THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO 238 OF 2021

SP AJUNA MARK::APPLICANT

VERSUS

1. **ATTORNEY GENERAL**
2. **INSPECTOR GENERAL OF POLICE::::::::::::::::::::::::::::::RESPONDENTS**

RULING

This is an application brought under Article 28(9) of the constitution of Uganda, section 7 civil procedure Act, section 33 & 36 Judicature Act, rules 3, 4, 5,6,7 & 8 of the judicature (judicial review) rules 2009, section 98 of the civil procedure Act Cap 71 and Order 52 Rules 1 and 3 of the Civil Procedure Rules seeking for orders that;

1. An Order of Prohibition be issued restraining the Inspector General of Police Through the Attorney General, his agents and or servants and all persons acting under his authority and all persons acting under the authority of the 2nd respondent herein from acting upon the judgement and finding of the police standby disciplinary court conducted at the police headquarters Naguru on the 15th day of January.

2. A writ of Certiorari be issued quashing and setting aside the decision of the police standby disciplinary court which was made illegally, in error of the law, unjust and ultra vires in general.

3. A Declaration the proceedings of the police standby disciplinary court against the applicant amounted to double jeopardy and thus were null and void and therefore against the principles of natural justice.

4. An Order of Mandamus be issued re-instating the applicant to his former position and line of duty in the Uganda police force.

5. An order be issued for the award of general and exemplary damages for the economic loss, inconvenience, psychological torture, mental anguish and emotional distress suffered by the applicant.

6. Costs of this application be provided for.

The grounds of the application are briefly stated in the application and further expounded in the affidavit in support of the application but briefly state;

1. The applicant was formerly an employee of the Uganda Police Force an institution headed by the second respondent and had been deployed as the DPC of Kumi District before being illegally dismissed.

2. The applicant was subjected to disciplinary before the police court at Naguru police headquarters conducted on the 15th day of January 2020 under disciplinary offence register NO. DOR 03/2020 wherein the Applicant was found guilty and dismissed from his office and the force at large.

3. That the said proceedings were illegal, null and void from the start as the Applicant had been earlier acquitted by the Chief Magistrate court and the Anti-Corruption Division of the high court on the same allegation which were now the subject matter in the disciplinary court of police

4. The despite the two acquittals form the chief magistrate's court and the High Court, the Inspector General of Police re-instated the matter and constituted a disciplinary court hearing of the matter again which resulted into his dismissal from the force.

5. That the applicant contends that the actions of the Inspector General of Police and the proceedings of the police standby disciplinary court are illegal, barred by the principles of res

judicata and amount to double jeopardy as the applicant had been charged and acquitted on the same facts and charges.

6. That the applicant as a result has been subjected to economic loss, inconvenience, psychological torture, mental anguish and emotional distress for which the 1st respondent is vicariously liable.

The 1st and 2nd respondent filed an affidavit in reply sworn by ACP, Kyasiimiire Dinah opposing this application which stated that;

1. That the complaint with regard to the institution of proceedings against the applicant in the police standby disciplinary court on the 15th of January 2020 is time barred.

2. That the applicant is still a serving member of the Uganda police force and has never been dismissed from the force.

3. The applicant has never been tried twice for the same offences as alleged.

4. That the applicant was charged and tried with the offence of Embezzlement and abuse of office in the Chief Magistrate's Court Anti-Corruption Division and on appeal in the High Court, Anti- Corruption Division.

5. That in the police standby disciplinary court, the Applicant was tried for a totally different offence to wit; discreditable/ irregular conduct.

6. That the police standby disciplinary court only recommended a dismissal of the applicant to the police authority.

7. That the applicant appealed against the decision of the police standby disciplinary court to the police appeals court.

8. That the applicant's appeal is still before the police appeals court pending final determination by the police Authority.

9. That the police disciplinary courts purely handle matters of discipline and not those of a criminal nature.

10. That the applicant has not suffered any economic loss as alleged. He is still on the payroll and his salary payments are up to date.

11. That this is not a proper case for the grant of the orders sought, whereupon the said Application ought to be dismissed with costs.

The applicant was represented by Counsel Dan Busingye while the respondent was represented by Sam Tusubira

At the hearing of this application, the parties were directed to file written submissions which I have had the occasion of reading and considered in the determination of this application.

In an application of this nature, the only issues for determination are;

1. Whether subjecting the applicant to proceedings in the Police Standby Disciplinary court is unlawful.

2. Whether the applicant is entitled to the remedies sought.

The respondent in their affidavit in reply raised a priminary objection to the propriety of this application that it was filed out of time according to paragraph of the applicant's affidavit in support.

The applicants in their rejoinder submitted that paragraph 6 of he applicant's affidavit in support of the application makes reference to Annexure "F" which is a copy of the loose minute addressed to the 2nd Respondent comprising a report on the disciplinary court proceedings compiled and signed by SCP chares Birungi chairperson PHDSC dated 3rd May 2021, at the bottom of the document, the minute is followed by the record of proceeding attached as "G" in paragraph 8 and the judgement of the disciplinary court attached as "H" in paragraph 10.

And they also state that judgement was delivered and received by the applicant on the 17th day of May 2021 as signed by the applicant on page 40 of

the said judgement. The applicant filed this application on the 12th day of August 2021, we submit that this is within the three months as enshrined in rule 5(1) of the judicature (judicial review) rules 2009 as amended.

Analysis

It is clear from the evidence on record that judgment was delivered and received on 17th day of May 2021and the applicant filed this Application on the 12th day of August 2021. This means that it was within a period of 3 months.

Under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

(1) An application for judicial review shall be made promptly and in any event **within three months from the date when the grounds of the application FIRST arose,** unless the court considers that there is good reason for extending the period within which the application shall be made. (Emphasis is ours)

Under the Judicature (Judicial Review) (Amendment) Rules 2019, Rule 7 (A) (1) (9); court is enjoined to satisfy itself that the application is amenable for judicial review. Among other stated considerations, an application for judicial review is amenable for judicial review if it is brought in time prescribed by the rules. The Judicature (Judicial Review) Rules 2009 under Rule 5 (1) thereof prescribes the time for applying for judicial review as follows;

"Time for applying for judicial review.

(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the Court considers that there is good reason for extending the period within which the application shall be made."

Under sub-rule (3) thereof, it is provided that;

> "This rule shall apply, without prejudice, to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."

In the case of **IP MUGUMYA vs ATTORNEY GENERAL HCMC NO. 116 OF 2015.** The Applicant challenged an interdiction which occurred on 6th July 2011 by an application for judicial review filed on 11th August 2015. **Hon Justice Steven Musota** (as he then was) dismissing the application for being filed out of time contrary to Rule 5(1) of the Judicature (Judicial Review) Rules 2009 had this to state;

> It is clear from the above that an application for judicial review has to be filed within three months from the date when the grounds of the application first arose unless an application is made for extension of time...the time limits stipulated in the Rules apply and are still good law.

This application is competent for being filed within the statutory period of 3 months and therefore we shall proceed to determine the application on merit.

Whether subjecting the applicant to proceedings in the police standby disciplinary court is unlawful.

The applicant contestation here is the police standby disciplinary court proceedings that were conducted and based on the facts and evidence and the way it was applied in reaching the decision that dismissed him from the police force.

It is without doubt that the applicant was subjected to criminal proceedings to which he was acquitted and the respondent was still satisfied with the outcome of court, the second respondent collected the record of proceedings from the anti-corruption division both magistrate and high court as an appellate court and decided to subject the applicant with his colleagues to a disciplinary court with anticipated decision whose only aim was to reverse the finds of the criminal court system and find the applicant guilty which they successfully did.

They submit that the whole process is unlawful, illegal, unjust, erroneous in law, and it goes against all the tenets of natural justice and therefore ultra

vires in general, amounts to double jeopardy and we pray that court finds them null and void.

The practical effect of the common law principle against double jeopardy is the prosecution against retrials for the same criminal offence following an acquittal or conviction. It is a rule which prevents the harassment of an accused person through successive trials for the alleged commission of the same criminal offence.

Justice Stephen Mubiru in deciding **UG v ADRIKO ISMAIL & ADUKULE ALI criminal case No. 122 of 2017**, stated the following; double jeopardy, properly understood, is the best described in the phrase "No man should be tried twice for the same offence"

The respondent in their reply submits that the disciplinary proceedings against the applicant in the police standby disciplinary court are lawful. It is clear that the applicant was recruited from civilian life and transformed into a member of the Uganda police force.

They argue that Article 214 of the Constitution of Uganda provides for the administration and regulation of the Uganda police force through enactment of laws by Parliament.

Section 44 of the Police Act cap 303 establishes the police disciplinary code of conduct for the disciplinary control of the police force.

Section 6 of the same Act empowers the 2nd respondent to make standing orders in consultation with the Minister, the Police Authority and Police Council on matters of administration, discipline, police duties and procedures.

They still state that according to Guideline 2.13 of the Uganda Police Force disciplinary force disciplinary courts, the institution of disciplinary proceedings against a defaulter after acquittal in criminal proceedings does not amount to double jeopardy.

And therefore, the applicant was tried for an offence against the Uganda police force disciplinary code of conduct.

Analysis

Double jeopardy is a procedural defence that prevents an accused person from being tried again on the same (or similar) charges and on the same facts, following a valid acquittal or conviction.

If this issue is raised, evidence will be placed before the court, which will normally rule as a preliminary matter whether the plea is substantiated; if it is, the projected trial will be prevented from proceeding. In some countries, including Canada, Mexico and the United States, the guarantee against being "twice put in jeopardy" is a constitutional right. In other countries, the protection is afforded by statute.

Article 28 (9) states that, "A person who shows that he or she has been tried by a competent court for a criminal offence and convicted or acquitted of that offence shall not again be tried for the offence or for any other criminal offence of which he or she could have been convicted at the trial for that offence, except upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal"

In simple terms,**"no one should be punished twice for the same crime"**

The rule against double jeopardy was founded on the principle that no man ought to be punished twice for the same offence and this had its origins in the ecclesiastical concept that "God judges not twice for the same offence".

However Section 44 of the Police Act cap 303 establishes the police disciplinary code of conduct for the disciplinary control of the police force.

Section 6 of the same act empowers the 2nd respondent to make standing orders in consultation with the Minister, the Police Authority and Police Council on matters of administration, discipline, police duties and procedures.

According to Guideline 2.13 of the Uganda police force disciplinary force disciplinary courts, the institution of disciplinary proceedings against a defaulter after acquittal in criminal proceedings does not amount to double jeopardy. And therefore, the applicant was tried for an offence against the Uganda Police Force Disciplinary Code.

Therefore, disciplinary proceedings can instituted against any civil servants under the rules of service. In these proceedings, disciplinary authority has much more discretion to hold a person guilty and his decisions are subject to peripheral, and not intense, judicial review. The quality of evidence required to hold a delinquent public servant guilty on criminal charges is not the same as is required in disciplinary proceedings.

If evidence against a public servant is not strong enough to prosecute him/her on criminal charges, then he may be still be subjected to disciplinary proceedings. Judicial review in such matters is extremely limited in scope and court does not ensure that the conclusion which the disciplinary authority has reached is necessarily correct in the eyes of the court.

If findings of the disciplinary authority are based on some evidence, review court would not interfere. Technical rules of the Evidence Act do not apply to disciplinary proceedings. Adequacy or reliability of evidence cannot be canvassed before court. The disciplinary authority is the sole judge of facts subject to there being some evidence on record to support the findings. The court would only interfere if there is no evidence, or if the findings are perverse, i.e findings are such that no reasonable person would ever reach such a decision.

There is no legal bar for both proceedings-disciplinary proceedings and prosecution under any criminal court to proceed simultaneously. Disciplinary proceedings are not really meant to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different.

In disciplinary proceedings, the question is whether the concerned public servant is guilty of such conduct as would merit his/her removal from service or a lesser punishment, as the case may be. On the other hand, in the criminal proceedings, the question is whether the offences registered against him or her are established and proved beyond reasonable doubt and if so, what sentence should be imposed on him or her. The standard of proof, the mode of inquiry and the rules governing the inquiry and trial in both cases are entirely distinct and different. See ***Geoffrey Kisembo v Standard Chartered Bank Uganda Ltd HCMApp No 344 of 2014***

Therefore, the proceedings in the Police Standby Disciplinary Court are lawful and are executed in accordance with the law under Section 44 of the Police Act. Guideline 2.13 of the Uganda Police Force Disciplinary Court is lawful and is in *pari materia* with Paragraph 13 of Section (F-s) of the Public Service Standing Orders, 2021 Edition which provides; *The fact that criminal proceedings were instituted against a Public Officer does not prevent the Responsible Officer from instituting disciplinary proceedings against a public officer or otherwise punishing him or her on any other charge arising out of his or her misconduct.*

This application fails and dismissed with costs

I so order.

SSEKAANA MUSA
JUDGE
20th February 2023