

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 0148 OF 2022

BWIRE GEOFREY.....APPLICANT

VERSUS

UGANDA PRINTING AND PUBLISHING
CORPORATION.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application under Article 50, 28, 42, 44(c) of the Constitution; Section 33 and 36 of the Judicature Act and rules 3, 6, and 7 of the Judicature Judicial Review Rules for the following judicial reliefs;

1. A declaration that the respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer*, addressed to the applicant withdrawing his employment as Senior Procurement Officer with Uganda Printing and Publishing Corporation is ultra vires, illegal, oppressive, arbitrary, biased, highhanded, irrational, unfair, a breach of fundamental right to be heard, and thus the same is null and void.

2. A declaration that respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer*, addressed to the applicant herein is irrational, illegal and ultra vires.

3. A declaration that the respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer*, addressed to the applicant withdrawing his employment as Senior procurement Officer with Uganda Printing and Publishing Corporation is a direct abuse of Administrative powers and interferes with the applicant's right to work, right to practice profession and economic rights in general and it is a prior restraint of the applicant's career development.
4. A declaration that the respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer*, addressed to the applicant withdrawing his employment as Senior Procurement Officer with Uganda Printing and Publishing Corporation breached the applicant's legitimate expectation.
5. Certiorari to call for and quash the respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer*, addressed to the applicant withdrawing his employment as Senior Procurement Officer with the Uganda Printing and Publishing Corporation for being ultra vires, biased, arbitrary, highhanded, unfair, illegal, irrational, vague and not sanctioned by law.
6. Certiorari to call and quash the respondent's decision contained *in the letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Details Leading to Withdraw of Employment Offer*, addressed to the applicant withdrawing his employment as Senior Procurement Officer with Uganda Printing and Publishing Corporation for being ultra vires, biased, arbitrary, highhanded, unfair, illegal, irrational, vague and not sanctioned by law.

7. Prohibition to restrain the respondent and its agents or servants from continuing to abuse or misuse their discretionary authority in withdrawing the applicant's employment in the manner complained of herein.
8. An Order awarding special damages for the impairment of career progression and earning capacity, damage to the applicant's reputation and social standing, psychological torture, emotional distress general, aggravated and punitive damages for the abuse of power, unfair administrative action, breach of legitimate expectation, inhuman and degrading treatment, and loss of opportunity to serve as senior Procurement Officer for Uganda Printing and Publishing Corporation, loss of opportunity to obtain employment at a comparable or high level elsewhere and other inconvenience or harm arising out of the respondent's conduct;
9. Interest of 25% p.a on damages under para 7 above until payment in full; and
10. An order awarding the applicant costs of the suit.

The applicant's application was supported by an affidavit of the applicant briefly setting the grounds in support of the application as follows;

1. The applicant applied for the job of Senior Procurement Officer and was shortlisted and emerged as the successful candidate for the job. He was duly informed and appointed as Senior Procurement Officer for Uganda Printing and Publishing Corporation vide a letter dated 22nd February 2022.
2. That the applicant duly accepted the appointment vide a letter dated 2nd March 2022 addressed to the Managing director of the respondent

with a subject captioned "Acceptance of Offer of Appointment as Senior Procurement Officer.

3. That as he waited to resume duty he received a *letter dated 4th and 19th May 2022 referenced UPPC/MD/022/33 and subject quoted; Withdraw of Employment Offer* and on 17th May 2022 he sent a letter requesting to know the events leading to withdraw of employment.
4. That the basis of withdrawal of the applicant's employment as contained in the letter was that; "feedback from substantive source was unsatisfactory, especially in respect to the conduct of your duties".
5. The Applicant was dissatisfied with the said decision stating that the same was ultra vires, illegal, oppressive, biased, irrational a breach of his fundamental right to be heard, and a direct abuse of administrative powers hence this application.

The Respondent filed an affidavit in reply through Betty Ajambo, the Human Resource Manager wherein it was stated that the application lacked merit and should be dismissed with costs. The Respondent stated that prior to the Applicant's assumption of duty, due diligence into the Applicant discovered that he did not possess a good work reputation desirable for holding the office.

The applicant was duly notified of the ongoing due diligence inquiries by the Human Resource and Administration Manager before he could officially assume duty since the corporation handles sensitive work that needed someone with a distinct level of integrity.

Upon this discovery, the Respondent withdrew its offer before the Applicant could assume office. The Respondent denied the Applicant's allegations that the decision was illegal, irrational, and oppressive stating that their actions

were justified, fair, and done in the best interest of the Respondent and public interest.

The applicant's employment was conditional and on probation as to establish the applicant's character and professionalism as a condition precedent to the applicant's assumption of duty.

The applicant was represented by *Counsel Bwire Ronald* whereas the respondent was represented by *Counsel Kayiwa Wilber*.

The parties were directed to file final written submissions that were duly considered by this court.

Two issues were framed for determination by this court;

1. *Whether this is a proper case for judicial review?*
2. *Whether the applicants were denied a fair hearing before the decision made on 12th-04-2022?*

What remedies are available to the parties?

Preliminary considerations

Whether this a proper case for judicial review?

The applicant's counsel submitted that the courts have elaborately discussed the circumstances under which employment matters may like the recent one be amenable to judicial review. The applicants cause of action is not breach of contract of employment or unlawful termination but is for improper exercise of powers by the respondent.

The applicant was appointed by the respondent in the exercise of statutory powers conferred by parliament but before he reported for work his appointment was cancelled on the basis that the respondent had carried out investigations which showed that the applicant was of unsatisfactory character.

The applicant was not claiming for any remedies under the Employment Act but is challenging the respondent's decision to withdraw his employment in arbitrary, biased, highhanded, irrational, illegal and unfair manner.

The respondent's counsel submitted that for an application to be amenable for judicial review, the applicant in such an action ought to be seeking the enforcement of rights and duties derived from public law as opposed to private individual rights and duties derived from private law.

The respondent contended further that the relationship between the applicant and the respondent was purely of a contractual nature created by the acceptance of the respondent's employment offer by the applicant. The crux of the applicant's grievance concerns the validity of the respondent decision to revoke the applicant's offer of employment which is purely hinged on private law (contract law/employment law) and not administrative law.

Analysis

Rule 3 of the Judicature, (Judicial Review) (Amendment) Rules, 2019, defines *judicial review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with performance of public acts and duties.*

Under rule 7A of the Judicature (Judicial Review) Rules, 2019 it provides for;

Factors to consider in handling applications for judicial review

- (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.*

(2) *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 a decision and that, as a result, there was unfair and unjust treatment.*

It is settled law in Uganda, as was held in *High Court Misc. Cause No. 0003/2016: Arua Kubala Park Operators And Market Vendors' Cooperative Society Limited v Arua Municipal Council*, which quoted with approval *R v East Berkshire Health Authority Ex Parte Walsh [1984] 3 WLR 818*, that the remedy of judicial review is only available where the issue is of breach of "public law", and not of breach of a "private law" obligation.

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.

According to the learned author of the text *Public Law In East Africa*, by *Ssekaana Musa, 2009, Law Africa Publishing*, the learned author states, at page 36, that 2 (two) things must be established for judicial review to be available, 1) the body under challenge must be a public body whose activities can be controlled by judicial review, 2) the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private law rights.

This application is entirely based on the respondent's withdrawal of the applicant's offer of employment. The grievance purely arises out of a private contractual relationship between the applicant and the respondent making it an issue of private law and not administrative law. This kind of dispute is therefore regulated by the Employment Act 2006.

Further, with regard to employment and judicial review, the Court must consider the process of appointment and revocation of the appointment and whether the aforesaid are governed by a Statute or the Constitution. Where the appointment or revocation is not governed by Statute or the Constitution it is a matter of private law. The applicant is erroneously using this application under judicial review to enforce a private law benefit. This court

relies on the decision in *R vs British Broadcasting Corporation Ex P Lavelle [1983] 1 ALL ER 241* which provides that private employment is clearly outside the realms of judicial review. See *Dr. Ezra Francis Munyabonera v Attorney General Miscellaneous Cause No. 392 of 2020*

The position of Senior Procurement Officer is not created or established under the statute but rather a creature of the board although the board is empowered to appoint and discipline members of staff. The provisions under statute-Uganda Printing and Publishing Corporation Act only creates a board which in turn prescribes the process of appointing and dismissing staff. The process of appointment and dismissal or termination is prescribed by the Human Resource Manual

It is a well-established proposition that where a right or liability is created by statute which gives a special remedy for enforcing the same, the remedy provided by statute must be availed of in the first instance. Being a labour complaint, the applicant ought to have filed a matter before the labour officer or the Industrial court. A court's inherent jurisdiction should not be invoked where there is a specific statutory provision that would meet the necessities of the case. See *Katabarwa v Electricity Regulatory Authority (Miscellaneous Cause No. 327 of 2021)*

Justice Geoffrey Kiryabwire (as he then was) in the case of *Classy Photo Mart Ltd vs The Commissioner Customs URA Miscellaneous Cause No. 30 of 2009* reechoed the position and the words of Bamwine J (as he then was) that " *I should perhaps add that it is becoming increasingly fashionable these days to seek judicial review orders even in the clearest of cases where alternative procedures are more convenient. This trend is undesirable and must be checked..... In this era of case management, it is the duty of a trial judge to see that cases are tried as expeditiously and inexpensively as possible....and this also means ensuring that unjustified short cuts to the judge's docket are eliminated.*"

The Applicant should therefore explore the remedies under the Employment Act. The Labour Officer or the Industrial Court are best suited or specialized in handling and determining labour disputes.

Secondly, the applicant seems to seek enforcement of human rights in the same application for judicial review which is quite irregular. The applicant has cited several articles on enforcement of rights under the constitution which in his view were violated and seeks declarations. The two procedures are quite distinct and are provided under different legal regimes. Any attempt to seek two remedies in parallel procedures obscures the purpose for which they were granted under different legal regimes.

It cannot be argued that the Constitution intended to disregard all procedural rules in relation to access to justice or grant of reliefs Constitutional provisions are not intended to supersede the available modes of obtaining relief before a civil court or deny the defences legitimately open in such actions.

The applicant like all other litigants should not be encouraged to circumvent the provisions made by a statute providing a mechanism and procedure to challenge administrative action. Every potential litigant would rush to the court in any manner they deem fit and thus rendering the statutory provisions meaningless and non-existent.

Constitutional provisions are not intended to short circuit or circumvent established procedures and statutory provisions for accessing courts. The applicant is not at liberty to combine judicial review and enforcement of rights application in one application. The combination of both application is irregular and should render such an application incompetent.

It is an abuse of court process to use another remedy under the Constitution to avoid a set procedure. In the case of *Harrikisson v Att-Gen(Trinidad and Tobago)[1980] AC 265 at 268* Lord Diplock underscored the importance of limitation to the constitution right of access to courts:

"The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter 1 of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms: but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action....the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of process of the court as being made solely for the purpose of avoiding the necessity of applying the normal way for the appropriate remedy...."

On this ground, the combination of applications would have rendered the application irregular and null and void. The applicant should have separated his application for judicial review from enforcement of rights which is extremely misconceived and an abuse of court process.

On that premise, this matter is not amenable to judicial review and is thereby dismissed with costs.

I so order.

SSEKAANA MUSA
JUDGE
22nd September 2023