THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE JUDICATURE (JUDICIAL REVIEW) RULES 2009

MISCELLANEOUS CAUSE NO. 0076 OF 2022

BIRIMBO AARON :: APPLICANT

VERSUS

UGANDA HUMAN RIGHTS COMMISSION :::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

[1] This application was brought by Notice of Motion under Articles 27, 28(1), 29, 42, 44(c), 50(1), 172 and 173 of the Constitution of the Republic of Uganda; Sections 38 of the Judicature Act Cap 13; the Judicature (Judicial Review) Rules S.I No.11 of 2009; and the Civil Procedure Rules S.I No. 71-1, for orders that;

a) An order of Certiorari does issue against the decision of the Respondent dismissing the Applicant from its employment and the same be quashed.

b) An order of mandamus directing the Respondent to reinstate the Applicant as a Human Resource and Administrative manager and pay all his benefits from 7th March to date.

c) A declaration that the Respondent's decision of terminating the Applicant's employment on the 7th day of March 2022 was illegal, unconstitutional, unjustified, biased and is against the principles of natural justice thus riddled with procedural impropriety.

d) An injunction does issue restraining the Respondents, whether by themselves or through other persons or Agencies, from dismissing the Applicant from the Respondent's employment.

e) An award of punitive, general and exemplary damages and costs of the Application.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit sworn by the Applicant in support of the application. Briefly, the grounds are that the Applicant was employed as a Human Resource and Administration Manager of the Respondent for a period of about 8 years. The Respondent issued a termination and dismissal letter dated 7th March 2022 which was illegal, unconstitutional, unjustified, biased and against the principles of natural justice thus riddled with procedural impropriety. The Applicant stated that he was wrongly interdicted in contravention of the Uganda Public Service Standing Orders. The Rewards and Sanctions Committee to which he was submitted for trial was not properly constituted and he was thus denied a fair hearing. As a result of the said conduct by the Respondent, the Applicant has suffered and is likely to continue suffering irreparable harm through violation of his rights to equality and non-discrimination, loss of dignity, loss of reputation, loss of future salary and employee benefits, disruption of family welfare, stress and inconvenience. It is in the interest of justice that the application is granted.

[3] The Respondent opposed the application through an affidavit in reply and a supplementary affidavit in reply deposed by **Margret Lucy Ejang**, the Respondent's Acting Secretary, who stated that the procedure of interdiction and submission of the Applicant to the Rewards and Sanctions Committee of the Respondent were lawful, procedurally proper and unbiased. She stated that the Rewards and Sanctions Committee was properly constituted and two of the members voluntarily recused themselves to avoid conflict of interest while the

office of Human Resource (the secretariat) was disqualified owing to the fact that the Applicant (who was the subject of the trial) was the head of the said office. The proceedings of the Rewards and Sanctions Committee were carried out in accordance with the rules of natural justice. The Committee established that the Applicant was guilty of gross misconduct and thus recommended his dismissal which was effected by the Respondent in accordance with the law. The process that led to the dismissal of the Applicant was therefore lawful, rational and complied with legal procedures. The Applicant is therefore not entitled to any of the reliefs claimed.

[4] The Applicant deposed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

[5] At the hearing, the Applicant was represented by **Mr. Matovu Asuman** and **Mr. Bojo Ivan** from Musangala Advocates and Solicitors while the Respondent was represented by **Ms. Maureen Ijang**, a State Attorney from the Attorney General's Chambers. It was agreed that the hearing proceeds by way of written submissions which were duly filed by counsel. I have reviewed and considered the submissions in the course of determining this matter.

Issues for Determination by the Court

[6] Three issues were agreed upon for determination by the Court, namely;

(i) Whether the application is amenable for judicial review?

(ii) Whether the application raises grounds for judicial review?

(iii) Whether the Applicant is entitled to the reliefs claimed?

Issue One: Whether the application is amenable for judicial review?

[7] There was no serious contention on this issue between the parties. The position of the law is that judicial review is concerned not with the decision but

with the decision making process. Judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. See ***Attorney General vs Yustus Tinkasimmire & Others, CACA No. 208 of 2013*** and ***Kuluo Joseph Andrew & Others vs Attorney General & Others, HC MC No. 106 of 2010***.

[8] The *Judicature (Judicial Review) (Amendment) Rules 2019* sets out the factors to be considered by the court when handling applications for judicial review. Rule 7A provides that;

> *(1) The court shall, in considering an application for judicial review, satisfy itself of the following –*
>
> *(a) That the application is amenable for judicial review;*
>
> *(b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law; and*
>
> *(c) That the matter involves an administrative public body or official.*

[9] As a matter of law, for a matter to be amenable for judicial review, it must involve a public body in a public law matter. Two requirements, therefore, need to be satisfied; first, the body under challenge must be a public body whose activities can be controlled by judicial review; and secondly, the subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights. See: **Ssekaana Musa, Public Law in East Africa, (2009) Law Africa Publishing, Nairobi, at Pg. 37.** In ***Arua Kubala Park Operators and Market Vendors' Cooperative Society Ltd vs Arua Municipal Council, HC MC No. 003 of 2016,*** **Mubiru J.** expressed the opinion that in order to bring an action for judicial review, it is a requirement that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large. The "public" nature of the

decision challenged is a condition precedent to the exercise of the courts' supervisory function.

[10] On the matter before me, it is not in dispute that the Respondent is a public body that acted in exercise of its public function. The matter in issue involves public law principles that may have a bearing on other officers of the Respondent mainly concerning issues of discipline within the organization. No alternative or existing remedy available to the Applicant within the Respondent body or under the law has been pointed out. Indeed, in their submissions, Counsel for the Respondent conceded that the application is amenable for judicial review. I accordingly find that the application is amenable for judicial review and issue one is answered in the affirmative.

Issue Two: Whether the application raises grounds for judicial review?

[11] *Rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019* provides that;

> "*The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching the decision and that, as a result, there was unfair and unjust treatment*".

[12] In the present case, the Applicant's complaint is that the decision by the Respondent to terminate his employment was tainted with Illegality, Procedural Impropriety and Irrationality. I will deal with each of the grounds separately.

The Ground of Illegality

Submissions by the Applicant's Counsel

[13] Counsel for the Applicant cited the case of ***Ojangole Patricia v Attorney General HCMA No. 303 of 2013*** where illegality was defined to mean when a decision making authority commits an error of law in the process of taking a

decision or making the act, the subject of the complaint. Counsel submitted that the Applicant was dismissed from his job basing on a private telephone conversation contrary to Article 27(2) on the right to privacy. Counsel further submitted that the Applicant was interdicted and submitted to the Rewards and Sanctions Committee on the same day without room for investigations contrary to the Public Service Standing Orders 2021. He submitted that the composition of the Committee was highly improper on account that it had a quorum of three members instead of five as required in Annex II, Section 3.1 of the Circular Standing Instruction No.1 of 2011. He also stated that there was actual bias because the chairperson was present in the committee meeting of 14th February 2022 and even signed the minutes but opted not to take part; and that there was unfairness because two of the three members who sat on the Committee come from the same village and that the reasons for dismissal was misconduct as per the dismissal letter and not gross misconduct that would result into dismissal as per section (F-r) (7), (F-t) (6) of the Public Service Standing Orders.

Submissions by the Respondent's Counsel

[14] In reply, Counsel for the Respondent relied on sections (F-s) 7, 8, 9 and 10 of the Standing Orders to the effect that the Responsible Officer can interdict an officer if there is belief that there has been a gross misconduct. Counsel submitted that interdiction does not require investigations as alleged by the Applicant. On the composition of the Rewards and Sanctions Committee, Counsel submitted that the composition of the Committee changed due to the fact that some members had been subject of the abusive language by the Applicant while others were directly supervised by the Applicant and that the three remaining members of the Committee and the co-opted member constituted quorum. Counsel argued that the Applicant as the Manager Human Resource could not be expected to sit in a hearing in which he was the subject matter. Counsel also submitted that the Applicant was interdicted on

offences under the Public Service Standing Orders and Respondent's (UHRC) Personnel Manual. Counsel pointed out that one of the allegations was disgraceful conduct that brings disrepute to the Commission which is termed as gross misconduct under UHRC Personnel Manual clause 12.2.3. Counsel also stated that the Committee report indicates that the hearing considered the responses to all the allegations of misconduct and found that the Applicant breached all of them. Counsel concluded that there was no illegality committed by the Respondent in the process leading to the dismissal of the Applicant.

Determination by the Court

[15] Illegality has been described as the instance when the decision making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality. **Lord Diplock** in the case of ***Council of Civil Service Unions v Minister for Civil Service (1985) AC 375***, made the following statement;

> ***"By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it. Whether he has or not is par excellence a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised."***

[16] A public authority will be found to have acted unlawfully if it has made a decision or done something without the legal power to do so. Decisions made without legal power are said to be ultra vires, which is expressed through two requirements: one is that a public authority may not act beyond its statutory power; the second covers abuse of power and defects in the exercise. See: ***Dr. Lam –Lagoro James v Muni University, HCMC No. 007 of 2016***.

[17] It is also the position of the law that where discretionary power is conferred upon legal authorities, it is not absolute, even within its apparent boundaries, but is subject to general limitations. As such, discretion must be exercised in the manner intended by the empowering Act or legislation. The limitations to the exercise of the discretion are usually expressed in different ways, such as the requirement that the discretion has to be exercised reasonably and in good faith, or that relevant considerations only must be taken into account, or that the decision must not be arbitrary or capricious. See: ***Smart Protus Magara & 13 Others v Financial Intelligence Authority, HCMC No. 215 of 2018***.

[18] In the instant case, the Applicant pointed out a number of particulars of illegality, namely, that; the Rewards and Sanctions Committee was not properly constituted; his dismissal breached various provisions of the Public Service Standing Orders, particularly by not following the required progressive disciplinary procedure for removal of a public officer from office; the audio based upon was in breach of his right to privacy; improper framing of charges and failure to consult with the Solicitor General and the Permanent Secretary for guidance in case of conflict in the laws.

[19] I will begin with the allegation concerning constitution of the Rewards and Sanctions Committee that entertained the disciplinary proceedings against the Applicant. Section F-r sub-section 26 of the Public Service Standing Orders introduces a Rewards and Sanctions Framework which is to be reviewed regularly. By Circular Standing Instruction No. 1 of 2011, a Rewards and Sanctions Framework was created which provided for establishment of a Rewards and Sanctions Committee in every Ministry, Department or Agency. An amendment was effected to the said Circular Standing Instruction on 23rd December 2011 and this amendment makes the latest provision on the issue of

composition of the Rewards and Sanctions Committee. According to the amendment to Section 3.1 of Annex II of the Circular Standing Instruction No. 1 of 2011, the "Committee shall consist of five (5) Officers from within the institution inclusive of the Chairperson and the Secretary". This means a Rewards and Sanctions Committee is only duly constituted when it consists of five officers from a particular institution. This instrument has no express provision on quorum. The logical interpretation is that for the Committee to have quorum and transact business, all the five members must be present and sitting; otherwise, with less than five members, there would be no committee duly constituted and capable of transacting business.

[20] I should make it clear that this requirement is not about the personalities constituting the committee; as long as the five persons are officers of the institution, it does not matter who they are. In the present case, there is evidence that only four members sat to handle the disciplinary proceedings against the Applicant. Of the four, three were members of a standing committee and the fourth was co-opted to offer technical support. Given that the fourth member was an officer of the Respondent, this does not raise any legal issue; the co-opted person properly acted on the Committee. The mischief in the present case is that there was no fifth member and the Committee therefore had no sufficient quorum to transact business.

[21] The reasons advanced for the recusal of two members of the Committee including the Chairperson, and the procedure adopted in that regard were legitimate and proper. Since the two officers had been cited in the impugned voice recording, it was only proper that they do not participate in the proceedings. Similarly, the representative from the Human Resource office was also properly disqualified from the proceedings since he/she would be potentially or actually conflicted given that the person under trial was the head and immediate supervisor of such a person. In this regard, the Respondent

acted lawfully when reconstituting the Committee. However, by not co-opting a fifth member so as to have the Committee fully constituted, the Respondent committed a gross omission which made the proceedings illegal, null and void. A committee that is not fully constituted in accordance with the law is no committee at all and whatever business undertaken is deemed not to have taken place. A nullity is incurable under the law.

[22] In the circumstances, on the ground of lack of quorum on the part of the Rewards and Sanctions Committee of the Respondent, the Applicant has satisfied the Court that the Respondent acted illegally in relying on the report and recommendation of the said Committee to dismiss him. This aspect of illegality has been proved.

[23] The second allegation of illegality concerned the framing of charges in breach of the provisions of the Public Service Standing Orders. According to the letter of interdiction served onto the Applicant and the letter submitting the Applicant to the Rewards and Sanctions Committee, both dated 20th January 2022 (Annexure E to the affidavit in support), the Applicant was charged with particular misconduct under various sections of the Public Service Standing Orders and one charge of "Disgraceful conduct which brings disrepute to the Commission" under the UHRC Personnel Manual. Going by the charges under the Public Service Standing Orders, none of them fell under the category of gross misconduct; they fell under the category of misconduct for which the Standing Orders have different prescriptions.

[24] Section F-r sub-section 6 of the Standing Orders provides that "Misconduct shall result into disciplinary measures other than dismissal or any other form of removal from public office …" Section F-r sub-section 5 sets out various acts that constitute misconduct on the part of a public officer. A number of these featured in the charges that were levelled against the present

Applicant. Section F-r sub-section 7 defines what amounts to gross misconduct and specifically sets out acts that amount to gross misconduct. It also specifically states that gross misconduct shall result into retirement in public interest or dismissal. Of the acts set out under sub-section 7 as amounting to gross misconduct, none featured in the allegations or charges against the Applicant. In short, therefore, in as far as the Public Service Standing Orders are concerned, there was no charge of gross misconduct against the Applicant. It was therefore erroneous and legally impossible to make a finding of gross misconduct against the Applicant; of which charge he was not formally charged. The Applicant could not have been found guilty of "misconduct" and then given a sanction that is only available, under the law, for "gross misconduct". From the cited provisions of the Standing Orders, the sanction of dismissal or removal from office is only available where a public officer is found guilty of "gross misconduct" and not of "misconduct". Acting outside the law or contrary to the law or its principles is an instance of illegality under judicial review.

[25] The Respondent attempted to explain that the charge of gross misconduct arose from the allegation of breach under the UHRC Personnel Manual. Clearly, this cannot be helpful to the Respondent. An institution's human resource manual cannot sustain provisions that are inconsistent with legal provisions. In this case, a public institution's human resource manual cannot have provisions that are inconsistent with the Public Service Standing Orders. In the case of a public servant, no disciplinary proceedings can be undertaken against him/her in a manner that contradicts the provisions of the Public Service Standing Orders unless otherwise provided for by a superior legislation. In this specific case, the UHRC Personnel Manual could not introduce a different standard of gross misconduct that is inconsistent with the Standing Orders. As such, that provision of the Personnel Manual is illegal and of no effect. The

irregularity by the Respondent was compounded by their failure to consult the Solicitor General as provided for under the Standing Orders.

[26] As it stands, therefore, the Applicant has satisfied the Court that the Respondent wrongly made a finding of gross misconduct against him when no such charge had been preferred against him. Such was in breach of the express provisions of the Public Service Standing Orders and constituted an illegality. This aspect of illegality has also been proved by the Applicant.

[27] The other allegation by the Applicant of illegality was that the audio based upon was in breach of his right to privacy contrary to the provision under Article 27(2) of the Constitution. It is important to point out from the outset that the provision cited by the Applicant is only available as between persons that are privy to the private correspondence and not the members of the public that receive the correspondence by any means of publication. In this case, the Respondent was not privy to the correspondence and only received it through publication. Once the Respondent came across the communication in the public domain and considered it damaging to those affected, the Applicant cannot sustain a claim of privacy as against the Respondent. Secondly, and equally important, the subject matter of the alleged private conversation is a significant factor. Where the private conversation involves matters of public or official interest, a party to such a discussion would hardly sustain a claim for privacy.

[28] In the present case, the subject matter of the audio recording was of public and official nature. The discussion revolved around officers of the Respondent and official Commission business. The Applicant cannot justifiably claim that it was within his right to privacy to discuss official business in such a denigrating manner. This claim by the Applicant therefore fails.

[29] In all, however, on the ground of illegality, the Applicant has established two instances of illegality that are sufficient to make the decision of the Respondent judicially reviewable.

The Ground of Procedural Impropriety

Submissions by Counsel for the Applicant

[30] Counsel for the Applicant submitted that the Respondent initiated the disciplinary procedure and interdicted the Applicant thereby usurping the powers of the Secretary of the Respondent which was contrary to the well laid down procedure. Counsel also stated that the Applicant was interdicted and sent to the rewards and sanctions committee on the same day, which committee lacked quorum. Counsel stated that the audio that was relied upon was not translated at the time of the disciplinary hearing yet all members were alien to the local dialect in which the audio was recorded. Counsel further submitted that the Commission in this case was the complainant and it became a judge in its own case. It was also submitted that it was improper for the Respondent to prefer charges of misconduct and then handle the proceedings as though the Sanctions and Rewards Committee was dealing with a case of gross misconduct. Counsel prayed to the Court to find that the decision of the Respondent was affected by procedural impropriety.

Submissions by Counsel for the Respondent

[31] For the Respondent, it was submitted that the procedure followed in the disciplinary proceedings adhered to the principles of natural justice and the procedure laid down in law. Counsel submitted that the interdiction was carried out by the Acting Secretary who reffered the matter to the Rewards and Sanctions Committee in accordance with Section F-s (7) of the Public Service Standing Orders. Regarding impartiality, Counsel submitted that the law grants the Commission authority to discipline its members of staff and that the

Respondent exhibited impartiality when the members of the Rewards and Sanctions Committee who were subject of the Applicant's abusive language recused themselves. Counsel also submitted that the Applicant was accorded a fair hearing and that the allegations of bias are unsubstantiated and were not the subject of the disciplinary proceedings. Counsel invited the Court to find that the Applicant had failed to discharge the burden of proving the allegations of bias and procedural impropriety.

Determination by the Court

[32] As a ground for judicial review, "procedural impropriety" has been defined to mean "the failure to observe basic rules of natural justice or failure to act with procedural fairness toward the person who will be affected by the decision." See: ***Council of Civil Service Unions & Others vs. Minister for the Civil Service [1985] AC 374*** Per **Lord Diplock.** Under the law, procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: ***Dr. Lam – Lagoro James Vs. Muni University, HCMC No. 0007 of 2016.***

[33] Procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause. The latter essentially provides against bias. Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, that the tribunal should act in good faith. See: ***Byrne v. Kinematograph Renters Society Ltd, [1958]1 WLR 762.***

[34] On the present case, the first complaint in this regard is that the Respondent initiated the disciplinary procedure and interdicted the Applicant thereby usurping the powers of the Secretary of the Respondent which was contrary to the well laid down procedure. It appears to me that this view held by the Applicant is based on a selective construction of the provisions of the Standing Orders under Sections F-r (Discipline) and F-s (Disciplinary Procedures). The Applicant appears to have based his conclusion upon one provision under Section F-r sub-section 25 which provides for the role of a responsible officer in undertaking disciplinary procedures. However, upon proper construction, it appears to me that a holistic consideration of the provisions in the two sections lead to the conclusion that when initiating disciplinary action against a public officer, a responsible officer does not act unilaterally. For instance, under Section F-s (6) of the Standing Orders, where a public officer is accused of misconduct, the report is first made to the immediate supervisor who carries out investigation and reports to the responsible officer. On the other hand, where the public officer is accused of gross misconduct, the report is made directly to the responsible officer [Section F-s (7)].

[35] It also appears to me that in exercising his/her role under the said provisions, there is nothing to indicate that the responsible officer is barred from being advised or directed on whether to interdict or not. The argument by the Applicant appears to be that the responsible officer is obliged to act unilaterally and that if he/she is advised or directed by the appointing authority to interdict a public officer, such is wrong and procedurally improper. I do not agree with this argument by the Applicant. I have not found any provision to the effect that in exercising that function, the responsible officer shall not be subject to any control or direction by any other person or authority. Secondly, provided the responsible officer finds and cites good cause for interdiction as provided for under the law, I do not find any mischief that

would arise from the decision to interdict arising in consultation with or upon the direction of the appointing authority.

[36] I am fortified in the above view by the provision under Regulation 38 of the Public Service Commission Regulations No. 1 of 2009. Section F-s (3) of the Standing Orders is clear to the effect that disciplinary procedures for public officers are provided for under the Public Service Commission Regulations 2009, among others. Regulation 38 of the said regulations provides as follows:

> ***"Interdiction.***
>
> *(1) Where—*
>
> *(a) a responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his or her office; or*
>
> *(b) disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her, he or she shall interdict the officer from exercising those powers and performing those functions."*

[37] It is clear to me that while under paragraph (a) above the responsible officer is expected to act upon his/her own discretion, under paragraph (b), he/she may act upon the fact that disciplinary proceedings are being undertaken or about to be undertaken. The law does not specify who or which authority may have commenced or may be about to commence such proceedings. Such authority may be the appointing authority or the service commission. In such a case, such authority may direct the responsible officer to interdict the public officer and such would be perfectly lawful and procedurally proper. Such is what happened in the present case and I have found no procedural flaw in that regard.

[38] The other complaint was that it was improper for the Respondent to prefer charges of misconduct and then handle the proceedings as though the Sanctions and Rewards Committee was dealing with a case of gross misconduct. A reading of the provisions of the Standing Orders and the Public Service Commission Regulations reveal that there are specific procedures when dealing with an allegation of misconduct by a public officer on the one hand and of gross misconduct on the other hand. According to Section F-r (8) of the Standing Orders, for cases of gross misconduct, *"there shall be proper framing of charges with full particulars of the case including the applicable provisions of the law and this shall be done in consultation with the Solicitor General"*. Regulation 44(1) of the Public Service Commission Regulations also require that where disciplinary proceedings are commenced against a public officer on grounds that are likely to lead to the dismissal of the officer, *"the responsible officer shall, after preliminary investigation that he or she considers necessary, forward to the officer, with a copy to the Solicitor General, a statement of the charge or charges against him or her together with a brief statement of the allegations on which each charge is based in so far as they are not clear from the charges, and shall call upon the officer to state in writing, within fourteen days, any grounds on which he relies to exculpate himself or herself"*.

[39] In the present case, it is clear that this procedure was not followed. While the Applicant was required to make a response within 14 days, it is clear that the charges were not drawn in accordance with the above cited provisions and there was no involvement of the Solicitor General which is a mandatory requirement in the case of an allegation of gross misconduct against a public officer. In this regard, the Respondent acted improperly and the allegation of procedural impropriety has been established by the Applicant.

[40] The next allegation of procedural impropriety is that the Applicant was interdicted and sent to the rewards and sanctions committee on the same day,

which committee lacked quorum. The issue of proceeding without quorum has already been handled as constituting an illegality. I will not belabor it any further. Regarding the timing of the submission to the disciplinary committee as against the interdiction, Section F-r (14) (b) of the Public Service Standing Orders provides that the responsible officer shall ensure that *"where a public officer is interdicted, investigations shall be concluded expeditiously within 3 (three) months for cases that do not involve the Police and Courts, and 6 (six) months for cases that involve the Police and courts of law"*. Similarly, under Regulation 38(5)(a) of the Public Service Commission Regulations, where *"a public officer has been interdicted by a responsible officer, investigations into the conduct of the public officer shall be speeded up and brought to conclusion within a period of— (a) three months from the date of interdiction for offences under investigations … not requiring or involving the police or a court of law"*. Both provisions above set the maximum time available to a responsible officer to undertake investigations. The provisions do not set the minimum timeline. There is therefore no bar to a responsible officer undertaking investigations before interdiction and to refer a public officer to a disciplinary committee at the same time as communicating the interdiction. In this regard, the action by the responsible officer of referring the Applicant to the Rewards and Sanctions Committee on the same day as the interdiction did not amount to any procedural impropriety.

[41] The next allegation was that the audio that was relied upon was not translated at the time of the disciplinary hearing yet all members were alien to the local dialect in which the audio was recorded. In my view, this point ought to have been raised during the disciplinary proceedings; otherwise, there is no evidence before this Court to establish whether the members of the committee that sat did not understand the content of the audio recording. The mere fact that the members originate from areas different from where the local dialect is spoken would constitute a mere assumption that they could not have

understood the contents of the recording. Such assumption, without more, is incapable of proving the Applicant's allegation. There is no evidence that the Committee's findings based on the audio recording contradicted the contents of the recording when it was finally transcripted and translated. There is no legal requirement that I am aware of to the effect that the language of the relevant Rewards and Sanctions Committee is strictly English as to invalidate any reliance on an untranslated material. In the premises, the reliance on the untranslated audio recording in the present case did not amount to a procedural impropriety.

[42] Lastly under this ground was the allegation of bias. The Applicant alleged that the Commission (the Respondent) was the complainant, the prosecutor and the Judge in this case. I believe that this complaint by the Applicant ignores the essential nature of disciplinary proceedings. For disciplinary proceedings to achieve the observance of the rules of natural justice, it is not a requirement that the proceedings are to be undertaken by a body independent of the relevant institution or appointing authority. By their nature, disciplinary mechanisms and proceedings are intra the organization. It is for that reason that in the case of public service, a Rewards and Sanctions Framework was put in place for each institution. Once the said framework is observed, the issue of the Commission being a judge in their cause would not arise.

[43] The other part of this allegation was that the Rewards and Sanctions Committee was not properly constituted and the Applicant referred to it as a kangaroo committee. The evidence on record is that the Committee had been formed earlier on and was in place way back before the emergence of the disciplinary proceedings against the Applicant. In fact, during the proceedings before the Committee, the Applicant expressed the fact that he had been part of the formation of the Committee which was now convening to try him. The alterations to the standing committee were duly explained. The Chairperson

and one other member recused themselves because they were object of the audio recording; they were part of the Respondent's officers that were allegedly attacked in the audio. There is no way they would sit in judgment of their alleged attacker. I do not believe that the Applicant would have found the committee as better constituted with the two said members. He would obviously have raised such as the first ground of bias. The other member from the Human Resource Unit was disqualified by the Committee because he/she was directly supervised by the accused person. This, as well, was an obviously correct decision because there was no way such officer would have sat in judgment of his/her immediate supervisor.

[44] After the said disqualifications, the Respondent through the Secretary had the power to co-opt other members to constitute the Committee for purpose of the particular proceedings. The Committee, as well, had the mandate to choose a chair amongst themselves since the substantive Chairperson had recused herself. This arrangement was in order and constituted neither a legal nor procedural flaw. The only error on the part of the Respondent was to under constitute the Committee by setting up four members instead of five; which conduct was resolved under the ground of illegality. As far as procedural propriety or fairness is concerned, therefore, no flaw has been established by the Applicant in this regard.

[45] The other aspect under the allegation of bias raised by the Applicant was that the Committee was constituted in such a way that it was composed of members who were favourable to the Acting Secretary of the Respondent. The particular allegation was that by their origin, the members were from the same geographical area as the Acting Secretary. However, beyond mentioning names of three of the members, there was no evidence to support the Applicant's allegation. Incidentally, the three members mentioned by the Applicant were initially part of the Committee. It cannot be true that they were put on the

Committee for purpose of handling the case against the Applicant. The member that was co-opted is not part of this allegation. I have, therefore, found this allegation by the Applicant as baseless.

[46] In all, therefore, on the ground of procedural impropriety, the Applicant has established only one allegation of impropriety, that is, that the Respondent acted improperly in preferring charges of misconduct and then handled the proceedings as though the Sanctions and Rewards Committee was dealing with a case of gross misconduct. This error is sufficient to invalidate the proceedings of the Rewards and Sanctions Committee, also taking into consideration the two aspects of illegality pointed out above.

[47] In view of the findings above, I find no need to dwell on the allegations based on the ground of irrationality since they are based on the same facts as analyzed above. The facts are not capable of leading to any different findings based on any alleged irrationality.

[48] In answer to issue two, therefore, the Applicant has established that the decision of the Respondent leading to his dismissal was marred by illegality and procedural impropriety in terms specifically set out above.

Issue 3: Whether the Applicant is entitled to the reliefs claimed?

[49] In view of the findings above, the Applicant is entitled to a declaration that the decision by the Respondent terminating the Applicant's employment on 7th March 2022 was illegal and procedurally improper. The Applicant is also entitled to a writ of *Certiorari* quashing the order dismissing him from his employment with the Respondent. Thirdly, the Applicant is further entitled to a writ of *Mandamus* directing the Respondent to reinstate the Applicant to his position in the Respondent and pay all the benefits he is entitled to since the 7th day of March 2022 to the date of this Ruling. The above declaration and

orders are accordingly issued in favour of the Applicant against the Respondent. I have found no need for issuance of any order of injunction.

[50] The Applicant further claimed for an award of general and punitive/exemplary damages. The law is that in judicial review, there is no right to claim for losses caused by the unlawful administrative action. Damages may only be awarded if the applicant, in addition to establishing a cause of action in judicial review, establishes a separate cause of action related to the cause of action in judicial review, which would have entitled him or her to an award of damages in a separate suit. In that regard, ***Rule 8(1) of the Judicature (Judicial Review) Rules, 2009*** provides as follows:

> *"8. Claims for damages*
>
> *(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if,*
>
> *(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter which the application relates; and*
>
> *(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages."*

[51] In that regard, the position of the law is that the additional cause of action which may be added to an application for judicial review may include a claim for breach of statutory duty, misfeasance in public office or a private action in tort such as negligence, nuisance, trespass, defamation, interference with contractual relations and malicious prosecution. See: ***Three Rivers District Council versus Bank of England (3) [3003]2 AC 28 1; X (Minors) versus Bedfordshire County Council [1995]2 AC 633; and Fordham, Reparation for Maladministration: Public Law Final Frontiers (2003) RR 104 at page 104 -105.***

[52] On the present case, although the facts would disclose a case of breach of contract of employment, I note that the reliefs that would be available in the present circumstances have already been awarded through judicial review; that is, orders of reinstatement and payment of accrued benefits. I do not find reason to make any further award of damages. The reasons that led to disciplinary proceedings against the Applicant were not totally unjustifiable. The Respondent had what could have constituted reasonable cause to undertake disciplinary proceedings; it is only that the Respondent did it the wrong way. In such circumstances, the reliefs already granted to the Applicant are sufficient to meet the ends of justice. I have, therefore, made no order for payment of damages.

[53] Regarding costs, since the application has substantively succeeded, the Applicant is entitled to the costs of this application and the same are awarded to him against the Respondent.

It is so ordered.

Dated, signed and delivered by email this 14th day of February, 2023.

Boniface Wamala
JUDGE