THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS CAUSE No. 0089 OF 2021

OCHAN WILLIAM ..... APPLICANT

VERSUS

KYEGEGWA DISTRICT LOCAL GOVERNMENT .....RESPONDENT

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

RULING

This is an application made under the provisions of Article 42 of the Constitution of the Republic of Uganda 1995 as amended, Section 36 of *The Judicature Act,* Rules 6 & 7 of *The Judicature (Judicial Review) Rules*, and Order 52 Rule 1 of the Civil Procedure Rules S.I 71-1 seeking judicial review of an administrative decision by way of grant of an order of Certiorari quashing the decision taken by the respondent's Chief Administrative Officer to interdict the applicant from his employment with the respondent as an Anesthetic Officer, an order of mandamus compelling and directing the respondent to restore the applicant to his position, a declaration that the interdiction of the applicant from work without affording him a right to be heard contravenes the rules of natural justice, an order of prohibition restraining the respondent from implementing an illegal and unreasonable decision, General damages and costs.

The application is supported by an affidavit sworn by the applicant by which he depones that he has been working as an Anesthetic Officer at Kyegegwa HC IV since 2012. He was interdicted in August 2021 by the Respondent's Chief Administrative Officer on half pay without affording him an opportunity to be heard contrary to the rules of natural justice and contrary to the disciplinary procedure prescribed by *The Uganda Public Service Standing Orders (2010).*

The application is opposed by the affidavit in reply sworn by the respondent's Chief Administrative Officer, Mr. Kisembe Grace, who depones that the applicant was found to have missed work on various occasions and numerous correspondences had been sent to him asking him to explain his misconduct. That it was also discovered that the applicant had while in the employment of the Respondent worked on a separate full time job with Medical Teams International, contrary to the Public Service Standing Order and that the process of interdiction is only temporary under the said standing orders meant to pave way for investigations into an alleged misconduct. Further that the application is premature and he invited the court to dismiss the application with costs to the Respondent.

Background

It is understood from the pleadings of the parties that the Applicant is employed by the Respondent as an Anesthetic Officer at Kyegegwa HC IV. It is alleged that while in the employment of the Respondent in this position, he obtained a full time job with Medical Teams International. It is also alleged that he was absent from work on several occasions. The Applicant at one time did not administer anesthesia to a mother who was already on the operating table at the health Centre, an incident he explained in his letter to the Respondent. When the Permanent Secretary for the Ministry of Finance, Planning & Economic Development conducted an internal audit into the Respondent, he discovered that the applicant had another job with Medical Teams International and ordered the Accounting officer of the district to recover the monies paid to the applicant as salary from public funds while he was in the employment of MTI-Uganda.

Following accusations of the applicant's misconduct as above, the respondent's Chief Administrative Officer interdicted the applicant on half pay by letter dated 11th August 2021. (Annexure B to the affidavit in support of the motion). It is this interdiction that he applicant seeks to challenge in the present application as being unlawful, contrary to the rules of natural justice and the disciplinary procedures prescribed by *The Uganda Public Service Standing Orders (2010).*

Representation

In the application, the applicant was represented by Wameli & Co. Advocates and the Respondent by Attorney General's chambers, Fort Portal Regional Office.

Each party seems to raise slightly different issues for the court's resolution but the gist of them all culminates into the following;

1. Whether the application raises grounds for Judicial Review
2. Whether the applicant is entitled to the reliefs sought

Submissions

In his written submissions, Counsel for the applicant argued that an order of Certiorari is issued against a public body to quash a decision that was reached in breach of the rules of natural justice. Further that the right to a fair hearing under Articles 28 (3) and 42 of the Constitution is a non-derogable and it imposes an obligation on the public body to hear both sides before a decision can be arrived at. He relied on the decision in ***Errington Vs Minister of Health (1935) 1 KB 249***. He also relied on Section F-r of *The Uganda Public Service Standing Orders (2010)* to submit that the said standing orders were violated by the Respondent when they interdicted the applicant without a hearing. For emphasis, I will reproduce the impugned provisions of *The Uganda Public Service Standing Orders (2010)*;

DISCIPLINE (F - r)
General

1. *……*

2. *The power to discipline and remove public officers from office is provided for in the Constitution.*

3. *Proper disciplinary procedure shall be followed in all cases involving discipline and removal of public officers from office.*

4. *The rules of natural justice must apply in all disciplinary cases of whatever description.*

5. *No public officer shall be subjected to any punishment without first being informed, in writing, what he or she has done and being given an opportunity to defend himself or herself in writing.*

6. *Those handling disciplinary cases must be impartial and both sides in the case must be heard.*

Counsel submitted that the Respondent could only have legally interdicted the applicant after affording him a right to be heard and following the procedure laid out in the standing orders. Relying on the case of ***Aggrey Bwire Vs Attorney General & Another (2009) 1 ULR 240***, counsel argued that procedural impropriety is a ground that aims at the decision making procedure rather than the content of the decision itself. He argued that the established procedure was not complied with. He therefore argued that the applicant is entitled to the prerogative orders sought as well as general damages.

In response, counsel for the respondent argued that the application is premature. That the applicant should have exhausted the local remedies before going to the High Court. He argued that much as the court has unlimited original jurisdiction, it should not involve itself with issues that are purely administrative like the present claims. She relied on the case of ***Kihunde Sylvia & Another Vs Fort Portal Municipal Council HCMC NO. 0061 of 2016*** to support her argument.

It was further argued for the Respondent that the powers to interdict public servants like the applicant are derived from Section (F-s) of *The Uganda Public Service Standing Orders (2010)* and that court will not intervene in the employer's internal disciplinary proceedings until the process has run its course. After the process is complete, then court's power may be invoked to examine the component parts of the process to determine if there were any irregularities leading to a miscourage of justice. She relied on the decision of ***Oyaro John Owiny Vs Kitgum Municipal Council HCMC No. 007 of 2018*** to support this argument.

The respondent argued that interdiction is a temporary step taken to pave way for an investigation into the alleged misconduct and that the applicant would have gotten his fair hearing and a chance to challenge the findings of the investigations. Further that the interdiction is not a final decision. In essence, the decision to interdict is not subject to the rules of natural justice but rather it is during the

disciplinary processes that follows, that those rules should be observed. The applicant at the stage of interdiction was only entitled to being given reasons for the interdiction and this was done. The application consequently is premature and the applicant is not entitled to any of the reliefs sought.

Court's decision

Issue 1: Whether the application raises grounds for Judicial Review

According to rule 3 of *The Judicature (Judicial Review) Rules, 2009, S.I. 11 of 2009*, applications may be made under section 38 (2) of *The Judicature Act*, for orders of mandamus, prohibition, certiorari or an injunction (by way of judicial review). Judicial review of administrative action is a procedure by which a person who has been affected by a particular administrative decision, action or failure to act of a public authority, may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully. While it has been said that the grounds of judicial review "defy precise definition," most, if not all, are concerned either with the processes by which a decision was made or the scope of the power of the decision-maker.

A public authority will be found to have acted unlawfully if it has made a decision or done something: without the legal power to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of reasonableness); or without observing the rules of natural justice (unlawful on the grounds of procedural impropriety or fairness). Failure to observe natural justice includes among others the denial of the right to be heard.

Judicial review on any of those grounds is concerned not with the merits of the decision, but rather with the question whether the public body has acted lawfully. Judicial review is not the re-hearing of the merits of a particular case, but rather the High Court reviews a decision to make sure that the decision-maker used the correct legal reasoning or followed the correct legal procedures. If the Court finds

that a decision has been made unlawfully, the powers of the court will generally be confined to setting the decision aside and remitting the matter to the decision-maker for reconsideration according to law, or to compel the decision maker to follow the law.

The court ought to proceed with due regard to the limits within which it may review the exercise of administrative discretion when interfering with an administrative function of an establishment or an employer as stated in ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1947] 2 ALL ER 680: [1948] 1 KB 223***, thus; - (i) illegality: which means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. (ii) Irrationality: which means particularly extreme behaviour, such as acting in bad faith, or a decision which is "perverse" or "absurd" that implies the decision-maker has taken leave of his senses. Taking a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it and (iii) Procedural impropriety: which encompasses four basic concepts; (1) the need to comply with the adopted (and usually statutory) rules for the decision making process; (2) the common law requirement of fair hearing; (3) the common law requirement that the decision is made without an appearance of bias; (4) the requirement to comply with any procedural legitimate expectations created by the decision maker.

Failure to observe the rules of natural justice;

It is understood that any discretionary power which has to be, or has been exercised by a public authority, must be, or must have been exercised, reasonably and in good faith, and in furtherance of the pertinent statutory provisions which govern the exercise of that authority. Accordingly, there is no such thing as unreviewable or unfettered administrative discretion (see *Padfield v. Minister of Agriculture, Fisheries and Food, [1968] AC 997*; The now well-established doctrine that statutory powers must be exercised reasonably and in good faith and in

keeping with the overall statutory objectives as regards the exercise of that power, has had to be reconciled by the Courts with the equally important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision.

A decision maker commits a legal error when they breach natural justice or fail to follow a statutory procedure that is designed to provide natural justice. There must be practical injustice before the decision is unlawful for a failure to comply with natural justice. The requirements of natural justice come from general administrative law, not the particular statute being administered. Many statutes do, however, spell out procedures that must be followed when making decisions; for example, it might stipulate who is entitled to notice, when notice should be given and in what form, what kind of hearing is to be given, and how much time is allowed for a person to respond. Natural justice imposes similar requirements, independently of the statute.

Natural justice means more than affording someone the opportunity to "say their piece." Individuals have a right to a hearing and are entitled to respond to any adverse material, from whatever source that could influence the decision. They are entitled to have their evidence and submissions properly considered. Failure to give genuine, realistic and proper consideration to both sides of a case can give rise to an apprehension of bias on the basis of prejudgment. In this case, I find that the statutory procedures contained in Regulations 34 of *The Education Service Commission Regulations,* Regulation 44 of *The Public Service Commission Regulations* and Regulations 1 and 8 of Part (F-S) at page 129, of *The Uganda Public Service Standing Orders (2010 edition)* are equivalent to what natural justice would require. They establish a complete procedural code compliance with which also satisfies the requirements of natural justice.

By virtue of ***Regulation 38 of The Public Service Commission Regulations, S.I No.1 of 2009***, a public officer may be interdicted pending a disciplinary enquiry. Interdiction therefore is not a form of a disciplinary sanction but is in the nature of

the first step taken towards possible disciplinary sanctions. In that sense, interdiction is the employment equivalent of arrest. It also has resemblance with ***Section 63 of the Employment Act, 2006*** that gives an employer the power to suspend an employee to pave way for an investigation into an alleged misconduct. No hearing is required in this respect but it is incumbent that the employee is informed.

The key rationale for interdiction is the reasonable apprehension that the public officer will interfere with investigation or repeat the misconduct. It follows that it is only in exceptional circumstances that a public officer should be suspended pending a disciplinary enquiry.

There are nevertheless substantial social and personal implications inherent in an interdiction. Like an arrest, interdiction usually prejudices an alleged offender psychologically by being barred from going to work and pursuing one's chosen calling, and of being seen by the community as "a suspect." The Public Officer suffers palpable prejudice to reputation, and possibly advancement and fulfilment. Consequently, resort to interdiction is not a matter to be taken lightly. These possible repercussions make a compelling case for safeguards and regulation of decisions that involve stoppage of a public officer from reporting to work, albeit in different ways; depending on whether such a decision is an interdiction or a suspension. The rules of fairness applicable to suspension are not necessarily applicable to interdiction.

Within the context of employment relations, interdiction is not exactly the same as suspension. Whereas both measures involve the temporary stoppage of a public officer from reporting to work, suspension may be taken as a disciplinary sanction, (but may also be taken for reasons purely of good administration or business efficacy, unrelated to discipline). On the other hand, interdiction is not a disciplinary sanction but invariably taken as a step pending a disciplinary enquiry and adjudication. Unlike interdiction which is a neutral action taken to allow unfettered investigation, suspension is in most cases a disciplinary action that

must therefore be taken in the context of natural justice. This is more so in situations where a suspension is so prolonged that it acquires the character of a final disciplinary action.

On the other hand, since interdiction is a neutral act and implies no assumption of guilt, but is simply the first step taken before a disciplinary enquiry and adjudication, the only considerations that satisfy the requirements of fairness in a decision to interdict are; (a) a public officer's involvement or suspected involvement or attempted involvement in the commission of a criminal offence or serious misconduct (it is necessary that interdictions are based on substantive and objective reasons, more than a mere suspicion that the public officer committed an offence or engaged in misconduct, but not an absolute certainty); and (b) reasonable grounds for believing that the public officer's interdiction is necessary in the public interest, for example when it is believed that a public officer who is suspected to have committed serious misconduct may interfere with the employer's investigation or tamper with evidence.

An officer on interdiction remains innocent until proved otherwise. In addition, such an officer has a legitimate expectation that he or she will be given an opportunity to respond to any adverse findings arising out of the preliminary investigations conducted by the employer. I find therefore that the decision to interdict is not subject to the right to be heard.

The purpose of a preliminary investigation is for the responsible officer to decide if the evidence against the officer is sufficient to proceed to the respective Service Commission. It has a relatively low standard of proof to meet in order for the case to be transferred to the respective Service Commission. During such an investigation, the responsible officer takes the evidence at face value. In other words, the responsible officer makes no determination if a person is telling the truth. Determining credibility is an issue for the actual disciplinary hearing by the respective Service Commission. The preliminary investigation is not a determination of guilt or innocence. Rather, the responsible officer's sole responsibility is to decide

if the available evidence has shown whether it is possible the officer did what they are accused of doing. The employee's continued attendance at the work place will jeopardize the investigations.

The Public Officer may at the stage of interdiction be interviewed by the Responsible Officer or other investigating officers and be made aware of the investigations. The only requirement specified by Regulation 8 (c) of Part (F - s) of *The Uganda Public Service Standing Orders (2010 edition)*, is that where a Public Officer is interdicted, he or she has to be informed of the reasons for such an interdiction. The letter of interdiction should thus be very explicit of the fact that the interdiction is only the first step and forms part of a process that would be finalised after the Public Officer has been given an opportunity to present his or her evidence and to appear before the disciplinary body in person.

Although the Responsible Officer may interdict a public officer pending a disciplinary enquiry, the investigation into the public officer's alleged transgressions must be concluded within a reasonable period. Some latitude is allowed between the act of interdiction and the institution of the proceedings but the gap must inevitably be short (see *Wycliff Kiggundu v. Attorney General, S.C. Civil Appeal No. 27 of 1992*). Thereafter, according to regulations 38 (5) of *The Public Service Commission Regulations,* 8 (b) of Part (F-S) at page 129 *The Uganda Public Service Standing Orders (2010 edition),* investigations into the conduct of the interdicted Public Officer must be speeded up and brought to conclusion within a period of three months from the date of interdiction for offences under investigations by the Ministry or department, or Auditor General, and not requiring or involving the police or a court of law, and six months from the date of interdiction for offences requiring or involving the police or a court of law.

I have examined the letter of interdiction attached to the applicant's affidavit in support as annexure B and it clearly spells out the reason for the interdiction. It had been established that the applicant was holding another full time job at Medical Teams International contrary to the Public Service Standing orders. It is the

applicant's contention that at the time of the interdiction, he was not holding any other job except the one with the Respondent. I am unable to delve into the truthfulness of the allegation, a power this court is not dressed with. This could would leave it to the responsible authority to conduct their investigations in accordance with the Public Service Standing orders and make their conclusion based on the evidence available to them.

Before the impugned interdiction, the Respondent had in a letter dated 12th June 2019 (annexure "A" attached to the affidavit in reply) informed the applicant of the various complaints of the applicant's absence from duty without permission and asking the applicant to respond to them, to which the applicant responded by letter dated 20th June 2019. Another letter dated 13th May 2020 was sent to the applicant asking him to explain his omission to administer anesthesia to a mother already on the operating table (annexure "D" attached to the affidavit in reply), to which the applicant responded in his letter dated 13th May 2020. By letter dated 22nd April 2021 (annexure "F" attached to the affidavit in reply) , the District Health Officer of the Respondent had written to the Chief Administrative Officer notifying the latter that the former had received reports from the applicant's immediate supervisor of the applicant's continued absence from work which was attributed to possession of another job. All these circumstances demonstrably reflect the decision to interdict to have been a practical, sensible and proportionate option in the circumstances. The letter satisfied the rules of fairness applicable to an interdiction.

Certiorari issues to quash decisions that are *ultra vires* or which are vitiated by error on the face of the record or are arbitrary and oppressive (see *In* ***Re an Application by Bukoba Gymkhana Club [1963] E.A. 473*** and ***Haji Mohamed Besweri Kezaala v. The Inspector General of Government and 2 others, H.C. Misc. Application No.28 of 2009)***. I have not found an error on the face of the record or any procedural impropriety with the applicant's interdiction by the Respondent. I find nothing to show that the decision of the respondent's Town Clerk to interdict the applicant was vindictive, arbitrary, and oppressive or in violation of the applicant's right to a fair hearing. This limb of his argument as well fails.

Issue 2: Whether the applicant is entitled to the relief sought.

The applicant having failed to prove any of the grounds on basis of which he sought to challenge the decision to interdict him, he is not entitled to any of the reliefs he sought. Consequently, there is neither a basis for issuing the orders sought nor for the award of damages. This application is therefore dismissed with costs to the respondent.

I so order

Dated at Fort Portal this 17th day of March 2022

Vincent Emmy Mugabo

Judge.

Court: The Assistant Registrar shall deliver the Ruling to the parties.

Vincent Emmy Mugabo

Judge

17th March 2022.