

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**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 for Judicial Review by Notice of Motion under Section 36(1) of the Judicature Act Cap 13, and Rules 3 and 6 of the Judicature (Judicial Review) Rules, 2009 seeking the following reliefs;

- (a) A writ of Certiorari quashing the decision of the Chairman, National Drug Authority, Dr. Medard Bitekyerezo, to terminate with immediate effect and without any legal basis the Applicant's services as Head, Legal Services of the 1<sup>st</sup> Respondent.
- (b) An order of Mandamus directing the Applicant to be reinstated back to his position as Head, Legal Services National Drug Authority.
- (c) A permanent injunction restraining the Respondents, their officers, principals, agents, and any other person acting under their authority or on behalf of the 1<sup>st</sup> Respondent from terminating the Applicant's employment with immediate effect as Head, Legal Services National Drug Authority, without legal basis.
- (d) An order that the Respondents jointly and severally pay the Applicant general and exemplary damages.
- (e) Costs of the application be provided for.

[2] The application was supported by the affidavit of the Applicant, **Mark E. Kamanzi** which, together with the Notice of Motion, set out the grounds of the application. The Respondents opposed the application through two affidavits in reply; one deposed to by **Donna Asimwe Kusemererwa** and another by **Dr. Medard Bitekyerezo**, the 2<sup>nd</sup> Respondent. The parties also filed some supplementary affidavits and affidavits in rejoinder. I will below start by setting out the background to this application.

### **Background to the Application**

[3] The Applicant was employed by the 1<sup>st</sup> Respondent as Head, Legal Services under a contract of employment dated 4<sup>th</sup> January 2016 for a period of five years which was expiring on the 4<sup>th</sup> January 2021. On the 6<sup>th</sup> of June 2017, the 1<sup>st</sup> Respondent terminated the Applicant's employment contract following a decision of the Authority in its meeting held on the 24<sup>th</sup> of May 2017 to terminate the contract of the Applicant upon payment of one month's salary in lieu of notice. The Applicant filed this suit vide Miscellaneous Cause No. 206 of 2017 for the above stated reliefs. He further filed Miscellaneous Application No. 392 of 2017 for interim orders and Miscellaneous Application No. 391 of 2017 for a temporary injunction. The interim and temporary injunction orders sought to restrain the Respondents from removing the Applicant from office and to maintain him as Head Legal Services of the 1<sup>st</sup> Respondent with full pay until the determination of the main cause.

[4] The interim order application was granted on 20<sup>th</sup> June 2017 with orders that the Applicant be allowed to remain in his position as Head Legal Services of the 1<sup>st</sup> Respondent with full pay and benefits as per his employment contract until final determination of the main application for a temporary injunction. As a consequence, the termination of the Applicant's contract was reversed and the Applicant retained his position as Head Legal Services of the 1<sup>st</sup> Respondent. Subsequently, on 25<sup>th</sup> August 2017, the parties consented to issuance of the temporary injunction with orders restraining the Respondents,

their agents or servants from any further attempts to effect the purported termination of the Applicant's employment as the Head Legal Services of the 1<sup>st</sup> Respondent until final determination of the main cause for judicial review; and that the Applicant retains his position as Head Legal Services of the 1<sup>st</sup> Respondent with full pay until the determination of the main cause. As such, the said order of temporary injunction maintained the then status quo regarding the Applicant's employment.

[5] On 13<sup>th</sup> February 2018, the Applicant was interdicted from the service of the 1<sup>st</sup> Respondent following a complaint by officers of the 1<sup>st</sup> Respondent to Police and criminal charges being preferred against the Applicant by the Director of Public Prosecutions (DPP) on offences of Abuse of Office and Causing Financial Loss under the Anti-Corruption Act, 2000. While the Applicant was still on interdiction, two occurrences took place, namely; the duration of his contract as stated in the employment contract dated 4<sup>th</sup> January 2016 expired on 4<sup>th</sup> January 2021; and the criminal proceedings terminated with the acquittal of the Applicant on 8<sup>th</sup> January 2021. After his acquittal, the Applicant wrote to the 1<sup>st</sup> Respondent asking for the lifting of his interdiction. The 1<sup>st</sup> Respondent responded stating that the Applicant's interdiction could not be lifted since his contract had ended by effluxion of time on the 4<sup>th</sup> January 2021. This prompted the Applicant to file an application vide M.A 138 of 2021 against the same Respondents seeking, among others, declarations and orders that the Respondents were in contempt of the court orders issued under M.A No. 391 of 2017 (the temporary injunction orders).

[6] On 17<sup>th</sup> February 2021, when this matter came up for mention pending completion of submissions and setting a date for Ruling, the Court was informed of the change in facts and circumstances of the case. Counsel for the Respondents prayed for leave of the Court to make and file a supplementary affidavit to update the Court on the new events that had occurred that would impact on the determination of this case. Counsel also prayed to make

supplementary submissions in the same regard. Counsel for the Applicant conceded provided they were allowed to file a rejoinder to the supplementary affidavit and submissions. The Court allowed the application and set timelines. As such, both the main cause (M.C No. 206 of 2017) and the application for contempt (M.A No. 138 of 2021) were due for Ruling at the same time.

[7] Miscellaneous Application No. 138 of 2021 (arising out this Cause) has been resolved first and the Court reached a finding that the term as to the duration and commencement of the Applicant's employment contract was specifically stated as 4<sup>th</sup> January 2016 and ending on 4<sup>th</sup> January 2021; the same was never varied and, as such, the Applicant's employment contract had expired on 4<sup>th</sup> January 2021. It follows that by the time the criminal proceedings terminated with the acquittal of the Applicant, his contract of employment had expired. The Court further found that the Respondents were justified in not lifting the interdiction since there was no existing contract between the parties at the time. It was also established that after the Applicant's acquittal, he was paid his outstanding entitlements and benefits save for payment for membership to a health club which the Respondents had wrongly refused to pay. The Court found this refusal to be in contempt of the earlier orders of the Court and accordingly ordered the Respondents to pay the claimed sum or suffer payment of a fine in case of default.

[8] It is in view of the above background that I find it pertinent to first explore whether there is still a live dispute before the Court. The parties made averments on this aspect and Counsel for the Respondents made submissions over the same. I have not seen any submissions from the Applicant's Counsel on this matter although they were given time to make a rejoinder to the Respondents' supplementary submissions.

## **Mootness of this Cause**

### **Evidence and Submissions**

[9] In the supplementary affidavit deposed on behalf of the 1<sup>st</sup> Respondent by **David Nahamya**, the Secretary to the 1<sup>st</sup> Respondent, and filed on 3<sup>rd</sup> March 2021, it was averred that owing to the developments that had taken place since the filing of this Cause, the remedies sought by the Applicant had been overtaken by events as the termination of his employment contract was not implemented. Upon expiry of his contract, the Applicant was paid his entitlements except in respect of the health club membership. It was prayed that this application be dismissed on the ground that the same was overtaken by events.

[10] In an affidavit in reply to the 1<sup>st</sup> Respondent's supplementary affidavit, filed by the Applicant on 15<sup>th</sup> March 2021, the Applicant stated that following the court's orders in M.A No. 392 of 2017, when he reported back to his office, he found that he had been stripped of all his functions as Head Legal Services and all his tools of trade had been taken away by the then 1<sup>st</sup> Respondent's Executive Director. The Executive Director in turn altered the Applicant's job description and started assigning him work as and when she pleased. The Applicant stated that it is not true that the Respondents implemented the court order in M.A 392 of 2017 by reinstating him in his substantive position as Head Legal Services and that save for salary payment, he was not allowed to do his work. This prompted the Applicant to file M.A No. 561 of 2017 for contempt of the orders issued vide M.A 392 of 2017 which orders were granted. The Applicant disputed the averment that the remedies sought by him in this application are overtaken by events since his contract was still running, according to him, until 4<sup>th</sup> July 2021.

[11] In their submissions, both in reply and in the supplementary submissions, Counsel for the Respondents submitted that the Applicant's case is no longer a proper case that calls for and invokes the grant of the prerogative remedies under judicial review for two reasons; one, because the Applicant already realized the remedy which he would have obtained from the judicial review proceedings; and two, the hearing of this matter and the remedies sought have already been overtaken by events as the Applicant's contract of employment, termination of which the Applicant seeks to prevent, has already expired. Counsel argued that owing to the above circumstances, the Applicant's case was now moot.

[12] Counsel for the Respondents further submitted that it is trite that courts of law do not decide cases where no live dispute between parties is still in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. Courts cannot issue orders where the issues in dispute have been removed or no longer exist. Counsel relied on the decisions in ***The Environment Action Network Ltd vs Joseph Enyau, Court of Appeal Civil Application No. 98 of 2005; Patricia Mutesi vs Attorney General, HC M.A No. 241 of 2016; Justice Okumu Wengi vs Attorney General; and Human Rights Network for Journalism & Another vs Uganda Communications Commission & Others, HC M.C No. 219 of 2013.*** Counsel prayed to Court to find that the present case has been rendered moot and dismiss the same with costs.

### **Determination by the Court**

[13] The matters being raised by the Applicant in his affidavit in reply to the 1<sup>st</sup> Respondent's supplementary affidavit, on basis of which he opposes the mootness of this suit, have been dealt with by the Court in M.A No. 138 of 2021. As of now, there is no dispute regarding the duration, commencement and expiry of the Applicant's employment contact. The Court has also

pronounced itself over the dispute as to whether the Respondents wrongly refused to lift the Applicant's interdiction.

[14] It is also clear on record that the remedies sought by the Applicant in this Cause have been overtaken by events. The first prayer was for a writ of Certiorari quashing the decision to terminate with immediate effect and without any legal basis the Applicant's services as the Head Legal Services of the 1<sup>st</sup> Respondent. As shown by the evidence on record, this decision was reversed by orders issued vide M.A 392 of 2017 and M.A 391 of 2017. It was ordered that the Applicant be retained in his position with full pay. Indeed, if it were not for the criminal prosecution and the eventual interdiction, the Applicant would have been expected to remain in office until the expiry of his contract subject to its being renewed or not. It may be true that the Applicant imputes bad faith on the part of the Respondents for precipitating the circumstances that led to his criminal prosecution. Nevertheless, that is not an issue that is before the Court for trial in this suit since the same arose way after the filing of the suit. There were no such facts at the time this Cause was filed. Such facts cannot, therefore, form part of the dispute for trial in this suit. That being the case, in as far as the first relief sought by the Applicant is concerned, there is no dispute for trial by the Court.

[15] The second relief was for an order of Mandamus directing the Applicant's reinstatement to his position as Head Legal Services of the 1<sup>st</sup> Respondent. As shown above, this remedy had been obtained through earlier orders of the Court. The status was only interfered with by the prosecution and interdiction of the Applicant. If the criminal proceedings had terminated the way they did before the end of the Applicant's contract, the Applicant would have resumed his employment as long as this suit remained pending. Unfortunately, the contract ended earlier. As such, there is no reinstatement to talk about as there is no contractual obligation between the Applicant on the one hand and the Respondents on the other. Similarly, the issue of renewal or not of the

contract cannot be litigated in this suit since it does not form part of the dispute before the Court in this matter.

[16] The third relief was for a permanent injunction restraining the Respondents, their officers or agents from terminating the Applicant's employment with immediate effect and without any legal basis. For the reasons already set out above, this remedy has also been overtaken by events and is not available for consideration by the Court.

[17] The fourth relief was for payment of general and exemplary damages. Where, in a judicial review application, no prerogative orders have been issued by the Court, the Court cannot consider making any award in damages. This is based on two principles. One is that the grant of judicial review remedies remains discretionary on the part of the court and it does not automatically follow that if any grounds for judicial review have been successfully proved then the court must issue remedies. See: ***Firdoshali Madatali Keswani Habib & Anor vs The Departed Asians Property Custodian Board & 2 Others, HC M.C No. 11 of 2019; R vs Aston University Senate ex parte Roffey [1969] 2 QB 558; R vs Secretary of State for Health ex parte Furneaux [1994] 2 All ER 652.***

[18] The second principle applicable to the present case is that in judicial review, there is no right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. In this regard *Rule 8(1) of the Judicature (Judicial Review) Rules, 2009* is instructive on the matter. The additional cause of action which may come with the application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence,



nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See: ***Three Rivers District Council versus Bank of England (3) [3003]2 AC 1; X(Minors) versus Bedfordshire County Council [1995]2 AC 633;*** and ***Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104 at page 104 -105.***

[19] On the case before me, there is no such separate action that was brought with the application for judicial review based on any alleged misfeasance or nonfeasance on the part of the Respondents. In any case, a claim for damages cannot be sustained in absence of any proof of grounds for judicial review and in a situation where the Court has not issued any prerogative orders as prayed for in the application.

[20] Taking into consideration the above analysis of the facts and circumstances of this case, it leads me to the conclusion that the case by the Applicant has been overtaken by events. I will now proceed to explore whether the suit has been rendered moot and the consequences thereof. In ***The Environment Action Network Ltd vs Joseph Eryau, Court of Appeal Civil Application No. 98 of 2005***, the Court of Appeal while relying on its earlier decision in ***Uganda Corporation Creameries Ltd & Another vs Reamaton Ltd, Civil Reference No. 11 of 1999***, stated that ***“It is a well-known principle of law that courts adjudicate on issues which actually exist between litigants and not academic ones”***. The Court went ahead to hold that courts do not decide cases for academic purposes because court orders must have practical effect and must be capable of enforcement. The Court concluded that such a case would be driven into the limbo of legal mootness.

[21] According to the **Black’s Law Dictionary, 9<sup>th</sup> Edition at page 1099**, a moot case is defined as a ***“matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights”***. On the facts before me, the present case fits well

within the above definition. There is no longer any controversy between the parties based on the Applicant's suit before the Court. If any controversy exists between the parties, it is one that is not before the Court for determination in this Cause.

[22] In view of the foregoing, therefore, I am in position to reach a conclusion that the Applicant's suit *vide* M.C No. 206 of 2017 has been overtaken by events. The Cause has been rendered moot and this court is not willing to be taken on a purely academic voyage. I therefore have to dismiss the suit.

[23] Regarding costs, the law is that costs follow the event and are awarded at the court's discretion (**Section 27 of the CPA**). In the instant case, the main factor that occasioned the mootness of the Applicant's case was the delayed disposal of this Cause and the criminal prosecution. None of the parties is principally responsible for this delay. None should therefore be subjected to payment of the other party's costs. In the result, this Cause is dismissed with an order that each party shall bear their own costs of the Cause.

It is so ordered.

***Dated, signed and delivered by email this 10<sup>th</sup> day of March 2022.***



**Boniface Wamala**  
**JUDGE**