

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS APPLICATION NO. 008 OF 2022

(APPLICATION FOR JUDICIAL REVIEW)

5 **KIIZA JOSEPH ::: APPLICANT**

VERSUS

1. KASESE DISTRICT LOCAL GOVERNMENT

2. KASESE DISTRICT SERVICE COMMISSION

10 **3. AHEEBWA SETH**

4. KASESE MUNICIPAL COUNCIL ::::::::::::::::::::::::::::::: RESPONDENTS

RULING

BEFORE HIS LORDSHIP VICENT WAGONA

Introduction:

15 This Application was brought under Rules 3 and 6 of the Judicature (Judicial Review) Rules 2019, Objective XXVI of the National Objectives and Direct Principles of State policy under the 1995 Constitution seeking:

(a) An order of certiorari to quash the decision of the 1st and 2nd
20 Respondents to offer appointment on transfer of services to the 3rd
Respondent under Min. 12/2022 doth issue.

(b) An order that costs of taking out the application be granted to the applicant.

Grounds and Evidence of the Applicant:

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The grounds of the Application are detailed in the affidavits of the Applicant and a one Ukasha Saibu Musenene and are:

- 5 (a) That the applicant is a concerned citizen of Kasese Municipality and in the exercise of his constitutional duty as a citizen sought to challenge the decision to offer appointment on transfer of service on promotion as Principal Education Officer for Kasese Municipal Council to Mr. Aheebwa Seth the 3rd Respondent due to the illegalities and unreasonableness that marred the process leading to that decision.
- 10 (b) That on the 15th August 2022, the 2nd Respondent made a decision under Minute No. 12/22 at its 458th meeting that was communicated on the headed paper of the 1st Respondent on 16th August 2022 appointing the 3rd Respondent as Principal Education Officer of the 4th Respondent on transfer and promotion.
- 15 (c) That the said appointment was marred with unreasonableness and illegalities to wit:
- (i) That on 2nd December 2021, the 2nd Respondent had directed that the post of Principal Education Officer for Kasese Municipality be re-advertised.
- 20 (ii) That on 15th August 2022 when the 2nd Respondent purported to appoint the 3rd Respondent, the post of the Principal Education Officer had never been re-advertised
- (iii) That on the 13/12/21, the Town Clerk of the 4th Respondent had written to the Permanent Secretary of Ministry of Public Service requesting for a waiver in favour of Mr. Mwesigye Emmy Kairi who had shown interest in the said position. That on 16th May 2022, the
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Ministry wrote back granting the waiver and the Secretary of the 2nd Respondent was copied in.

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- (iv) That on 15/8/22, the 4th Respondent had never submitted a one Aheebwa Seth to the 2nd Respondent for appointment on promotion and the Town Clerk of 4th Respondent deliberately refused to submit to the 2nd Respondent, Mr. Mwesigye Emmy Kairi, in whose favour a waiver had been made by the Ministry of Public Service.
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- (v) That the process leading to the appointment of the 3rd Respondent on transfer of service on promotion as Principal Education Officer is highly suspect of illegality and unreasonableness. The applicant thus prayed that the same should be quashed.

Evidence of the Respondents:

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The Application was opposed by the Respondents supported by the affidavits of Kabiira Everlyne (Secretary of the 2nd respondent), the 3rd and Mr. Tibihika Theophilus (Town Clerk of the 4th Respondent).

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It was averred for the 2nd Respondent that on the 18th/2/21, the Town Clerk of the 4th Respondent declared the vacancy for the post of Principal Education Officer and requested the 2nd Respondent to recruit a suitably qualified person to fill the said vacancy. That on 4/3/2021, the 2nd Respondent advertised the vacancy and a copy of the advert was published in New Vision News Paper. That on 2/12/21, the 2nd Respondent informed the office of the Town Clerk that they had not found any suitably qualified person among the applicants and directed that the post be re-advertised. That

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on 11/2/22, the 2nd Respondent received a complaint from the 3rd



Respondent one of the applicants for the said position, through his lawyers. That the Service Commission found that the complaint had merit and called for a review of its earlier position. That the Commission reviewed its earlier decision and went ahead to short list, conduct interviews and informed the
5 Town Clerk to that effect. That the successful candidate was identified by the commission and the decision was communicated to the Town Clerk of the 4th Respondent for appropriate action. That the Application at hand has no merit and that it is fair and just that the same is dismissed with costs to
10 the Respondents for being premature, misconceived and intended to flout the established administrative processes.

The 3rd Respondent on the other hand averred that the 2nd Respondent run an advert in March 2021 inviting suitably qualified Ugandans to fill the
15 vacancy of Principal Education Officer at Kasese Municipal Council. That he applied since he had the required qualifications to wit, a bachelors of Arts Degree with Education obtained from Makerere University in 2005 and Post Graduate Diploma in Public Administration and Management obtained from
20 Uganda Management Institute on 30th March 2012. That he also had the required work experience having been appointed on 27th June 2012 by the Ministry of Education and Sports and posited to St. Kizito Secondary School, Kibedi Kibaale District and was later confirmed in service; that on
25 the 16/5/2017, he was issued with an appointment letter on transfer from the Central Government to Kibaale District Local Government as a Senior Education Officer which appointment cancelled the first one. That on 22nd May 2017, the Permanent Secretary Ministry of Education forwarded his appointment as a way of releasing him from the Ministry of Education and Sports. That with the above academic qualifications and work experience, he



5 applied for the position as advertised by the 2nd Respondent. That he was not shortlisted and thus lodged an appeal on 25th January 2022 with the Chief Administrative Officer for failure to produce a short list for the post of Principal Education Officer. That when he did not receive a response, he later issued a notice of intention to sue through his lawyers seeking an administrative review of the decision of the Commission since he was told that all those who had expressed interests did not meet the required qualifications yet for him he had the same. That later the 2nd Respondent reviewed its decision and he was shortlisted to appear for interviews on the 10 4th April 2022. That the interviews were later postponed on the 1st of April 2022 to a date to be communicated by the 2nd Respondent. That the interviews were later rescheduled to the 28th day of July 2022 and further to 15th August 2022. That he was interviewed and he was successfully appointed on the 16th day of August 2022 for the post of Principal Education Officer U2. That he has since assumed duty and is carrying out the demands 15 of his appointment. It was averred hat there was no illegality, irrationality and impropriety in his appointment to warrant the grant of the application. That it was in the interests of justice that the application is denied and dismissed with costs since it is premature, misconceived and intended to flout the administrative processes. 20

It was averred for the 4th Respondent who partly re-stated the averments by 2nd Respondent and added that on the 2nd December 2021, the 2nd Respondent informed the office of the Town Clerk that they had not found a 25 suitably qualified person among the applicants and directed that the post be re-advertised. That on the 13th day of December 2021, the Town Clerk of the 4th Respondent wrote to the Permanent Secretary, Ministry of Public Service



and requested for a waiver on the job specifications of the three years' experience at the level of Senior Education Officer in favour of a one Mwesigye Emmy Kairi. It was averred that on the 16/3/2022, the Town Clerk was informed by the Service Commission that it had an eligible candidate who had been short listed and interviews were to be held. That on the 16th/5/22, the Permanent Secretary, Ministry of Public Service wrote back to the Town Clerk granting the waiver and noted that the waiver was given on condition that the municipality had no other person eligible and qualified for the position. That upon receipt of the waiver, the Town Clerk was not able to make the submission to the 2nd Respondent since he had been informed by the Secretary that the waiver was overtaken by events as the suitable candidate had been short listed and interviews were to be conducted in due course. That the Town Clerk was informed that an eligible and qualified officer within the 4th Respondent at a senior level was shortlisted and that the submission of a waiver would be in contravention of the conditions set in the same waiver as to there being no other eligible and qualified candidate for the position. That the interviews were conducted by the 2nd Respondent and the 4th Respondent was later directed on 16th August 2022 to appoint the 3rd Respondent on transfer of service on promotion as Principal Education Officer Scale U2. That a waiver was not a substitute for re-opening a recruitment process and thus the 2nd Respondent used the most transparent manner where the eligible persons were at liberty to apply. That an aggrieved party by the decision of the 2nd Respondent is meant to appeal to the Public Service Commission and the decision of the 2nd Respondent remains valid until the Public Service Commission directs otherwise. That the applicant was not an aggrieved party since he was not directly affected by the recruitment exercise and that the application is not amenable for



judicial review as it was filed by a person who was not party to the decision and acts of the Respondents. That it was fair and equitable to dismiss the application with costs to the Respondents.

5 **Representation:**

The Applicant was self-represented at the time of filing the petition but later instructed **M/s Bagyenda & Co. Advocates** to represent him while the **Attorney General's Chambers** represented all the Respondents. The parties filed written submissions which I have considered together with the pleadings.

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At the commencement of the trial, Counsel for the Respondent raised two preliminary points of law to which he invited court to consider and dismiss the application at hand. It is trite law that where points of law are raised which have the effect of disposing of the matter wholly or partly, the same should be considered by court first before delving into the merits of the case.

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First Point of law:

For the 1st Point of law, Counsel for the Respondents submitted that the Applicant has no locus to present this Application. Counsel relied on rule 3A of the Judicature (judicial review) Amendment Rules 2019 which provides that any person who has direct or sufficient interest in a matter may apply for judicial review. Counsel argued that the applicant was not directly affected by the decision of the 4th Respondent and that he lacked sufficient interest in the matter thus failing to meet the threshold under the said rule. Counsel cited a number of authorities to back up his arguments, to mention **Misc. Cause No. 212 of 2020, Muhumuza Ben Vs. Attorney General and**

20thers where his Lordship Sekaana Musa noted that it is settled law that before court considers an application for judicial review, it must establish whether or not the applicant has sufficient interest to institute such an application. Counsel also invited court to the decision of **HCMA No. 338 of 2020, Community Justice and Anti-Corruption Forum Vs. Law Counsel and Sebalu and Lule Advocates** where it was held thus: *"In particular, a citizens concern with legality of governmental action is not regarded as an interest that is worth protecting itself. The complainant must be able to point to something beyond mere concern with legality; either a right to 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 action popularis which allow any person to bring an action to defend someone else's interest".*

Counsel submitted relying on the said authorities that the applicant has no sufficient interest as required under Rule 3A of the judicial review Rules to present the current application for Judicial Review. That the Applicant is no more than an officious intervener without interest or concern beyond what belongs to a citizen and thus court cannot open up its door for such baseless claim. That the court has a duty to protect its scarce resources and the overburdened court system by ensuring that litigants who appear in court in matters of judicial review have a direct and or sufficient interest which is not the case with the applicant. Counsel thus asked court to uphold the objection and dismiss the case with costs.

In reply, Counsel for the Applicant agreed with Counsel for the Respondents as to the position of the law that a party to an application for judicial review



must demonstrate that he or she has sufficient interest in the matter. Counsel submitted that the cases cited by the Respondent's counsel are distinguishable with the one at hand and do not apply. That in this case a position fell vacant in the public service of Uganda. It was submitted that issues of government jobs and use of public property are matters of public interest where transparency and strict adherence to the law is mandatory. It was further submitted that where there are issues of corruption, every citizen of Uganda has sufficient interest and locus to challenge such decision by way of judicial review. That every citizen of Uganda has a duty to expose corruption and the temple of justice cannot be closed for such citizen. Counsel thus submitted that the applicant has sufficient interest by virtue of being a citizen to bring the Application. Counsel further argued that it is a settled principle of law that where an illegality is brought to the attention of court, the court must act and set aside that illegality at once no matter how and when it has been brought to the court's attention. That a court of law cannot sanction what is illegal and he cited the case of **Makula International Ltd Vs. H.E Cardinal Nsubuga and Anor [1982] (HCB)** to back up his argument. It was submitted that since there are illegalities pointed out in the application, that even if court finds that the applicant has no sufficient interest to present the application at hand, it should still pronounce itself on the illegalities and point out and set the record straight to avert subsequent application over the issue in controversy. Counsel thus asked court to overrule the objection and proceed to determine the case on merits.

Consideration of the point of law by court:



The doctrine of Judicial Review allows one to challenge a decision of a public body. However, only those with a direct or sufficient interest have *locus standi* to bring an action for Judicial review. In **R Vs, Monopolies and Mergers Commission, Exparte Argy II Group PLC [1986]1 WLR 763** Lord Sir John Donald held that the first stage test in an application for judicial review is to establish whether the applicant has sufficient or direct interest in the matter. Lord Justice Rose in **N Fleming & Anor Vs. S. Richard, [1995] 1 WLR 386** that standing albeit is decided in the exercise of the court's discretion. That there has been a liberal approach to the concept sufficient or direct interest where courts have over time recognized persons or a group of persons as having locus to present an application for judicial review. That the issue of standing should not be treated as a preliminary issue but it must be taken in the legal and factual context of the whole case. That locus standi in judicial review may vary from case to case and there is no uniform standard that has to be applied. That some of the consideration in determining locus may include (a) the importance of the issue raised, (b) the likely absence of any other responsible challenger, (c) the nature of the breach of duty against the reliefs and (d) the role of the applicants in giving advice, guidance and assistance with the regard to an issue. Those are of the considerations that courts may rely on in determining whether a person has sufficient or direct interest in the decision of a public body that he or she seeks to challenge.

Rule 3A of the Judicature (Judicial Review) (Amendment) Rules, 2019 provides thus: "Any person who has direct or sufficient interest in a matter may apply for judicial review". The rules do not define the parameters of what amounts to direct or sufficient interest in the matter. It is therefore left



in the discretion of the Court to evaluate the facts and make its own mind as to whether an applicant for review has locus standi to bring the same. I agree with the decision of the Hon. Justice Musa Ssekaana in **Misc. Cause No. 212 of 2020, Muhumuza Ben Vs. The Attorney General of Uganda & 2other** where he stated thus: *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. 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: 9 "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 application 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 called be locked out at the gates of the temple of justice.

5 The doctrine or concept of direct or sufficient interest restricts locus standi. It is the floodgates for screening the claims for judicial review to allow only persons with direct or sufficient interest in a matter to bring an application for Judicial Review. It is not every citizen of Uganda that is clothed with the locus to present an application for Judicial Review, but rather, only those with direct or sufficient interest in a matter. In this case, the only basis for 10 the Applicant's locus is that he is a citizen of Uganda and a resident of Kasese Municipality and thus was exercising his constitutional right. The Applicant has not presented any evidence to the satisfaction of Court that he has direct or sufficient interest in the decision of the 2nd Respondent where the 3rd Respondent was appointed as a Principal Education Officer of the 4th 15 Respondent. The position would have been different if the applicant was one of those who had expressed interest in the job. I find that the applicant had no locus standi to bring this Application. I therefore uphold the first point of law raised by Counsel for the Respondent. I do not find it necessary to determine the second point of law or the merits of the Application since this 20 point of law disposes of the entire Application. In the result, this Application is hereby dismissed with no order as to costs.


Vincent Wagana

25 **High Court Judge**

Fort-portal

2.11.2022