

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.392 of 2020

DR. EZRA FRANCIS MUNYAMBONERA=====APPLICANT

VERSUS

ATTORNEY GENERAL=====RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this suit under section 36 and 38 of the Judicature Act Cap 13, Rule 3 of the Judicature (Judicial Review) Rules.2009,section 98 of the CPA, order 52 r 1 and 3 of the Civil Procedure Rules SI 71-1 seeking for orders that;

- a) Orders of certiorari quashing the purported decision of Economic Policy Research Centre (EPRC) represented by the respondent dated 24th July 2020 and 4th November 2020 purporting to accept the resignation of the applicant from Economic Policy Research Centre.
- b) An order of prohibition doth issue to prohibit the respondent from any further unjustified eviction from office without the due process of the law.

- c) An order of mandamus be issue compelling the respondent to allow the applicant back to office and continue attending to his official work with immediate effect.
- d) An order of mandamus compelling the respondent to pay the applicant his salary plus allowance due to him.
- e) An order for general damages.
- f) Costs of the application be provided for

The grounds of this application were stated briefly in the notice of motion and supported by Dr. Ezra Francis Munyambonera's affidavit who stated that;

1. That the applicant was on the 11th March 2019 appointed on a three(3) year contract as a senior research fellow by Economic policy Research Centre, a government body that draws funds from the consolidated fund.
2. That the applicant on the 19th of March 2020 wrote to the Executive Director of Economic Policy Research Centre of his intention to make an early retirement which was expected to take effect from the 1st of October 2020.
3. That the management of the Economic Policy Centre did not respond to the applicants intended retirement after four months of the same.
4. That the applicant after realizing the silence of his employers about his intended retirement which amounted to constructive denial of the

request to retire dated on the 24th of July 2020 to rescind his decision to retire.

5. That on realizing that the applicant had written rescinding his decision, the executive Director of Economic Policy Research Centre hurriedly wrote to the applicant accepting his intention to retire and dated it 24th July 2020, the day the applicant wrote his letter rescinding the decision however the same reached the applicant only on 27th July 2020, the applicant had written withdrawing his intention to retire.
6. That on the 27th of July 2020, the applicant again wrote to the chairperson committee of finance and Administration of Economic Policy Research Centre reaffirming his decision to rescind his decision to retirement.
7. That on the 25th of August 2020, the applicant wrote an appeal against the decision allegedly accepting his letter resigning from the position.
8. That on the 27th of August 2020, the Executive Director of Policy Research Centre wrote back to the applicant in response to his appeal and advising him to wait for the board decision.
9. That following the letter to the application on the 27th of August 2020 in respect of waiting for the decision of the board on appeal, the applicant on the 14th of September wrote to the chairperson of Economic Policy Research Centre to preserve the status quo but same was ignored.

10. That on the 1st of October 2020, the applicant again wrote a reminder about preserving the status quo pending the decision of the board but the same was again ignored.
11. That on the 13th of October, having not received any communication from the board as claimed earlier by the Executive Director, the applicant wrote to the executive Director requesting the Board minutes and resolution in respect of his matter but nothing was availed.
12. That on the 4th of November, 2020, the board finally wrote to the applicant confirming the earlier decision to let the applicant leave his job.
13. That all this time, the applicant was never given any opportunity to appear before any of these bodies to make his case and the decision was made without giving him any opportunity to be heard and therefore the applicant was not given any fair hearing.
14. That the applicant only wrote an intention to retire which intention to retire is not resignation as claimed by Economic Policy Research Centre and that the same was withdrawn before the alleged acceptance and therefore cannot be a basis to withdraw him from his employment.
15. That immediately the applicant received the decision of the board Economic Policy Research Centre immediately and on the same day deposition his account his gratuity even before he requested for it contrary to the known procedure of issuing even before he requested

for it contrary to the known procedure of issuing gratuity and this only confirms that this was a witch hunt intended to just do away with the appeal.

16. That on the 9th of November, 2020, the applicant again wrote a letter to the board chairman, requesting for the minutes of the board meeting that withdrew him from office but the same was again denied.

17. That some of the people that sat in the committee that decided the fate of the applicant in the first instance are the same with those that in the appeal committee in total violation of the rule of fair hearing.

18. That the application was immediately deleted from the payroll during Covid period contrary to the government policy that no public servant should be removed from the payroll during the lockdown.

19. That the applicant had tried all efforts to have this matter resolved including formally within a notice of intention to sue but the same has been ignored.

20. That the action of the respondent is high handed illegal and a deliberate abuse of the right to the right to be heard and if not quashed the applicant and many others may continue to be victims of this handedness.

The respondent opposed this application and filed an affidavit in reply sworn by Sarah N Ssewanyana the Executive Director Economic Policy Research Centre contending that;

1. That I have been informed by my lawyer at the Attorney Generals chambers, that the application is frivolous, vexatious, a waste of courts time and it ought to be dismissed with costs.
2. That The Economic Policy Research Centre is a company limited by guarantee and can sue and be sued in its own capacity and has been informed by my lawyer at the Attorney General Chambers that they have raised a preliminary objection about the party sued.
3. That the applicant's complaint falls within the ambit of an employment dispute and should be before a labor court and not a civil court as a judicial Review Application.
4. That I know the Application has been working with EPRC SINCE 1st August 2011 and his contract was renewed on 11th March 2019 for a period of 3 years till 11th March 2022.
5. That on 19th March 2020, the applicant sent a letter to The Human Resource of EPRC notifying him of his intention to resign effect 30th September 2020.
6. That on 24th July 2020 after the Covid -19 Lockdown had been eased down, the Finance and Administration committee sat, considered and accepted the applicant's resignation after which this decision was communicated to him.
7. That that when the applicant submitted his intention to resign in clear and unequivocal terms on 19th March 2020, he effectively terminated his employment contract with EPRC.

8. That the applicant's resignation was accepted by a competent body of the EPRC as created under clause 2.16.1 of the Board Governance Manual.
9. That on 24th July 2020, on which date the committee accepted the Applicant's resignation, he wrote a letter to me revoking his resignation.
10. That I saw the applicant's letter revoking his resignation on 27th on July 2020 since I had been out of office for a meeting prior to this.
11. That on 25th August 2020, the applicant wrote another letter to me asking that the decision of the Finance and Administration committee of EPRC be reviewed.
12. That on 27th August 2020, I advised the applicant to wait for the decision of the Board as regards his decision to revoke his resignation.
13. That on 14th September 2020, the applicant wrote to the board chairman and made a request to continue work pending final disposal of his petition and appeal with the Board chair requesting for administrative review of his appeal.
14. That the applicant met with the vice chair of the EPRC Board management MR. William Bazeyo and put his case to him and Mr. Bazeyo took the case to the full Board which after sitting on 29th October 2020 confirmed the applicant's resignation.

15. That I know that the applicant complained to the Inspector General of Government (IGG) on 27th October 2020 who then wrote to me asking for details of his matter and I wrote back on 6th November 2020 stating the facts of the case and what had transpired.
16. That on 11th November 2020 stating the facts of the case at hand, the IGG wrote back to the applicant stating that it had found no fault in the way EPRC conducted itself or in the Board's decision to uphold the applicant's resignation.
17. That I know that there is no obligation on my employer to accept to revocation of the employee's resignation. EPRC has paid the applicant's end of service benefit and there is no outstanding due to him.
18. That I know that the orders of injunctive relief, certiorari, and mandamus being sought against the respondent are academic and or moot and the application ought to be dismissed with costs of the respondent.

Four issues were proposed by the applicant for courts resolution;

1. *Whether the decision of the Economic Policy Research Center purporting to accept the decision of the board was lawful?*
2. *Whether this application is competent before court?*
3. *Whether the applicant was granted a fair hearing by the Economic Policy Research Centre before accepting his resignation?*
4. *What remedies are available to the parties?*

The applicant was represented by Counsel Ochieng Yafesi and the respondent was represented by Kokunda Claire (State Attorney).

The parties were directed to file submissions which I have considered in this ruling.

DETERMINATION

Whether this application is competently before the court?

Counsel for the applicant submitted that, the respondent in their affidavit in reply among other claim that The Economic Policy Research Centre is a company limited by guarantee and can sue or be sued in its name and as such they claim even without putting any proof of being a body limited by guarantee that the applicant sued a wrong party to which they strongly object. More so that this court doesn't have jurisdiction on this matter as in their view belongs to the labour officer which the applicant disputed.

The applicant stated in his affidavit that Economic Policy Research Centre is Government body under the Ministry of Finance without a corporate status conferred to it by parliament and as such can only be sued through the Attorney General which is not disputed by the respondent and as everybody under the Government cannot just wake up and claim legal specifically states that for a public body to have legal capacity must be through the Act of parliament.

Counsel for the applicant also submitted that for a public officer to be vested with capacity to sue or be sued, Parliament must expressly state so. He contends that EPRC is under the government and can only be represented by the Attorney General, the fact that it's a body limited by guarantee does not give it corporate status to represent itself.

Counsel contended that the AG is the right person to be sued in this case because it is the only legal representative of government in absence of a specific act of parliament conferring such powers on a public body. That Economic Policy Research Centre derives its finances from the consolidated

funds and their employees are paid by the government they don't have any other legislation giving them powers to prosecute their matters by parliament, and there is no evidence to prove that it's a company limited by guarantee as the respondents purports. Counsel further argued that with authority that EPRC is a semi- Autonomous body under the Ministry of Finance and it's one of those bodies aligned for merger with the National Planning Authority this information is on the Public service Website.

Counsel also cited Article 42 of the Constitution of the Republic of Uganda which gives this court power to handle every administrative decision of public body and it's true as alleged by the respondent that its matter falls under labour court. The respondent contends in their affidavit that this is an employment matter which should go to the labour officer since they claim to be a company. Public bodies have specific procedure of challenging their decision which is by filing for judicial review not a complaint before the labour officer. Prays that the respondent's objection be overruled for it is baseless and has no legal basis.

The Respondent on this issue submitted that Judicial Review was brought under section 36,38 of the Judicature Act and Rule,3 of the Judicature (Judicial Review)Rules,2009.

Under Rule 7A of the Judicature (Judicial Review) (Amendments) Rules,2019, it is incumbent upon the court seized with the matter to first ascertain whether the application is amenable for Judicial Review)

The respondent submitted that, it's trite law that Judicial Review, courts do not interrogate the merit of the impugned acts and / or the decisions of the public body or official. Courts concern is restricted to procedural propriety, legality and or rationality of the impugned decision or acts.

The respondent contended that the applicant failed to prove to court that the decision made by the respondent was tainted with illegality, irrationality and procedural impropriety. That he was more concerned with the final decision of the Board accepting his resignation rather than the decision making process.

That the aggrieved person has exhausted the existing remedies available within a public body or under the law

Counsel for the respondent submitted that the applicant had not exhausted all the existing remedies available under the law that since the matter is one that falls under employment law, that he had an option to refer the matter to the labour officer for settlement but he did not do so. Referred to section 3(1) of the Labour Dispute (Arbitration and Settlement) Act 2006. By this submission contends that the application is not competent before this court and prayed for dismissal of the application with costs.

Analysis

According to the *Black's Law Dictionary at page 852*, judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

Under rule 7A of the Judicature (Judicial Review) (Amendment) Rules 2019, it is the primary duty of the court to establish firstly, whether the application is amenable for judicial review.

Rule 7A provides for the factors to consider in handling application for judicial review.

(1) The court shall, in considering an application for judicial review, satisfy itself of the following-

a) That the application is amenable for judicial review;

- b) *That the aggrieved person has exhausted the existing remedies available within a public body or under the law; and*
- c) *The matter involves an administrative public official.*

The matter before court concerns private rights and respondent counsel cited the case of *Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)* Court noted that;

“Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.”

Section 93 (1) of the Employment Act provides that the only remedy available to a person who claims an infringement of any of the rights granted under this Act is by way of complaint to a Labour Officer.

It appears that this application, being a disguised labour complaint, ought to have been filed before the Labour Office and not before this Honorable Court by Judicial Review. This Court has rejected such Applications for being an abuse of Court process. In *Catherine Amal v Equal Opportunities Commission, HCMA No. 233 of 2016*; Hon. Lady Justice H. Wolayo held that;

“In effect, the applicant wants this court to believe that her failure to attend the disciplinary proceedings and the decision to terminate her employment contract give rise to two distinct causes of action. I am of a contrary view because her dismissal from employment is what gives her a cause of action is remedied by ordinary suit and not by judicial review. Her failure to attend the proceedings forms part of the evidence in a suit for wrongful dismissal but does not give rise to a possible remedy in judicial review. The non-attendance of disciplinary proceedings and the final decision are closely interlinked.

It is true that the applicant was employed by a public body EPRC which in the courts view is a public body. The respondent has not proved the

allegation of it being a private entity by way of any evidence of registration as a company limited by guarantee. However, even if the Respondent is a public body the employment relationship with the applicant would not imply any public law issues in their employment relationship. In the case of *R vs East Berkshire Health Authority Ex P Walsh [1985] QB 152* per Sir **John Donaldson MR** noted that employment by a public body does not, *per se*, inject any element of public law in employment matters.

Further, with regard to employment and judicial review, the Court must consider the process of appointment and revocation of the appointment and whether the aforesaid are governed by a Statute or the Constitution. Where the appointment or revocation is not governed by Statute or the Constitution it is a matter of private law. The Applicant is erroneously using this application under judicial review to enforce a private law benefit. This court relies on the decision in *R vs British Broadcasting Corporation Ex P Lavelle [1983] 1 ALL ER 241* which provides that private employment is clearly outside the realms of judicial review.

It is settled law in Uganda, as was held in *High Court Misc. Cause No. 0003/2016: Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council*, which quoted with approval *R v East Berkshire Health Authority Ex Parte Walsh [1984] 3 WLR 818*, that the remedy of judicial review is only available where the issue is of breach of "public law", and not of breach of a "private law" obligation. To bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large.

According to of the text **Public Law In East Africa, Ssekaana Musa, 2009, LawAfrica Publishing**, the learned author states, at page 36, that 2 (two) things must be established for judicial review to be available, 1) the body under challenge must be a public body whose activities can be controlled by judicial review, 2) *the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private law rights.*

Public law is the system which enforces the proper performance by public bodies of the duties which they owe the public. On the other hand, private law is concerned with enforcement of personal rights of persons, human or juridical, such as those emanating under property, contract, duty of care under tort and mainly regulates relations between private persons: *Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council. (supra)*

The learned author of **Public Law in East Africa (supra)** at page 45, states that disputes arising out of the employment relationship will be private law disputes, and thus claims to enforce a right derived from contract or from statutory requirements, which have been incorporated into a contract, are private law claims enforceable by ordinary action for damages or a declaration or injunction.

The subject matter under challenge involves enforcement of private law rights. The real matter in issue between the Applicant and Respondent arises out of an employment contract/relationship, the applicant resigned from his employment and the respondent allegedly delayed to accept the resignation and the applicant rescinded his earlier resignation. The Applicant is therefore seeking to enforce personal and individual rights derived from the contract of employment. The remedy of judicial review is thus not available to the Applicant.

In *Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council (Supra)*, the Honourable Mr. Justice **Stephen Mubiru** held that where a relationship is regulated by the law of contract, like in the instant Application, administrative law remedies should generally not be available. The Learned Judge further held that it is important that parties are held to their contractual obligations through ordinary suits and not by invoking public law remedies. A party should not take advantage of public law simply because it contracted with a public body, and thereby obtain an advantage in the enforcement of that contract,

that would otherwise not be available against a non-public body or private person.

This application is clearly a labour dispute arising out of resignation and rescinding resignation or a dismissal from office of the applicant and there are no issues of public law that would arise in respect of refusal to accept resignation or failure to consider revocation of resignation. The principles of judicial review should not be transplanted in the realm of private law rights enforcement.

The subject matter of the claim being pursued in the judicial review application must involve strictly matters of public law not private law. Public bodies (like private bodies) may enter into contracts or commit torts. Individuals may only be seeking to enforce essentially private law rights. Judicial review is not available to enforce purely private law rights. Contractual and commercial obligations are enforceable by ordinary action and not by judicial review. *See R v Lord Chancellor ex p. Hubbit and Saunders [1993]COD 326.*

Employment by a public authority does not per se inject any element of public law. It could be different if there were statutory 'underpinning' of employment such as statutory restrictions on dismissal, which would support a claim for ultra vires, or a statutory duty to incorporate certain conditions in the terms of employment, which could be enforced by a mandatory order. Where a public authority takes action in relation to an employee, such as disciplinary action or termination of an employment relationship, this will normally be a matter of contract or employment law rather than judicial review. *See Mrs Anny Katabazi-Bwesigye v Uganda Christian University HCMC No. 268 of 2017; R v Derbyshire CC Ex p Noble [1990] I.C.R 808; Evans v University of Cambridge [2002] EWHC 1382; R (Tucker) v Director General of the Crime Squad [2003] EWCA Civ 57*

In light of the above authorities, the Applicant's issues of resignation and rescinding his resignation or eviction from office or orders of payment of salary arrears and allowances could have been a basis for a labour complaint before a Labour Officer/Industrial Court and not an action for judicial review.

For the reasons herein above stated this application fails and there is no need to delve into the rest of the issues raised for trial.

The application is dismissed with costs.

I so Order.

SSEKAANA MUSA

JUDGE

22nd August 2022