

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 271 OF 2021**

JABBE PASCAL OSINDE OSUDO:..... APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
- 2. CIVIL AVIATION AUTHORITY :..... RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application was brought under Article 42 and 50 of the Constitution, Section 33 and 36 of the Judicature Act Cap 13, Sec 98 of the Civil Procedure Act Cap 71 and Rules 3,4, 6 and 7 of the Judicature (Judicial Review) Rules, 2009 for the following orders;

1. A declaration that the 1st respondent's act of short-listing, and later appointing a one Fred Bamwesigye to the post of Director General at the 2nd respondent before establishing the authenticity of the latter's academic document was irrational.
2. A declaration that the 1st respondent's act of short-listing, and later appointing a one Fred Bamwesigye to the post of Director General at the 2nd respondent's before establishing his actual age was irrational.
3. A declaration that Fred Bamwesigye was ineligible for appointment as the 2nd respondent's Director General at the time he was shortlisted and subsequently appointed to the said position.
4. A declaration that the said short-listing and subsequent appointment is illegal, irregular, ultra vires, null and void.

5. A declaration that the 2nd respondent acted illegally in lowering the minimum qualifications for the said post.
6. An order of certiorari issues quashing the said decision.
7. An order of prohibition, prohibiting Fred Bamwesigye and any officer(s) of the 2nd respondent from implementing or otherwise taking further action on the basis of the above impugned decision.
8. An order of prohibition, stopping Fred Bamwesigye from claiming and continuing to occupy the said office.
9. An order of mandamus compelling Fred Bamwesigye to immediately vacate and to cease acting in the said office.
10. An order of mandamus compelling the respondents to immediately cause and/or effect a lawful appointment of an eligible director general to the 2nd respondent.
11. Costs of the application.

The application was supported by the affidavit of Jabbe Pascal Osinde Osudo and the grounds therein were briefly;

1. That on the 15th of March 2021, the 2nd respondent run an advert for the post of Director General at the 2nd respondent authority and he was one of the applicants.
2. That on 28th September 2021, the 1st applicant appointed a one Fred Bamwesigye for the said post.

3. That Fred Bamwesigye possesses documents with glaring inconsistencies and contradictions which anomalies were ignored by the respondents.
4. That inter alia, there was no evidence that;
 - a. The said purportedly successful applicant had completed primary education, and or that he had sat primary leaving examination.
 - b. That there was no verified result slip in the names of Fred Bamwesigye submitted to the respondents by the said candidate.
 - c. That accepting and considering the P.L.E result slip of Kanyangoga as a document belonging to Fred Bamwesigye exhibited either bad faith or neglect of duty by the respondent.
 - d. That without prejudice, whereas Fred Bamwesigye purports to have been born on 27th November 1967, the said result slip indicates that Kanyangoga Fred sat for P.L.E in 1976.
 - e. The inconsistencies ignored by the respondents was that, by implication, Kanyagoga Fred had started primary one in January 1969 when he was still one year of age.
5. That according to the job advert, the applicants had to be between 35-55 years of age, but the respondent did not bother to analyze the said documents so as to establish whether or not Fred Bamwesigye had not lowered his age, even earlier, to fit within the age bracket for such a post.
6. That Fred Bamwesigye' CV indicated that he had completed PLE in 1978 contradicting the PLE results slip in annexure C1 since the latter document indicates that the person appearing therein had sat PLE in 1976, two years earlier.

7. That Fred Bamwesigye's UCE results slip indicates that he sat the said exams in 1981, two years after the date of completion of primary education as indicated in the documents earlier submitted to the 2nd respondent.
8. That as such, the information available to the respondents contained all the pointers of fraud notifying the respondents to question the authenticity of the said documents and the subsequent transcripts, inter alia in different names.
9. That the respondents ignored the said leads, proceeded to shortlist the said candidate and later appointed him accordingly.
10. That in absence of a person with the requisite expertise and aviation experience managing the said authority, which is inter alia charged with the provision of air navigation services, the travelers' lives are at risk.

The respondents opposed this application. The 1st respondent through Bageya Waiswa, the Permanent Secretary and the Accounting Officer in the Ministry of Works and Transport swore an affidavit in reply while Joseph Joel Okwalinga, the Manager Legal Services of the 2nd Respondent swore an affidavit in reply for the 2nd respondent contending that;

1. The application is an abuse of Court process as the matters arising herein are res judicata having been raised and conclusively determined in High Court Civil Suit No.110 of 2021 Magambo Mpumwire -v- Fred Kanyangoga Bamwesigye.
2. There is no illegality, irrationality, procedural impropriety or unreasonableness in the 2nd Respondent's decision that has been shown in the application or at all and the matter is not amendable to judicial review.

3. The recruitment process for the position of Director General was conducted in accordance with provisions of the law and within the 2nd respondent's approved procedures as below.

The following issues were framed for determination.

1. *Whether the application is properly before the court?*
2. *Whether the appointment of Fred Bamwesigye to the post of Director General at the 2nd respondent was irregular and illegal.*
3. *Whether the respondents complied with the law providing for the process of appointment of the director general at the 2nd respondent.*

Counsel Allan Bariyo appeared for the applicant while *Counsel Brian Musota* for the 1st respondent and *Counsel Thomas Ocaya* for the 2nd respondent.

The parties raised several preliminary objections that owing to their nature I will address in due course of determining the merits of the application except for the one regarding the validity of the affidavits in reply of the 1st and 2nd respondents. The applicant challenged the authority of the deponent stating that the 1st respondent's deponent did not state his role in the recruitment process. Further the two did not disclose the source of their information hence offending Order 19 rule 3 of the Civil Procedure Rules.

Order 19 rule 3 (1) of the Civil Procedure Rules stipulates that;

"Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated."

The deponents of both affidavits in reply are the Permanent Secretary and Accounting Officer in the Ministry of Works and Transport, for the 1st respondent and Manager Legal Services for the 2nd respondent

respectively. Both deponents in paragraphs 1 and 2 respectively aver that they are conversant with the facts of the case.

Except for the mere claim by the applicant that they do not possess knowledge of the facts of the case, no evidence has been led to the contrary.

In the absence of any such evidence, I find that the said affidavits are valid and in compliance with Order 19 Rule 3(1) of the CPR.

I, therefore, overrule the preliminary objection.

Whether the application is properly before the court? & Whether the appointment of Fred Bamwesigye to the post of Director General at the 2nd respondent was irregular and illegal?

In his submissions, counsel for the applicant jointly submitted on all issues and contended that the short-listing and subsequent appointment of Fred Bamwesigye by the 2nd respondent was irrational, illegal, irregular, ultra vires and void.

That the 2nd respondent acted illegally in lowering the minimum qualifications for the said post. That as per the affidavit evidence, Fred Bamwesigye possesses documents with glaring inconsistencies and contradictions which anomalies were irrationally ignored by the respondents.

Counsel further contended that the 2nd respondent was in custody of Fred Bamwesigye's signed and filed documents while applying for the position of Director Human Resource and administration as evidenced by annexure C6 to the application. That the said documents indicate that Fred Bamwesigye's date of birth as presented to the International Civil Aviation Organization was 27th November 1963 but later on he asserted that he was born on the 27th November 1967 and even got a judgment to the effect.

He also argued that the said judgment did not compel the respondents to shortlist and appoint him. That the respondents were under a duty to

inquire and scrutinize the same further and if not satisfied, decline to shortlist or to appoint the said person. That whereas the respondents by law were under a duty to accept his date of birth as per the judgment, the said date of birth ought to have guided the respondents to question Fred Bamwesigye's academic documents given the said declared date of birth.

That the respondent's act of accepting the application by Fred Bamwesigye and shortlisting him without verifying the same, and before having a comprehensive report was an act of irrationality, and the minister's act of appointing the said candidate without questioning the same followed suit.

He contended that Section 14 (1) of the Civil Aviation Authority Act restricted the 1st respondent to recommending one candidate and there is no explanation as to why only the candidate with the highest mark was not recommended but instead Fred Bamwesigye who had the lowest mark.

That all these amounted to acts of illegality as held in the case of *Ojangole Patricia & Others -v- Attorney General HCMA No.303 of 2013*. In conclusion, Counsel submitted that the acts by the respondents were illegal, irrational and ultra vires.

In reply, counsel for the 1st respondent submitted that the appointment of Mr. Fred Bamwesigye to the post of Director General at 2nd respondent was regular and in compliance with the law.

He referred to the case of *Twinomuhangi Pastoli -v- Kabale District Local Government & two others, Misc. Cause No.152 of 2006 reported in [2006] Vol.1p 130*, counsel submitted for one 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 or procedural impropriety. He went ahead to define the said principles/grounds in accordance with the said case.

Regarding the applicant's submission that the respondents did not take into consideration the alleged glaring inconsistencies in respect to the date

of birth of Mr. Fred Bamwesigye, Counsel submitted that the Court in *Magambo Mpumwire -v- Fred Kanyagoga HCCS No.110 of 2021*, on 9th April 2021 found and held that the correct date of birth of the Defendant therein Fred Kanyango Bamwesigye is 27th November 1967.

Counsel submitted that this matter was determined by the High Court and no appeal was preferred. That the applicant is using the instant proceedings to re-litigate a matter that was determined.

As to whether the respondents complied with the law providing for the process of appointment of the Director General at the 2nd respondent, he disputed the applicant's submission on Section 14(1) of the Civil Aviation Authority Act.

The said section stipulates that;

"There shall be a managing director of the authority, who shall be, appointed by the Minister on the recommendation of the board on terms and conditions that may be specified in the appointment."

Counsel submitted that the section above does not state that the board is restricted to recommending one candidate. That the applicant's argument were flawed and not in tandem with the provisions of the law.

He submitted that there were three candidates that scored above the pass mark and as such were eligible to be recommended to the Hon. Minister of Works and Transport for appointment. That in accordance with Section 14(1) of the Civil Aviation Authority Act, Cap 354 appointed Mr. Fred Bamwesigye to the position of Director General of the 2nd respondent. That the 1st respondent only acted on the 2nd respondent's recommendation and hence complied with the law.

Counsel for the 2nd respondent contended that the applicant was estopped from bringing the present application on account of the fact that the said issues are *res judicata* having been conclusively determined in *Magambo Mpumwire -v- Fred Kanyangoga Bamwesigye HCCS No. 110 of 2021*.

Counsel further submitted that by bringing this judicial application challenging the appointment of Mr. Fred Kanyangoga Bamwesigye on account of discrepancies relating to age, he sought to re-litigate the decision above which was final and binding.

In reply as to whether the decision of the Board of the 2nd respondent to short-list Mr. Fred Kanyangoga Bamwesigye and the act of the Minister of Works and Transport to appoint him was illegal and irrational, counsel submitted that the respondents complied with the law providing for the process of appointment of the Director General at the 2nd respondent.

He concurred with the 1st respondent's argument on Section 14 (1) of the Civil Aviation Authority Act that it did not provide for a specific number of people to be recommended by the 2nd respondent's board of directors. He cited *Council of Civil Service Unions & Others -v- Minister for Civil Service Unions & Others 1984*] and *Pastoli -v- Kabale District Local Government Council [2008] 2 EA 300* on the principles of judicial review.

That the applicant's contention that the board of Directors of the 2nd respondent and the Minister of Works and Transport were under an obligation to establish the authenticity of the academic documents of Mr. Fred Kanyangoga Bamwesigye, because of the age discrepancies on them but neglected to do so, was an issue that was litigated on in *Magambo Mpumwire -v- Fred Kanyangoga Bamwesigye HCCS No. 110 of 2021* hence making the application without merit.

Analysis:

Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, 2019, defines Judicial Review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

The purpose of Judicial Review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected to. (See the case of *Chief Constable of North Wales vs Evans [1982]3 ALLER 141*).

Rule 3A of the Judicature (Judicial Review) (Amendment) Rules provides that any person who has a direct or sufficient interest in a matter may apply for judicial review.

The question this court has to consider is whether the applicant has sufficient interest in instituting this application for judicial review or is a mere busy body.

Rule 3A of the *Judicature (Judicial Review) (Amendment) Rules, 2019* provides that;

Any person who has direct or sufficient interest in a matter may apply for judicial review

The applicant states his interest to be that of a regular traveler with Uganda Airlines and intends to board the same in future. The threshold for instituting an application for judicial review is to show sufficient interest in an application in order to be allowed access to the temple of justice. This would enable the court assess the level of grievance against what is being challenged and to sieve out hopeless applications. The interest must be substantial, tangible and not vague vague, intangible or caricature.

The interest required by law is not a subjective one; the court is not concerned with the intensity of the applicant's feelings of indignation at the alleged illegal action, but with objectively defined interest. Strong feelings will not suffice on their own although any interest may be accompanied by sentimental considerations. Every litigant who approaches the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective. See *Muhumuza Ben v AG & 2 Others High Court Miscellaneous Cause No. 212 of 2020*

In particular, a citizen's concern with legality of governmental action is not regarded as an interest that is worth protecting in itself. The complainant (petitioner) must be able to point to something beyond mere concern with legality: either a right or to a factual interest. Judicial review applications should be more restrictive to persons with direct and sufficient interest and should not be turned into class actions or *actio popularis* which allow any person to bring an action to defend someone else's interest under Article 50 of the Constitution. See *Community Justice and Anti-Corruption Forum v Law Council & Sebalu and Lule Advocates High Court Miscellaneous Cause No. 338 of 2020*

The 'unqualified' litigants or persons without direct and sufficient interest (meddlers) are more likely to bring flimsy or weak or half-baked actions/cases and that these are likely to create bad or poor precedents. It may be a bar for other genuine persons with sufficient interest from challenging the actions or decisions affecting them directly. The courts should be satisfied that a party has sufficient interest and ensure that they are presented with concrete disputes, rather than abstract or hypothetical cases. In the case of *Ferreira v Levin NO & Others; Vryenhoek & Others v Powell NO & Others 1996 (1) SA 984 CC para 164* Chaskalson P stressed that:

"The principal reasons for this objection are that in an adversarial system decisions are best made when there is a genuine dispute in which each party has an interest to protect. There is moreover the need to conserve scarce judicial resources and to apply them to real and not hypothetical disputes."

The court should attach importance to a track record of concern and activity by the applicant in relation to the area of government decision-making body under challenge. Standing in judicial review matters should remain a matter of judicial discretion contingent on a range of factors identified in that decision, for the most part, those factors do not operate to prevent worthy public interest cases being litigated: is there a justiciable issue? Is the applicant raising a serious issue? Does the applicant have

genuine interest in the matter? Is this a reasonable and effective setting for the litigation of issues?

In any legal system that is strained with resources, professional litigant and meddlesome interloper who invoke the jurisdiction of the court in matters that do not concern them must be discouraged. An applicant will have standing to sustain public action only if he fulfils one of the two following qualifications: he must either convince the court that the direction of law has such a real public significance that it involves a public right and an injury to the public interest or he must establish that he has a sufficient interest of his own over and above the general interest of other members of the public bringing the action.

Therefore any citizen who is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the citizens in this country; the door of the court will not be ajar for him. But if he or she belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busy body, he could not be locked out at the gates of the temple of justice.

It is the duty of the courts to protect the scarce state resources and the overburdened court system by ensuring that litigants who appear in court in matters of judicial review have a direct or sufficient interest to come to court. Precious resources would be wasted on the adjudication and defence of claims if mere busybodies could challenge every minor or alleged minor infraction by the state or public officials. Without sufficient interest threshold for standing the floodgates will open, inundating the courts with vexatious litigation and unnecessary court disputes.

Currently, every person and or former employees have developed a sense of entitlement to continue intermeddling in affairs of the former employers. It is not ground enough to continue poking their noses in affairs of a public office after your employment is terminated, as this will be abused and used to settle scores with the institution especially if such employee left

acrimoniously like the present applicant (*this court takes judicial notice of the manner in which the applicant left Civil Aviation Authority and the several cases lodged in this court*). This is clogging and 'choking' the court system with all manner of applications with competition for fame or recognition. The court should raise the bar and prevent what is now being termed as '*publicity litigation*' in order to entertain justiciable matters by parties with sufficient interest. See *Aboneka Micheal & another v Attorney General High Court Miscellaneous Cause No. 367 of 2018*

In the instant case, according to paragraph 2 of his affidavit in support, the applicant brought this application as a regular traveler who has traveled with Uganda Airlines and intends to board the same in the future. The applicant's claim is not made or premised on the above assertion as a regular traveler with Uganda Airlines but rather it is because he was a former employee of Civil Aviation Authority and has developed a sense of entitlement to continue poking his nose in the internal affairs of the organization. This court cannot use this as a standard of allowing every frequent flyer to have sufficient interest to file applications for judicial review on matters which do not concern them within Civil Aviation Authority. Where the party initiating an action does not have sufficient interest, the court is robbed of jurisdiction to entertain it. This application would fail on this preliminary objection/point for lack of sufficient interest.

The respondents also raised a preliminary objection premised on *res judicata*. (*Whether the matter or questions in issue are res judicata?*)

Res judicata means a matter adjudged, a thing judicially acted upon or decided, a thing or matter settled by judgment, a thing adjudicated. Once a dispute or matter has been finally and judicially pronounced upon or determined by a court of competent jurisdiction, neither parties thereto nor their privies can subsequently be allowed to re-litigate such a matter in court.

This application was premised on assertions that Mr. Fred Bamwesigye's documents as submitted to the 2nd respondent, contained contradictions in regard to his age which according to the respondents were already determined in the case of *Magambo Mpumwire -v- Fred Kanyangoga Bamwesigye HCCS No. 110 of 2021*.

I have looked at the said judgment that was delivered on 9th April, 2021 by Justice Boniface Wamala. It indeed determined the issue of age of the Mr. Fred Bamwesigye and the same cannot be re-litigated under the circumstances. The court noted and held as follows;

“Whether the correction of the birth record by the defendant was a bonafide act.

The evidence by the defendant that he has always known the 27th November 1967 as his date of birth according to information given to him by his parents and as evidenced by his Baptism Card of 31st March 1972. The defendant stated that at the time during registration for examinations, he mistakenly stated his date of birth as 27th November 1963. For purpose of consistency, he maintained that date in all his academic and official documents before 2007. Around 12th September 2007, he deponed to a statutory declaration correcting the mistake and reverting to his real birth date of 27th November 1967. The statutory declaration, duly executed, was produced before the court and is not contested. It is also not contested that the said correction was done before the defendant joined the Uganda Civil Aviation Authority (UCAA), having joined the Authority in 2009. It is also not disputed that after 2007, all the defendant's official documents that have been produced before the court state the defendant's date of birth as 27th November 1967. These include his current passport and National Identity Card.

I find the above evidence inconsistent with the suggestion by the plaintiff that the alteration of the defendant's date of birth in September 2007 was done “with the sole aim of making himself eligible to continue serving UCCA either as Deputy Director General or Director General past retirement age”. I also find the evidence inconsistent with the plaintiff's assertion that the said alteration “was work of concoction of information and forgery of documents to aid a long calculated ploy to cling onto and continue in public office”. The assertions by the plaintiff cannot be

accurate for the simple reason that at the time the defendant made the alteration, he was neither an employee of UCAA or any public office that has been pointed out to the court: nor can it be reasonably concluded that he had anticipated that he would at one time need to “cling on” to an office in UCAA contrary to the provision on the retirement age of 60 years. There is nothing on record to prove such an intention as against the defendant when he effected the said alteration.

Consequently, I am persuaded to believe the defendant averment to the effect that the said correction in his registration records was a bonafide act free of illicit motive and was engendered to rectify a mistake that was born of academic examinations’ registration and, maintained for the sake of consistency of such records and the defendant has, and has, always known he was born on 27th November 1967. I find the evidence on record consistent with this averment.

*Under the law, deponing to a statutory declaration is an authorised and recognised way of putting across facts on oath that are not contentious or subject to any pending court proceedings. The provisions of the Statutory Declarations Act cap 22 Laws of Uganda and the decision in **Dr. Kizito Deo Lukyamuzi vs Kasumba Mathias & Another, HC Election Petition No. 003 of 2011 (Masaka HC)** are good guidance for this position.*

At the time the defendant made the statutory declaration, there was no contention regarding his date of birth and, certainly, there were no pending court proceedings regarding the same. The defendant therefore took lawful and legitimate steps to correct an anomaly the reason for whose occurrence he explained. In absence of any strict and specific evidence, bad faith cannot be imputed over such a legal step. It has therefore not been proved to the court that the correction of the birth record by the defendant was an act done in bad faith and/or with ulterior motive. On the contrary, available evidence supports a finding that the correction was an act done bonafide.

*The question that was stated as the first question was: **From the available documentation, what is the defendant’s correct date of birth?** In view of the foregoing evaluation of evidence and of the finding that the alteration of the date of*

birth was done lawfully and bonafide; and further in view of the documents that are on record that were executed after 2007, the logical conclusion is that the correct date of birth of the defendant is the 27th November 1967. This question is also decided in favour of the defendant."

Section 7 the Civil Procedure Act Cap 71 provides that: -

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that Court."

In the case of *Ganatra -v- Ganatra* [2007]1 EA at P.82 Justice Nyamu held that;

"... for res judicata to be established, three conditions have to be fulfilled. Firstly, that there was a former suit or proceedings in which the same parties as in the subsequent suit or proceedings was litigated. Secondly, that the matter in issue in the later suit must have been directly answered substantially in issue in the former suit. Thirdly, that a Court competent to try it had heard and finally decided the matters in controversy between the parties in the former suit..."

The rule of *res judicata* is based on considerations of public policy. The rule envisages that finality should attach to the binding decisions pronounced by courts of competent jurisdiction, and that it is in public interest that individuals should not be made to face the same litigation twice. In the absence of any such rule, there is every likelihood of multiplicity of litigation without any end thus involving the rights of a person in endless confusion which would cause great injustice to him under the cover of law.

The binding character of judgments or rulings pronounced by courts of competent jurisdiction is itself an essential part of the rule of law. It prevents the same case being twice litigated or re-agitated at subsequent

proceedings. See *Uganda Law Society & 2 Others v Hoima Sugar Limited & 3 Others HCMC No. 151 of 2021*

I concur that the discrepancies issue in Mr. Fred Kanyangoga Bamwesigye's age on his documents was satisfactorily determined by the case *Magambo Mpumwire -v- Fred Kanyangoga Bamwesigye* (supra) where the trial Judge found that his correct date of birth to be 27th November 1967. Therefore, the matter being raised in controversy has been decided fully and finally in the previous litigation. The finding of that court disposed of a matter of age and date of birth directly and substantially. Since there was never any appeal that order would attain finality and would operate as *res judicata*.

For completeness, relying on that decision, the 2nd respondent recommended him and two others for appointment. On 28th September 2021, he was appointed the Director General of the 2nd respondent about 5 months after the delivery of the said decision.

The respondents argued that they could not scrutinize Mr. Bamwesigye's age issue because the same had been handled by Court. The applicant was not a party in the above suit but it is clear, Mr. Fred Kanyangoga Bamwesigye was the subject matter and the facts herein were the same. I find that this issue was duly determined by a competent Court of law and cannot be heard again. See *Attorney General v Walugembe Daniel Court of Appeal Miscellaneous Application No. 390 of 2018*

The other contention by the applicant was that the 2nd respondent breached the provision of Section 14 (1) of the Civil Aviation Act by recommending 3 candidates instead of one.

The said section provides that;

"There shall be a managing director of the authority, who shall be, appointed by the Minister on the recommendation of the board on terms and conditions that may be specified in the instrument of appointment."

I agree with the respondents' submissions that the above provision does not stipulate that at the time of recommendation, the 2nd respondent's board is bound to forward a single name (sole candidate) for consideration by the Minister.

I therefore cannot fault the 2nd respondent board for forwarding the three names. The applicant's submission that only one person could be recommended by the board is totally flawed and erroneous. The board is at liberty to recommend several names and the Minister as the appointing authority is supposed to choose one of them irrespective of the scores attained at interviews. Otherwise, if the Board has forwarded only one name out of the many potential candidates? Then who has appointed, is it the Minister? or the Board?

Section 3 of the Interpretation Act provides:

"Words and expressions in the singular include the plural, and words and expressions in the plural include the singular."

The above provision clearly addresses the applicant's contention. The law allows the Board to make recommendation to the minister of more than one name and it is in their discretion to recommend any number in accordance with the law. The Minister, then in accordance Civil Aviation Act exercises discretion and chooses out of the several names forwarded. *See Prof Anthony Mugisha v Makerere University & Prof William Bazeyo HCMC No. 312 of 2018*

No administrative power is given without a reason or purpose, doing so would breach the principle of rationality which is a requirement for all public action including legislation. See *Pharmaceutical Manufacturers Association of South Africa & Another: In Re Ex Parte President of the Republic of South Africa & Others* 2000 (2) SA 674(CC)

Whatever the Board's choice may be in exercising their (wide) discretionary powers, the board's purpose in making that choice or their

reasons for doing so must be aligned to what is authorised in the empowering provision that is to make recommendations to the Minister of Transport and not to take the choice between the different candidates. Therefore, the process of appointment of the applicant was done in accordance with the law.

Mr Fred Bamwesigye equally met the criteria set by Uganda Civil Aviation Authority and was thus eligible and suitably qualified to be shortlisted and later appointed as Director General of the and respondent.

The appointment of Fred Bamwesigye to the post of Director General of Civil Aviation Authority was lawful and the process complied with law.

In the circumstances, I find no merit in this application. It is dismissed with costs to the respondents.

I so order.

SSEKAANA MUSA

JUDGE

8th August 2022