THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS CAUSE No. 011 OF 2022
RUSOKE JOHNIEY BOSCO ..... APPLICANT
VERSUS

1. **FORT PORTAL CITY COUNCIL**
2. **KAGABA R. NDORA .....RESPONDENTS**

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

RULING

This is an application made under the provisions of Sections 36, 37, 38 of the Judicature Act, Section 98 of the Civil Procedure Act, Rules 3 & 6 of The Judicature (Judicial Review) Rules of 2009 as amended seeking judicial review of the respondents' administrative decisions by way of grant of prerogative remedies in the following terms;

a) A declaration that the applicant's retirement by the respondents on the 10th November 2022 is irrational, ultra-vires, null and void
b) An order of Certiorari be issued quashing the decision to retire the applicant
c) An order of mandamus directing the respondents to reinstate the applicant to his duty and fully pay his remuneration and allowances for the period he has been out of office by virtue of the said retirement
d) IN THE ALTERNATIVE to c) above, an order of mandamus directing the respondents to designate the applicant to the position of Assistant Town Clerk and fully pay his remuneration and allowances for the period he has been out of office by virtue of the said retirement
e) An injunction be issued restraining the respondents from advertising or otherwise appointing any person to hold the office of the applicant

OR that of Assistant Deputy Town Clerk as long as the applicant is not barred by any lawful order from holding the same

f) General damages; and

g) Costs of these proceedings

Background

The applicant was employed in the position of Deputy Town Clerk of Fort Portal Municipal Council, the 1st respondent's predecessor on 7th January 2020. In July 2020, the municipal council was elevated to city status, Fort Portal City Council. Ministry of Public Service put in place job descriptions and person specifications for cities providing for salary scales, qualifications among others. The same ministry issued guidelines for the implementation of the city structures particularly empowering the City Service Commissions to consider the city staff through validation for retention, retirement, promotion among others. Staff of the 1st respondent were taken through a validation exercise by the City Service Commission.

On 31st October 2022, the City Service Commission submitted its staff validation report to the City Clerk recommending that the applicant be retired from service for lack of the qualification of a master's degree. By letter dated 10th November 2022 and signed by the 2nd respondent as the acting City Clerk of the 1st respondent, the applicant was retired from the position of Deputy Town Clerk of the 1st respondent. It is the applicant's contention that his retirement was tainted with illegality, irrationality and procedural impropriety.

The application is supported by an affidavit sworn by the applicant by which he deposes that;

a. He was formally appointed on transfer of service to the position of Deputy Town Clerk of the 1st respondent on 3rd October 2022.
b. The validation committee recommended that he be retired because of lack of academic qualifications yet he possesses the required qualifications provided for under the Local Governments Act.
c. That the job descriptions and person specifications that the City Service Commission relied on to recommend the applicant's retirement cannot override the clear provisions of the Local Governments Act and are of no legal consequence.
d. The Permanent Secretary, Ministry of Public Service had noted the applicant's lack of the master's degree and advised the 1st respondent to re-designate the applicant to the position of Assistant Deputy Town Clerk and that he be given two years to acquire the required qualification. The City Clerk at the time on 1st November 2022 recommended to the City Service Commission that the applicant be retained in service and re-designated to the position of Assistant Deputy Town Clerk
e. The decision of the City Service Commission was influenced by a letter from the State Minister for Local Government advising the Commission to disregard the technical advice from the Permanent Secretary Ministry of Public Service.
f. The applicant was discriminated against since there were other officers without the required qualifications but were given a grace period to acquire them.
g. His retirement was not cleared by the responsible Permanent Secretary which contravenes the Public Service Standing Orders

The 2nd respondent deposed affidavits for his reply and that of the 1st respondent. He contends as such;

i. That all the 1st respondent's staff, including the applicant were subjected to a validation exercise and the City Service Commission recommended that the applicant be retired due to lack of a minimum qualification of a master's degree and the 2nd respondent in performance of his duty communicated the resignation to the applicant.

ii. That the 1st respondent has submitted the final proposal for pension and gratuity for affected staff including the applicant to the Ministry of Public Service for consideration.

iii. That the 2nd respondent is a wrong party to the application since he is protected from proceedings such as the present application by the Local Governments Act

iv. That the applicant has not exhausted the available remedies and as such, the application is premature, baseless and misconceived.

Representation and hearing

In the application, the applicant is represented by Mr. Nyakaana Patrick of Nyakaana-Mabiiho & Co. Advocates. The 1st Respondent is represented by Mr. Isingoma Alex of the Attorney General's Chambers while the 2nd respondent is represented by Mr. Kaahwa Joseph of Kaahwa, Kafuuzi, Bwiruka & Co. Advocates. Written submissions have been filed on behalf of all the parties and I have considered the same in this ruling.

Issues

Each party seems to raise slightly different issues for the court's resolution but the gist of them all culminates into the following;

1. Whether the application raises grounds for Judicial Review
2. Whether the applicant is entitled to the reliefs sought

Preliminary matters

In his written submissions, counsel for the 1st respondent raised several preliminary objections to the application.

1. That the applicant has not exhausted the available remedies under the law prior to instituting this action in judicial review rendering it being premature
2. That the affidavit in support of the application is incurably defective
3. That the application was wrongly brought against the 2nd respondent

I consider it useful to handle these first, and I hereby do hereunder.

That the applicant has not exhausted the available remedies under the law prior to instituting this action in judicial review rendering it being premature.

Counsel for the 1st respondent argued that **Rule 5 of the Judicature (Judicial Review) Amendment Rules 2019** (hereunder referred to as the Judicial Review rules) provides for the factors to consider before handling an application for judicial review. Notable among them is the requirement that the applicant ought to have exhausted the existing remedies available within the public body or under the law. Counsel relied on the case of ***Associate Professor Jude Sempebwa & another Vs Makerere University & another HCMA No. 021 of 2021*** where court noted that without taking recourse to the alternative remedies available under the law, then every person would rush to the High Court rendering the provisions almost meaningless.

Counsel for the 1st respondent also referred to Regulation 11(1) of the Public Service Regulations 2009 which states that an employee of a local government may appeal to the Public Service Commission only after his or

her case has been handled by the relevant district service commission. Counsel submitted that there is no evidence to indicate that the applicant appealed against the decision of the Fort Portal City Service Commission to the Public Service Commission, which renders the present application premature.

In response, the applicant deposed in his affidavit in rejoinder that appealed to the Public Service Commission. He attached a copy of his appeal dated 9th December 2022 and received by the Ministry on 14th December 2022. He notes that he has not been favoured with any response to his appeal. Counsel for the applicant argues that there are no internal remedies that the applicant could have explored.

I agree with the submission of counsel for the 1st respondent that an applicant for judicial review needs to first explore the existing remedies within a public body or under the law. I have however looked at the applicant's affidavit in rejoinder and noted the attached copy of his appeal to the Public Service Commission. I also note that no response has been given to the applicant on the same.

I note that the applicant's appeal to the Public Service Commission was received on 14th December 2022 and the present application was received by this court on 16th December 2022. The applicant might have been a little impatient in that he did not wait for the response to his appeal from the Public Service Commission. But am also mindful of the timelines set by the Judicial Review rules of 2009 under Rule 5(1) thereof that application for judicial review ought to commenced within three months from the date the grounds for review first arose. It had been over a month from the date of the applicant's resignation letter when the applicant filed

his appeal and this application. If he had decided to wait for the response, he might have waited in vain.

It is understood that an applicant for judicial review needs to exhaust the available remedies first and it can be an important factor in exercising the discretion whether or not to grant the reliefs sought. However, contemporary jurisprudence is to the effect that applications for judicial review should be heard and determined without undue regard to procedural technicalities and that the availability of other remedies is no bar to the granting of judicial review relief. See the case of ***Eberuku Vs Moyo District Local Government HCMA No. 05 of 2016.***

This objection is accordingly overruled.

That the affidavit in support of the application is incurably defective

Counsel for the 1st respondent argued that paragraphs 5, 6, 9, 10, 14-18, 20-22 of the applicant's affidavit in support of the application are construed as hearsay information because he did not disclose his source of information therein. Counsel relied on **Order 19 rule 3 of the Civil Procedure Rules** to state that affidavits are supposed to be limited to such as the deponent is able by his own knowledge to prove.

Counsel for the applicant agrees with the provisions of the law and authorities cited by the respondent's advocate but disagrees with their application to the present application. He argues that the import of **Order 19 rule 3 of the Civil Procedure Rules** is that statements in affidavits that are based on information other than the belief and knowledge of the deponent are acceptable as long as their source of information is disclosed. Counsel submits that if that provision were to be interpreted as counsel for the 1st respondent suggests, it would lead to absurdity. Also that if that

were the case, the 1st respondent's affidavit in reply would be equally defective as the deponent of the same was not the author of many of the annexures therein among which is the Guidelines on Implementation of City Structures that the 1st respondent relies on.

I have carefully looked at the paragraphs in the applicant's affidavit that are said to be hearsay. In most, he refers to information that is contained in public documents and are not a reserve of particular individuals. In other paragraphs he discloses the source of information especially on legal matters to be his advocates. The information contained in other paragraphs is contained in his letter of retirement.

In addition, courts have established the practice of severance when dealing with affidavits containing possible hearsay and facts based on knowledge. When considering such type of affidavits courts have followed a liberal approach. In ***Col (Rtd) Dr. Kizza Besigye Vs Museveni & another, Election Petition No. 1 of 2001***. Much as this approach was adopted in an election petition which by many standards has peculiar circumstances, it poses great injustice to throw out an entire affidavit merely because a paragraph therein possibly contains hearsay evidence, which I have already found is not the case in the present matter.

This objection would also accordingly be overruled.

<u>That the application was wrongly brought against the 2nd respondent</u>

Counsel for the 1st respondent relied on **Section 173 of the Local Governments Act** to submit that officers of a local government are not personally liable for acts done or omitted to be done in good faith in their execution of their duties. Counsel submits that the 2nd respondent was executing his duties in good faith when he communicated the City Service

Commission decision to the applicant. As such, the 2nd respondent was wrongly sued and he should be struck off with costs.

In response, counsel for the applicant argues that it is improper for counsel for the 1st respondent to raise a preliminary objection on behalf of the 2nd respondent. He submits that this would amount to representing a party without instructions which is contrary and in breach of **Regulation 2(2) of the Advocates (Professional Conduct) Regulations**.

I however note that counsel for the 2nd respondent also raised the same objection.

It is true that officers of local governments enjoy some immunity under the law against personal liability for acts done or omitted to be done in good faith in execution of their functions. However, I have examined the applicant's pleadings and the applicant raises issues that may point to the 2nd respondent's lack of good faith when he dealt with the applicant. For instance in paragraph 15 of the applicant's affidavit in rejoinder, he claims that the 2nd respondent communicated the applicant's resignation before the 2nd respondent received the City Service Commission's report and recommendation. If this were proved to be true, the same could indeed point to the 2nd respondent's lack of good faith. The applicant can only be allowed the benefit to prove such claims and the 2nd respondent to defend himself against the same.

I also agree that it would be improper for counsel for the 1st respondent to raise an objection on behalf of the 2nd respondent without instruction. This objection would also be overruled.

I now delve into the merits of the application before court.

Consideration of the application.

Whether the application raises grounds for Judicial Review

According to **rule 3 of The Judicature (Judicial Review) Rules, 2009, S.I. 11 of 2009**, applications may be made under section 38(2) of The Judicature Act, for orders of mandamus, prohibition, certiorari or an injunction (by way of judicial review). Judicial review of administrative action is a procedure by which a person who has been affected by a particular administrative decision, action or failure to act of a public authority, may make an application to the High Court, which may provide a remedy if it decides that the authority has acted unlawfully. While it has been said that the grounds of judicial review "defy precise definition," most, if not all, are concerned either with the processes by which a decision was made or the scope of the power of the decision-maker.

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 (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness); or without observing the rules of natural justice (unlawful on the grounds of procedural impropriety or fairness).

Judicial review on any of those grounds is concerned not with the merits of the decision, but rather with the question whether the public body has acted lawfully. Judicial review is not the re-hearing of the merits of a particular case, but rather the High Court reviews a decision to make sure that the decision-maker used the correct legal reasoning or followed the correct legal procedures. If the Court finds that a decision has been made

unlawfully, the powers of the court will generally be confined to setting the decision aside and remitting the matter to the decision-maker for reconsideration according to law, or to compel the decision maker to follow the law.

The court ought to proceed with due regard to the limits within which it may review the exercise of administrative discretion when interfering with an administrative function of an establishment or an employer as stated in ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1947] 2 ALL ER 680: [1948] 1 KB 223***, thus; - (i) illegality: which means the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. (ii) Irrationality: which means particularly extreme behaviour, such as acting in bad faith, or a decision which is "perverse" or "absurd" that implies the decision-maker has taken leave of his senses. Taking a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it and (iii) Procedural impropriety: which encompasses four basic concepts; (1) the need to comply with the adopted (and usually statutory) rules for the decision making process; (2) the common law requirement of fair hearing; (3) the common law requirement that the decision is made without an appearance of bias; (4) the requirement to comply with any procedural legitimate expectations created by the decision maker.

Against the background earlier laid down, counsel for the applicant argued that a city is equivalent to a district according to **Section 4 of the Local Governments Act.** As such, the office of the Chief Administrative Officer (CAO) is equivalent to that of a Town Clerk in a city setup. He relied on

Section 63(2) of the Local Governments Act to lay down the qualifications of a person to hold office of a CAO which include a University degree, a diploma in public administration, not less than ten years' experience and high moral character. Counsel submits that since the office of the CAO is equivalent to that of a Town Clerk in the city arrangement, the same qualifications are required of a Town Clerk. He submits that the applicant possesses a University degree in social sciences, a post graduate diploma in urban governance, post graduate diploma in public administration and a certificate in administrative law. Counsel notes that it is an error of law for the applicant to have been retired on the grounds of lack of the required qualifications when he possesses the same.

Counsel for the applicant further argued that the respondents did not follow the procedures for retirement of public officers. Mr. Nyakaana argues that in accordance with **Section (L-i), paragraph 2 of the Public Service Standing Orders 2021**, before a public officer can be retired on abolition of office or compulsory retirement to facilitate improvement to effect economy, a submission is supposed to be made by the responsible officer (the Town Clerk) to the appointing authority (the City Service Commission) upon clearance by the responsible Permanent Secretary (Ministry of Public Service). Counsel argues that the applicant's retirement was never cleared by the responsible Permanent Secretary and the procedure followed by the respondents is not that that is laid down by the Public Service Standing Orders. In addition, counsel argues that the City Service Commission cannot act on its own volition without a comprehensive submission from the Town Clerk. This is a procedural failure.

It was also argued for the applicant that in retiring the applicant, the respondents did not act fairly. He submitted that the applicant has served in public service since 2006 when he was appointed a Community Development Officer in Kabarole District and has risen through the ranks to Deputy Town Clerk in a period of over sixteen years. Counsel also argues that the applicant has diligently served the 1st respondent. It can only be seen as unfair that the applicant can be retired merely for lack of academic qualifications, which he argues that he possesses.

It is also the applicant's submission that he was discriminated against when he was unjustly retired for lack of academic qualifications when some of the other officers who face a similar dilemma were recommended to be given a grace period to acquire the required qualifications. He referred to the example of the Principal Commercial Officer of the 1st respondent who equally does not possess the required master's degree but was recommended to be retained and be given a grace period to acquire the qualification. Further that the applicant was retired in complete disregard of the technical advice from the Permanent Secretary of the Ministry of Public Service who recommended that the applicant be retained in the position of Assistant Deputy Town Clerk and be given a grace period within which to acquire the required Master's degree.

Mr. Nyakaana also argued that the absurd decision of the City Service Commission was influenced by the direction of the State Minister for Local Government who asked the City Service Commission to disregard the technical advice from the Permanent Secretary of the Ministry of Public Service which would amount to erosion of the independence of the City Service Commission.

In response, counsel for the 1st respondent argued that in line with **Section 55(1) of the Local Governments Act**, the City Service Commission ought to exercise its duties independently. As such, the technical advice from the Permanent Secretary of the Ministry of Public Service did not confer powers upon her to appoint persons in the local government. In addition, that the said advice only sought to benefit the applicant yet many other people were affected by the validation process which would amount to discrimination.

Mr. Isingoma also argued that the applicant's argument that the City Service Commission acted without a submission from the City Clerk is misguided. He states that the City Clerk submitted the report of the validation committee to the City Service Commission for consideration as required by law. Counsel submitted that the applicant clearly lacks the qualifications to occupy the office of the Deputy Town Clerk and that of Assistant Deputy Town clerk because he does not possess the required master's degree. Accordingly, the applicant was properly retired, payment of three months in lieu of notice was paid to him and the respondents have submitted the proposal for pension and gratuity for consideration by the Ministry of Public Service.

Counsel for the 2nd respondent argued that the respondents were wrongly sued because what they were implementing were government functions and not of their own. He refers to **Section 73 of the Local Governments Act** that confers immunity on local government officers against personal liability for acts done in execution of their lawful functions. I have already dealt with a similar submission earlier in the ruling.

It was also submitted for the 2nd respondent that the 2nd respondent merely communicated a decision that was reached by the City Service

Commission with full participation of the applicant in the validation exercise. Mr. Kaahwa argued that the applicant does not possess the required qualification of a Master's degree to hold office as a Deputy Town Clerk or Assistant Deputy Town Clerk. As such, Sections 53(4), 59 and 63 of the Local Governments Act are cited by the applicant in error as they are not applicable to the present application since the creation of the new cities created a new dispensation on the Human Resources docket.

Counsel for the 2nd respondent further argued that the applicant's retirement was cleared by the responsible Permanent Secretary when she communicated the guidelines for implementation of city structures and directing the respondents to act under them. Counsel also submits that the alleged mix up of the dates of the City Service Commission report and the retirement letter signed by the 2nd respondent is untenable. He argues that the decision to retire the applicant was based on the minute extract from the City Service Commission and the extract date was 25th October 2022. It is submission that the applicant's retirement was legal, rational and procedurally proper.

I have extensively read the parties' pleadings, evidence and submissions. All the advocates appear to have invested considerable time to prepare their respective documents for which they are appreciated. They have made expansive arguments in support of their respective cases.

As earlier discussed, and in light of the parties' respective cases, I will now move to determine whether the process leading up to the applicant's retirement was marred with any illegality, procedural impropriety, unfairness or if the decision itself was unreasonable. To begin with, the process of retirement of public officers where structural changes or abolition of office have occurred is governed by Section L-i of the Public

Service Standing Orders 2021. I will reproduce the relevant paragraphs of the said section for ease of reference.

> ***RETIREMENT ON ABOLITION OF OFFICE OR COMPULSORY RETIREMENT TO FACILITATE IMPROVEMENT OR TO EFFECT ECONOMY (L - i)***
>
> *1. When the Appointing Authority directs that a public officer shall retire because his or her post is abolished or retires to facilitate improvement in the organisation to which he or she belongs, by which greater efficiency or economy may be achieved, he or she is eligible for a pension in accordance with the law.*
>
> *2. A submission by a Responsible Officer shall be made to the Appointing Authority that a public officer should be retired because of abolition of office or on grounds of reorganisation upon clearance by Responsible Permanent Secretary. The reason for this is that Government does not consider an officer's office abolished unless it is impossible to offer him or her continued employment in an office of broadly similar duties and on the same pay. The public officer's career prospects must completely fail for abolition of office to occur.* (Underlining for emphasis).

From the above, it can be said that first, there has to be abolition of the office or that structural changes or reorganisation has made it clear that an employee ought to be retired. Second, the responsible officer (in this case the Town Clerk) has to bring it to the attention of the Permanent Secretary (of Ministry of Public Service in this case) seeking his or her clearance of the retirement. Third, the Town Clerk now makes the submission to the appointing authority for consideration.

In the present case, is clear that this was not the process that was adopted by the respondents to retire the applicant. The argument by counsel for the 2nd respondent that the applicant's retirement was cleared when the Permanent Secretary communicated the guidelines for the implementation of new city structure to the respondents is not satisfactory. That was a general communication to all the affected city councils that ought to have been implemented not in disregard to the existing procedures but in accordance with the same.

I have also looked at **Article 200 (4) of the Constitution of the Republic of Uganda**, **1995 (as amended)** as cited by counsel for the applicant and counsel for the 2nd respondent. The said provision states that the power to appoint persons to hold or act in the office of town clerk in the service of a city or a municipality, including the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove those persons from office is vested in the Public Service Commission. To clarify on this, **Section A-a, paragraph 9 of the Public Service Standing Orders** 2021 specifies 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 and Town Clerks of a Municipal Council.

From the above, could it be said that the City Service Commission had the power to validate, interview and retire the applicant who was then a Deputy Town Clerk? My considered opinion was that the City Service Commission was not empowered to remove from office an officer of the applicant's positon and the same should have been forwarded to the Public

Service Commission for further management. Instead, when the Permanent Secretary of the Public Service was requested for technical advice, her advice was disregarded and the respondents chose to take their own path not provided for by the standing orders.

All the parties claim that there were elements of discrimination in the process. The applicant claims that other officers who did not possess the required master's degree were retained and given a grace period to acquire the qualification. The respondents claim that the technical advice from the Permanent Secretary was for the benefit of only the applicant when many other staff members of the 1st respondent were affected by the restructuring. While both claims are true, one can easily be seen to outweigh the other. The validation exercise involved every staff of the 1st respondent. No justification has been advanced by the respondents for retiring some staff like the applicant for lack of academic qualifications, to wit a master's degree and retain others who equally lack the same qualification. Some were given a grace period to acquire the qualification and others were retired for lack thereof. This is a clear case of unjustified discrimination. It may be understood that the Permanent Secretary's technical advice is in respect to only the applicant because it was sought in respect of only the applicant.

There is also a claim that the Service Commission's validation report was received by the respondents much later after the 2nd respondent had already issued the retirement letter to the applicant. It has been argued by counsel for the 2nd respondent that the retirement letter was based not on the validation report but on the minute extract from the proceedings of the City Service Commission, which extract was made on 25th October 2022 before the issuance of the retirement letter. I have examined the forwarding

letter for the validation/placement report from the secretary of the City Service Commission. The secretary notes that the report is in respect to the exercise that took place between 21st and 26th October 2022. This would mean that by the 25th October 2022 when the 2nd respondent extracted the minute on which he based his communication of retirement to the applicant, the validation and placement exercise was not yet complete. One would wonder how the service commission would have a minute to retire the applicant before concluding the validation and placement exercise.

Related to the above, one would also wonder why the 2nd respondent would rush to extract a minute of the service commission even before the report of the validation exercise was communicated to him. What would be his interest in applicant's retirement? I note that the report was actually communicated to the 2nd respondent on 22nd November 2022 when he had already communicated the retirement to the applicant. Exercise of good faith cannot be deduced from this set of circumstances.

There is also the interference in the independence of the city Service Commission. The State Minister for Local Government wrote to the chairperson of the City Service Commission advising that the commission disregards the technical advice received from the Permanent Secretary Ministry of Public Service. With due respect, the Hon. Minister has no right to direct the City Service Commission on which advice to take and which to disregard.

<u>The test for unreasonableness.</u>

According to the case of ***John Jet Tumwebaze Vs Makerere University Council & Ors CA No.78 of 2005*** it was held that irrationality is when a

decision made is so outrageous in its defiance of logic or acceptable moral standards that no person could have arrived at that decision. In the present case, the applicant has been in the public service and has risen through the ranks ever since to the position of Deputy Town Clerk that he occupied prior to his retirements. The applicant possesses several academic qualifications including a University degree in social sciences, a post graduate diploma in urban governance, post graduate diploma in public administration and a certificate in administrative law.

The reason behind the requirement that the retirement on grounds of reorganization should be cleared by the Permanent Secretary of the Public service is that Government does not consider an officer's office abolished unless it is impossible to offer him or her continued employment in an office of broadly similar duties and on the same pay. The public officer's career prospects must completely fail for him to be retired on the grounds of abolition of office or structural reorganization. If some of the 1st respondent's staff were given a grace period to acquire the master's degree, why not the applicant? In any case, the respondents have not indicated that there has been a complete change in the responsibilities of the applicant which may not be performed by an officer without a master's degree. The decision to retire the applicant would be unreasonable in the circumstances.

I disagree with the submission of counsel for the applicant possessed the required academic qualifications under the law. It is true that Section 63 of the Local Governments Act specifies the qualifications of a person to hold office as a CAO, equally as a Town Clerk and Deputy Town Clerk. However, **Article 166 (1) (c) of the Constitution** empowers the Public Service Commission to review the terms and conditions of service,

standing orders, training and qualifications of public officers. The mode of such review is not specified by law. As such, it is my considered opinion that when the Public Service Commission issues new staff structures in the form of new job descriptions and guidelines, they may not be said to be contrary to law. I find that the applicant does not possess the Master's decree as require to occupy the position of Deputy Town Clerk of the 1st respondent.

On the whole, I find that the process leading up to the applicant's retirement was tainted with several illegalities, procedural lapses and the decision to retire the applicant was unreasonable as analysed above.

This application succeeds.

Issue 2: Whether the applicant is entitled to the reliefs sought.

According to **Section 36(1) of the Judicature Act**, the High Court has discretionary powers to grant prerogative remedies which include prohibition, certiorari and mandamus. Further, **Section 38 of the Judicature Act** empowers this court to issue injunctions to restrain any person from doing any act as may be specified by the court. These are the remedies prayed for by the applicant in addition to declarations and damages.

An order of certiorari issues to quash a decision which is ultra vires or vitiated by an error on the face of the record. In this case the respondents acted *ultra vires* the law by subjecting the applicant to proceedings that led to his untimely retirement when they did not have the jurisdiction to do so. This court therefore issues an order of certiorari to quash the decision of the 1st Respondent's service commission and the 2nd respondent's communication to retire the applicant.

An order of mandamus is issued to compel performance of a Statutory Duty. Like some of the other staff of the 1st respondent, the applicant should be given the grace period to acquire the master's degree. In line with the technical advice from the Permanent Secretary of the Ministry of Public Service, the applicant should be retained and re-designated to the position of Assistant Deputy Town Clerk and paid his salary and other emoluments from the time of his untimely retirement. I note that the applicant had been paid an equivalent of three months' salary in lieu of notice. The same could be computed and subtracted from the pay that the applicant is entitled to.

Rule 8 of the Judicial Review Rules allows the applicant to claim for general damages. In this case, the applicant has been out of office for more than three months by virtue of an improper process. It is the natural result that the applicant has suffered inconvenience and lost expected earnings from employment where he would have earned.

An award of damages is discretionary and in assessment of the quantum of damages, courts are mainly guided by the value of the subject matter, the economic inconvenience that a party may have been put through and the nature and extent of the breach or injury suffered (see ***Uganda Commercial Bank Vs Kigozi [2002] 1 EA 305).*** Counsel for the applicant has done nothing to guide court on the instance of general damages and their quantum. The prayer for general damages id declined.

This ruling disposes of Miscellaneous Application No. 001 of 2023, Rusoke Johniey Bosco Vs Fort Portal City Council. It is accordingly closed with no order as to costs.

Obiter: In accordance with Section 58 of the Local Governments Act, District Service Commissions are independent bodies. This would mean they have the capacity to be sued independently of any other bodies in the district or the city for this matter. It would be proper that an applicant who finds issue with district or city staff recruitment or reorganization exercises that have been undertaken by the respective Service Commission to involve the said Commission in the proceedings before court.

In the final result, this cause succeeds and I make the following orders;

a. It is declared that the applicant's retirement by the respondents on the 10th November 2022 is irrational, ultra-vires, null and void

a) An order of Certiorari is issued to quash the decision of the 1st Respondent's service commission and the 2nd respondent's communication to retire the applicant.

b) An order of mandamus is issued directing the respondents to retain and re-designate the applicant to the position of Assistant Deputy Town Clerk and pay his salary and other emoluments from the time of his untimely retirement. The respondents may compute and subtract any monies that may have been paid to the applicant in lieu of his retirement notice. The applicant should be given a grace period within which to acquire the master's degree.

c) An injunction is issued to restrain the respondents from appointing any person to hold the office of Assistant Deputy Town Clerk as long as the applicant is not barred by any lawful order from holding the same

d) Costs of these proceedings are awarded to the applicant

e) Miscellaneous Application No. 001 of 2023 is closed with no order as to costs.

Dated at Fort Portal this 23rd March 2023. .

Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties

Vincent Emmy Mugabo

Judge

23rd March 2023.