THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 182 OF 2020

MPIIMA DAVID WYCLIFFE :: APPLICANT

VERSUS

1. **UGANDA CANCER INSTITUTE**
2. **ATTORNEY GENERAL::RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for judicial review brought under Article 42 of the Constitution, Section 33, 36 and 38 of the Judicature Act cap 13 and Rule 3, 3A, 4, 6, 7 and 8 of the Judicature (Judicial review) Rules S.I No 11 of 2009 as amended.

The applicant sought prerogative orders and declarations that the actions of the 1st respondent interdicting the applicant for a period of over a year was unlawful, illegal, unreasonable and ultra vires as well as award general, punitive and aggravated damages and costs of the suit.

The applicant was interdicted from his job as a laboratory technologist with the Uganda Cancer Institute following an investigation into illegally run samples which were private and none UCI leading to loss of revenue. The investigation was conducted and it involved witnesses who identified the applicant as the one responsible for the illegal samples. Following a hearing by the Sanctions and Rewards Committee, the applicant was interdicted.

The respondent opposed this application stating that the applicant's interdiction was legal and lawful as alleged by the applicant. The respondent prayed that it was fair and in the interest of justice that the application be dismissed for being an abuse of court process.

When the matter came up for hearing on the 1st day of September 2020, the respondents' lawyer intimated to court that the applicant's interdiction had been lifted however the same was not communicated to the applicant. At the next hearing of the case on the 17th day of September 2020, the respondent informed the court that the Executive Director of Uganda Cancer Institute had since written to the applicant informing him that the Board of Directors had directed that the applicant's interdiction be lifted and he had been requested to report to office for duty instructions.

This therefore disposed part of the applicant's claim however the court still has to determine the prolonged interdiction dispute.

The applicant was represented by *Kikabi Ibrahim* while the respondents were represented by *Maureen Ijang* (State Attorney)

The parties framed the following issues for determination by this court;

1. ***Whether this application is amenable to judicial review***
2. ***Whether the decision by the 1st respondent to interdict the applicant more than one year constituted an illegality and therefore ultra vires***
3. ***Whether the decision of the 1st respondent to interdict the applicant for a period of one year was irrational***
4. ***What remedies are available to the parties?***

The respondents' counsel raised a preliminary objection stating that this application disclosed no cause of action against the 2nd respondent.

Counsel for the respondents submitted that the UCI is by law established as a body corporate which can sue or be sued in its name. The actions taken by it are independent of the central government to the extent that the Minister is estopped from interfering with the independence of the Institute. Counsel submitted that **section 6** of the **Uganda Cancer Institute Act, 2016.** ***Powers of the Minister. (1) The Minister may give policy directions, in writing, to the Institute. (2) The directions given by the Minister under subsection (1) shall be consistent with the purposes and provisions of this Act with respect to the functions of the Institute and shall not adversely affect or interfere with the independence of the Institute or the performance of the functions and exercise of the powers of the Institute under this Act. (Emphasis ours)***

Counsel further submitted that Uganda Cancer Institute (UCI) is a legal person and all the actions taken in the disciplinary hearings and interdiction of the applicant were taken by officials of the Uganda Cancer Institute acting independently as provided for by the law and that the applicant is therefore estopped from turning around claiming that the Government should be liable.

In reply to the respondents' Preliminary Objection, counsel for the applicant submitted that the Health Service Commission is empowered by **Article 170(1) (b)** of the **1995 Constitution** to appoint public servants in health services.

Counsel submitted that pursuant to **section 3(a)** of the **Health Service Commission Act 2001**, public servants in health services include health professions. The power of HSC to appoint persons in health service is exercised in appointing staff into UCl. This is premised on **Regulation 2.1.2 of the UCI Human Resource Manual** that envisages interalia that a staff is appointed on permanent basis on confirmation by HSC following **Regulation 3.5.2** that incorporates section **(A-d) (2) and (A-e)** of the **Uganda Public Service Standing Orders (PSSO).** Using these powers by HSC, the applicant was confirmed into service of UCI as a **laboratory Technologist** of UCI as evidenced in **paragraph 3** of the **affidavit in support**. The appointment letter signed by the Executive Director of UCI Dr. Jackson Orem clearly states that the HSC had confirmed his appointment at UCI.

Counsel further submitted that the HSC pursuant to **Article 170 (1) (b)** has powers to exercise disciplinary control over persons it appoints to health services. This position is also envisaged in **Regulation 2.4.1 (a)** of the UCL Human Resource Manual that is to effect that the relevant Service Commissions which is the HSC in this case, shall have supreme control over all disciplinary matters of inter alia UCI staff on permanent basis. It goes on to say that the PSSO shall also be applicable in discipline matters.

The applicant was interdicted on 18th March 2019. Pursuant to **Regulation 2.4.3 (vi)** of UCI Human Resource Manual, this kind of suspension from work was not to exceed 4 weeks. The PSSO however provide a longer period of not more than 3 months in **section (F-s) 8 (b).** PSSO further provide in **(F-s) 8 (g)** that after the necessary investigations, the Responsible officer who is the Executive Director of UCI in this case, refers the matter to the relevant Service commission that is HSC with recommendation of action to be taken and documentation supporting such recommendation. Counsel submitted that it was in line with this disciplinary function of HSC that the applicant

wrote a letter to the Secretary of HSC which is attached as **C1** to the **affidavit in rejoinder** and the reply by Secretary HSC attached as **C2**.The contents of C1 related to the unfair interdiction of the applicant which the Secretary HSC replied to in C2 with intent to follow up matter with ED of UCI. HSC did not follow up the matter.

Counsel concluded that in light of this foregoing that HSC becomes a relevant party since they ultimately are concerned with disciplinary action of the applicant as employee of UCI and despite getting the facts of the unlawful prolonged interdiction; they did not avert the illegalities complained of.

Analysis

This court has considered the applicant's counsel detailed submission on why the 2nd respondent is a necessary party to the suit or was added to the suit, however I find the correlation too remote. The Uganda Cancer Institute independently conducted the investigations that resulted into the applicant's interdiction and also independently made the decision to interdict the applicant. There was no influence and/or interference by the Health Service Commission at any stage of the process. Furthermore the prayers by the applicant could solely be implemented against the 1st respondent without involving the Health Service Commission.

Secondly, Uganda Cancer Institute was set up under The Uganda Cancer Institute Act 2016 and it establishes it as an autonomous Cancer Institute with the mandate to undertake and coordinate the management of cancer related diseases in Uganda. It is a body corporate which can sue or be sued in its names. Their actions and decisions are independent of Ministry of Health and they cannot hold the Attorney General vicariously liable for any wrongful decision taken in the course of executing their duties.

I find that the Attorney General was wrongly joined to these proceedings. This application stands dismissed against them.

Counsel for the applicant also raised an objection that the respondents' submissions were filed out of the time as directed by court.

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

I have read the parties submissions and I find no contention on this issue but rather the parties delve into issue 2. It was unnecessary and wastage of courts time to be raised as an issue for determination.

For an application to be amenable to judicial review several conditions are set in the **Judicature (Judicial Review) Rules 2009 as amended by S.1 No.32 OF 2019.**

The applicant ought to demonstrate pursuant to **Section 3A** of the rules that it has a direct or a sufficient interest in the matter. The applicant an employee of the 1st respondent who was interdicted for a period of more than one year has a direct interest in this matter. Rule **7A (1) (c)** of the rules; the 1st respondent is a body corporate and a body corporate. Rule **7A (1) (b)** which is to effect that the applicant has to have exhausted all the remedies provided for by law which the applicant submitted that they had exhausted all remedies.

I find the application is amenable for judicial review.

Whether the decision by the 1st respondent to interdict the applicant more than one year constituted an illegality and therefore ultra vires

Counsel for the applicant submitted that whereas the initial decision was lawful, the continued interdiction beyond the period provided by law made it illegal and irrational. The decision of the 1st respondent that interdicted the applicant for more than a year which was clearly contrary to the 3 months period provided in **Section F (f-s) 8 (b)** of **The Public Service Standing Order (PSSO)** for cases that do not involve police and courts of law and 4 weeks in UCI Human Resource Manual.

Counsel submitted that the 1st respondent was content with the illegality to extent that it ignored to respond to a letter by the applicant about the case and prolonged interdiction whereas the Health Service Commission aware of the illegality after the applicant did not do much to avert the illegality.

For the respondent on the other hand, counsel submitted that following an incident on 17th February, 2019 wherein the UCI Laboratory equipment was used to run numerous private non UCI samples, the applicant was identified as the officer responsible for the illegally run tests.

The Clinical Head brought to the attention of the applicant the allegations against him and requested him to respond which allegations the applicant ant denied. The Applicant was interdicted from duty and the case forwarded to the Rewards and Sanctions Committee for further management which called witnesses and the Applicant for hearing.

Counsel submitted that the interdiction of the applicant was not unlawful as alleged. From the evidence of Dr. Orem the Rewards and Sanctions committee in their sitting of 29th July, 2020 recommended the lifting of the interdiction which has since been communicated to the applicant.

In the minutes on the 9th Rewards and Sanctions Committee sitting, the committee reviewed the minutes of the previous sitting the case of the Applicant was reviewed. This is evidence to show that at all times the disciplinary case of the Applicant was the subject of discussion by the Committee.

In rejoinder, counsel for the applicant reiterated their submissions stating that this prolonged interdiction beyond a year made the decision of UCI illegal, ultravires and irrational.

Analysis

Public Service Standing Orders of Uganda (2010 Edition) under Regulation (f-s) 8 thereof; defines Interdiction as *"temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out"*

It further provides as follows;

"this shall be carried out by the Responsible Officer by observing that;-

- The charges against an officer are investigated expeditiously and concluded;
- Where an officer is interdicted, the responsible officer shall ensure that investigations are done expeditiously in any case within (three) 3 months for cases that do not involve the police and courts and 6 months for cases that involve the police and courts of law"

Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction.

In **Fredrick Saundu Amolo vs Principal Namanga Mixed Day Secondary School & 2 others** [2014] eKLR, the court had occasion to look into the interdiction question and the decision has been endorsed in many subsequent decisions. The following was held in that case: –

It is important to note that there can be preventive interdicts or punitive interdicts. On the one part being an interdict that is done in the context of allegations of misconduct prior to finding of guilt and the other interdict is implemented as a sanction after the finding of guilt.

A Punitive interdict can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction…

Whether it is preventive or punitive, the interdict, suspension…to be valid must meet the requirements of substantive and procedural fairness. This is the position articulated in ***Chirwa versus Transnet and Others [2008] 2 BLLR 29, at the Constitutional Court of South Africa*** *and reiterated by this Court in* ***Industrial Petition No 150 of 2012, in the Matter of Joseph Mburu Kahiga et al versus KENATCO Co. Ltd et al.*** *This is so because, suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfillment…*

There must be a **clear reason why the employee's interdiction is necessary**, independent of any contention relating to the seriousness of the misconduct… Thus a suspension or interdiction should only follow pending a disciplinary enquiry only in **exceptional circumstances,** where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated, or repeat the misconduct in question. The purpose of such removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way…

Once these preliminaries are addressed, **then the employee must be heard on the merits of the case as a cardinal rule**. This is not to revisit the decision to suspend or interdict, the hearing is simply aimed at determining the allegations leveled against the employee and any defences that the employee may wish to make. Only then, after the close of the hearing or investigation is a sanction issued to the employee. ***See Sempebwa Cox Moses Nsubuga v Wakiso District Local Government HCMC No. 319 of 2018***

In the case of ***Oyaro John Owiny vs Kitgum Municipal Council*** *High Court Miscellaneous Application No. 8 of 2018*, Justice Stephen Mubiru stated that; the decision to interdict is

not subject to the rules of natural justice. See also ***Cheborion Barishaki vs Attorney*** *General High Court Miscellaneous Application No. 851 of 2004*

The standing orders envisage an investigation after an interdiction which must be done expeditiously. Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction. The interdiction was lawful in the beginning since there were serious corruption allegations against the applicant and it was justified in the circumstances. However we have to note that there is a limitation period for investigations set out in the public service standing Orders whose purpose is to avoid violation of rights of the employee on interdiction.

In ***Ochengel & Anor v Attorney General (Miscellaneous Cause-2019/274),*** this court stated;

"Therefore the Inspectorate of Government had to carry on the interdiction for the specified statutory period and where it was to take longer than the stipulated, the Applicants ought to have been informed about the delay to enable them exhaust all the administrative process before proceeding to Court.

But the applicants also as affected parties had a duty to move the concerned offices to lift the interdiction. It would be imprudent for the interdicted person to wait endlessly in the village until when the person who interdicted notifies them. There is corresponding responsibility to establish how far the investigations have progressed in order to protect your rights as a responsible citizen."

In sum therefore, failure by the 1st respondent to conclude investigations within the prescribed period as well as communicate the decision to lift the interdiction caused the interdiction of the applicant to be unlawful to that extent. The 1st respondent from their evidence show that there were investigations being carried out over the period the applicant was interdicted however this does not cure the fact that the interdiction had exceeded the prescribed period without any justifiable reason.

Issue 4: What remedies are available to the 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***

I decline to issue any Orders of *Certiorari, Prohibition* or *Injunction* against the decision of the 1st respondent taken before interdiction and during the interdiction.

I would make a declaration that the delay in taking a decision against the applicant's interdiction by the 1st respondent was unlawful in the circumstances of this case.

As stated in **Ochengel & Anor v Attorney General (Miscellaneous Cause-2019/274);**

"Not every delay to lift the interdiction would be construed to be a violation of rights for one to seek damages. The nature of delay must be such as the court would construe to have been deliberate and intended to violate the rights.

The nature of damages sought by the applicant is general damages. Under judicial review proceedings, damages are awarded in the rarest of the rare cases upon court being satisfied of a possible tort of misfeasance. Otherwise, judicial review proceedings will turn into ordinary proceedings for damages and yet it is not intended for that purpose. It is confined to correcting public wrongs through prerogative orders under the Judicature Act."

The applicant in this case was reinstated to his job and the respondent led evidence to show that the he continued to receive his half salary while he was on interdiction. It automatically follows that the applicant will be entitled to his full salary since the interdiction has been lifted.

I make no order as to costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
21st June 2021