstrated potential for further development and possess relevant experience, qualifications and attributes prescribed for the position, and that they should have served as a minimum in their current positions for a minimum of one year.

The respondents’ counsel submitted that according to the Human resource manual, the direct recruitment procedure which the applicant contests is mandatory and couched in mandatory terms while the applicant’s preferred method of internal recruitment is optional. Similarly, the procedure of promotion under the Human Resource Policies Manual is also optional.

The respondent further contended that the 2<sup>nd</sup> respondent did not involve members of the Executive Committee of the 1<sup>st</sup> respondent in the recruitment and promotion process, since the said Executive Committee had not been fully constituted and the Human Resource Policies Manual permits the 2<sup>nd</sup> respondent as Executive Director to carry out promotions.

The recruitment procedure which the respondents followed was rational as it followed international Human Resource best practices and the 1<sup>st</sup> respondent’s Human Resource Policies Manual. The respondents’ decision was based on logic that the successful candidate was the best performing candidate in the oral interviews. In addition, the respondent’s decision was rational as it took into consideration all relevant matters before arriving at the actions complained of. The applicant seems to challenge the actions as illegal and irrational only to the extent that such actions did not benefit her.

## *Analysis*

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. Article 42 of the Constitution provides that; *Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.*

In this particular case, the applicant stated that at the time the respondent has refused to take a decision on whether to renew the applicant's contract and had continued to hold the applicant in total suspense about the matter in spite of the fact that the other employees' contracts in the similar category have been considered. The applicant has tried to vindicate her rights by lodging complaint against the delay or refusal to renew her contract coupled with direct complaints against the 2<sup>nd</sup> respondent for bias in his actions and decision towards her.

The 2<sup>nd</sup> respondent has power conferred under the Human Resource Policies Manual to renew contracts of employees and this power is undisputed or contested. This court is mandated to review the exercise of such power since it is public power/authority vested and exercisable in public interest and not whimsically. If a court finds that powers have been used for unauthorised purposes, or purposes 'not contemplated at the time when the powers were conferred', it will hold that the decision or action is unlawful.

Power or discretion conferred upon a public authority must be exercised reasonably and in accordance with law. An abuse of discretion is wrongful exercise of discretion conferred because it is the exercise of discretion for a power not intended. Accordingly, the courts may control it by use of the *ultra vires doctrine*. The courts task is merely to determine whether the decision made is one which achieves a reasonable equilibrium in the circumstances. See *Minister of Environment Affairs and Tourism v Bato*

*Star Fishing (Pty) Limited 2004 (7) BCLR 687 (CC); 2004 (4) SA 490 (CC) para 49.*

The Human Resource Manual provides for the different modes of recruitment methods of staff under section 2.5;

- a) Direct Recruitment by the Corporation through Advertisements
- b) Recruitment through Consultants
- c) Head Hunting
- d) Filling vacant positions from within the Corporations

The 2<sup>nd</sup> respondent opted for the first method of recruitment in exercise of his discretion and the applicant is challenging this exercise of discretion contending that he ought to have used the 4<sup>th</sup> method.

A closer reading of the different methods set out under the Human Resources Manual shows any one or combination of two or all of the methods may be used in the recruitment process. But on further scrutiny and to make sense of the section 2.5.4 the respondents are obliged to first try to fill the position which has fallen vacant internally. It is upon failure of identifying or finding a suitable staff that the vacant position shall be filled through external sourcing. See section 2.5.4(b)(iii) of the Human Resource Manual.

It would not make sense of the entire section if the recruitment should be commenced by externally advertising the position and then you resort to filling the vacant positions from within the Corporations later and yet the section provides otherwise.

To act otherwise would be irrational and unreasonable and would wholly defeat the intended purpose and staff recruitment and retention policy of the 1<sup>st</sup> respondent. The decision to decide to advertise or make a direct recruitment is an exercise of discretion and must be exercised fairly and justly premised on the circumstances of the case and not used as a punishment against the existing staff since they may not be favoured by the 2<sup>nd</sup> respondent or other senior staff of the organization.

The 2<sup>nd</sup> respondent was vested with power or discretionary power choose the method of filling a vacant post and also to renew the applicant's contract and the said power had to be exercised by its own mind and after taking into account and consideration of all relevant factors keeping in view the object of conferring such discretion. It should not be influenced by improper motive or purpose.

Another aspect of the matter is that the decision makers must not allow their personal interest and beliefs to influence them in the exercise of their statutory powers, but must exercise those powers impartially and should not pre-judge the case. It could indeed be true that the 2<sup>nd</sup> respondent had serious issues with applicant and opted to exercise his discretion in a manner that would prejudice her chances of being elevated to the new position.

The powers conferred by statute or any other power derived from other instruments must be exercised reasonably and in good faith and for proper and authorized purpose only and that, too in accordance with the spirit as well as letter of the empowering instruments or legislation.

The primary rule is that discretion should be used to promote the policies and objects of the governing Act. A discretionary power should not be used to achieve a purpose not contemplated by the Act that confers the power. All decision makers are expected to act in good faith. Powers must not be abused and should not be exercised arbitrarily or dishonestly.

The actions of the 2<sup>nd</sup> respondent were *malafide* since it involved improper exercise of power or abuse of discretion. The impugned action of the 2<sup>nd</sup> respondent was taken with a specific object of denying the applicant an opportunity to be promoted or elevated to a new position and later refusing to renew the applicant's contract of employment in order to affect her livelihood.



It can equally be said that fettering of one's discretion is to abuse that discretion. The law expects that public functionaries would approach the decision making process with an open mind. Reason and justice and not arbitrariness must inform every exercise of discretion and power conferred by statute. See *Johannesburg Stock Exchange v Witwatersrand Nigel Ltd 1988 (3) SA 132*

In addition, the 2<sup>nd</sup> respondent has refused to renew the applicant's contract and continues to allege that the process was not concluded due to the applicants conduct which according to him, she is rude and belligerent as set out in his affidavit in reply para 13(a).

The power exercisable by 2<sup>nd</sup> respondent is derived from section 15 (3) of The Uganda Development Corporation Act which provides that;  
*The Board may delegate the power to appoint certain categories of staff of the Corporation to the Executive Director.*

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

The 2<sup>nd</sup> respondent has not made out any justification for the refusal to renew the applicant's contract and yet the rest of the employees in similar status have had their contracts renewed. The excuse advanced that the committee set up by the 2<sup>nd</sup> respondent is yet to handle her complaint is a mere deceptive scheme or scam intended to justify the refusal or intended actions of the 2<sup>nd</sup> respondent and indeed it can be deduced from the evidence on record. The 2<sup>nd</sup> respondent in his affidavit contends that the application is premature. For how long should the applicant wait for her contract renewal to be considered? This is a pointer to abuse of power as he tries to hit back at her for the alleged rudeness and belligerent character.

The decision not to renew the applicant's contract was done outside the powers conferred; it was vitiated because it was *malafide* or bad motives or improper purposes.

The 2<sup>nd</sup> respondent also acted irrationally when he considered other employees in the same category as the applicant and had their contracts renewed and left the applicant out. This was also discriminatory in nature and thus unconstitutional since there is different treatment of the applicant with other employees as equals ought to be treated equally.

The actions of the 2<sup>nd</sup> respondent is a '*colourable exercise of power*' since it is an abuse of discretion. Which simply means an exercise of power under the colour or guise of power conferred for one purpose, the authority is seeking to achieve some other purpose which it is not authorized to do under the law. The motive and real reasons for which the respondents have refused to renew the contract infer an improper purpose for the exercise of power conferred.

Government agencies are obliged to observe principles of natural justice or rules of fairness before taking decisions that may affect the livelihood of citizenry like contracts of employment.

The employees legitimately expected to be treated fairly before any decision is taken not to renew their contracts of employment. Legitimate expectation envisages that if the administration by a representation has created an expectation in some person, then it will be unfair on the part of the administration to whittle down or take away such legitimate expectation. It is mainly confined mostly to right to a fair hearing before a decision which results in negative promise or withdrawing an undertaking is taken.

Legitimate expectation extends to an expectation of a benefit. This may arise from what a person has been permitted to enjoy and which he can legitimately expect to be permitted to continue to enjoy. But the same can

be changed on rational grounds after giving an opportunity to comment to the affected person. It may also extend to a benefit in future which has not yet been enjoyed but has been promised.

The applicant expected to have the contract renewed since it was clearly promised in the original contract. Any intended frustration of the legitimate expectation had to be explained through a hearing and reasons availed for any refusal or frustration.

This court is therefore satisfied and convinced that the decision of the respondents not to renew the applicant's contract was marred by procedural irregularities and prolonged delay due to the inconclusive consideration of the applicant's complaint is an abuse of power and authority.

### **ISSUE 3**

*What remedies are available to the parties?*

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. The utility of any system of judicial review depends largely on the effectiveness of its remedies.

For example, whereas certiorari was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

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 vs Aston University Senate ex p Roffey* [1969] 2 QB 558, *R vs Secretary of State for Health ex p Furneaux* [1994] 2 All ER 652.

This court issues a declaratory order that the decision of the 2<sup>nd</sup> respondent acts of automatic activation and filling of vacancies at the levels of Managers of Departments, subsequent promotions and external hiring without involvement of and the approvals from the Executive Committee of the 1<sup>st</sup> respondent and adherence to Human Resource Manual was illegal, irrational and irregular.

This court also issues a declaratory order that the decision of the 2<sup>nd</sup> respondent deliberately delaying, ignoring and or refusing to renew the applicant's contract without any justifiable reason whereas having renewed all other employee contracts in the same status was irrational, irregular, discriminative and arbitrary.

This court issues an order of Mandamus against the respondents compelling them to consider the renewal of the applicant's contract without victimization or vindictiveness.

As far as damages are concerned, it is trite law that damages are awarded in the discretion of court to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

The applicant is awarded **UGX 10,000,000** as damages due to the circumstances of this case that has occasioned her suffering and damage due to wrongful exercise of power and abuse of authority.

This application is allowed with costs.

I so order.

**SSEKAANA MUSA**

**JUDGE**

**9<sup>th</sup> April 2021**