

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MASINDI**

**MISCELLANEOUS CAUSE NO. 007 OF 2022**

**Baguma Patrick :: Applicant**

*Versus*

**Sanyu Phionah :: Respondent**

**Ruling**

*Before: Hon. Justice Byaruhanga Jesse Ruyema*

[1] This is an Application by way of Notice of Motion under **Articles 28 and 29 of the Constitution of the Republic of Uganda, S.38 of the Judicature (Amended) Act of 2002 and Rules 3,4,5,6 and 7 of the Judicature (Judicial Review Rules S.I No. 11 of 2009 and O.52 rr 1 and 2 of the CPR.**

[2] This Application is seeking the following Orders:

- (a) Quashing by way of Certiorari the decision of the Respondent interdicting the Applicant and making him handover his office as communicated to the Applicant in the letter dated 4<sup>th</sup> February, 2022.
- (b) A declaration that the interdiction of the Applicant is null, void and unlawful.

- (c) An Order of Prohibition restraining the Respondent from flouting Public Service Disciplinary Procedures.
- (d) An injunction restraining and stopping the District Service Commission of the Respondent or any other organ of the Government from carrying out any disciplinary measures against the Applicant basing on the interdiction.
- (e) Judicial review award of damages caused to the Applicant as a result of the inconvenience, mental torture, trauma and shock as a result of the actions of the Respondent.
- (f) Costs be provided for.

**The Applicant's Case:**

[3] The Application is supported by the Affidavit deponed by **Baguma Patrick**, the Applicant, where in the Applicant's case is that he was appointed on probation as a **Health Inspector, Masindi Local Government** in 1998 and on 10<sup>th</sup> February, 2017, he was appointed on promotion as an **Assistant District Health Officer-Environment** by Masindi District Service Commission. On 11<sup>th</sup> October, 2001, he was confirmed as a **Health Inspector, Masindi District Local Government**. The Applicant was subsequently assigned duties of **District Health Officer** by the Chief Administrative Officer, Masindi in 2018 and again in 2019. On 4<sup>th</sup> February, 2022, the Applicant was interdicted from duty by the Respondent.

[4] The Applicant contends that the decision of the Respondent interdicting him is illegal and irregular for flaunting the principles of natural justice. That the decision was tainted with illegality, biased and was made in bad faith. He further contends that he has been humiliated, has lost self-esteem, was psychologically tortured and has suffered damage for the acts of the Respondent which calls for the review of the Respondent's decision by way of certiorari, prohibition, declaration and injunction. That it is fair, equitable and in the interest of justice that this Application be granted.

**The Respondent's Case:**

[5] This Application is opposed by the Affidavit of the Respondent and the gist of the Respondent's case is that she interdicted the Applicant on account of gross misconduct with immediate effect to pave way for investigations. That the matters relating to the gross misconduct are now subject of police investigations where the Applicant is charged with **Embezzlement vide Masindi Police GEF 001 of 2021**.

[6] Further, that the interdiction of the Applicant was done in the exercise of her authority as the Chief Administrative Officer, Masindi District and supervisor of the Applicant and that her actions were therefore lawful and in keeping with the Provisions of the Public Service Standing Orders 2021.

**Party Legal Representation:**

[7] The Applicant is represented by Counsel **Zemei Susan of Zemei Aber Law Chambers, Masindi** while the Respondent is

represented by Counsel **Simon Kasangaki of M/s Kasangaki & Co. Advocates, Masindi**. Both Counsel filed their written submissions as permitted by Court for consideration in the determination of the Application.

**Burden and Standard of Proof:**

- [8] It is trite law that for the Applicant to succeed in an Application for Judicial Review, he has to satisfy Court that the matter complained of is tainted with any or a combination; of illegality, irrationality and or procedural impropriety; **Twinomuhangi Pastoli v Kabale District Local Government Council and 2 Others, H.C.M.C. No. 152 of 2006 reported in [2006] HCB Vol. 1 at page 131 and Council of Civil Service Union v Minister for the Civil Service (1985) AC 2 at page 410**. As in all Civil cases the burden of proof is on the Applicant to prove his/her allegations on the balance of probabilities that the action or decision complained of is tainted with illegality, irrationality and procedural impropriety.

**Preliminary Objection:**

- [9] Counsel for the Respondent raised a preliminary point of law to the effect that the Respondent as the head of public service in Masindi District took a decision to interdict the Applicant **under S.64(1) of the Local Government Act Cap. 243** and therefore, this action, if it had merit ought to have been brought against Masindi District Local Government as the Respondent and not the Respondent in her personal capacity. He prayed that this Application should be dismissed with costs.

- [10] Counsel for the Applicant responded that the preliminary point of law raised is misconceived and devoid of merit. That the Respondent acted personally in interdicting the Applicant without any minute from Masindi District Local Government Commission. She cited and relied on the case of **Nalubega Ssansa Mwajuma v Ogwang Okello H.C.M.A. No. 005 of 2012** where Court held the Respondent personally liable for his irregular and uncouth conduct against the Applicant when he wrote a letter of transfer of her services without involving the Appointing Authority.
- [11] I have had the opportunity to peruse the authority of **Nalubega Sasa Mwajuma**, the pronouncement by Court that the Respondent be personally liable for his irregular and uncouth conduct against the Applicant was in the face of the Respondent's actions in defiance of Court directives thus the Judge found the respondent's conduct irregular and uncouth for he transferred the Applicant in a vengeful manner. The authority is therefore in the circumstances distinguishable from the instant case for Court has not made any order or directives that have been flouted.
- [12] Secondary, Judicial Review is concerned not with the decision in issue *per se* but with the decision making process. The High Court cannot thus determine whether the decision is right or wrong on its merits; **UTODA V KCCA and Another: H.C.M.A. No. 137 of 2011**. Judicial Review cannot thus be used as an avenue for appeal against decisions.
- [13] The law places the discretion to interdict Public Servants on the responsible office and it may be invoked under circumstances

enacted in **Reg.38 of the Public Service Commission Regulations 2009** which provides that:

*“(1) Where-*

*(a) A responsible officer considers that public interest requires that a Public Officer ceases to exercise the powers and perform the functional of his or her office; or*

*(b) Disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her, he or she shall interdict the officer from exercising those powers and performing those functions”.*

**S.64 of the Local Government Act Cap. 243** provides for the functions of the Chief Administrative Officer and Subsection 3 thereof reads thus:

*“In addition to the duties under Subsection (2), the Chief Administrative Officer shall perform all Statutory duties and functions which he or she is required to do under any other law”.*

**“Any Other Law”** include the **Uganda Public Service Commission Regulations, 2009** and the **Uganda Public Service Standing Orders (2021 edition)** which empowers a responsible officer to interdict a public officer from exercising his powers and performing the functions of his or her office when disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her.

[14] In the instant case, it is the Respondent's case that on 4<sup>th</sup> February, 2022, the Respondent in exercise of her authority as the Chief Administrative Officer and Supervisor of the Applicant interdicted the Applicant from duty on account of gross misconduct to pave way for investigations since the Applicant had been charged with **embezzlement** vide **Masindi Police GEF 001 of 2021** and was therefore, under Police investigations. The Applicant did not in any way deny these claims by the Respondent save his complaints about the manner in which he was arrested.

[15] In the circumstances of this case, in her capacity as the Chief Administrative Officer, Masindi District and the supervisor of the Applicant while exercising her powers as a "Responsible Officer", interdicted the Applicant on account of allegations of gross misconduct. **The Uganda Public Service Standing Orders (2021 edition)** did not in any way require her to obtain any minute from the District Local Government Commission directing her to interdict the Applicant, as Counsel for the Applicant argued. It follows therefore that the Respondent in interdicting the Applicant acted in her capacity as Chief Administrative Officer and not in her personal capacity as Respondent and this action ought to have been brought against the Masindi District Local Government under the doctrine of vicarious liability since the Respondent was acting in public interest and within the scope of her duties as its officer. In any case under **Section 173 of the Local Government Act** the Chief Administrative Officer as the head of the Public Service in the District and the head of the administration of the District Council (Under S. 64 LGA) is protected or immune from personal liability of any civil action,

claim or demand arising out of matter or thing that was done or omitted in good faith in the execution of his/her lawful duties.

[16] I would in the premises dismiss this Application with costs. However, for the purposes of having this case brought to its logical conclusion, I now proceed to the merits of the Application.

### **Merits of the Application**

[17] As Counsel for the Respondent submitted, substantially what is being challenged in this Application is the decision by the Respondent to interdict the Applicant.

[18] **Judicial Review** is the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior Courts, tribunals, and other bodies or persons who carryout quasi-judicial functions or who are engaged in the performance of public acts and duties. Those duties may affect the rights or liberties of the citizens. **Lukwago v A.G, H.C.M.C. No. 18 of 2013**. The purpose of Judicial Review is to ensure that the individuals are given fair treatment by the authority to which he or she has been subjected to; **Chief Constable of North Wales v Evans (1982) 3 ALLER 141**.

[19] The Applicant pleaded in this Application that the decision to interdict him by the Respondent is tainted with illegality, irrationality and procedural impropriety.

### **Interdiction:**

[20] **The Uganda Public Service Standing Orders (2021 Edition)** provides that all public officers are bound by these Standing



Orders. These orders therefore apply to all public officers serving in Ministries, Departments and Local Government Units. The orders define ***“interdiction”*** as

*“the temporary service of a public officer from exercising the duty of his or her office while investigations over a particular misconduct are being carried out”*

Accordingly interdiction involves a temporary service of an officer pursuing his or her normal duties and he or she receives not less than half (½) of his or her salary as the responsible officer shall think fit, with effect from the date of interdiction until the matter is finalized, **Reg. 38 (2) of the Uganda Public Service Regulations, 2009**. If the officer is cleared or acquitted at the conclusion of the disciplinary proceedings or trial that triggered the interdiction, he or she is granted all emoluments withheld during the period of interdiction in the event that he or she is allowed to return to duty. Thus, interdiction is not a form of a disciplinary sanction but rather it is the first step taken towards disciplinary trials; **Sebutosi Joseph v Lilian Nakamate and Another: H.C.M.C. No. 001 of 2019**. At that stage the Applicant shall have an opportunity to be given a fair hearing by the relevant Service Commission if the inquiry report establishes a prima face case against the Applicant, See **Reg. 8(c) part (F-s) Uganda Public Service Standing Orders (2021 Edition)**.

[21] In this case, the relevant Service Commission is the Masindi District Service Commission. Where a Public Officer is interdicted, he or she remains only to be informed of the reason for such interdiction and the public officer is given an

opportunity to respond to the allegation of misconduct: **Reg. 6 part (F-s) of the Standing Orders at page 131.**

[22] In the instant case, it is not disputed that the Applicant was informed of the reason upon which the Respondent based herself to take such decision of interdicting the Applicant. The Applicant however insists that the Respondent acted emotionally, illegally, in bad faith, in breach of the law, ultra vires her mandate when she interdicted the Applicant **without any recommendations from the Rewards and Sanctions Committee.**

[23] However, **Reg. 7 Part (F-s) of the Standing Orders** clearly provides for the disciplinary proceedings as follows; Where a public officer is alleged to have been involved in gross misconduct and the Responsible Officer has reason to believe that gross misconduct has been committed, he or she shall interdict the public officer in question. The **“Responsible officer shall then, within 10 working days refer the matter to the Rewards and Sanctions Committee or other government investigating agencies as deemed appropriate”.**

[24] It is therefore clear from the regulations, that where there are allegation of gross misconduct, the responsible officer and in this case the Respondent Masindi District Chief Administrative Officer had powers to first interdict the Applicant and then refer him to the **Rewards and Sanctions Committee as any other government investigating agencies** as deemed appropriate. It is apparent that in this case, the Applicant was referred to Police.

[25] As already observed, the Applicant does not in any way deny he has criminal charges against him being investigated by Police vide **Masindi Police GEF 001 of 2021**. He only complains about the manner he was arrested as being very inhuman and degrading but this cannot be attributed to the Respondent in her personal capacity.

[26] **In Joel Cox Ojiko v A.G.: H.C.M.C. No. 107 of 2004**, Remmy Kasule, J. (as he then was) rejected the Application for judicial review for reason that:

*“It was in public interest that the Applicant be interdicted while criminal investigations against him continue and/or the Director, Public Prosecutions decides upon the matter... It is also good sense and promotes a perception of justice that if a public officer makes him/herself to be subjected of criminal investigations... in connection with his duties of his/her public office...that such officer keeps away from his or her office until investigations are completed one way or the other”.*

[27] As shown by the Respondent in this case, the investigation process is ongoing. As per **Oyaro John Owiny v Kitgum Municipal Council H.C.M.C. No. 07 of 2018 at page 25**.

*“The Court will not intervene in any employer’s internal disciplinary proceedings until it has run its course... Court should be cautious in exercising its jurisdiction so as not to appear to take over and exercise managerial prerogative at work places”.*

**Conclusion:**

[28] In the premises, I find that the Applicant has not on a balance of probabilities proved by any evidence that the action by the Chief Administrative Officer to interdict the Applicant were in bad faith or was motivated by bias, unfairness and/or in disregard of the principles of natural justice. The Applicant has not shown to the satisfaction of Court that the action of the Respondent to interdict the Applicant was illegal for she acted within the law as mandated by the relevant provisions of the Public Service Standing Orders, Public Service Act and the Local Government Act. The Applicant has not been able to show that the Respondent faulted any procedure when she interdicted the Applicant thus she acted rationally with no doubt cast upon the propriety of the procedure adopted by the Respondent.

[29] The Applicant has therefore in the circumstances failed to prove the reliefs being brought in this Application. The Application is found to have lacked merit. The Applicant is not entitled to the reliefs sought. The Application is therefore accordingly dismissed with costs to the Respondent.

Dated at Masindi this 26<sup>th</sup> day of May, 2022.

**Byaruhanga Jesse Rugyema**  
**JUDGE**