THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS CAUSE No. 006 OF 2020

OWEBEYI JAMES MUGYEMANYI..... APPLICANT

VERSUS

1. **ATTORNEY GENERAL**
2. **MINISTER OF LOCAL GOVERNMENT ..... RESPONDENTS**

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

RULING

This is an application made under the provisions of Article 50 (1) & (2) of the Constitution of the Republic of Uganda 1995 as amended and Order 52 Rule 1 of the Civil Procedure Rules S.I 71-1 seeking for declarations that the omissions of the respondents to pay LC1s and LC2s a salary, salary arrears and provide for their office equipment and facilities violates their freedom from discrimination and the right to equality. The applicant prays for orders compelling the respondents to pay salary to lower local councils LC1s and LC2s, to pay salary arrears since the time of their election, provide facilitation and equipment for their offices and costs of this application.

The application is supported by an affidavit sworn by the applicant by which he deposes that since the election of lower local councils in 2018, they have been working without pay except for the annual allowance of UGX 120,000=. He notes that LC1s and LC2s carry out various duties including judicial functions under the Local Council Courts Act but without facilitation from government, which conduct he notes is

discriminatory and may lead to poor service delivery among these officers. The application is also supported by the affidavit of Baguma Justus, the LC1 Chairperson of Kidukuru-Kihembo A cell who also deposes that the government needs to pay salaries to lower local councils like other elected leaders. He notes that the failure of the government to pay salaries to LC1s and LC2s and facilitating their work is discriminatory.

The application is opposed by the affidavit in reply sworn by Singura Isaac Karekona, a Senior State Attorney in the 1st Respondent's Chambers. He objected to the inclusion of the 2nd Respondent in these proceedings on the basis that the 2nd respondent is not a legal person and cannot be sued. He deposed further that the applicant's claims are baseless since salaries for LC1s and LC2s are not budgeted for, and that the intention to stand for office by LC1s and LC2s is voluntary and candidates are aware of the terms and conditions of filling those positions.

Background

The applicant is a citizen of Uganda and has brought this application for enforcement of the rights of LC1s and LC2s. The government carried out elections of lower local councils in 2018 where elected leaders occupied the offices of LC1 and LC2 in all villages and parishes in the country. It is the contention of the applicant that save for the annual allowance of UGX 120,000/= given to these leaders, they are not paid salary by the government and that their work is not facilitated like other elected leaders. The applicant notes that this is discriminatory and a violation of these leaders' freedom from discrimination and their right to equality.

Representation and hearing

In the application, the applicant is self-represented and the Respondent by Attorney General's chambers, Fort Portal Regional Office. Both parties have filed written submissions that have been considered in this ruling.

Each party seems to raise slightly different issues for the court's resolution. The respondents have raised two objections to the application to the effect that 2nd Respondent is not a proper party to the application and that the application is not properly before court. In light of the foregoing and in accordance with **Order 15 rule 5 of the Civil Procedure Rules**, I frame the following issues for determination.

1. Whether the 2nd Respondent is a proper party to the application
2. Whether the application is properly before the court
3. Whether the applicant is entitled to the reliefs sought

Consideration by court

ISSUE 1.

Whether the 2nd Respondent is a proper party to the application

It is an objection raised by the respondents' counsel that the 2nd Respondent was improperly sued. He argued that the 2nd respondent is not a legal person. He relied on **Section 10 of the Government Proceedings Act** to argue that civil proceedings by or against the government are instituted against the attorney general. No submissions in rejoinder were filed by the applicant.

I agree with the submission of counsel for the respondent on this issue. In addition, **Article 250 of the Constitution 1995**, provides as follows;

"Civil proceedings by or against the Government shall be instituted by or against the Attorney General; and all documents required to be served on the Government for the purpose of or in connection with those proceedings shall be served on the Attorney General."

In effect, the Attorney General is the Chief Government lawyer and legal advisor upon whom the mandate falls to represent Government in any civil proceedings by or against the Government. See also ***Mukasa Vs Attorney General & Anor (Miscellaneous Cause 94 of 2019.***

The 2nd respondent is an improper party to this application and is hereby struck off.

ISSUE 2

Whether the application is properly before the court

Before I delve into the substance of this issue, I must state that the provisions of **O.1 r 8** of the **Civil Procedure Rules** (as amended) are, where applicable, mandatory and if not complied with would render the suit incompetent and incapable of amendment. This rule relates to the procedure for commencement of representative actions. It is mandatory to obtain a representative order from court before an action of this nature can be commenced.

It is the contention of counsel for the respondents that the application was commenced under Article 50 of the Constitution as a public interest suit but that the application does not come near to satisfy the criteria for public interest suits. He relied on the case of ***Aboneka Michael & Another Vs Attorney General HCMA No. 367 of 2018*** to argue that public interest suits should be those in which issues of broad public concern are raised, have impact on marginalized groups and not for the

political benefit of one person. He prayed for the application to be dismissed.

The circumstances of this application shows that the suit is not bonafidely in the interest of the public since it is for the benefit of LC1s and LC2s and on their behalf so the requirements of O.1 r 8 of the Civil Procedure Rules ought to have been complied with. The mere fact that it was stated on the face of the notice of motion that it is brought under Article 50 does not give an exemption from seeking the representative order.

This application is brought on behalf of persons who are known and identifiable and therefore cannot be represented except if leave of court is obtained to bring a suit on their behalf of persons who may be aware of their rights but lack financial ability to enforce those rights or those who may not be aware at all about their infringed rights. See ***Rev. Mtikila Vs Attorney General of Tanzania, HCCS No. 51 of 1993.***

I would re-echo what was said in the Constitutional Court in the Petition of ***Dr. Rwanyarare & Another V Attorney General - Petition 11/97***. *"We cannot accept the argument of Mr. Walubiri that any spirited person can represent any group of persons without their knowledge or consent. That would be undemocratic and could have far reaching consequences. If plaintiff wished to put his philanthropic ideas in motion, he should have complied with Order 1 Rule 8 of the Civil Procedure Rules, and now that he did not, he must put his legal activism on hold."*

The applicant has not demonstrated that that he actually has an actual interest in the matter or that he has an independent cause of action. If he remained alone in this application, it will not be sustainable because

he brings it on behalf of LC1s and LC2s. It may appear from the reading of Article 50 (2) that any person can bring such action. I however realise that most, if not all civil suits are brought for enforcement of a right. Either individual right or freedom, economic right, social, religious or cultural right. It is my considered opinion that where a suit is for enforcement or a right or freedom on behalf of the public or a section thereof, such an action would properly fall within the provisions of Article 50 as public interest. Where a person purports to enforce a right or freedom on behalf of a specified and known individual, the person enforcing such a right must prove that he or she has interest and that he or she must comply with Order 1 Rule 8 of the Civil procedure rules. I believe the Constitutional Court's decision in the case of ***Dr. Rwanyarare (supra)*** that not every spirited person can represent any group of persons without their knowledge or consent.

A citizen's concern with legality of governmental action is not regarded as an interest that is worth protecting in itself. The applicant must be able to point to something beyond mere concern with legality: either a right or to a factual interest. Applications of this nature 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 wording of this application claim clearly shows that this is not a suit envisaged under Article 50 of the Constitution. It is a representative action which required the applicant to have an interest in the case. The

applicant does not demonstrate any personal interest in the application leaving him with no cause of action or *locus standi* to bring this suit without a representative order.

From the foregoing, the applicant has no locus to bring this application, this application is not properly before court and it would therefore be liable to be dismissed. I will however proceed to determine the third issue as framed herein.

ISSUE 3.

Whether the applicant is entitled to the reliefs sought

The gist of the applicant's claim is that from the election of lower local councils in 2018, LC1s and LC2s have been working without pay and yet other elected leaders in the country are paid salary. He also claims that the government does not facilitate their work, which involves a lot of duties among which are judicial functions under the Local Council Courts Act. That the denial of salary payment and facilitation by the government is discriminatory. That this puts tension on the respective leaders to use their respective resources to execute their work since failure to perform their functions may lead to censure under the Local Governments Act. The applicant submitted that performance of the functions of LC1s and LC2s would require facilitation and that the respondents have continued to subject them to different treatment which is a violation of their right to equality.

Counsel for the respondent submitted that it is not the function of the court to make provision for the payment as claimed by the applicant. He relied on the case of ***Muhumuza Ben Vs Attorney General, HCMC No.***

212 of 2020 to argue that the judiciary should not excessively interfere in the functions of the Executive and Legislature. He noted that a matter of this nature is not justiciable before the court.

It is further argued by the respondents that salaries and other emoluments of elected leaders are drawn from the consolidated fund. Counsel submits that no monies can be drawn from the consolidated fund without a corresponding Appropriation Act. He notes that salaries for LC1s and LC2s have never been budgeted for and neither have they ever been appropriated. He supported this argument with the decision of ***Combined Services Ltd Vs Attorney General & Another HCMA No. 0811 of 2021***. Further that the LC1s and LC2s stand for election into these offices knowing that no such payment of salary or facilitation is provided. They therefore voluntarily do so in full knowledge of the fact. He invited court to dismiss the applicant's claims since there is no right or freedom violated by the government.

Parliament gives statutory authority for the government to draw funds from the Consolidated Fund by Acts of Parliament known as Appropriation Acts. According to **Article 154 (1) of the Constitution**, no monies may be withdrawn from the Consolidated Fund except; (a) to meet expenditure charged on the fund by the Constitution or by an Act of parliament. Furthermore, **Section 32 (3) (a) of the Public Finance Management Act** of 2015 provides that money contained in the Consolidated Fund cannot be withdrawn except upon the authority of a warrant issued by the Minister, to the Accountant-General. The Minister may not issue such a warrant except where a grant of credit is issued by the Auditor- General in respect of; (a) statutory expenditure, during a financial year; and (b) for services to be rendered during a financial year

where the funds are authorized by an Appropriation Act or supplementary Appropriation Act. Therefore, except for statutory expenditure, the Minister may only issue a warrant for expenditure that is authorized for the financial year during which the withdrawal is to take place by an Appropriation Act or a Supplementary Appropriation Act.

An applicant who claims to be entitled to payment from the government must indicate or provide evidence to show that the amount sought to be recovered or sought to be paid to him or her forms part of expenditure that is authorized for the financial year during which the payment is sought. See ***Combined Services Ltd Vs Attorney General & Another HCMA No. 811 of 2021***. The applicant has not indicated that the salaries and facilitation of LC1s and LC2s are provided for in the budget for them to claim them. A person may not seek for payment from the Consolidated Fund just because funds are not legally available to pay.

National budgeting and appropriation of the country's resources are well known to be functions of the Executive and the Legislature. Excessive interference by the courts in the functions of these two arms of the government is not proper. They should be allowed to execute their functions in line with their respective mandates under the law.

In the absence of a budget line or budget vote for the salaries for LC1s and LC2s, I don't see out of what funds I can compel the respondents to pay the same. Recourse for this lack of a budget line may be had with the 2nd Respondent to make proposals to the executive for inclusion of the same in a particular budgeting cycle, or Parliament to amend the Local Governments Act to clearly provide for these emoluments. Then they could be considered under the respective heads of expenditure from

government. While the elected lower local councils may have genuine concerns over payment and facilitation for their work, I hold the opinion that court may not be the most appropriate forum to raise these concerns.

The elected leaders in the lower local councils voluntarily apply for election and are elected to these offices out of their free will well knowing that there exists no budget line to provide for salaries and other facilitation. It is not logical that they turn up years later to claim what they know they are not entitled to.

I find that this issue has no merit and I resolve it in the negative.

In the final result, this application is dismissed with costs to the 1st Respondent.

I so order

Dated at Fort Portal this 29th day of April 2022

Vincent Emmy Mugabo

Judge.

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

Vincent Emmy Mugabo

Judge

29th April 2022.