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The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Cause No. 0017 of 2022

Okello Isaac Applicant

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Versus

- 1. Serere District Local Government
 - 2. Serere District Service Commission
 - 3. Ofamba Peter
- } Respondents

Before: Hon. Justice Dr Henry Peter Adonyo

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Ruling

This is an application by way of notice of motion under section 36 of Judicature Act, Rules 3 & 6 of the Judicature (Judicial Review) Rules S.I 11 of 2009 and section 98 of the Civil Procedure Act for orders that;

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a) An order of mandamus directing the 1st and 2nd respondents to promote and appoint the applicant as Substantive Senior Civil Engineer (Roads and Buildings) of Serere DLG and implement the decision of the Permanent Secretary, Ministry of Public Service dated 30th August 2022.

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b) A declaration that the first respondent's retention of a non-registered engineer to supervise the applicant who is a registered engineer is irrational, illegal and unlawful.

c) An order of prohibition and an injunction to prevent the respondents from ring-fencing the positions of District Engineer and Senior Civil Engineer

5 (Roads and Buildings) promoting and appointing the current acting District Engineer who does not meet the requisite qualifications.

d) A declaration that the act of the 1st and 2nd respondents, allowing an employee to act in a senior position for more than 12 years without advertising the vacancy is illegal, unlawful and in breach of Public Standing
10 Orders and Employment law.

e) General damages.

f) Costs of the application.

The grounds of this application are briefly that the failure or refusal by the respondents to implement the decision of the permanent secretary, Ministry of
15 Public Service, contained in a letter date 30th August 2022 is irregular, irrational, amounts to contempt and is calculated at defeating justice. The respondents have retained in office a non-registered Engineer to supervise the applicant who is a registered engineer. The actions of the respondents are in bad faith, malicious and unreasonable.

20 The applicant in his affidavit in support stated he joined the service of the 1st respondent as a road inspector in April 2011 and was deployed at Serere District headquarters under the departments of works for a probationary period of six months which was confirmed in June 2012.

That in 2016 he was promoted in service to the position of Assistant Engineering
25 Officer. On the 31st of May 2021 while going through his HR file at the central registry of the 1st respondent he discovered that his duly filed appraisal forms were missing and after complaints to the CAO no reply was made to date.

That by a letter dated 14th September 2021 he was transferred to Ocaapa Town Council as assistant engineering officer by the 1st respondent's CAO which was

5 done in bad faith, that he declined that transfer as his complaint on missing appraisal forms had not been handled.

Following that he was appointed as the Force Account Manager and retained at the District HQ to oversee works in the county.

The applicant further state that he entered service with an ordinary diploma in
10 construction (Building and Civil Engineering) but along the way he obtained a higher diploma in the same field and that he later on enrolled for a bachelor's degree in civil engineering at Ndejje University where he graduated in 2015 and in 2016 he enrolled for a master's degree of science in project management at Cavendish University where he graduated in 2021 and later in 2017 he enrolled
15 for a post-graduate diploma in construction project management at Makerere University where he graduated in May 2021.

That in October 2021 he registered with the Engineers Registration Board - a body mandated to oversee and regulate the engineering profession in Uganda as a certified engineer and was subsequently granted a practicing license to practice
20 engineering in Uganda.

That since the initiation of the 1st respondent in 2010 they have never had a substantive District Engineer and Senior Civil Engineer (Roads and Buildings) in spite of existing vacancies in the district and available resources for recruitment rather they have kept it under acting position for the last 12 years with the
25 current District Engineer, one Emesu Simon Peter in position yet he does not possess the requisite academic and professional qualifications as he is not registered with the Engineers Registration Board and without a practicing license. That Emesu, a non-registered engineer is not capable of supervising the applicant who is registered.

5 That it is unlawful for the 1st respondent to continue working with unregistered engineers as it contravenes the law and hinders service delivery.

That since 2021 he has written several requests to the 1st respondent's CAO to consider promoting him to the position of senior civil engineer (roads and buildings) and who asked the 3rd respondent to process the same but to date no
10 progress has been made.

That on 15th March 2022 he wrote to the Permanent Secretary (PS) Ministry of Public Service complaining of the injustices and discrimination imposed on him by the respondents and on 30th August 2022 the PS wrote back asking the 1st respondent's CAO to act and consider promoting and appointing him as Senior
15 Civil Engineer (Roads and Buildings) since the position was available.

That in the same letter he was asked to follow up the matter with the 1st respondent's CAO.

That the respondents have since failed and or ignored to implement the decision/directive of the PS and have ring-fenced the positions of Senior Civil
20 Engineer (Roads and Buildings) and District Engineer for unregistered engineers. That on 19th May 2022, the chairman Engineers Registration Board made a reply following one by the Permanent Secretary, Ministry of Public Service seeking professional advice on the legality of a registered engineer reporting to a non-registered engineer.

25 The respondents' in an affidavit in reply sworn by Richard Bukone Sajjabi the CAO of Serere DLG stated that the contents of the application were denied.

That the applicant's employment in Civil service is subject to transfer and deployment at any station or post within district in line with public service

5 standing orders and the applicant's refusal to adhere to lawful instruction amounts to gross misconduct in public service.

That recruitment is based on confirmation of availability of resources for the wage bill confirmed by the accounting officer not by mere assertions by the applicant.

10 That the 1st respondent assigned duties of district engineer to one of its personnel in acting capacity pending appointment of a substantive person in accordance with Public service standing orders and such assignment of duty in acting capacity does not require a person to possess all the prerequisite technical qualification for a district engineer.

15 That the applicant has since his transfer to the 1st respondent worked effectively under the supervision and mentorship of the current acting District engineer without any difficulties and as a result has acquired additional qualifications.

That promotion in public service is a discretionary reward of employees based on performance and availability of funds and this application is incompetent as it
20 seeks orders to force the respondents to execute their discretionary administrative duties based on a variety of facts and prevailing circumstances in favour of the applicant.

That it is unlawful for the applicant to lobby the 1st and 2nd respondent to promote him as the 1st and 2nd respondents are independent entities with
25 supervisory powers over the applicant and promotion is based on their assessment, available funds and not orders and directives from other government entities.

That this application should be dismissed with costs to the respondents as the grounds are unjust and the grant of the orders sought will cause a miscarriage of



5 justice, create a hostile work atmosphere and the respondents shall lose their supervisory control over their employees.

In rejoinder the applicant stated that his transfer was not done in good faith or in accordance with the public service standing orders.

10 That there was availability of resources from the European Union to recruit critical positions in the district set up and the 1st respondent was listed as one of the beneficiaries.

That the independence of the 1st and 2nd respondents must be in compliance with the existing laws and regulations made by parliament.

4. Representation:

15 The applicant was represented by Danrich Advocates formerly Okurut, Okalebo, Outeke & Co. Advocates and the respondents were represented by the Attorney General's Chambers Soroti. Parties, through their counsels filed written submissions which are on record and considered along with the pleadings as well as affidavits for and against this application.

20 5. Issues:

Two issues were raised for the determination of this matter. They are adopted accordingly by court and these are;

- i. Whether the application raises any grounds for judicial review?
- ii. Whether the applicant is entitled to the remedies sought in the
25 application?

5 6. Determination.

a. Preliminary objections.

Counsel for the applicant submitted that the 1st respondent filed an affidavit deposed by its CAO but did not furnish the authority to the deponent to swear the affidavit the same on behalf of the 2nd and 3rd respondents as is provided for
10 **Order 1 rule 12** of the **Civil Procedure Rules** and confirmed by the holding in **Ssenyimba & 2 Ors vs Birikade & Anor MA No. 378 of 2018 [2019] UGHCFD** that where an affidavit is sworn on one's behalf and on behalf of others there is need to prove that others authorised the deponent to swear on their behalf.

The respondents in their submissions stated that the facts in **Ssenyimba (supra)**
15 are distinguishable from the facts at hand as the in that case the deponent simply swore the same as a person with knowledge of the facts being the CAO of the 1st respondent.

Furthermore, the 1st respondent dismissed the assertion of applicant that the CAO of the 1st respondent had sworn an affidavit on behalf of other respondents
20 as being diversionary as nothing to that effect was there since even this matter was not a representative suit as envisioned under order 1 rules 8 and 12 of the CPR.

In making this assertion, Counsel relied on **Esemu Nicholas and Anor vs Mwitaniwa Kazaarwe HCMA no. 952 of 2020** where it was noted that where
25 there is nothing to show that an applicant was swearing the affidavit on behalf of the others, he or she can only do so as a witness who had knowledge and facts upon which the applicant's joint action is based.

In the instant matter, the perusal of the affidavit sworn by the CAO is clearly one which is sworn by a knowledgeable person and is not indicated anywhere that it

5 was on behalf of the other parties. He swears his affidavit as the CAO of the 1st respondent and replies to the application basing on his knowledge. He does not purport to swear the affidavit on behalf of the 2nd and 3rd respondents.

That being the case, I am amendable to the holding in *Esemu Nicholas and Anor vs Mwitaniirwa Kazaarwe HCMA No. 952 of 2020* and *Tumwine Tumushabe and 4*
10 *Ors Vs Asiimwe 2015] UGHCFD 33.*

This objection is accordingly overruled.

The respondents' in their submissions also raised a preliminary objection that this application is time barred having been filed more than 3 months from the time the cause of action arose.

15 More so the applicant did not seek extension of time from this court. Counsel relied on *Order 7 rule 6* of the *CPR, rules 5(1), 7A (1)(9)* of the *Judicature (Judicial Review) (Amendment) Rules* and *IP. Mugumya vs Attorney General HCMC No. 116/2015.*

20 Counsel for the respondent submitted that the applicant is challenging the respondent's alleged decision which happened in 2021 and yet the application was filed in November 2022.

In reply, the applicant submitted that the applicant in his affidavit in support under paragraph 20 stated that after exhausting all remedies to have his complaints attended to in vain wrote to the PS Ministry of Public Service on the
25 15th March 2022 and the PS responded by writing to the CAO of Serere District on the 30th of August 2022, per this letter the PS asked the applicant to follow up with the CAO.

5 That after this letter the 1st respondent refused to follow the PS' guidance and thereafter the application was filed on the 11th November 2022 well within the 3 months as provided for in the Rules.

Rule 5(1) Judicature (Judicial Review) (Amendment) Rules as amended in 2019 provide that an application for judicial review shall be made promptly and in any
10 event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.

In the instant case the applicant started making requests for promotion in 2021 with no progress, he then filed a complaint on 15th of March 2022 to the PS
15 Ministry of Public Service and the response was made on 30th August 2022.

The respondents did not act on the guidance by the Ministry prompting this application which was filed on the 8th of November 2022.

The reliefs sought in this application arise from a combination of events, however, the main factor is the response made by the PS on the 30th of August
20 2022.

Using this letter as the gauge for time frame within which this application was filed in court, I conclude and hold that indeed this application was filed within the time prescribed by the rules and as such the preliminary objection is overruled.

The conclusion of the above two preliminary holdings takes me to the substantive
25 issues in this application, each of which I have considered as below.

b. Whether the application raises any grounds for judicial review.

Rule 2 of the Judicature (Judicial Review) Rules defines judicial review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or

5 persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties.

Counsel for the applicant submitted that for one to succeed in an application for judicial review the party must prove that there was illegality, irrationality or procedural impropriety.

10 On illegality counsel for the applicant submitted that the Engineers Registration Act requires that only engineers that are duly registered with the Engineers Registration Board are legally permitted to engage in engineering practice and yet the current acting substantive district engineer does not have the requisite academic and professional qualifications to practice engineering or even make
15 decisions in the engineering profession on behalf of the 1st respondent.

Counsel further submitted that per annexure 'R' the chairman of the Engineers Registration Board in his professional advice to the PS Ministry of Public Service stated that the law requires only engineers registered with the board to engage in engineering practice and consequently such registered engineers should
20 occupy senior engineering positions within public institutions and positions of responsibility and that it is technically unethical for a non-registered engineer to supervise a registered engineer.

That the applicant in his affidavit proved that he is a qualified engineer with a valid practising certificate and he is being supervised by a non-registered
25 engineer who does not possess the requisite qualifications to practice engineering in Uganda.

Counsel further submitted that the respondent did not deny that the applicant has been working under a non-registered engineer. Counsel relied on *section 19*

5 *of the Engineers Registration Act 1969* and the *Engineers Code of Professional Practice and Ethics and Disciplinary Procedures 2011*.

Counsel additionally submitted that since the initiation of the 1st respondent in 2010, it has not had a substantive district engineer despite availability of resources and furthermore they have maintained this position in an acting
10 position contrary to paragraph 8 of section A-G of the Public Service Standing Orders which presupposes that an acting appointment shall be for a period of six months.

Counsel for the respondent in their submissions on illegality focused on the issue of funding for the position of district engineer.

15 Counsel submitted that annexure 'A' relied on by the applicant which pertains to funding from the European Union for specific positions did not include the position of district engineer and as such it would be a mischief to promote the applicant without proper funding.

The perusal of Annexure 'A' to the applicant's rejoinder shows that the referred
20 to for recruitment of critical staff in Serere District provided for specific positions but did not include that of district engineer. They included heads of department, head of internal audit, head PDU, Principal HR Officer (administration) and Principal HR Officer (Secretary District Service Commission).

Arising from the factual evidence from that document, I would find that the
25 applicant has not led evidence to the effect that a district engineer was also a head of department who then would be a subject of the above funding and so without proof of that particular administrative structure, this court is unable to make any findings that indeed the 1st respondent had funding per annexure 'A'.

5 Regarding the issue of a non-registered engineer in the employ of the 1st respondent and acting as the district engineer for 12 years.

The respondents did not deny this allegation for under paragraph 7 of the CAO's reply he stated that the 1st respondent assigned the duties of district engineer to one of its personnel in acting capacity pending appointment of substantive
10 person in accordance with the Public Service Standing Orders.

Also under paragraph 8 the CAO states that such assignment of duty in acting capacity does not require a person to possess all the prerequisite technical qualification for a district engineer.

Further under paragraph 9 the CAO acknowledges the applicant's allegation that
15 he has been supervised by a non-registered engineer by stating that the applicant since his transfer to the 1st respondent has worked effectively under the supervision and mentorship of the Ag. District Engineer.

I also note that Annexure 'R' to this application is a letter dated 19th May 2022 from the chairman Engineers Registration Board to the Secretary Public Service
20 Commission, the Chairman Serere District Service Commission and the CAO Serere DLG providing technical guidance on the requirements for promotion and appointment of engineering professionals in the public service.

In that letter, *inter alia*, the Chairman Engineers Registration Board gives his opinion as per the Engineers Registration Act Cap 271 which he states provides
25 for only engineers registered with the board to legally engage in engineering practice and consequently should occupy senior engineering positions within public institutions.

The Chairman Engineers Registration Board further notes that despite the requirements of the law and their guidance some government institutions and
30 particularly local governments had continued to appoint unregistered engineers

- 5 to occupy senior positions of responsibility and he mentions Serere DLG as a one such case where the District Service Commission had perpetually appointed an unregistered engineer in the position of Acting District Engineer and had failed to promote other engineering professionals in the department who have the requisite qualifications and were registered with the board.
- 10 The Chairman Engineers Registration Board continues to lament that it was unfortunate for the respondent to have an unregistered engineer is supervising a registered engineer which is not only against the Engineers Registration Act and professional code of practice but also demotivating factor to duly qualified staff. He advises that only registered engineers should hold senior positions of
- 15 responsibility in the districts as was provided for by the law and that it was technically unethical for a non-registered engineer to supervise a registered engineer in an engineering function and so the anomaly at the respondent DLG should be rectified.

I have had a look at The Engineers Registration Act Cap 271.

20 It is a law that provide for the establishment of an Engineers Registration Board with powers and functions for the registration of engineers.

Under section 3 the Engineers Registration board has the duty to regulate and control engineers and their activities within Uganda and to advise the Government in relation to those functions.

- 25 In order to carry out this mandate all engineers in Uganda are required to register with the board after meeting specific requirements. Being a member of this board then automatically makes one a member of the Uganda Institution of Professional Engineers and subject to the code of ethics.

Section 19 of the Engineers Registration Act provides for prima facie evidence of

30 registration, it states thus;

5 A publication under section 18 shall be prima facie evidence that the persons named in the publication are registered under this Act, and the deletion from the register of the name of any person notified by the publication, or the absence of the name of any person from the publication, shall be prima facie evidence that that person is not so registered.

10 The register, lists and all copies of or extracts from them which purport to have been certified under the hand of the registrar shall be receivable in all courts and tribunals or other bodies authorised to receive evidence as prima facie evidence of the facts stated in them.

15 **Section 28** permits only persons whose names have been entered in the register and remain in the register to adopt and use the style and title "Registered Engineer" and to use the prefix "Eng." before their name and to offer their services to the public for gain or reward or by way of trade as a professionally qualified engineer.

20 **Section 29** criminalises the use of the above titles if one does not possess the requisite qualifications.

From the above it is clear that the engineering profession is strictly regulated with the requirement that one must register with the board before they can legally practice in Uganda.

25 In the instant case, it the case of the applicant that the current acting district engineer of Serere does not possess the requisite qualifications to hold such a position. I, however, do not find any designations as such in the law which is prescribed but that of a registered engineer and this fact was confirmed by the applicant, respondents and the letter from the chairman of the Engineers Registration Board.

5 Thus it is not clear to me that the position of an Acting District Engineer is one which would fall within the meaning of a registered Engineer.

While it is true that the maintaining of a non-registered engineer in a high position is illegal with its attendant risk to the respondents because he cannot be held liable under the various laws, codes of ethics and bodies which govern engineering professionals, it must be proved to the court that an Acting position is an appointment position which is prescribed and into which no one should hold
10 Without meeting the requisite minimum requirements of the law.

Since that is not proven, this court would be going into a fishing expedition to determine definitely that the position of the Acting District Engineer is one preserved for only qualified engineers only who are registered by the Engineers
15 Registration Board. It could be an administrative position which does not require such qualifications or not but that has not been proved one way or the other.

That being the case, I would find that the applicant has failed to prove to this court on a balance of probability that the said position is one that is provided for
20 under the appropriate law.

Accordingly, I am unable to make any positive finding that the 1st and 2nd Respondents have committed an illegality by having someone holding the an acting position of a district engineer for which this court would find contrary to the relevant law as a position held by a non-registered engineer so that the net
25 effect of the law would arise. Accordingly, this issue has not been proven and it fails.

- The next issue concerns the 1st and 2nd respondents having the same employee in acting appointment for 12 years.

5 **Section (A – c) of the Uganda Public Service Standing Orders** provides for appointment procedures, under Paragraph 9 it states that;

10 An appointment on acting basis is expected to last for not more than six months, and is subject to direction by the Appointing Authority. Any period of acting appointment beyond six months will be null and void and the public officer holding such an appointment shall automatically revert to his or her substantive post, unless the Appointing Authority extends the appointment for another period of six months, but shall not exceed 12 months in total. This arrangement will only apply when a Statutory Office is temporarily vacated.

15 This position is reiterated in **section (A – i) paragraph 8** which provides that;

Acting appointment shall be for a period of six months and is renewable only once.

The 1st respondent's district engineer has been under acting appointment since its initiation in 2010 with the same officer, on Emesu Simon Peter in office.

20 From the provisions of the standing order, it would appear that it contrary to the said standing orders to have one act for a period longer than 12 months with the Acting District Engineer cited herein stated to have been in the same position for 12 years.

25 However, no law was cited from which the said standing orders arise and as such I am unable to make a finding whether the acting position is illegal or not in the context of an enacted law. That being the case, this ground fails as it is not proved.

The next issue as raised by the applicant is failure to advertise the position of district engineer or promote one to the same.

5 **Section (A-a)** of the **Public Service Standing Orders** under paragraph 9 (d) provides
that the power to appoint, confirm, discipline and remove public officers from
office in the Public Service is vested in the relevant District Service Commission
in the case of Local Government staff except the Chief Administrative Officer,
Deputy Chief Administrative Officer, Town Clerk and Deputy Town Clerk of City
10 and Town Clerks of a Municipal Council.

Section (A – c) of the Uganda Public Service Standing Orders under Paragraph 3
provides that;

Appointment in the public service shall be subject to availability of: -

- (a) a vacancy in the approved staff establishment; and
- 15 (b) funds in the approved estimates.

Section (A - g) under paragraph 2 provides that

When recommending a public officer for promotion, the following shall be
considered: -

- (a) existence of a vacancy; and
- 20 (b) eligibility for promotion including existence of eligible serving officers
with the required competencies and having served for a minimum of 3
years at the lower grade.

From the above it is clear that once there is a vacancy in a public office it is upon
the responsible officer to have filled those posts whether through appointment
25 or promotion and depending on the availability of resources.

In the instant case since the inception of the 1st respondent, it is alleged that no
move has been made by the 1st respondent to have the position of district
engineer filled in permanent and pensionable appointment but had instead

5 maintained an unregistered engineer in this position. The respondent raises the
excuse of absence of resources. While the applicant argues that 1st and 2nd the
respondents should have budgeted for and requested resources in order for it to
fulfil the said position since its inception, I would find that the said argument
remains merely argumentative with no evidence to contrary that the
10 respondents simply sat unbothered and made no effort to recommend a district
engineer for appointment despite the vacancy. Since no proof of this laxity has
been made, it would be futile for the court to make a decision made on the
inaction and not the action of the respondents.

I would find that the inaction of the respondents cannot be amenable to judicial
15 review. This is because **Black Laws Dictionary 8th Edition at, page 864**, defines
judicial review as the court's power to review the actions of other branches or
levels of government, especially the court's power to invalidate legislative and
executive actions as being unconstitutional with judicial review being a form of
appeal from an administrative body to the courts for review of either the findings
20 of fact, or of law, or of both.

This position was well amplified in the case of *Lukwago vs Attorney General HCMC
No. 281 of 2013* where the court went on to define judicial review as the process
by which the High Court exercises its supervisory jurisdiction over proceedings
and decisions of inferior courts, tribunals and other bodies or persons who carry
25 out quasi-judicial functions or who are engaged in the performance of public acts
and duties. In this case no proceedings and decisions of the respondents have
been raised herein for judicial review so that pursuant to Section 36 (1) (a, c, d
and e) of the Judicature Act, Cap 13 the High Court then would grant reliefs.

5 As it is the case, judicial review is not concerned with the decision per se but with the decision-making process. This means that a court cannot delve into determining whether the decisions complained of were right or wrong on their merits but only determine the process that led to the decision.

In this case no decision has been made for the High Court to delve into its process.

10 Accordingly, this ground is thus not proved.

On procedural impropriety counsel for the applicant's submissions focused on failure by the 1st and 2nd Respondent to promote the applicant. In brief he submitted that decisions on tenure, appointment, promotion and posting are of utmost importance in public service and should be entrenched in publicly
15 available rules providing for these processes.

Counsel relying on reg. 26 of the Public Service Commission Regulations which provides for vacancies, submitted that it is evident that an applicant for promotion is one who is already an employee and must be based on objective criteria such as merit and seniority.

20 The respondents in reply submitted that there is no evidence of flaunted procedures in the decision taken and neither has a decision been made by the District Service Commission.

Procedural impropriety relates to the failure on the part of a public authority to act in accordance with the requirements of procedural fairness and in compliance
25 with the rules of natural justice.

I do find that the respondents have not made any decisions relating to promotion or appointment of the applicant or any other person to the position of District Engineer or and Senior Civil Engineer (Roads and Buildings) and no evidence has been led in that regard, as such I cannot find procedural impropriety where the

5 procedures of promotion or appointment have not yet been done. The issue of non-advertisement of the vacancies by the 1st and 2nd respondents has been handled under illegality. This ground similarly fails.

On the ground of irrationality, counsel for the applicant submitted that the applicant was being supervised by an unregistered engineer and the respondents
10 was ring-fencing the positions of District Engineer or and Senior Civil Engineer (Roads and Buildings) and that this was irrational.

Irrationality relates to gross unreasonableness in the decisions taken or act(s) done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision.

15 As noted above, while it is proved that the applicant is a duly registered engineer and he is under the supervision of ***"an unregistered engineer"***, I have not been provided with further details as to whether the said position of Acting District Engineer is a legal preserve of registered engineers or is merely an administrative position for purposes of coordination of engineering services.

20 Since no evidence has been adduced as such, I would find that it would be futile for the court to speculate as to the practicality that such a position is protected by law or not so as to make a finding that the actions of the 1st and 2nd respondents in maintaining an ***"unregistered engineer"*** is a failure on their part in observance of the laws, which action has led such a person to supervise a
25 qualified person. That being the case, I would find no legal reason to hold that the mere supervision of a qualified person by an unqualified person is illegal. This ground would thus fail.

Overall, I do find that the applicant has failed to prove to this court that the actions of the 1st and 2nd respondents qualify for judicial review as actions for



5 judicial review would require that a court would delve to only determine the process that led to the particular decision but not into determining whether the decisions complained of were right or wrong on their merits.

7. Remedies:

10 Since the applicant has failed to prove that there are processes which led to confirmed decisions by the respondents which would require the interference by this court, then this application has failed with no remedies available to the applicant.

8. Orders:

15 This application for judicial review is speculative and is not grounded on any processes which led to a particular decision of the respondents. It is thus lacks merits and is dismissed with each party to bear own costs.

I do so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

31st May 2023

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