

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 422 OF 2019

1. OGOL JOHN CHARLES
2. TURYAMUHIKA G. TUMWINE ----- APPLICANTS

VERSUS

ATTORNEY GENERAL ----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this application under Directive Principle XIV (b), Article 21(1) and (2), 26 (1) , 42, 44 (c), 29 (2) and 50 (1) of the Constitution Article 14 of the International Covenant on Civil and Political Rights, Article 7 of the African Charter on Human and Peoples Rights, Section 33 of the Judicature Act, Rules 3 (1) of the Judicature (Fundamental Rights and Freedoms)(Enforcement Procedure) Rules, 2009 and Section 98 of the Civil Procedure Act for the following judicial reliefs;

1. A declaration that the respondent's act of unilaterally dismissing the applicants from the public service of Uganda violated their rights guaranteed under Directive Principle XIV (b), Articles 21 (1) and (2), 24, 26 (1), 42 and 44 (c) of the 1995 Constitution, Article 7 of the African Charter on Human and People's Rights and Article 14 of the International Covenant on Civil and Political Rights.
2. An order for general damages for the inconvenience and mental anguish suffered by the applicants as a result of the unconstitutional acts of the

respondent's agents at an interest of 20% from the date of judgement till payment in full.

3. An order for punitive damages against the respondent to deter him from similar highhanded and unconstitutional actions at an interest of 20% from the date of judgement till payment in full.
4. An order for aggravated damages against the respondents as compensation to the applicants for the injury to their dignity caused by the callous manner in which the respondent's agents wilfully violated the applicants' constitutional rights at an interest of 20% from the date of judgement till payment in full.
5. Costs of the Application be paid for by the respondents.

The grounds in support of this application were stated very briefly in the Notice of Motion and further detailed in the affidavits of Mr. Ogol John Charles and Turyamuhika G. Tumwine, the applicants which briefly are;

- 1) The applicants were public officers in the Ministry of Finance, Planning and Economic Development. On the 27th of March, 2017, while executing their official duties, unknown persons clad in civilian clothes stormed their offices, blindfolded and whisked them off at gunpoint.
- 2) The applicants were detained *incommunicado* until they were produced before the Anti-Corruption court at Kololo on the 7th April, 2017 and charged with the offence of corruption in HCT-00-AC-SC-0006-2017: Uganda vs Ogol John Charles & Anor.
- 3) The applicants only came to know the reasons of their arbitrary arrest and consequently arbitrary detention *incommunicado* when they were arraigned before the Anti-Corruption court at Kololo on the 7th April, 2012 and formally charged.

- 4) On the 31st May, 2019, the Public Service Commission at its meeting unilaterally dismissed the applicants from the public service and notified the Permanent Secretary/ Secretary to the Treasury of their decision on the 18th June, 2019.
- 5) Sometime in June, 2019 while in Luzira prison, the applicants were notified of their dismissal from public service by the Permanent Secretary/ Secretary to the Treasury of MoFPED.
- 6) The applicants were neither notified nor did they take part in the hearing leading to their dismissal from public service.

The respondent opposed this application and filed an affidavit in reply through Charles Ziraba, the Assistant Commissioner Human Resource Management in the Ministry of Finance Planning and Economic Development as follows;

1. That in March 2017, the applicants were arrested on allegations of receiving a bribe of USD 50,000.
2. Consequently, the applicants were upon being arraigned in court interdicted from exercising the powers and functions of their offices.
3. The applicants were remanded to Luzira Prison and later appeared before the Anti-Corruption court where they were charged, convicted and sentenced to serve a period of two years imprisonment.
4. That in accordance with section 46 of the Anti-Corruption Act, 2009, the court disqualified the two Applicants from holding public office for a period of 10 years and went ahead to emphasize that from the time of the decision, the Applicants were jobless.
5. That upon reaching court reaching the decision to disqualify the applicants from holding their offices, it granted them a fair hearing and acted within its mandate and powers granted to it by the Anti- Corruption Act, 2009.

6. That pursuant to the above judgement, the Ministry of Finance, Planning and Economic Development (MoFPED) made a submission to the Public Service Commission recommending that the two officers be dismissed from the service in accordance with the court order and in June, 2019, the Applicants were accordingly dismissed.

Three issues were framed by the applicant for court's determination;

1. *Whether the respondent's act of unilaterally dismissing the applicants from the public service of the Republic of Uganda violated the Applicant's rights guaranteed under Articles 21 (1) and (2), 28 (1), 42, 44(a), and 44(c) of the 1995 Constitution of the Republic of Uganda, Article 7 of the African Charter on Human and People's Rights, and Article 14 of the International Covenant on Civil and Political Rights?*
2. *Whether the unilateral dismissal of the Applicants was a violation of their rights under Directive Principle XIV (b) and Article 26 (1) of the Constitution?*
3. *Whether the Applicants are entitled to the remedies sought?*

The applicant was represented by *Mr. Batanda Gerald* whereas the respondent was represented by *Mr. Jeffery Atwine*.

The parties were ordered to file written submissions and accordingly filed the same. I have read the pleadings, evidence and submissions of all the parties and considered the same to determine this matter.

Resolution

1. *Whether the respondent's act of unilaterally dismissing the applicants from the public service of the Republic of Uganda violated the Applicant's rights guaranteed under Articles 21 (1) and (2), 28 (1), 42, 44(a), and 44(c) of the 1995 Constitution of the Republic of Uganda, Article 7 of the African Charter on Human and People's Rights, and Article 14 of the International Covenant on Civil and Political Rights?*

Plaintiff's submissions;

It was submitted for the applicants' that the Constitution provides for the right of equality before and under the law and the right to a fair hearing. Counsel stated that Article 28(1) of the Constitution provides for the right to a fair hearing before an independent and impartial tribunal established under the law. He noted administrative officials or bodies are enjoined to treat persons appearing before them in a fair and just manner whereupon he cited the case of Uganda Law Society –vs- Attorney General Const. Pet. No.2 and 8 of 2002.

He submitted that under Article 166 (1) (b), the Public Service Commission is enjoined to exercise disciplinary control over persons holding office in the public service of Uganda and quoted section f-r of the Public Standing Orders that provides that the rules of nature justice must apply in all disciplinary cases whatever the description and that the conviction of a public officer does not automatically remove them from office.

Counsel contended that the Public Service Standing Orders and the case of Juma Nkunyngi Ssembajja vs Attorney General & Anor Misc. Cause No. 82 of 2019 demonstrate that even persons convicted and sentenced to imprisonment cannot be dismissed without according them a fair hearing and upon conviction of a criminal offence, a public servant still retains the right to be heard before they are dismissed.

He argued that the applicants were not notified of the nature of disciplinary charges against them during and after the meeting, told the identity of their accuser, furnished with evidence against them and afforded an opportunity to plead their case. He further noted that the applicants should have been notified of the hearing, opportunity to examine witnesses, the opportunity to respond against allegations made against them which are essential aspects of the right to a fair hearing which the respondent did not meet.

Counsel further argued that the applicants having been convicted did not strip them of their equality before the lawful tribunal and to a fair hearing. He relied

on Article 7 of the African Charter on Human and Peoples Rights and Article 14 on the International Covenant on Civil and Political Rights that provides for the right to equality before lawful tribunals and right to a fair hearing. Counsel submitted that the applicants were convicted and sentenced to a two-year imprisonment term in April 2019 and banned from holding public office for 10 years after serving the custodial sentence.

He noted that the applicants' affidavits show that the applicants were dismissed about a month after they were convicted and sentenced and that the timing and actions of the respondent's public service commission were designed to take advantage of their unavailability due to the imprisonment. He noted that the respondent could not presume that the prisoners do not deserve a fair hearing before the commission as the criminal proceedings in a criminal trial cannot be automatically taken to be proceedings leading to termination of employment.

He further relied on the case of *Salvator Abuki vs Attorney General* where he stated that court noted that the doubly entrenched provisions under Article 44 of the Constitution can never be altered to the disadvantage of any one even if that person has been charged or convicted of a serious offence. He thus stated that the this extended to tribunals as such cannot operate outside the context of non derogable rights of the Constitution.

The applicants therefore prayed that this court finds and declares that the respondent's act of unilaterally dismissing the applicants from Public Service Commission violated their rights under Articles 21(1) and (2), 24, 28(1), 42, 44 (a) and 44(c) of the 1995 Constitution, Article 7 of the African Charter on Human and People's Rights and Article 14 of the International Covenant on Civil and Political Rights.

Respondent's submission

Counsel submitted that the right to a fair hearing is provided for under Article 28 of the Constitution and is to the effect that a person charged of an offence must have the right to a fair and speedy hearing before an independent and impartial

tribunal. Counsel took note of the applicants' statements in their affidavits that they did not know about their case before the Public Service Commission.

He submitted that this is not true as the applicants were aware of the Anti-Corruption court judgement and subsequently court ordered against them vide Criminal Session Case 6 of 2017 to which they have not filed against their conviction and sentence. He stated that the applicants' right to a fair hearing was exercised in the aforementioned case.

It was submitted for the respondent that the applicants underwent a hearing before the Anti-Corruption court where they were given every opportunity to face their accusers and put forward evidence in their defence and were subsequently found guilty and convicted on a standard of proof beyond reasonable doubt as is in criminal matters. See *Miller vs Minister of Pensions* [1947] 2 ALL ER 373. He therefore submitted that the presumption of innocence as envisaged in Article 28 (3) (a) does not apply to the applicants.

Counsel further relied on the case of *Bamutura Henry vs Uganda Misc. Application No. 19 of 2019* that the legal status of an offender changes and he/she is no longer wholly shielded by the presumption of innocence as espoused in Article 28 (3) of the Constitution.

On the case of *Sifiso Sibandize vs Prime Minister of Swaziland (Criminal Appeal No. 28 of 2017)* noted that the police officer had been dismissed on recommendation by the police board to the commissioner of police and the police board did not adhere to the set down procedure in section 13 (2) of the Police Act as the minister of police merely endorsed the decision of the Commissioner of police without giving the appellant the opportunity to make representation. He noted that the facts in this case are distinguishable from the instant case as the court order stated that;

By virtue of the conviction, the two convicts were automatically disqualified from holding public office for a period of 10 years pursuant to section 46 of the Anti-Corruption Act, whatever punishment the court should impose it takes into

account that from now on until this decision is maybe overruled on appeal, the convicts are jobless.

Counsel therefore submitted that the applicants' conviction in the court order was followed by consequential orders as to their jobs.

Counsel also stated that it is trite law that a specific legislation on corruption, the Anti- Corruption Act supersedes any other law such as the Public Standing Orders. He noted that there's no evidence submitted to this court to show that the Applicants have filed an appeal to challenge the decision of the court order made vide Criminal Case No. 6 of 2017. He noted that the in the case of Ssembajjwe vs Attorney General & Anor Misc. Cause No. 82 of 2019 as relied on by the Applicants, the applicant therein had filed an appeal against his conviction and therefore presumed innocent until his appeal was determined. In effect, the Public Service Commission had no obligation to dismiss him until the appeal was determined. He noted that the facts therein are distinguishable from the instant case as the applicants in this case have not filed any appeal against their conviction and sentence and that the Public Service Commission is mandated to enforce the orders of court so made without fail.

Counsel submitted that the decision of court once passed is binding on all parties including the Public Service Commission (see: Nile Construction General Constructors Ltd & Anor vs Prof. Dr. G.W. Kanyeihamba Misc. Applic. No. 405 of 2016). He therefore submitted that the Public Service Commission was only enforcing the court order that had been made in the judgement against the applicants in a trial where they were given a fair hearing.

It is therefore the respondent's submission that this application is misconceived, without merit and an intention by the applicants to waste court's time and circumvent existing court orders vide Criminal Session No. 6 of 2017 and prayed that the same be dismissed with costs.

Analysis

The Applicants' application is hinged on enforcement of their human rights in respect of the right to a fair hearing in respect of their employment with the Public Service of Uganda. The **Constitution, 1995 under Article 28 (1)** is very clear on the right to a fair hearing in as far as it provides as follows;

"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."

In the case of **Zachary Olum and Anor v Attorney General (Constitutional Petition No 6 of 1999)** court noted that fair hearing connotes that in accordance with the law a party is given the necessary opportunity to canvass all such facts as are necessary to establish his case. In the instant case, the applicants submitted that they were not accorded a fair hearing by the Public Service Commission before they were dismissed from their employment.

It is however, important to note that the applicants were charged for offences under the Anti-Corruption Act where they were granted an opportunity to call witness, defend themselves under their legal representation before this court. Their matter was heard by court and the applicants were then convicted and sentenced by the Anti-Corruption court for the offence of abuse of office.

Section 46 of the Anti- Corruption Act provides that a person who is convicted of an offence under section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 shall be disqualified from holding a public office for a period of ten years from his or her conviction.

It is under the confines of this section that the applicants were convicted and forthwith disqualified from holding their office by the Public Service Commission. Upon conviction of the applicants for abuse of office under the Criminal Session 6 of 2019 in the Anti- Corruption Court, the applicants were

later discharged of their right to hold public office under the public service commission for a period of 10 years.

I disagree with the applicants' submission that they ought to have received a fair hearing from the public service commission before termination of their employment in light of the conviction under the Anti-Corruption Court and section 46 of the Anti-Corruption Act. I agree with the position of the High Court espoused in the case of **Oundo Sowedi & Anor –vs- Ouma Adea Consolidated Petitions No. 18 & 19 of 2016**, where J. Bashaija, found the section of mandatory sanction by the use of "shall.

I also wish to state that the Anti-Corruption Act, 2000 was enacted as; "An Act to provide for the effectual prevention of corruption in both the public and the private sector...." The Act has a mandate to eradicate Corruption by punishing and deterring culprits from furthering their vice. The Act goes a mile further and defines its parameters of operation. See; **Magomu v The Electoral Commission & Anor; HCT-04-CV-CA-0078-2016** It is not in dispute that the court which convicted and sentence the Applicants of the offences listed under Section 46 (supra) is a competent court where they were given an opportunity to be heard.

It must be emphasized, for the present and future reference, that **Section 46 of the Anti-Corruption Act** is quite independent, and a stand – alone provision. It is self-regulating in procedure and effect, from the rest of the statute, and it operates as a "consequential order" upon every conviction under the specified provisions of the Act. Regardless of whether or not, a court issues a specific order disqualifying a person convicted person under the provisions, the effect of the conviction is that provisions of Section 46 (supra) automatically apply to the convicted person, who is then barred from holding a Public office, for the period of ten years from the date of conviction. It does not matter that the convicted person ultimately serves a sentence of imprisonment or pays a fine. Still, the effect of the conviction is to bar him or her from holding a public office for the prescribed period. The provision is much more concerned with the effect of the

conviction than of the sentence, if any is passed. See; **Ssekiranda Kibirige -vs- Nakaseke District Local Government; Miscellaneous Cause No. 56 of 2019**

Regarding the Applicants' contention that they were never accorded a hearing by the Respondent before being disqualified from holding Public office for 10 years, court finds that the Respondent needed not to hold such a hearing in the circumstances. The inquiry into the Applicants' conduct had already been properly inquired into by a competent court of law which found them guilty and convicted them.

Article 28 (3) (a) of the Constitution is very clear on the presumption of innocence of an accused person where it states that every person charged with a criminal offence is presumed to be innocent until proved guilty or until that person has pleaded guilty. As submitted by counsel for the respondent, the applicants were charged before the Anti-corruption court and convicted by the same court having been heard and given an opportunity to defend themselves as further present their witnesses. This decision has never been appealed against by the Applicants.

It is thus clear that in dismissing the applicants from their employment with the Public Service, the commission was abiding by the court decision and proceedings therein which were not appealed from by the Applicants who were convicted of the offences under the Anti-Corruption Act and for which they shall be disqualified from holding a public office for a period of ten years from his or her conviction.

I therefore find that there was no violation of the applicants' rights under Articles 21 (1) and (2), 28 (1), 42, 44(a), and 44(c) of the 1995 Constitution of the Republic of Uganda, Article 7 of the African Charter on Human and People's Rights, and Article 14 of the International Covenant on Civil and Political Rights by the respondent upon dismissing the applicants from employment.

This ground is therefore answered in the negative.

2. Whether the unilateral dismissal of the applicants was a violation of their rights under Directive Principle XIV (b) and Article 26 (1) of the Constitution.

The applicants' counsel noted that Directive Principle XIV (b) provides for rights that include the right to work, pension and retirement benefits. Article 26 (1) provides for the right of everyone to own property either individually or in association with others. Counsel also relied on Article 1 of the Protocol to the European Convention on Human Rights which lays down a general rule on every natural or legal person is entitled to the peaceful enjoyment of his possessions. He relied on the case of *Banfiled vs United Kingdom* Applic. No.6223/04. Counsel argued that pension rights constitute proprietary rights and can only be deprived under Article 26 (2) of the Constitution.

Counsel argued that this instant application arises out of the act of the respondent's public service commission of unilaterally dismissing the applicants from the public service of Uganda which in effect led to the applicants losing all their rights and privileges as public officers. He submitted that proprietary rights that involve pension rights cannot be just forfeited without lawful procedures as is the case before this court.

It was therefore submitted that the respondent locked the applicants out of proceedings that rendered them unable to defend themselves and thereby protect their social security benefits thus being deprived of their right to the enjoyment of their possessions thus violation of the right to property. The applicants therefore pray that this court finds and declares that the respondent's act violated their rights under Directive XIV (b) and Article 26 (1) of the Constitution.

Counsel for the respondent submitted that the Directive Principle XIV (b) and Article 26 (1) of the Constitution were not violated. The respondent avers that following the conviction and sentence of the applicants by the High Court Anti-Corruption Division vide Criminal Session Case No. 6 of 2017, the Applicants

ceased to be public servants by operation public servants by operation of the law and by virtue of the conviction, the applicants could not continue receiving pension.

Counsel relied on the case of State of Jharkand & Anor vs Jitendra Kumar & Anor Supreme Court of India C.A No. 6770 of 2013 where court reasoned that pension and gratuity are not bounties but hard earned property that can only be deprived of following lawful procedures which includes judicial proceedings.

Counsel further relied on the case of Paul Banfield vs UK (Application No. 6223/04 where court noted that a penalty cannot be imposed unless and until the wrongdoing has been proved. Court stated that whilst it is true that conviction is the means by which it is established that the person concerned did commit that offence, it is also the primary safeguard against unjust deprivation of property as ECTHR confirmed in Banfield.

Counsel further cited the case of Whirchelo vs Secretary of State for the Home Department, 1997 where court cited the Banfield case which indicated that conviction of the serious crime is the justification for the existence, and not just the exercise, of the power to forfeit. He further stated that someone who has been proved to have abused their position to commit a serious criminal offence should not continue to be paid pension by the state. They no longer have a right to be paid a pension from public funds, because they have been convicted of the crime.

Counsel therefore submitted that there was a judicial proceeding in which the applicants were charged, convicted and sentenced by the High Court Anti-Corruption Division vide Criminal Session Case No. 6 of 2017. They were sentenced to imprisonment for two years and disqualified from holding office for a period of 10 years pursuant to section 46 of the Anti- Corruption Act. It is therefore the respondent's submission that the actions of the Public Service Commission were justified and did not violate any rights of the applicants in this case.

Analysis

Having found in 1 above that the applicants' rights were not violated when the Respondent's Public Service Commission dismissed them from their employment under section 46 of the Anti-Corruption Court, it only goes without saying that they were not entitled to any more benefits under their employment.

It is indeed an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by duty of his long, continuous, faithful and un-blemished service. See; *D.S. Nakara and Ors. vs. Union of India; (1983) 1 SCC 305, State of Jharkand & Anor vs Jitendra Kumar & Anor Supreme Court of India C.A No. 6770 of 2013* where court reasoned that pension and gratuity are not bounties but hard earned property that can only be deprived of following lawful procedures which includes judicial proceedings.

In the circumstances before this court, the applicants were discontinued from their employment upon their conviction and sentence under the Anti-Corruption Court for offences under the Act. This automatically disqualified them from continued pay of their salary, pension and gratuity as benefits under their employment. It is indeed inappropriate for government to keep paying pension to someone who by operation of the law ceased to be a public official.

I therefore do not find that there was any violation of the applicants' rights under Directive Principle XIV (b) and Article 26 (1) of the Constitution by the Respondent.

This ground is answered in the negative.

3. Whether the applicants are entitled to the remedies sought.

The applicants prayed for a declaration that their rights under Directive XIV (b), Articles 21, 24, 26, 28, 42 and 44 were violated by the Respondent's unilateral act of dismissing them from public service of Uganda.

The applicants also prayed for orders of general damages of Ugx. 500,000,000/=, punitive damages of Ugx. 400,000,000/= and aggravated damages of Ugx.

200,000,000 against the respondents for inconvenience, highhandedness, each at an interest of 20% from the date of judgement.

The respondent submitted that it is completely inappropriate for government to keep paying pension for someone who by operation of the law ceased to be a public official. He stated that the applicants offer no proof that the state is required to continue paying their pension even when they do not hold a public office.

Counsel further submitted that the applicants do not deny that a court order to the effect that they were jobless by virtue of Section 46 of the Anti-Corruption Act following their conviction existed. He therefore submitted that the enforcement of a court order should not be seen as a violation of the applicants' rights and prayed that this application be dismissed with costs.

I entirely agree with the respondent's counsel as it indeed inappropriate for the applicants who were convicted by the Anti- Corruption Court for offences under the Anti-Corruption Act to continue being paid out of the tax payers money. This is totally against the public interest and something this court cannot order.

Having found that none of the applicants' alleged rights in this application were violated by the respondent's Public Service Commission, the applicants are not entitled to any remedies sought.

This application therefore fails and is dismissed with costs to the respondent.

I so Order.

SSEKAANA MUSA
JUDGE
11th March 2022