THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 138 OF 2021

(ARISING FROM MISCELLANEOUS APPLICATION NO. 391 OF 2017)

(ARISING FROM MISCELLANEOUS CAUSE NO. 206 OF 2017)

MARK E. KAMANZI :: APPLICANT

VERSUS

1. NATIONAL DRUG AUTHORITY

2. DR. MEDARD BITEKYEREZO :::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought this application by Notice of Motion under Articles 50(1) & (2), 128(1) & (2) of the Constitution, Sections 14 & 33 of the Judicature Act Cap 13, Sections 64(e) and 98 of the Civil Procedure Act, Order 52 Rules 1, 2 & 3 of the Civil Procedure Rules SI 71-1 seeking various declarations and orders to wit: -

(a) A declaration that the Respondents jointly and or severally are in contempt of court order arising from Miscellaneous Application No. 391 of 2017 dated 25th August 2017.

(b) A declaration that the 2nd Respondent's letter referenced 47/CM/NDA/01/2021 amounts to disobedience of a lawful court order issued in M.A No. 391 of 2017.

(c) A declaration that the refusal by the Respondents to reinstate the Applicant after his acquittal by the Anti-Corruption Court on the 8th January 2021 was in contempt of the Court Order arising from M.A 391 of 2017, and in wilful and mala-fide abuse and disobedience of the court order dated the 8th January 2021.

(d) An order directing the 2nd Respondent to be committed to civil prison for contempt of the court order arising from M.A No. 391 of 2017, for wilful and mala-fide abuse and disobedience of the court order dated the 25th August 2017.

(e) A declaration that the Applicant's contract dated 4th January 2016 was varied on the clauses relating to salary, salary scale and commencement date by the 1st Respondent.

(f) A declaration that the Applicant's contract dated 4th January 2016 expires on the 4th day of July 2021.

(g) A declaration that the interdiction of the Applicant by the 2nd Respondent from the 13th February 2018 to date is irrational, illegal and unlawful.

(h) A declaration that the decision of the Respondents communicated in their letter referenced 47/CM/NDA/01/2021 dated 28th January 2021, purporting not to renew the Applicant's employment contract without offering him an opportunity to be heard is irrational, illegal, unlawful and contrary to principles of natural justice.

(i) A declaration that the Respondents' refusal to pay the Applicant's Health Club membership fees amounting to USD 8,800 amounts to breach of contract and contempt of court order in M.A No. 391 of 2017 and the order in Anti-Corruption Court criminal case No. 14 of 2018.

(j) An order of mandamus compelling the Respondents to comply with the court orders in M.A 391 of 2017 and halt any purported termination and/ or cessation of the Applicants' contract till it expires on the 4th of July 2021.

(k) An order directing the Respondents jointly and or severally to pay compensation of UGX 500,000,000/= and, in the alternative and without prejudice, pay general damages, exemplary damages, for repeated contempt, malicious prosecution and all the inconveniences, oppression, degradation, shame and mental anguish occasioned to the Applicant since 2017.

(l) An order directing the Respondents jointly and severally to pay a fine of UGX 500,000,000/= for being repeated contemnors by disobeying lawful court orders.

[2] The Application was supported by the affidavit of **Mark E. Kamanzi** which, together with the Notice of Motion, set out the grounds of the application as follows;

(i) The Applicant was appointed Head, Legal Services on fixed contract of 5 years dated on the 4th January 2016.

(ii) The 1st Respondent by letter dated 14th April 2016 varied Clauses 1 and 4.1 of the Applicant's contract relating to salary scale and monthly gross salary.

(iii) The 1st Respondent by the letter Ref. 170/NDA/ADMIN/08/2016 dated 15th August 2016 varied Clause 2 of the Applicant's contract and commencement became effective the 4th July 2016.

(iv) On 7th June 2017, the 2nd Respondent unlawfully without offering the Applicant an opportunity to be heard purported to terminate the employment contract of the Applicant.

(v) On 13th June 2017, the Applicant filed Miscellaneous Cause 206 of 2017 interalia seeking a writ of certiorari, an order of mandamus, and a permanent injunction.

(vi) On 25th August 2017, court issued an order for a temporary injunction restraining the Respondents, their agents or servants from attempting to terminate his contract till the final determination of the main cause.

(vii) The Respondents wilfully disobeyed the court order and in the result the Applicant filed M.A No. 561 of 2017 arising from M.A No. 392 of 2017 against the Respondents and 2 Others for contempt of court orders in M.A No. 392 of 2017.

(viii) The Respondents were parties, duly represented by counsel and consented to the court orders in M.A No. 391 of 2017 which has never been appealed against and/ or varied by other order of a competent court.

(ix) The main cause has never been determined but the Respondents filed a complaint to the CID headquarters and the Applicant was charged at the

Anti-Corruption Magistrates Court at Kololo with abuse of office and causing financial loss. He was tried for three years and acquitted of the offences on the 8th January 2021.

(x) Subsequently, after being charged at the Anti- Corruption Court, the 2nd Respondent interdicted the Applicant vide letter ref: 98/CM/NDA/02/ 2018 dated 13th February 2018.

(xi) On 25th January 2021, the Applicant petitioned the 2nd Respondent to reinstate him to his position as Head Legal Services on the ground that he had been acquitted and the fact that his contract would expire on the 4th July 2021 but instead the 2nd Respondent decided to terminate the contract vide letter ref: 47/CM/NDA/01/2021 dated 28th January 2021.

(xii) The 2nd Respondent in his capacity as the Chair of the 1st Respondent institution wrote to the Applicant vide letter ref. 47/CM/NDA/01/2021 dated January 28th 2021 terminating the Applicant's contract of employment in total disregard of provisions 2 and 3 of the court order issued on the 25th August 2017 hence disobeying the said order

(xiii) The Respondents have denied the Applicant to exercise his right to practice his profession as head, legal services and that the actions of the Respondents are in bad faith and intended to abuse the court process and bring actions of court in disrepute.

(xiv) The contempt having been repetitive with impunity and continuing to date, it is just and equitable that the Court be pleased to issue the orders prayed for.

[3] The Respondents opposed the application through two affidavits; one deposed by **David Nahamya**, the Secretary of the 1st Respondent; and the other by **Dr. Medard Bitekyerezo**, the 2nd Respondent. Briefly, it was stated in the 1st Respondent's affidavit in reply that the Applicant's contract of employment as Head Legal Services of the 1st Respondent stipulated that it was to run for a duration of 5 years effective from the 4th day of January 2016 and ending on

the 4th day of January 2021. The Human Resource Manual which was applicable by virtue of Clause 18 of the Contract provided that all newly recruited employees shall serve a 6 months' probation period effective from the first day of reporting on duty. After completion of the Applicant's probationary period on 4th July 2016, the Applicant's appointment was confirmed by the 1st Respondent and the Applicant was duly notified by letter. The deponent avers that the said confirmation of the Applicant's appointment did not vary the commencement or expiry date of the Applicant's contract of employment. Under the employment contract, the Applicant's contract could only be varied by mutual agreement and at the written request of either party.

[4] It was further stated in the 1st Respondent's affidavit in reply that although the High Court ruled that the 1st Respondent was in contempt of a court order in M.A No. 392 of 2017, the 1st Respondent has since appealed the said decision to the Court of Appeal which appeal is pending hearing and determination. The deponent further stated that the complaint which culminated in the Applicant's prosecution was never intended to circumvent the court orders in M.A No. 391 of 2017 as alleged by the Applicant and the criminal charges were preferred by the office of Director of Public Prosecutions (DPP) in the performance of its legal mandate. The Applicant was interdicted upon receipt of a letter from the DPP notifying the 1st Respondent of the criminal charges and advising that the Applicant be interdicted. As such, the 1st Respondent was not in contempt of any court orders since the charges preferred against the Applicant were not under the control and command of the 1st Respondent.

[5] The 1st Respondent's affidavit in reply also stated that after his acquittal, the Applicant demanded for payment of his retained remuneration and other benefits which were paid by the 1st Respondent, save for membership to a health club for which the 1st Respondent requested the Applicant to submit copies of receipts or tax invoices to enable payment to be effected; which

documents the Applicant did not submit. The 1st Respondent could not reinstate the Applicant since his contract of employment had ended on 4th January 2021 and it was not renewed. The 1st Respondent complied with the temporary injunction order of maintaining the Applicant in its employment up until the date of expiry of his employment contract on 4th January 2021, whereupon the employment contract was automatically terminated through effluxion of time and through expiry. The 1st Respondent, therefore, in no way contravened any court orders or restricted the Applicant's right to practice his profession since he was under interdiction until 8th January 2021 when he was acquitted, which was after the expiration of his contract of employment.

[6] In his affidavit in reply, the 2nd Respondent denied indulging in any conduct that was contemptuous of any orders of the Court. The other averments in the affidavit basically reiterate the contents of the 1st Respondent's affidavit in reply. The Applicant filed affidavits in rejoinder to each of the Respondent's affidavit in reply. I have taken the contents of the said affidavits in rejoinder into consideration.

Representation and Hearing

[7] When the matter came up for hearing, the Applicant was represented by Mr. Kituuma Magala; the 1st Respondent by Mr. Esau Isingoma; while Ms. Lelia Katusiime and Mr. John Kaddu represented the 2nd Respondent. It was agreed that the matter proceeds by way of written submissions which were duly filed by Counsel as agreed. I have studied the elaborate submissions by Counsel and have taken them into consideration during the determination of the issues that are before the Court.

Issues for determination

[8] The following issues were framed for determination by the Court: -

1. **Whether the 1st Respondent's letter Ref. 170/NDA/ADMIN/08/2016 dated the 15th August 2016 varied the Applicant's employment**

contract commencement date from 4th January 2016 to 4th July 2016.

2. **Whether the failure and/ or refusal by the Respondents to lift the interdiction of the Applicant after the expiry of six months prescribed in the Public Standing Orders and 1st Respondent's Human Resource Manual is irrational, illegal and unlawful.**
3. **Whether the Respondent's letter ref: 47/CM/NDA/01/2021 dated the 28th January 2021 terminating the Applicant's employment contract under the guise of non-renewal while Misc. Cause No. 206 of 2017 was still pending and without offering him an opportunity to be heard was/is irrational, illegal and contrary to the principles of natural justice.**
4. **Whether the Respondents' refusal to pay the Applicant's Health Club Membership fees amounting to USD 8,800 is a breach of contract of employment.**
5. **Whether the consent orders in Misc. Application No. 391 of 2017 dated the 25th August 2017 are binding to all parties to the application and the main Miscellaneous Cause No. 206 of 2017.**
6. **Whether the Respondents by purporting to terminate the Applicant's contract of employment under the guise of non-renewal and/or refusal to reinstate him after his acquittal by the Anti-Corruption Court are in contempt of the court orders in Miscellaneous Application 391 of 2017.**
7. **Whether the Applicant is entitled to the remedies prayed for.**

Resolution by the Court

[9] I need to first point out that, to my understanding, this application was intended to address allegations of contempt of court that were brought by the Applicant against the Respondents. It is a miscellaneous application arising out of the main cause No. 206 of 2017 for judicial review. It however happens that during presentation and argument of this application, new grounds for

judicial review have been raised and argued, giving an impression that during the determination of this application, the Court would be at liberty to make findings on illegality, irrationality or procedural impropriety of such actions or decisions taken by the Respondents that occurred after the filing of the main cause. If that trend introduced by the Applicant is followed, it would mean that the Court would have to consider issuing of prerogative orders based on the grounds raised in this application; which grounds were not available to the Applicant in the main cause, for the simple reason that by the time the main cause was filed, the facts leading to the latter grounds were not in existence. In effect, this Court would be called upon to determine a judicial review application within another judicial review application.

[10] In my view, that route is not available to the Applicant. A judicial review application cannot be brought as a miscellaneous application within another main cause for judicial review. If new grounds amenable to judicial review arose after the filing of the main cause, the option available to the Applicant was to either amend the main cause or bring another application for judicial review. As such, as far as this application is concerned, it is to be handled and determined as purely an application for contempt of earlier orders issued by the Court during the pendency of Miscellaneous Cause No. 206 of 2017. For that reason, all issues raised and arguments made that do not assist proof or rebuttal of allegations of contempt of the court will be considered irrelevant and/or superfluous. With the above in mind, I will now proceed to consider the issues in the manner they were raised.

Issue 1: Whether the 1st Respondent's letter Ref. 170/NDA/ADMIN/08/2016 dated the 15th August 2016 varied the Applicant's employment contract commencement date from 4th January 2016 to 4th July 2016.

Submissions

[11] It was the submission by Counsel for the Applicant that the letter by the 1st Respondent Ref: 170/NDA/ADMIN/08/2016 dated the 15th August 2016 varied Clause 2 of the Applicant's employment contract whereby the commencement date became effective on the 4th July 2016. Counsel submitted that the Applicant's original employment contract did not provide for a probationary period. Counsel's view was that by the introduction of the probationary period of 6 months, a separate probationary contract was created which necessitated the 1st Respondent to vary the commencement date as they did accordingly from 4th January to 4th July 2016. Counsel argued that by the said letter of 15th August 2016, the Respondents varied the commencement date of the contract, the same way they had done by letter dated 14th April 2016 by which they varied the Clauses on gross salary and salary scale.

[12] In response, Counsel for the Respondents submitted that the Applicant being a new recruit had a 6 months' probationary period which was completed on the 4th July 2016. Upon completion of the probationary period, the Applicant's appointment was confirmed by the 1st Respondent. Counsel submitted further that this period did not vary the commencement or expiry date of the Applicant's contract of employment. Counsel argued that in order for a party to vary a contract, the law requires that such variation is done through two principles which are variation through an express agreement that is recorded in an Agreement and variation completed by usage or custom if the usage or custom would bind both parties. Counsel referred the Court to *Section 67 of the Contracts Act* for that submission. Counsel further relied on the

decision in ***Rock Advertising Ltd V MWB Business Exchange Centres Ltd [2018] 4 All ER 21***.

[13] Counsel for the Respondents further submitted that in the present case, the terms of the contract could only be amended by mutual agreement and at a written request of either party. Counsel concluded that the Applicant's employment contract was not varied by the letter of 15th August 2016 since the alleged variation did not conform to the modalities required to effectuate a variation. Counsel submitted that the purpose of the said letter was simply to convey to the Applicant confirmation of his employment with the 1st Respondent following successful completion of a mandatory probationary period. Counsel further submitted that unlike the letter of 15th August 2016, the letter of 14th April 2016 conformed to the agreed modalities of variation of the Applicant's employment contract since it contained an acceptance clause which was signed and dated by the Applicant on 15th April 2016.

Determination by the Court

[14] This issue is crucial to the determination of this matter because it is necessary to establish whether by the 8th January 2021 when the Applicant was acquitted by the Anti-Corruption Court, his contract of employment was still subsisting or had expired. This will form the basis upon which the other issues are to be answered. According to the Applicant's employment contract dated 4th January 2016, (Annexture A to the affidavit in support of the application), Clause 2 thereof provides for commencement and duration of the contract by stating that the "*contract is for a duration of Five years and shall take effect from the 4th day of January [2016] and shall expire on the 4th day of January [2021]"*. Clause 17 of the same contract provides for amendment and variation of the contract by stating that the *"Contact may be amended by mutual agreement and at the written request of either party"*. Clause 18 thereof states that the provisions of the Human Resource Manual of the 1st

Respondent are applicable to the Applicant's employment contract unless otherwise expressly excluded.

[15] It is not disputed that according to the employment contract in issue, the duration was five years starting on 4th January 2016 and ending on 4th January 2021. The argument by the Applicant is that the said clause in the contract was varied by the 1st Respondent vide letter dated 15th August 2016. The said letter (Annexture C to the Applicant's affidavit in support) signed by Donna Kusemererwa as the Secretary to the 1st Respondent and addressed to the Applicant, in part reads as follows:

> *"Confirmation in Appointment as Head, Legal Services*
> *This is to inform you that following the successful completion of your probation, the Authority at its 60th meeting held on 15th June 2016 resolved to confirm you in your appointment as Head, Legal Services with effect from 4th July 2016."*

[16] It is the Applicant's assertion that the above letter effected a variation of the commencement and duration clause of the employment contract which is already set out herein above. The Applicant relies on an earlier variation of the same contract that was effected through a letter from the 1st Respondent dated 14th April 2016 to claim that the two variations were effected in the same manner and the 1st Respondent is estopped from denying the latter (of 15th August 2016). The letter of 14th April 2016, signed by Donna Kusemererwa as Executive Director of the 1st Respondent and addressed to the Applicant (Annexture B to the affidavit in support of the application) in part reads as follows:

> *"Salary Harmonisation*
> *Following the recent salary harmonisation process, I am pleased to inform you that your salary has been increased to … which is Grade C Notch 3 within the revised NDA salary structure. The effective date of this payment is the 1st January 2016 and all arrears due shall be paid respectively. Take note that*

all other conditions and terms of service remain the same. Do get back to me if you need any further information or clarification."

[17] At the bottom of the said letter, there is an acceptance clause which is duly signed by the Applicant and dated 15th April 2016. The name "Mark E. Kamanzi" is filled in pen. The clause reads as follows:

"I Mark E. Kamanzi confirm acceptance of the salary change on the basis of harmonisation as set out in this letter which I have read."

[18] It has been argued by Counsel for the 1st Respondent that while the letter of 14th April 2016 effected a variation of the contract as per the agreed terms, the letter of 15th August 2016 had neither such intention nor effect. I am in agreement with learned Counsel for the 1st Respondent. According to *Section 67 of the Contracts Act, No. 7 of 2010*, *"Where any right, duty, or liability would rise under agreement or contract, it may be varied by the express agreement or by the course of dealing between the parties or by usage or custom if the usage or custom would bind both parties to the contract."* In the instant case, there was express agreement between the parties that any amendment or variation had to be "by mutual agreement and at the written request of either party". Contrary to the argument by the Applicant's Counsel, the letter of 15th August 2016 expresses no such mutual agreement or even intention to vary the contract term as to duration. As clearly shown herein above, the clause as to commencement and duration was very specific and unequivocal. There is no way it could be varied by implication and by an instrument that communicates no change or shift in the dates stated in the said clause.

[19] The reference by the Applicant to the letter dated 14th April 2016 is in my view not helpful. The letter (Annexture B to the affidavit in support) clearly refers to a harmonisation process. The Applicant does not deny having participated or been aware of the process. The Applicant signed acceptance of the change based on the harmonisation process. There is no way the Applicant

can claim that the variation of the clauses on salary were done without mutual consent when he signified his consent in writing. Similarly, the argument by the Applicant that by indicating the date of 4th July 2016 as the date on which the confirmation took effect, it followed that the contract commencement also shifted to that date is also unhelpful. This is because in the letter of 14th April 2016, the variation in the salary took effect from 1st January 2016 and there is no argument that such became the contract date of commencement. As such, there is no way a date stated for purpose of giving effect to the confirmation of the Applicant would by implication vary the date of commencement and duration of the contract that were expressly stated in the contract.

[20] The other argument by Counsel for the Applicant was that when the Applicant was put on probation, such amounted to a probationary contract and upon completing the probationary contract, a new contract commenced under confirmation with effect from 4th July 2016. It appears to me that this argument is based on a misunderstanding of the difference between a "probationary contract" and a "term for probation in a contract". Under the law, it is possible to have a probationary contract as a separate agreement and strictly for probation for a period of 6 months, renewable up to not more than another 6 months. This is what is provided for under Sections 2 and 67 of the Employment Act. However, including a term as to probation in a full term or fixed contract does not make the contract a probationary one. The probationary period only becomes part of the contract. This point was well articulated by **Elizabeth Musoke J.** (as she then was) in ***Maudah Atuzarirwe vs Uganda Registration Services Bureau & 3 Others, HC MC No. 249 of 2013***.

[21] In light of the foregoing therefore, the claim by the Applicant that the clause as to the commencement and duration of his employment contract was varied has not been made out. The Clause was not in any way affected by the letter dated 15th August 2016 which simply communicated the end of the probation period under the Applicant's contract and a commencement of the

period under confirmation. It should be understood that a term as to confirmation under an existing contract does not create a new contract except where probation was served under a probationary contract and a new contract is expressly executed upon confirmation. This is not what happened in the present case. The 1st issue is therefore answered in the negative.

Issue 2: Whether the failure and/or refusal by the Respondents to lift the interdiction of the Applicant after the expiry of six months prescribed in the Public Standing Orders and 1st Respondent's Human Resource Manual is irrational, illegal and unlawful.

[22] To begin with, for purpose of this application, the challenged action or inaction on the part of the Respondents is not being investigated for illegality or irrationality. As already stated above, if the Court is to investigate the conduct along those lines, the Court would have to call in the principles governing judicial review. But this is not a judicial review application. The scope of this Court's investigation on this issue will therefore be restricted to its relationship with the allegations of contempt of the court. The proper issue, therefore, is whether the Respondents wrongly refused to lift the Applicant's interdiction after expiry of the 6 months or after his acquittal by the Anti-Corruption Court.

[23] The law on interdiction of public officers is provided for under the Uganda Public Service Standing Orders, 2010 which is the edition that is applicable to the present case. I will also make reference to the Public Service Commission Regulations S.I No. 1 of 2009. The 1st Respondent also made provisions for disciplinary rules under its Human Resource Manual.

[24] By virtue of Article 175 (a) and (b) of the Constitution, the Applicant as an employee of the 1st Respondent was a public officer. The 1st Respondent is a public authority whose budget is appropriated by Parliament and is payable directly from the consolidated fund. As such, the Public Service Standing

Orders and the Public Service Commission Regulations are applicable to the Applicant.

[25] Item 8 of Section F, Part (F-S) at page 129 of the Uganda Public Service Standing Orders defines interdiction as the temporary removal of a public officer from exercising his or her duties while an investigation over particular misconduct is being carried out. The Responsible Officer is mandated to observe that:

a) The charges against an officer are investigated expeditiously and concluded.
b) Where an officer is interdicted, the Responsible Officer shall ensure that investigations are done expeditiously in any case within 3 (three) months for cases that do not involve the Police and Courts and 6 (six) months for cases that involve the Police and Courts of law.
c) Where a public officer is interdicted, he or she shall be informed of the reasons for such an interdiction.
d) A public officer interdicted shall receive such salary not being less than half of his or her basic salary, subject to a refund of the other half, in case the interdiction is lifted and the charges are dropped.
e) The public officer under interdiction shall not leave the country without permission from the responsible officer.
f) The case of a public officer interdicted from exercising the powers and functions of his or her office shall be submitted to the relevant service commission to note.
g) After investigations, the responsible officer shall refer the case to the relevant service commission with recommendations of the action to be taken, and relevant documents to justify or support the recommendations should be attached.

[26] *Regulation 38 of the Public Service Commission Regulations, S.I No. 1 of 2009* reiterates the above provisions of the Public Service Standing Orders

materially but with greater clarification. Under *Regulation 38 (1) thereof*, two circumstances are laid down which if any exists, the responsible officer shall interdict the public officer, namely, where;
(a) a responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions 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.

[27] In the instant case, the Applicant was interdicted following criminal charges being preferred against him by the DPP. This is confirmed by letter dated 13th February 2018 (Annexture K to the affidavit in support of the application) which makes reference to a letter written by the DPP to the 1st Respondent dated 6th February 2018. In light of the above laid out provisions of the Public Service Commission Regulations, the Responsible Officer had neither choice nor discretion but to interdict the Applicant upon being informed that criminal proceedings had been instituted against the Applicant. The Respondents therefore, lawfully effected the interdiction and cannot be faulted for having interdicted the Applicant.

[28] It was argued for the Applicant that the complaint to the police that led to the criminal prosecution was activated by malice on the part of the Respondents. This claim was however not substantiated either with particulars of malice or any evidence. Similarly, although the Applicant was acquitted, there was no finding by the court that the prosecution was baseless or actuated by malice. The finding was that the prosecution had failed to prove the allegations; which, under criminal law, does not impute malicious prosecution.

[29] It is further claimed by the Applicant that having been interdicted, the Respondents were obliged to lift the interdiction after expiry of six months from

the date of interdiction relying on the provision under Section F, item 8 (b) Part F-S of the Public Service Standing Orders. Looking at the said provision, it makes reference to completion of investigations within six months in cases that involve the Police and the Courts of law. This was one such case. The argument for the Applicant is that by virtue of the above provision, the Applicant's interdiction ought to have been lifted after six months whether the court proceedings were still on or not. In my view, the above argument is based on a misconstruction of the said provision of the Standing Orders which is also replicated in the Public Service Commission Regulations. This is because the provision is in reference to completion of investigations so that the officer knows his/her fate which can be either subjection to disciplinary proceedings, criminal prosecution or exoneration. Once the investigations are complete within six months, and any of the foregoing action is taken, then the provision under item 8 (b) above of the Standing Orders is satisfied. This can be discerned from a clear reading of Item 8 (g) of the Standing Orders (supra) and Regulation 38 (7) of the Public Service Commission Regulations.

[30] On the case before the Court, by the time the Applicant was interdicted, the matter had already been referred to the Court. The six months' period referred to in the provision under contention was therefore inapplicable. Once the interdiction was made, it had to remain in force until after completion of the criminal proceedings, which is what happened. There was, therefore, no irregularity on part of the Respondents in that regard. There is evidence that the criminal proceedings terminated with the acquittal of the Applicant on 8th January 2021. It is argued for the Applicant that upon his acquittal, the Applicant was entitled to have his interdiction lifted and to being reinstated to his position as Head, Legal Services. However, this argument was based on the thinking on the part of the Applicant that his contract was subsisting by the 8th January 2021. In view of the finding on the 1st issue herein above, this argument cannot hold. It is apparent that by the time the Applicant was

acquitted of the criminal charges, his contract had expired and had not been renewed. The lawfulness or not of the non-renewal is subject of the next issue.

[31] In the circumstances, therefore, it has not been established by the Applicant that the Respondents wrongly refused to lift the Applicant's interdiction after expiry of the 6 months or after his acquittal by the Anti-Corruption Court. This issue is answered in the negative.

Issue 3: Whether the Respondent's letter Ref: 47/CM/NDA/01/2021 dated the 28th January 2021 terminating the Applicant's employment contract under the guise of non-renewal while Misc. Cause No. 206 of 2017 was still pending and without offering him an opportunity to be heard was/is irrational, illegal and contrary to the principles of natural justice.

AND

Issue 6: Whether the Respondents by purporting to terminate the Applicant's contract of employment under the guise of nonrenewal and/ or refusal to reinstate him after his acquittal by the Anti-Corruption Court are in contempt of the court orders in Miscellaneous Application No. 391 of 2017.

[32] These two issues raise similar matters and I have opted to handle them concurrently. As I have already noted above, the impugned action of the Respondents under issue three is not being investigated for illegality, irrationality or procedural unfairness. It has to be investigated as to whether it was wrongful and done in disobedience of any lawful order of the court. It was argued for the Applicant that the orders issued vide M.A 391 of 2017 (the application for a temporary injunction) were to the effect that the Respondents were restrained from terminating the Applicant's employment as Head Legal Services until the final determination of the main cause for judicial review (MC No. 206 of 2017) and that the Applicant retains his position until determination of the said Cause. It appears to be the view of the Applicant that

this court order offset the terms of the contract including its duration; such that even if the contract expired, it would remain in force until determination of the judicial review application.

[33] I do not find the above view by Counsel for the Applicant a true construction of the said court order. There was, clearly, no intention that the said order would override clear provisions in a contract duly executed between the parties. This is especially so since the pending proceedings were not a dispute challenging the validity of the contract which would make the contract liable to be set aside. Under such circumstances, there is no way the court would by order of a temporary injunction pass orders that would or be intended to set aside a contract. In my view, the correct inference is that the court had envisaged that the judicial review application would be disposed of before expiry of the contract of employment. It was only unfortunate that the suit took longer and the contract expired, indeed for no fault of the Respondents. As such, the notification issued to the Applicant of the expiry of the contract cannot be said to be in contempt of the court order issued vide M.A 391 of 2017.

[34] It was further argued for the Applicant that the Respondents wrongfully refused to renew the Applicant's contract without offering him an opportunity to be heard. Unfortunately, there was no existing court order that the contract, if it expired, had to be renewed. The exercise by the Respondents of the power not to renew the Applicant's contract could only be challenged on judicial review grounds. I have already stated why I cannot take that route in this matter. In the circumstances, the 3rd and 6th issues are answered in the negative.

Issue 4: Whether the Respondents' refusal to pay the Applicant's Health Club Membership fees amounting to USD 8,800 is a breach of contract of employment.

[35] It was submitted by Counsel for the Applicant that the employment contract and the letter of remuneration and benefits entitled the Applicant to annual health club membership at Maisha Health Club at Serena Hotel. Counsel submitted further that the 1st Respondent had paid USD 2,200 in the year 2016 for the Health Club Membership but later in 2017 the 1st Respondent alleged that this payment had caused financial loss. In the decision of the Anti-Corruption Court, it was found that the said payment of USD 2,200 to the Applicant by the 1st Respondent was in favour of the contractual obligations and did not cause any financial loss. Counsel for the Applicant submitted that the 1st Respondent refused to pay the Applicant USD 8,800 which was an outstanding claim. Counsel argued that this act was irrational and in breach of the contract to require the Applicant to provide accountability for the funds he did not receive.

[36] In reply, Counsel for the 1st Respondent submitted that the Applicant's employment contract entitled him to the benefit of membership at the health club and not the monetary equivalent of it. The 1st Respondent submitted further that it was well within the bounds of reason to request the Applicant to furnish the 1st Respondent with receipts and tax invoices proving that he had attended the health club.

[37] This aspect of the Applicant's case will be investigated because it has a bearing on what the Respondents were bound to do upon termination of the proceedings that led to the Applicant's interdiction. It is not in dispute that the Applicant was entitled to payment for membership to a Health Club which was expressly stated in the employment documents. There is also no dispute that

this payment was not effected since the year 2017. There is further no dispute that upon his acquittal, the Applicant was entitled to all his unpaid salary and other entitlements or benefits. Indeed, there is evidence that all other entitlements and benefits were paid but for the health club membership allowance. There is also evidence that before the Applicant's interdiction, the Respondents had raised questions over this payment and the same even formed part of the complaints raised during the criminal prosecution. The Court, however, found no wrong doing on the part of the Applicant in that regard and cleared that transaction. There is therefore no reason as to why the accrued sum is not payable.

[38] It was claimed by the Respondents that one reason they did not pay was because the Applicant was required to produce receipts and/or tax invoices and he did not. I do not see how the claim for receipts arises. This is because there was no requirement that the Applicant had to first use his personal money to pay and then claim a refund. This angle is just being imported into the contract by the Respondents which is unacceptable. Secondly, the Applicant showed in evidence that he presented invoices. The Applicant adduced evidence by letter dated 17th February 2021 (Annexture ME to the affidavit in rejoinder to the 1st Respondent's reply) on which is attached four copies of pro-forma invoices in respect of the years 2017, 2018, 2019 and 2020. The letter has a received stamp of the 1st Respondent of 18th February 2021. It was claimed by the Respondents that the Applicant should have produced tax invoices. The Respondents did not show how tax invoices are different from pro-forma invoices and how they were unable to effect payment simply because one was produced and not the other.

[39] The above claim by the Respondents is, in my view, simply an excuse on the part of the Respondents and is conduct that is in disobedience of the order of court. In the order vide M.A 391 of 2017, it was ordered that the Applicant was to retain his position as Head Legal Services of the 1st Respondent with full

pay. It is agreed that upon his acquittal, all unpaid entitlements and benefits were supposed to be paid. There is no sufficient reason as to why payment for his health club membership was not made. In this regard, the Respondents acted in breach of the order of the court.

[40] I will now consider whether this breach amounted to contempt of the court and the consequences. Contempt of court is defined as an act or omission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it". See ***Principles of Criminal Law*** **1 ed. (Juta, Cape Town 1991) at 627;** ***R v. Almon*** **(1765) 97 ER 94 at 100;** ***Ahnee and others v. Director of Public Prosecutions*** **[1999] 2 WLR 1305 (PC) and** ***R v. Metropolitan Police Commissioner, Ex parte Blackburn (No 2)*** **[1968] 2 All ER 319 (CA).**

[41] Under the law, the recognition given to contempt is not to protect the tender and hurt feelings of the judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed. Conduct is calculated to prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that prejudice will result. Contempt of court may thus take many forms; it may be committed by the person's action or inaction. Among other forms, contempt of court occurs when an individual intentionally and demonstrably disobeys a court order. To constitute contempt of this nature, the act or omission which contravenes the court order must have been intentional but not necessarily deliberately contumacious (wilfully disobedient or deliberately defiant). It is well established that it is no answer to say that the act was not contumacious in the sense that, in doing it, there was not direct intention to disobey the order. The requirement of intention excludes only casual or accidental acts. See: ***Angelina Lamunu***

Langoya vs Olweny George William HCC Misc. Application No. 30 of 2019 (Gulu High Court).

[42] In that regard, therefore, the conditions which must be proved by an applicant in contempt of court proceedings are as follows:

a) The existence of a lawful court order.
b) The potential contemnor's knowledge of the court order.
c) The potential contemnor's failure or refusal to comply with the order or disobedience of the order.

(See: ***Hon. Sitenda Sebalu versus Secretary General of East African Community Ref. No. 8 of 2012; Dr. Charles Twesigye vs Kyambogo University HC Misc. Application No. 120 of 2017*** and ***Angelina Lamunu Langoya vs Olweny George William HCC Misc. Application No. 30 of 2019***).

[43] On the case before me, it is not in dispute that the court order issued vide M.A 391 of 2017 lawfully existed. It is also not in dispute that the Respondents had actual knowledge of existence of the said order. The Respondents also admit that they refused to abide by the said order owing to the reasons they put across; which reasons have been found unsubstantial. This circumstance raised by the Respondents bring in the aspect of contumacy. The issue therefore is whether the breach by the Respondents herein was intentional but not necessarily contumacious. Contumacy is wilful disobedience or deliberate defiance of the court order on the part of the alleged contemnor. Mere absence of contumacy is not excusable. But absence of intentional disobedience is excusable. As such, an applicant for contempt of court does not have to show that the disobedient conduct was deliberate or wilful. The applicant however has to show that the disobedience was intentional (as opposed to deliberate defiance of the order) by showing that the respondent knew of and understood the order but chose not to abide by it.

[44] In the instant case, the Respondents have not shown any credible excuse as to why they refused to pay the Applicant's full entitlements and/or benefits. The excuse given for not paying the health club membership fees does not negative intention on the part of the Respondent to disobey the court order. I therefore find that the Respondents are guilty of contempt of the court order issued vide M.A No. 391 of 2017 by refusing to fully pay the Applicant's entitlements/benefits without lawful excuse. The Applicant therefore succeeds on the 4th Issue.

Issue 5: Whether the consent orders in Misc. Application No. 391 of 2017 dated the 25th August 2017 are binding to all parties to the Application and the Main Miscellaneous Cause No. 206 of 2017.

[45] I do not find any dispute raised under this issue. There is no dispute as to whether the parties herein, who were parties to M.A 391 of 2017, are bound by the orders passed therein. I have therefore found this issue redundant and unnecessary.

Issue 7: Whether the Applicant is entitled to the remedies prayed for.

[46] In light of the above findings, the application has only succeeded on one issue. The application is, therefore, partly allowed to the extent stated herein above. The rest of the application is dismissed accordingly.

[47] Regarding the consequences of the Respondent's contempt of the court order, I find that the breach was not gross and is one the Respondents can be allowed to purge themselves of. I will therefore allow the Respondents time to effect the outstanding payment, failure of which the Respondents shall be subjected to payment of a fine.

[48] In the result, I make the following orders:

1) The application by the Applicant partly succeeds.

2) The Respondents shall pay the sum of USD 8,800 to the Applicant being his outstanding entitlement/benefit in respect of payment for Health Club Membership as per the Applicant's contract of employment. The said sum shall be paid within thirty (30) days from the date of this order.

3) In default of the order in (2) above, the Respondents shall pay a fine of UGX 100,000,000/= through the Registrar of this Court.

4) The Respondents shall pay one third of the costs of this application to the Applicant.

It is so ordered.

Dated, signed and delivered by email this 10th day of March 2022.

Boniface Wamala

JUDGE