

The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Misc. Cause No. O6 of 2021

In The Matter of an Application for Judicial Review for Orders of Certiorari,  
Mandamus, Prohibition, Declaration, Damages and Other Necessary Orders  
against Kalaki District Local Government

Between

Ochen James :: Applicant

Versus

Kalaki District Local Government :: Respondent

Before: Hon Justice Dr. Henry Peter Adonyo

Ruling:

This application was brought by notice of motion under sections 33, 36, 37 and 38 of the Judicature Act, Cap. 13 as amended, Rules 3 (1) & (2), 5, 6, 7 and 8 of the Judicature (Judicial Review) Rules S.1 No. 11 of 2009. It seeks the following orders;



- a. Certiorari to issue against the respondent to quash the decision of the respondent which denied the applicant the constitutional right to gainful employment
- b. Mandamus to compel the respondent to issue an appointment letter as per the notice of successful candidates issued by the District Service Commission
- c. Prohibition against the respondent from recruiting any person to the office of the Senior Environmental Health Officer of Kalaki District Local Government, which the applicant should be occupying
- d. A declaration that the respondent acted unconstitutionally, illegally and irrationally when it withheld the applicant's appointment letter even after the applicant emerged as the successful candidate for the position of Senior Environmental Health Officer Kalaki District Local Government
- e. General Damages for the applicant's suffering
- f. Costs of the application

The grounds in support of this application were contained in the affidavit of the applicant, Mr. Ochen James. They are as follows;

1. That the respondent posted an advert in the New Vision Newspaper dated 10<sup>th</sup> February 2020 inviting applications for essential positions in Kalaki District Local Government
2. That the applicant being qualified for the position of Senior Environmental Health Officer duly responded and was shortlisted on the 4<sup>th</sup> June 2020 by the respondent
3. That as per the Public Service Commission, Guidelines, DSC/154/382/01 dated 14<sup>th</sup> August 2020, the respondent listed and invited the applicant for oral interviews on the 14<sup>th</sup> August 2020 and 19<sup>th</sup> August 2020 respectively that were duly conducted on the 3<sup>rd</sup> September 2020
4. Consequently, the applicant emerged as the successful candidate for the position of Senior Environmental Health Officer as per respondent notice dated 22<sup>nd</sup> September 2020
5. That the offensive action occurred in November 2020 when the respondent withheld or refused to issue the applicant an appointment letter thereby infringing on the applicant's constitutional right to gainful employment.
6. That the applicant qualifies for the position of Senior Environmental Health Officer and was duly recruited by the Respondent



7. Consequently, the respondent acted unfairly when she refused to issue the applicant with the appointment letter

8. That the applicant also seeks general damages from the respondent for mental, physical and emotional anguish caused by the respondent actions.

An affidavit in reply was sworn by Ms. Epodoi Pauline Apio, the Chief Administrative Officer of the Respondent. She admitted that the applicant applied for and was interviewed for the post of Senior Environmental Officer and that his name first appeared as the successful candidate for the post (See paragraphs 4 and 5 of the affidavit). However, that when her office received the District Service Commission Minutes on 27<sup>th</sup> October 2020, for the purposes of implementation, she realized that there was a discrepancy, and that the minutes of the District Service Commission had captured the names of Oluka Simon Peter as the person to be offered appointment for Senior Environment Officer and not the applicant as had been earlier indicated on the notice board. That, she then wrote to the Secretary, District Service Commission on 30<sup>th</sup> October 2020 for clarification and correction of the record.

A copy of this letter was attached to the affidavit and marked as R1. She averred that in response to her query, the District Service Commission notified her by letter dated 23<sup>rd</sup> December 2020, that the two persons, including the applicant herein did

not meet the job specifications. That, the Commission then recommended that the post be advertised again to attract suitable candidates. According to Ms. Epodoi's affidavit, it is her belief that the applicant did not meet the qualifications and therefore could not be appointed by the Respondent, who she deponed, exercised its mandate constitutionally.

Submissions:

On the first preliminary objection, counsel for the applicant submitted that the applicant had acted within the time lines of 3 months stipulated under the Judicature (Judicial Review) Rules 2019 (as amended by no. 35 of 2019). It was submitted that the applicant only learnt of his fate on 22<sup>nd</sup> December 2020, through the letter issued by the Chief Administrative Officer of the Respondent and before that he had no knowledge that the respondent had declined to issue him an appointment letter. That, after this letter the applicant then filed an application on 25<sup>th</sup> February 2020. Furthermore, that the application raises matters of illegality, which is an exception to the law of limitation of time.

In relation to the second preliminary objection relating to non-exhaustion of remedies, counsel for the applicant submitted that the applicant was denied the opportunity to make use of the mechanisms in the public service because he was taken out of its jurisdiction by the failure to appoint him, and thus had no *locus*



*standii* and he could not appeal to the Public Service Commission. According to learned counsel, the applicant's remedies are before this honourable court and he is entitled to benefit from the principles of natural justice, fairness, equity and good conscience. Counsel argued that the respondent is statutory body with quasi-judicial functions, and engaging in public functions and duties, and thus its decisions are subject to review and supervision by the High Court.

That, the applicant's decision to seek remedy in the High Court is provided for under Article 42 of the Constitution of Uganda which provides for the right to just and fair treatment in administrative decisions.

Counsel for the applicant raised two issues on which he submitted including;

- a. Whether the applicant is entitled to judicial review
- b. Whether the applicant is entitled to the reliefs sought under judicial review

Counsel also cited several cases on the definition of judicial review as provided for in *Clear Channel Vs Public Procurement and Disposal of Public Assets Authority Miscellaneous Application No. 380 of 2008* as well as *Kasibo Joshua vs Commissioner of Customs Miscellaneous Application No. 44 of 2004*. He referred to section 36 of the Judicature Act Cap. 13 which gives the High Court power to grant the following reliefs including mandamus, prohibition, certiorari, injunction and declaration. He also relied on *Council of Civil Service Union vs Minister of*

*Civil Service (1985) AC 374* as well as *John Jet Tumwebaze vs Makerere University Council & 2 Others Misc. Cause No. 353 of 2005* which lays out the grounds upon which an order for judicial review may be granted, and these include Procedural impropriety, illegality and irrationality.

On the first issue, counsel cited various legal provisions, including rule 3 of the Judicature (Judicial Review) (Amendment) Rules 2019 as well as article 40 (2), and 42 of the Constitution of the Republic of Uganda, and section 36 of the Judicature Act Cap. 13 which provide justification for the grant of judicial review and also provide for the powers of the High Court to grant this remedy.

Furthermore, cases cited by counsel include *Owor Arthur & Others vs Gulu University HCMA 18/2007* as well as *Kasibo Joshua vs Commissioner of Customs U.R.A HCMA No. 44/ 2007* which explain the purpose of the prerogative orders granted under judicial review. It was submitted that the applicant's affidavit clearly showed that the respondent failed to act clearly by issuing an appointment letter to the applicant, and that after finding that the applicant was the successful candidate for the position of Senior Environmental Health Officer, the respondent rescinded the appointment without informing the applicant, which was illegal, irregular and unjust and that the applicant ought to have been heard before that.



That, after the applicant spoke up and issued a demand notice to the respondent, the respondent then suddenly found the applicant unsuitable. Lastly, that failure to give the applicant an appointment letter and then dismissing him before he could be issued with an appointment letter was irregular, irrational and procedurally wrong, and went against the Public Service Commission Guidelines and was a violation of the principles of natural justice.

The applicant sought for an order of certiorari, mandamus, prohibition, declaration, general damages and costs

On the preliminary objection, it was submitted for the respondent that the pursuant to Rule 5 (1) of the Judicature (Judicial Review) Rules 2009, the cause of action arose on 10<sup>th</sup> November 2020 which meant that the three months within which to file an application for judicial review had lapsed on 10<sup>th</sup> February 2021, without the extension of time, and therefore the application was incompetent and ought to be struck out. Counsel relied on *Okoth Umaru & 3 Others vs Busia Municipal Council & 3 Others Misc. Cause No. 0012/2016* for this principle.

The second preliminary objection was that the applicant did not exhaust the appeal mechanisms provided for under Section 59 (2) of the Local Government Act and that no appeal has ever been lodged to the District Service Commission by the applicant. That, the applicant ought to have appealed the decision contained in the



letter of 23<sup>rd</sup> December 2020 instead of prematurely filing the application. It was also the argument of counsel that the prerogative remedies under judicial review are not available where there are alternate statutory remedies.

In relation to the substantive application, on the first issue, it was submitted that for the respondent that the District Service Commission not to appoint the applicant was not tainted with illegality, irrationality or procedural impropriety. That, the applicant did not produce any proof of appointment and only relied on his name appearing on the notice board to give him legal basis. On the remedies available to the applicant, it was submitted that the applicant had failed that the respondent's decision was tainted with illegality, irrationality and procedural impropriety and that he should not be granted the remedies sought.

Decision of Court:

I have carefully considered the pleadings and submissions of the parties on this application. I will consider first, the preliminary objections raised by the respondent, and my finding on this issue is as follows.

In relation to the first preliminary objection, counsel for the Respondent argued that the application was time barred and ought to have been filed within a period of three months from when the cause of action arose. He relied on rule 5 (1) of the Judicature (Judicial Review) Rules 2009 which provides that "*an application for Judicial*



*Review shall be made promptly and in any event within 3 months from the date when the grounds of the application first arose; unless the court considers that there is good reason for extending the period within which the application shall be made...*”

In relations to the provision of the law above, counsel for the respondent argued that the applicant’s cause of action arose on 10<sup>th</sup> November 2020 which date as solidified in the applicant’s affidavit is the date when he should have received an appointment letters meaning that the period within which to file this application lapsed on 10<sup>th</sup> February 2021 yet the applicant had filed the present application on 25<sup>th</sup> February 2021.

The submissions of the applicant are, however, that he was never aware before the letter dated 23<sup>rd</sup> December 2020 and attached to the affidavit of the Ms. Epodoi as R2, he had no knowledge that the District Service Commission had reviewed his two applications and found that he did not meet the job specifications and that the position was to be re-advertised to attract suitable candidates. This fact is not controverted at all.

Therefore, given this position, I would tend to agree with the applicant’s submissions that the respondent’s submissions to this fact is without merit and support and thus the first preliminary objection fails.

The second preliminary objection by counsel for the respondent was that the applicant has not exhausted the available remedies before seeking judicial review, and that the applicant ought to have sought remedy before the Public Service Commission by way of appeal. Section 59 (2) of the Local Government Act on which counsel for the respondent referred to support his argument provides that;

*“A person aggrieved by the decision of the District Service Commission may appeal to the Public Service Commission, but the ruling of the District Service Commission shall remain valid until the public service commission has ruled on the matter.”*

I have also taken into consideration the cases relied on by counsel for the respondent, including that of *Fuelex Uganda Limited vs Attorney General, The Minister of Energy & Mineral Development & The Commissioner, Petroleum Supply Department, Miscellaneous Cause No. 048/ 2014* as well as *Micro Care Insurance Limited vs Uganda Insurance Commission Misc. No. 0218 of 2009*.

I am cognizant of the findings of those case that the remedy of the judicial review is not available where an alternative remedy exists. Indeed, in the case of *Badru Ssesimba vs Nakaseke District Service Commission & Another Miscellaneous Cause No. 16 of 2018*, it was held that it was advisable for one to explore alternative remedies before one seeks judicial review if such remedies exists.



Relating the above holdings to the instant matter, it is clear to me that the applicant has not demonstrated through his affidavit in support of this application that he had either explored the existing alternative remedies, or that they were not available to him or that they were inadequate. His only submission is that he has no *locus standi* to appeal to the Public Service Commission. I find this argument without basis for under **Section 59 (2) of the Local Government Act** as it provides no such exception. The fact is that if the applicant was aggrieved by the decision of Kalaki District Service Commission then he had *locus standi* pursuant to section 59 (2) of the Local Government Act to appeal the impugned decision before the Public Service Commission.

The Applicant is thus required by law to first appeal to the Public Service Commission before filing this application for judicial review as that alternative and primary remedy existed to him and was applicable to his situation which is different from the holding in *Badru Ssesimba vs Nakaseke District Service Commission & Another* where the court allowed a similar application like the instant one because the applicant in that matter had sought the opinion from the Permanent Secretary of the Ministry of Public Service which the court found meant that the appellate body had been involved and thus the only other remedy was to court which is not the case here.

The second preliminary objection succeeds.

Given my understanding that indeed there is an alternative remedy available to the applicant which has neither been explored or exhausted, I would find this application is premature and incompetent given fact that the applicant himself agrees that he has not sought nor exhausted the alternate remedies available to him from the Public Service Commission before coming before this court.

That being the case this application would be found to be without merit and would thus be dismissed with costs to the respondent.

The applicant is advised to first seek the available alternative remedy available to him from the Public Service Commission before coming before this court.

I so order.



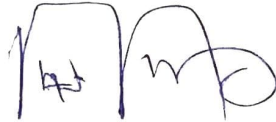
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Hon. Justice Dr. Henry Peter Adonyo

Judge

7<sup>th</sup> July 2021

Order: This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order



Judge

7<sup>th</sup> July 2021

Q: 23/7/21  
Ruling delivered to  
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