THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

MISC. CAUSE No. 12 of 2020

NAKAGGWA RACHEAL NAKIWALA :: APPLICANT

VERSUS

KALUNGU DISTRICT LOCAL GOVERNMENT :::::::::::::::::::::::::::::::: RESPONDENT

Before; Hon Justice Victoria Nakintu Nkwanga Katamba

RULING

This is an application for Judicial Review brought under Section 36 of the Judicature Act Cap 13, Rules 3, 4, 6 and 8 of the Judicature (Judicial Review Rules 2009), and Rule 4 of the Judicature (Judicial Review Amendment) Rules 2019, seeking Orders that;

a) A declaration that the decision made by the Respondent passed on the 21st day of May 2020, dismissing the Applicant from service as the Respondent's Education Secretary is null and void in so far as it contravened the Rules of natural justice.

b) An order of certiorari be granted to call for and quash the Respondent's decision on the 21st day of May 2020, dismissing the Applicant from service as the Respondent's education secretary.

c) A prohibition Order be granted restraining the Respondent from enforcing the decision passed on the 21st day of May 2020, dismissing the Applicant from service as the Respondent's Education Secretary.

d) An Order of mandamus be granted ordering the respondent to allow the Applicant back into her office.

e) An Order of prohibition be granted prohibiting the respondent from harassing intimidating and or molesting the applicant in any way while at the Respondent's offices.

f) An Order that the Respondent pays damages for wrongful dismissal, mental stress ad inconvenience

g) Costs of this application.

The grounds of the application as contained in the affidavit of the Applicant are briefly that the Applicant was employed by the Respondent in the position of Education Secretary, on the 21st day of May, 2020, she was informed that she had been dismissed from employment since she was not attending the Respondent`s meetings. The decision made by the Respondent is unreasonable and irrational as it was made without due consideration of the Presidential Directives suspending all public meetings, public and private transport due to Covid-19 and the subsequent lockdown. The said decision is illegal, unconstitutional and ultra vires, the Applicant has suffered psychologically, mentally and has suffered public harassment due to the decision made by the Respondent.

In his affidavit in reply, Bbaale Abudu the Speaker of the Respondent stated that the Applicant has never been an employee of the Respondent but was simply appointed as a member of the District Executive Committee (DEC) by the District LC5 Chairperson. Following the President's directive during the Covid-19 lockdown, the Minister for Local Government issued guidelines to be adhered to during Council proceedings. The Respondent's District Chairperson by letter dated 19th May 2020 notified the District Speaker of his intention to address the District Council, the meeting was held and the Applicant was in attendance and it was in that meeting that the District Chairperson in exercise of his powers under the Local Government Act reshuffled the District Executive Committee and the applicant was dropped as Secretary for Education. The Applicant's claims for compensation are unfounded and misconceived.

In rejoinder, the Applicant in her affidavit stated that she is designated as an employee of the Respondent and was admitted on the government pay roll and that the Respondent approved and acted as guarantor to secure a salary loan which is still running. It was wrong for the Respondent to wrongfully terminate her service without any reason and yet it is upon her employment that it guaranteed her salary loan. The Respondent is well aware that

the President restricted the movement of public transport and at the time, the Applicant was in Kampala with her family. The Respondent's District Chairperson informed the Applicant verbally that she had been dismissed for failure to attend the council meeting.

Both parties filed written submissions.

Counsel for the Applicant cited Rule 7A (1) (a), (b) and (c) of the Judicature (Judicial Review) (Amendment) Rules of 2019, on the issues for determination in Judicial Review, and framed the following issues for determination by this Court;

1. Whether the application is properly before court
2. Whether the Respondent's decision of dismissing the Applicant was illegal, irrational and contravenes the law
3. What are the remedies available?

Counsel submitted that the general principle of law is that, an application for Judicial Review must be brought in the circumstances where a matter involves an administrative public body. That the decision in the instant case was made by the Respondent which is a district body and therefore qualifies to be a public body. Counsel cited the case of ***John Jet Tumwebaze versus Makerere University Council & two others MA No. 353 of 2005***, where it was stated that Court shall grant orders sought in Judicial Review if there is gross violation of principles of natural justice.

Counsel further submitted that without giving the Applicant a fair hearing, the Respondent terminated her employment on the ground of absentia, despite the running loan guaranteed by the Respondent, and the Applicant was dissatisfied with that decision and therefore has a direct or sufficient interest in the said acts of the Respondent. The decision taken by the Respondent without following due process of the law was unfair since it was taken without giving the Applicant a fair hearing and therefore amounted to unjust and unfair treatment.

On whether the Respondent's decision was illegal, irrational and contravenes the law, Counsel submitted relying on the case of ***Aine Godfrey Kaguta Sodo vs. NRM and another***

Misc. Cause No. 343 of 2020, that the Applicant was not given a fair hearing while reaching the decision of dismissing her from employment and therefore this Court should exercise its supervisory powers on the respondent and have the said decision quashed. The Respondent dismissed the Applicant from employment yet she had a salary loan that was still running and guaranteed by the Respondent. Counsel contends that this decision was irrational. The Applicant was not given a fair hearing, the reason for non-attendance was not a reasonable ground for the dismissal, and the Respondent did not exercise its powers under Section 20 of the Local Government Act. The decision was therefore illegal.

On the issue of remedies, the Applicant prayed for certiorari to quash and reverse the decision of the Respondent and such decision to be declared illegal, a declaration that the termination was wrongful and irrational, and damages arising out of the Respondent's illegal decision.

On the other hand, Counsel for the Respondent submitted that the Respondent did not adduce any evidence to prove her appointment as an employee or public officer of Kalungu District Local Government. Evidence of salary payment as adduced by the Applicant did not constitute proof of appointment as an employee or public officer of the Respondent by the Applicant. Counsel prayed that this court finds that the application is not properly before court and dismisses it with costs.

On whether the dismissal was illegal, irrational and contravenes the law, Counsel submitted that the Applicant was never an employee or public officer of the Respondent and there was no such dismissal. Even if she was an employee, the Applicant did not adduce any evidence of such dismissal by way of letter or termination/dismissal. The evidence of a loan application form, loan recommendation scheme and Oath of Secrecy do not constitute evidence of an appointment as a district employee or public officer.

Counsel further submitted that Section 20 of the Local Government Act does not confer any powers on the District Local Government but rather provides for circumstances under which the office of a member of a District Executive Committee falls vacant. Counsel

prayed that this court finds that there was no decision taken by the Respondent to dismiss or terminate the Applicant from its employment as none had ever existed between the Parties. Further that, this Court finds that the application is devoid of merit and falls short of the required standard under the law for the grant of orders under judicial review and dismisses it with costs to the Respondent.

Determination of the Application;

Issue one; whether the application is properly before Court

The first issue to determine is whether the application is properly before this court. The Applicant's claim is that she was an employee (public officer) of the Respondent (public body) until she was dismissed without a fair hearing (a decision she seeks to be reviewed). In that regard, the Respondent challenged the Applicant's claim that she was an employee of the Respondent and Counsel for the Respondent submitted that the Applicant was never an employee or a public officer of the Respondent. The Respondent adduced evidence of minutes for the Respondent's Council meeting held on 28th March 2019 in which the District Chairperson appointed the Applicant to the Executive Committee in accordance with ***Sections 16 (1), 18 (3) and (6) of the Local Government Act*** and maintained his submission that the Applicant was never an employee of the Respondent and that no dismissal from service was ever conducted by the Respondent as no employment relationship existed between the parties.

To refute this claim, the Applicant adduced evidence of a pay slip to show that she was admitted on the government pay roll, a copy of an official oath which is to be taken by all public officers, and documents showing that the Respondent approved and guaranteed security for a salary loan that was obtained by the Applicant.

It is not contested by the Respondent that the Applicant was appointed by the Chairperson LC5 of the Respondent as Secretary Education on the Executive Committee of the Respondent. It is also not contested that she drew a salary from the Respondent and she was

on the pay roll. The Respondent's contention is that the Applicant was merely an elected Council member and being on the Committee did not make her the Respondent's employee.

Although no evidence of an appointment letter was adduced to prove the Applicant's employment as a public officer, I find that there is other sufficient evidence to prove that the Applicant was an employee of the Respondent and hence a public officer. The Appellant adduced evidence of an Oath of Allegiance that she took as a public officer and I find it particularly compelling and convincing in as far as proving that the Applicant was indeed an employee of the Respondent and a public officer.

The Official Oath is provided for under the ***Uganda Public Service Standing Orders***, and it is taken by all public officers.

Article 175 of the ***Constitution of the Republic of Uganda 1995*** defines a "***public officer***" as any person holding or acting in an office in the public service.

Counsel for the Respondent submitted that the Applicant was never a public officer because she did not adduce any letter of appointment to prove the same. The ***Uganda Public Service Standing Orders 2010*** in Section A-c provide for the methods of effecting appointments in public service and one of them is; Decisions of the District Service Commissions through a Chief Administrative Officer or Town Clerk to take action on District Service Commission Minutes.

The Standing Orders further provide that, "*no appointment of any public officer shall be deemed to be effective until the Responsible Permanent Secretary or the Responsible Officer has made an offer to the officer and he or she has accepted the offer in writing. It follows therefore, that until the officer has formally accepted the offer in writing and reported to his or her posting duty station, where applicable, the salary attached to the appointment shall not be paid*…."

Further that, "*On assumption of duty, all newly appointed public officers shall take Oaths as prescribed by law which at the commencement of these Standing Orders are the Official Oath and Oath of Secrecy."*

All public officers and persons engaged to work in the public service shall be required to take The Official Oath; and The Oath of Secrecy and in this case, such an oath would be administered by the Chief Administrative Officers or Town Clerks for Public officers in the Local Government.

More so, the Applicant adduced evidence to show that she was admitted to the government payroll, which had to be approved upon confirmation of her appointment and assuming office as per the Standing Order cited above. She also took the Official Oath and Oath of Secrecy which were administered by the Chief Administrative Officer on the 28th day of March 2019 as per the copy adduced into evidence. It is clearly indicated on the form for the Official Oath that the form is to be signed by public officers on the U8 scale and above.

Accordingly, reading Article 175 of the Constitution of the Republic together with the provisions of the Uganda Public Service Standing Orders and considering the evidence of an Official Oath and Oath of secrecy, the Applicant was a public servant and an employee of the Respondent.

In further consideration of issue one, Counsel for the Applicant submitted that the general principle of law is that, an application for judicial review must be brought in the circumstances where a matter involves an administrative public body. That the decision in the instant case was made by the Respondent which is a district body and therefore qualifies to be a public body.

I agree with Counsel's submission and it is not disputed that the Respondent is a public body. The Respondent refutes the Applicant's claim and grievance on the claim that she was never the Respondent's employee/public officer. This has already been settled, and since the Applicant is aggrieved by a decision of a public body, she has a sufficient interest under ***Rule 4 of the Judicature (Judicial Review) (Amendment) Rules of 2019*** to apply for

judicial review. The first issue is therefore resolved in the affirmative and this application is properly before this court.

Issue two; whether the Respondent's decision of dismissing the Applicant was illegal, irrational and contravenes the law.

Illegality;

The principles governing Judicial Review are well settled. 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 my fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. ***See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.***

I have considered the arguments made by the Parties herein, and I am alive to the broad grounds on which the Court exercises its judicial review jurisdiction as stated in the case of ***Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300*** as follows:

"*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...**Illegality** is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are*

*instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission...**Irrationality** is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...**Procedural Impropriety** is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."*

From the foregoing it is clear that where the authority whose decision is challenged displays gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision such as where the decision is in defiance of logic and acceptable moral standards, the Court will interfere even if there is no illegality or procedural impropriety.

I will first consider whether the decision taken to dismiss the Applicant and the process of dismissal was **illegal**. The Applicant claims that she was informed orally/verbally by the District Chairperson that she had been dismissed for failure to attend the Respondent's council meeting.

Counsel for the Respondent challenged the Appellant's claim above on the basis that she did not adduce any evidence of such dismissal. Section 20 of the Local Government Act does not confer any powers on the District Local Government but rather provides for circumstances under which the office of a member of a District Executive Committee falls vacant which among others include the appointment of such a member being revoked by the chairperson of the district.

Section 20 of the Local Government Act provides that, "*the office of a member of the district Executive Committee shall fall vacant if— the appointment of a member is revoked by the chairperson; a member is elected as speaker or deputy speaker of the district council; a member— resigns from office; becomes disqualified to be a member of the council; or dies; where the council passes a vote of censure in a member; or a new chairperson assumes office."*

In the instant case, according the evidence adduced by the Respondent as contained in the minutes for the council meeting held on the 21st May 2020, the District Chairperson exercised his powers under Section 16 (1) and Section 18 (3) and (6) to appoint new members of the Executive Committee at which point the Applicant was not re-appointed. In her affidavit in support of the Application and paragraph 7, thereof, the Applicant states that she was informed on the 21st day of May, 2020 by the Respondent's District Chairperson that she had been dismissed for failing to attend the respondent's meetings. She does not state from where she was informed of the decision to dismiss her but the Minutes of the Council meeting of 21st May, 2021 show that she was in attendance and probably that is how she learnt of her dismissal.

The Respondent denies being the Applicant's Employer but acknowledges the fact that she was a member of the District Executive Committee serving Education Secretary. Her appointment and removal from office are governed by the Local Government Act which provides as follows:

Section 18 (3) of the Local Government Act provides that, "*The secretaries shall be nominated by the chairperson from among the members of the council and shall be approved by the majority of all the members of the council."*

Section 20(a) of the same Act is to the effect that, "*The office of a member of the district executive committee shall fall vacant if the appointment of a member is revoked by the chairperson….*

According to the minutes for the council meeting held on 21st May 2020, the Applicant was present when the District Chairperson exercised his powers of appointment of committee members who were then approved by the council members. I therefore do not find any illegality as to the process that led to the removal of the Applicant from the committee. The decision was made by the District Chairperson while exercising his powers to appoint new members to the district committee and to revoke the appointments of some who were serving. The law does not provide the grounds upon which such revocation may be premised but that is the law.

A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); ***(See Dr. Lam – Lagoro James versus MUNI University Miscellaneous Civil Cause No. 0007 of 2016)***

In the instant case, the Respondent acted within the ambit of the Local Government Act and reached the decision to revoke the Applicant's appointment legally.

Irrationality;

To determine whether a decision made by a public body was irrational thereby to warrant the grant of judicial review, there must be such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. (***See Dr. Lam – Lagoro James versus MUNI University supra)***

It is the Applicant's submission and claim that she obtained a salary loan which was guaranteed by the Respondent, the loan was still running when she was dismissed and for that reason, the dismissal was irrational and unlawful. The Respondent claims that the loan guarantee was irregularly issued since the Applicant was not an employee of the Respondent.

From the reading of the recommendation for the loan/guarantee which was adduced in evidence, the Respondent recommended the same in good faith as the Applicant's employer.

In ***Regina v. Hull University Visitor, Ex parte Page; Regina v. Lord President of the Privy Council ex Parte Page, [1993] 3 WLR 1112, [1993] AC 682***, the House of Lords considered the nature and purpose of the system of judicial review from this perspective and stated:

The fundamental principle [of judicial review] is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases.....this intervention.....is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a sense.....reasonably. If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is unreasonable, he is acting ultra vires his powers and therefore unlawfully.(emphasis mine)

The District Chairperson had the powers to appoint new members to the committee which he did and, his decision was administrative in nature. He also had powers to revoke the Applicant's appointment under Section 20(a) of the Local Government's Act. The Minutes adduced by the Respondent show clearly that the District Chairperson was exercising his powers to appoint committee members.

Although there is no general duty at common law to conduct a hearing before an administrative decision is taken, in circumstances where important interests are at stake such as one's livelihood a hearing has been required **(see *R v. Commissioner for Racial Equality exp. Helling don LBC [1982] AC 779*). Article 42 of the Constitution of the Republic of Uganda** also calls for the right to fair and just treatment in administrative decisions.

It is the Applicant's claim that she was dismissed from her employment on grounds of non-attendance of council meetings. This was however not supported by any evidence as she

claims to have been dismissed verbally. However, the decision taken by the Respondent left the Applicant with a running salary loan which had been guaranteed by the Respondent itself.

Unreasonableness and unfairness in administrative decisions subject to judicial review may be adduced from the non-observance of the Rules of Natural Justice or acting without procedural fairness towards one to be affected by the decision. As already stated, the ***Constitution of the Republic of Uganda 1995*** under ***Article 42*** provides for the ***Right to just and fair treatment in administrative decisions.***

The above Article requires that a Public body which seeks to exercise administrative powers to take an administrative decision ought to comply with the applicable rules of natural justice. It is also expected to act within the law, its powers and jurisdiction and should not arrive at a decision which is so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it, as per ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B 223***.

The Respondent challenges the loan recommendation/guarantee on the basis that the Applicant was not its employee, I find that by holding out as the Applicant's employer when she was applying for an obtaining the salary loan, the Respondent is now estopped from claiming otherwise.

The loan was extended to Applicant on the 23rd day of July 2019 as per the bank statement attached to her affidavit in rejoinder. According to the loan application form, the payment period for the loan was twelve months, therefore it should have been cleared by the 23rd day of July 2020. In the Respondent's recommendation for the loan there was no guarantee that the Applicant would remain an employee of the Respondent thereby securing the loan to its full payment. In fact, the Respondent stated in the loan recommendation that, "***in the event of resignation, dismissal, death or departure from employment of any employee recommended for a salary loan….the bank shall promptly be notified…"***

This clearly meant the although the Respondent was recommending the Applicant for a salary loan, there was possibility that she would either resign from office or be lawfully terminated/dismissed.

Existence of a salary loan recommended by the employer unless premised on the express understanding that the employee would continue to be employed by the employer and repay the loan through salary deductions, does not guarantee that the employee will not be lawfully dismissed or terminated from employment.

I have already found that the Respondent's decision to revoke the Applicant's appointment was lawful in as far as the District Chairperson had powers to revoke the appointment under Section 20 of the Local Government Act. The Local Government Act does not provide for grounds of revocation or the need to hold a hearing before the appointment is revoked, therefore the Respondent was not obligated to follow such procedures prior to revoking the Applicant's appointment.

The mere fact of having a running salary loan did not guarantee that the Applicant would be in permanent employment of the Respondent, therefore, Counsel's submission and the Applicant's claim that failing to take into consideration the running loan was unreasonable and irrational on the Respondent's part cannot stand.

I therefore find that the decision taken by the Respondent was neither reached unfairly, not irrationally for failure to take into consideration the Applicant's running salary loan.

Issue Three; what are the remedies available;

The Applicant prayed for certiorari to quash and reverse the decision of the Respondent and such a decision be declared illegal. Counsel for the Applicant cited the case of ***Aine Godfrey Kaguta Sodo vs. NRM and another Misc Cause No.343 of 2020, where it was held that;***

"*Under judicial review proceedings once a decision has been proved to be illegal, the resulting effect of Certiorari would therefore be to quasi the said ultra vires and or illegal decision and deprive the said decision of any effect whatsoever".*

In resolving issue two, I found that the Respondent`s District Chairperson exercised his powers duly under the Local Government Act and the decision reached at was not illegal since he followed the law. I have also found that there was no irrationality portrayed in the Respondent's decision to revoke the Applicant's appointment to the Executive Committee.

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***

In the instant case, since the Respondent`s decision was legally arrived at I will not grant the remedy of certiorari as prayed for by the Applicant.

The Applicant is also not entitled to the award of damages sought since there was no irrationality, unfairness or unreasonableness in the process of reaching the decision to revoke her appointment from the Executive Committee.

I so order.

Before I take leave of this matter, I wish to observe the need for a reform in the law as per Section 20 (a) of the Local Government Act in as far as it gives too much power to the District Chairperson to revoke appointments of Committee members yet the appointment process under Section 18 (3) of the same Act requires for appointments to be made through a two-part process involving nomination by the Chairperson and approval by the majority of the Council.

"*Section 24 of the Interpretation Act* provides**;**

Where, by any Act, a power to make any appointment is conferred, the authority having the power to make appointment shall also have power (subject to limitations or qualifications which affect the power of appointment) to remove, suspend, reappoint, or reinstate any person appointed in the exercise of the power."

There is a need for the legal framework to be revised to make the process of vacation of office of the committee more transparent and involving the council just as it is involved in the appointment process, in order to promote transparency, accountability and fairness in the administrative processes and decisions taken by the Local Government office. The decision to revoke appointment of committee members should be a Council decision rather than a District Chairperson decision.

Dated at Masaka this 29th day of April, 2021

Victoria Nakintu Nkwanga Katamba

Judge