

- 1) A declaration be issued that the 1st respondent's directive communicated in a letter dated 23rd April 2019 was procedurally irregular, irrational, and in total disregard of the rules of natural justice and any actions and decisions resulting therefrom are tainted with illegality and thus null and void.
- 2) A declaration that the 1st respondent's directive communicated in a letter dated 30th May 2019 under reference EDS. 123. 1E to maintain the suspension of the applicants was illegal, irrational, procedurally unfair and irregular and consequently any actions and decisions resulting therefrom were tainted with illegality and thus null and void.
- 3) A writ of certiorari issues quashing the directive of the 1st respondent to suspend the applicants from their employment with Post Bank Uganda communicated by a letter dated April 23rd 2019 referenced GOV. 123 and maintained by letter of May 30th 2019 referenced EDS. 123. 1E and any actions and decisions resulting therefrom.
- 4) A writ of Mandamus doth issue compelling the respondents to permit applicants resume their employment at Post Bank Uganda Limited in accordance with employment contracts.
- 5) An Order awarding general and punitive damages to the applicants for the anguish inconvenience and suffering due to the respondent's actions.
- 6) Costs of the application be paid by the respondents.

The application was supported by the sworn affidavits of the applicants as well as an affidavit in rejoinder by the 1st applicant. The 2nd respondent filed an affidavit in reply sworn by *Justine Tumuheki Wabwire*, the company secretary. The 1st respondent filed also filed an affidavit in reply sworn by *Titus W Mulindwa*, the Deputy Legal Counsel.

The applicants were represented by *Counsel Robert Kirunda* while the respondent was represented by *Counsel Albert Byamugisha*.

Issues

- 1) *Whether this is a proper application for judicial review?*
- 2) *Whether the 1st respondent's directives to the 2nd respondent from their duties were procedurally irregular, irrational and in total disregard of the rules of natural justice and consequently tainted with illegality?*
- 3) *Whether the Applicants are entitled to the remedies prayed for?*

The 1st applicant wholly withdrew the suit against the 2nd respondent which was granted by this court.

The parties filed written submissions that have been considered by this court.

Determination.

The applicants in this case were aggrieved by the directives of the respondent a public body to suspend them from their employment with Post Bank Uganda.

They contended that the respondent's actions were irrational, irregular and illegal whereas the respondent contended that they were justified under Section 82 (1) of the Financial Institutions Act. The applicants argued that section 82 (1) doesn't allow the central bank to direct the suspension of staff of financial institutions without independent investigations by the central bank and without according such staff a fair hearing.

The respondent's counsel submitted that the suspension was based on the ongoing investigations and the potential impact from potential impact and reputational and operational points of view. The 1st respondent found that members of the top management of the bank, the applicants, were being investigated by the state institutions for abuse of office and causing financial loss to the respondent contrary to the Anti-Corruption Act.

It was the respondent's case that the applicants' were under the circumstances not fit and proper persons to manage the 2nd respondent-Post Bank (U) Ltd.

Analysis

Section 82 (1) of the Financial Institutions Act, 2004 provides that *the Central Bank is mandated if it has reason to believe or finds that the affairs of the financial institution are conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the financial institution or in contravention of this Act, or any other written law or that the financial institution has refused to submit to inspection, or has provided false information, the Central Bank may, without prejudice to any other course of action; to issue directions regarding measures to be taken to improve the management, financial soundness or business methods of the financial institution.*

The 1st respondent in this case issued the following directive, on the 23rd of April 2019;

"Reference is made to your PBU/BC/01 dated 12/4/2019 and the ongoing investigations of Post Bank Uganda Limited officials for abuse of office and other irregularities by the Anti-Corruption Unit of State House, Office of the Auditor General and the Criminal Intelligence and Investigations Directorate and the potential impact from reputational points of view.

The Bank of Uganda in exercise of its regulatory powers under Section 82 of the Financial Institutions Act and following a risk assessment facing the Post Bank, hereby directs you as the Board of Post Bank Uganda Limited to take the following measures.

To immediately suspend the office bearers in the list below to pave way for an exhaustive investigation whose outcome will then inform the next steps to be taken whether to reinstate or to take other measures as shall be found appropriate."

Among the staff to be suspended were all the applicants.

Another directive was issued in a letter on the 30th of May 2019 which read in part;

“In relation to Mr. Jackson Mwesigwa and Mr. Gilbert N. Katwire against whom charges have been preferred, the outcome of the Court process may impact on the extent to which they can be considered “fit and proper” to manage the affairs of a financial institution (Third Schedule of the Financial Institutions Act, 2004). Determination on this issue can only be after conclusion of the Court process, and a verdict pronounced. Accordingly, Mr. Jackson Mwesigwa and Mr. Gilbert N. Katwire, together with all other arraigned persons, should remain on suspension until the trial process is concluded.”

The applicants who were members of the top management of Post Bank Uganda were being investigated for abuse of office and other irregularities by the Anti-Corruption Unit of State House, Office of the Auditor General and the Criminal Intelligence and Investigations Directorate contrary to the Anti-corruption Act. It was on that basis that the respondent directed that Post Bank Uganda suspend the applicants to pave way for investigations.

These investigations gave the Central Bank ample reason to believe that the affairs of Post Bank Uganda were being run in a manner detrimental to the institution. As the regulator empowered under section 82 of the FIA the respondent therefore legally issued the directives above.

Furthermore, the applicants argued that the respondent ought to have given the applicants an opportunity to explain themselves or to be heard before issuing the directives. Counsel for the applicants in their submissions interpreted section 82 to require that the central bank conduct its own investigations-Independent Investigations of any facts relating to the making of such a decision.

That the findings of the investigations could only be contained in a report and be the result of a fair, impartial and transparent investigative process in which any likely persons to be affected are given the opportunity to be heard as required by natural justice.

Counsel submitted that the respondent only acted on the basis of the fact that the applicants were under investigation and at the time of filing of application they had been charged with offences. That the applicants enjoyed a constitutional right to presumption of innocence and should not have been subjected to prejudicial treatment by the Central Bank on the basis of speculated reputational damage.

The requirement of fair hearing or right to be heard under natural justice will not apply in all situations of perceived or actual detriment. There are clearly some situations where the interest affected will be too insignificant, or too speculative, or too remote to qualify for a fair hearing. Whether this is so will depend on all the circumstances surrounding the particular case. Special circumstances may create an exception which vitiates the inference of a duty to act fairly. The applicants were under investigation by the bodies mandated to fight corruption, this would not require a hearing until the investigations in such matters had been conclusively dealt with.

It is key to note that the respondent has discretion under the third schedule of the FIA to determine who is a fit and proper person to manage a financial institution. Allegations and prosecution of charges of abuse of office and other irregularities under the Anti-Corruption Act insinuated deceitful or oppressive, fraudulent, prejudicial conduct by the applicants which potentially discredited them as fit and proper persons to hold their positions in post bank.

Whether fairness or the right to be heard is required and what is involved in order to achieve fairness is for the decision of the courts as a matter of law. The issue of whether a person can be heard may also be one for the discretion of the decision-maker. The test is whether no reasonable body would have thought it proper to dispense with a fair hearing. The court is final arbiter of what is fair. However, in limited circumstances the court may give great weight to the decision-makers view of what is fair. See *R v Panel on Takeovers and Mergers Ex p. Guinness* [1990] QB 146. *R v Monopolies and Mergers Commission Ex p. Mathew Brown Plc* [1987] 1 WLR 1235

The sensitive nature of financial institutions requires the Central Bank as the regulator to assess the risks involved in situations like in the present case where the top management was being investigated for offences that contained allegations of dishonesty as an element and result into financial loss to an institution or the public.

There was no necessity for a hearing as described by counsel for the applicant to be called since the applicants' cases were being handled by other state institutions mandated to investigate matters of corruption. Those investigations by Anti-Corruption Unit of State House, Office of the Auditor General and the Criminal Intelligence and Investigations Directorate for offences contravening the Anti-corruption Act were sufficient to warrant the respondent to direct the applicants' suspension under section 82 of the Financial Institutions Act.

What is required in any particular case is incapable of definition in abstract terms. As Lord Bridge has put it;

“ the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body , domestic, administrative or judicial, has to make a decision will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.”

See *Lloyd v Mc Mahon* [1987]AC 625 at 702

The requirement fairness and to follow rules of natural justice must be tailored in a manner that has regard to all circumstances of each case or particular circumstances and varies according to the context. Therefore, what fairness requires is “essentially an intuitive judgment”. In order to ascertain what must be done to comply with the principles of natural justice in a particular case, the starting point is the statute creating the power. See *Kioa v Minister of Immigration and Ethnic Affairs* (1985) 65 ALR 231. *Sheridan v Stanley Cole (Wainfleet) Ltd* [2003] EWCA Civ 1046 [2003] 4 All ER 1181; *Principal Reporter v K* [2011] 1 WLR 18; *R (on application of*

Shoesmith) v Ofsted [2011] EWCA Civ 642; R v Secretary of State for Home Department, ex parte Doody [1993] 3 All ER 92.

In this case the statute does not provide for any hearing but rather it expects an investigation to come to a decision. What the applicants are demanding from the 1st respondent i.e to follow rules of nature justice has to be appreciated in the circumstances of the case and the nature of the decision that was made. In the celebrated case of ***Maneka Gandhi v Union of India [1978] 1 SCC 248*** court noted;

“The rules of natural justice are not embodied rules. What particular rules of natural justice should apply to a given case must depend to a greater extent on the facts and circumstances of that case, framework of the law under which the enquiry is held and constitution of the tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened the Court must decide whether the observance of that rule was necessary for a just decision on the facts of the case.”

This court accepts that fairness is variable concept and fairness is not something that can be reduced to a one-size-fit all formula. The circumstances of the present case did not require the applicants being given a hearing as noted earlier since the regulator has a wider duty to protect the public or depositors. This was a temporary corrective action as the investigations were being concluded by the relevant state agencies. Therefore, no hearing would have been expected in such circumstances before the conclusion of the investigations.

In the result, this application fails and is dismissed with costs to the 1st respondent.

I so order.

SSEKAANA MUSA

JUDGE

24th January 2022