

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

MISCELLANEOUS CAUSE NO. 87 OF 2021

**JOSEPH MWANGALA MUGABI ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS**

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Sections 24, 36 and 41 of the Judicature Act Cap 13 and rules 3, 4, 6, 7 and 8 the Judicature (Judicial Review) Rules 2009 as amended by S.I No. 32 of 2019, for orders that;

- a) A declaration that the decision made by the Respondent not to renew the contract was illegal, unconstitutional, unjustified, unreasonable and is against principles of natural justice and fairness.
- b) An order of Certiorari quashing the decision of the Board of Directors of the Respondent not to renew the employment contract of the Applicant.
- c) An order of Prohibition preventing the Respondent from enforcing the decision of the Board not to renew the Applicant's contract.
- d) An order of Mandamus instructing the Respondent to renew the Applicant's contract.
- e) An order for damages for the non-renewal of the Applicant's contract.
- f) The costs of the application be provided for.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit deposed by the Applicant in support of the application. Briefly, the grounds are that the Applicant was employed by the Respondent and diligently worked as an Assistant Commissioner Customs Audit under a five-year contract effective 1st January 2016. Clause 6(i) of the contract provided for the possibility of renewal of the contract upon making an application three months prior to its expiration. On 1st October 2020, towards the end his contract, the Applicant submitted an application for renewal of his contract. He learnt that on 29th October 2020 a meeting of the Board was held but no response to his application was made. Because he had tested positive for Covid 19 on 2nd December 2020, the Applicant worked from home under self-quarantine until 17th December 2020.

[3] The Applicant further stated that he had had a discussion with the Commissioner General of the Respondent on 8th December 2020 who verbally informed him that his contract would not be renewed as the Respondent needed new blood although the said Commissioner General admitted that the non-renewal of the Applicant's contract was not performance or integrity related. The Applicant stated that on 10th December 2020, he appealed to the Board of the Respondent to review their decision not to renew his contract but on the next day, 11th December 2020, through his email, he received a formal response that his contract was not going to be renewed and a termination letter dated 1st December 2020 was thereto attached. On 17th December 2020, the Applicant met with the Commissioner General who told him that he had integrity issues due to undeclared property and issues of non-performance. The Applicant avers that such issues had not arisen during his previous performance appraisals. He further averred that his appeal was not considered making the basis of his termination dated 29th December 2020 speculative, unfair and legally flawed. The Applicant prayed to the Court to allow the application.

[4] The Respondent opposed the application through an affidavit in reply deposed by **Stella Nyapendi Chombo**, the Assistant Commissioner Legal Services and Board Affairs of the Respondent who stated that the decision not to renew the Applicant's contract was done under the law and following due process. The deponent stated that the decision to renew the contract or not was in the full discretion of the Respondent's Board of Directors which considered the Applicant's application and resolved not to renew his contract. She further stated that the Respondent's Human Resource and Policies Manual do not require provision of reasons for non-renewal of a senior management contract. The deponent also stated that since the Applicant had informed the Respondent that he had tested positive for Covid -19 and was under self-quarantine, the Respondent was unable to physically meet or interact with the Applicant to inform him of the Board decision but did so via mail dated 11th December 2020. She further stated that the Applicant had not exhausted other available remedies, his contract had expired on 31st December and he was paid all his due benefits. She concluded that the decision of the Respondent was lawful, proper, non-discriminatory and not high handed as alleged by the Applicant. She prayed for dismissal of the application with costs.

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

Representation and Hearing

[6] At the hearing, the Applicant was represented by **Ms. Evelyn Akello** while the Respondent was represented by **Mr. Tonny Kalungi, Ms. Gloria Akahurira** and **Ms. Ritah Nabirye**. The hearing proceeded by way of written submissions that were duly filed by counsel and have been taken into consideration in the course of determination of this matter.

Issues for Determination by the Court

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

- a) Whether the application was brought within time as provided for by law?**
- b) Whether the action or decision of the Respondent was illegal or procedurally improper?**
- c) Whether the Applicant is entitled to the remedies prayed for?**

Resolution of the Issues

Issue 1: Whether the application was brought within time as provided for by law?

Submissions by Counsel for the Respondent

[8] It was submitted by Counsel for the Respondent that the application was filed outside the prescribed 90 days (three months) for filing an application for judicial review under rule 5 of the Judicature Judicial Review Rules. Counsel cited the decision in *IP Mugumya v Attorney General, HCCM No. 116 of 2015* to the effect that an application for judicial review filed after three months from when the ground of the application first arose shall not be allowed unless there is an application for extension of time. Counsel further cited the Court of Appeal decision in *Uganda Revenue Authority v Uganda Consolidated Properties Ltd, Court of Appeal Civil Appeal No. 31 of 2000* to the effect that timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

[9] Counsel submitted that the impugned decision was communicated to the Applicant via mail dated 11th December 2020 because the Applicant was not at work having indicated that he had contracted covid-19. Counsel stated that in that regard, the time for filing of the current application lapsed on 11th March 2021 and the Applicant ought to have applied for extension of time within which

to bring the application rather than arguing that he received official communication on 29th January 2021. Counsel finally submitted that the contention that the cause of action arose on 29th January 2021 would be untenable since the Applicant's Contract had lapsed by effluxion of time on the 31st December 2020.

Submissions by Counsel for the Applicant

[10] On their part, Counsel for the Applicant submitted that the grounds of the application first arose on the 29th January 2021 when the Applicant was served with the response confirming non-renewal of the contract and that filing the instant application on 16th March 2021 was within time as required under the law. Counsel submitted in rejoinder that the 11th day of December 2020 was the date of communication of the non –renewal which was not a definite decision since it was subject to an appeal and that the final decision was communicated on 29th January 2021 making it the day the grounds of the application first arose.

Determination by the Court

[11] Rule 5(1) of the Judicature (Judicial Review) Rules, 2009 provides 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.”*

[12] The position of the law is that time limitations are substantive provisions of the law and limitation of actions is not concerned with merits of the case. In *Dawson Kadope v Uganda Revenue Authority, HC MA. No. 40 of 2019* while citing the decision in *I.P Mugumya v Attorney General, HC M.A No. 116 of 2015*, the

court held that from the clear wording of the rule [5(1)], failure to bring the application within the prescribed time and the failure to seek and obtain the court's order extending the time renders the application for judicial review time barred and therefore not amenable for judicial review. The court added that the general effect of the expiration of the limitation period is that the remedy is also barred. Thus it is generally agreed that provisions as to time limitation are usually strict and inflexible; such that litigation is automatically stifled after the fixed time has elapsed, regardless of the merits of a particular case. Also See: *Hilton v Steam Laundry [1946] 1 KB 61 at p.81.*

[13] It is also the position of the law that grounds for judicial review generally first arise when the impugned decision was made; except in cases falling in the exception under sub-rule 2 of rule 5 of the Judicial Review Rules. Sub-rule 2 thereof provides that where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgement, order, conviction or proceedings if that decision is delivered in open court, but where the judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates or prison officers, or sent by registered post, shall be taken to be date when the grounds of judicial review first arose. The said exception is not applicable to the present case since we are not dealing with any judgment, order, conviction or other proceedings of any court or a quasi-judicial tribunal or body. In this case, we are dealing with a decision of a public body and the applicable position is that the grounds for judicial review first arose when the impugned decision was made.

[14] On the evidence before the Court, the Applicant's challenge is in respect of two decisions; the first being the decision by the Board of the Respondent not to renew his contract upon his application dated 1st October 2020; and the second being the refusal by the Board to review the earlier decision not to renew the

contract upon the Applicant's request in the letter dated 10th December 2020. The evidence on record indicates that the Respondent made the decision not to renew the Applicant's contract on 1st December 2020 which was communicated to the Applicant by email on 11th December 2020. It appears, however, that by 11th December 2020, the Applicant was already aware of the decision since he had, on 10th December 2020, through his lawyers, written to the Board of the Respondent asking for review of the decision. For that matter the date of 11th December 2020 is immaterial in as far as the computation of time is concerned. The relevant date in as far as the decision not to renew the contract is concerned is the 1st day of December 2020 when the letter communicating the decision was issued. The 90 days, therefore, elapsed by 2nd March 2021. The present application, having been filed on 16th March, was filed outside the time provided for under the law. Consequently, the decision by the Respondent not to renew the Applicant's contract cannot be competently subjected to judicial review on account of being time barred.

[15] It was claimed by the Applicant that on 10th December 2020, through his lawyers, he wrote to the Board of the Respondent seeking for review of the decision not to renew his contract. The Board of the Respondent wrote back to the Applicant by letter dated 29th December 2020 rejecting the application to review their decision. It is claimed by the Applicant that this decision was communicated to him on 29th January 2021 and the Applicant bases his computation of time on that date. However, going by the position of the law highlighted above, the date on which the decision was made is taken as the day when the grounds for judicial review first arose. Whatever occurrence or reason that could have led an applicant not to bring the application within time starting from when the decision was made, is supposed to constitute a ground for seeking extension of time within which to bring the application. It is not supposed to oscillate the point from when the computation of time starts.

[16] In the instant case, counting from 29th December 2020 when the decision not to review the earlier decision was made, the 90 days elapsed by 1st April 2021. Having filed the application on 16th March 2021, the application was brought within time in as far as the challenge towards the review decision by the Board is concerned. One part of the application by the Applicant is, therefore, properly before the Court.

Issue 2: Whether the action or decision of the Respondent was illegal or procedurally improper?

Submissions by Counsel for the Applicant

[17] It was submitted by Counsel for the Applicant that the Applicant was deprived of the right to a fair hearing making their decision in the letter dated 29th December 2020 flawed with illegalities. Counsel stated that the Applicant expected to have his contract renewed since it was clearly promised in the original contract and any contrary decision had to be explained through a hearing. Counsel challenged the Respondent for failure to adhere to clause 12.1.2 of its Human Resource Manual which provides for constitution of an Appeals Committee for staff dissatisfied by decisions of the head of department or against the head of department or any other staff appeals that may come through the normal appellate process. Counsel submitted that following a request for appeal by the Applicant, no hearing was afforded to the Applicant to consider his appeal.

[18] Counsel submitted that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. Counsel further submitted that the power or discretion conferred upon a public authority must be exercised reasonably and in accordance with the law. An abuse of discretion is wrongful exercise of power. Counsel concluded that in the instant case, the lack of a fair hearing deprived the Applicant of his

right to be heard and made the eventual decision in the letter of 29th December 2020 flawed with illegalities and in breach of his legitimate expectation.

Submissions by Counsel for the Respondent

[19] It was submitted by Counsel for the Respondent that the decision of the Respondent's Board at its 321st meeting on 30th November 2020 not to renew the Applicant's contract was made following the set procedures and practice of Respondent and according to the Human Resource Management Manual. Counsel stated that under Clause 6 of the Manual, the Respondent's Board reserved the right to exercise its discretion to renew the Applicant's Contract or not and is not required to provide reasons for the exercise of its discretion when renewing or not renewing contracts of senior management. Counsel further submitted that the Respondent's decision not to renew the Applicant's contract was not marred with any procedural irregularities or illegalities since the Respondent followed the laid down procedure before the said decision was undertaken. Counsel argued that the impugned decision was a matter of contract renewal that was not automatic and whose full discretion was reserved by the Respondents Board of Directors without a requirement to give reasons for its decision. Counsel concluded that there was no evidence to support the Applicant's claim that the non-renewal of his contract was attributed to issues of integrity or non-performance.

Determination by the Court

[20] It is settled law that judicial review is concerned not with the decision itself but with the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal against the decision 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. The duty of the court, therefore, is to examine the circumstances under which the

impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice. See: *Attorney General v Yustus Tinkasimmire & Others, Court of Appeal Civil Appeal No. 208 of 2013* and *Kuluo Joseph Andrew & Others v The Attorney General & Others, HC MC No. 106 of 2010*.

[21] *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”. In that regard, the duty of the applicant in an application like the one before me is to satisfy court on a balance of probabilities that the decision making body or officers subject of his challenge did not follow due process in making the respective decisions or acts and that as a result, there was unfair treatment of the applicant which is likely to have an effect on other members of the public.

[22] In the instant case, the complaint by the Applicant is that the decision by the Respondent’s Board refusing to review the non-renewal of his contract of employment was tainted with illegality and procedural impropriety. I will examine these allegations separately.

The Ground of Illegality

[23] 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”.

[24] A public authority will be found to have acted unlawfully if it has made a decision or done something without 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, HCM No,007 of 2016*. 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 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.215/2018*.

[25] In the instant case, it was argued for the Applicant that the Board of the Respondent exercised its discretion unreasonably or arbitrarily since they neither called the Applicant for a hearing nor did they give any reasons as to why they upheld the decision for non-renewal of the Applicant’s contract. I need to point out that the subject matter of the present suit concerns an employment contract between the Respondent as employer and the Applicant as employee. Such a contract is within the ambit of the doctrine of freedom of contract. Where parties have set down the terms of their engagement, such terms must be

respected by both parties unless vitiated. The terms must also be compliant with the law and regulations in place in addition to the other policies governing the relationship.

[26] In the present matter, the employment contract was a fixed term contract of 5 years. Under Clause 6 thereof, the contract had a possibility of being renewed or extended but the decision to renew or extend the contract was reserved for the full discretion of the Respondent. It was stated by the Respondent that under the Human Resource and Policies Manual of the Respondent, it was specifically provided that when considering renewal of senior management contracts, the Board of the Respondent was not required to assign any reasons for either renewal or non-renewal of such a contract. This averment contained in the affidavit in reply of the Respondent was not controverted by the Applicant. It is deemed by the Court to be a correct statement of fact. Incidentally, both parties avoided or omitted to adduce in evidence a copy of the full or a substantial part of the relevant manual. The Applicant only attached one page of the same on his affidavit in rejoinder. As such, the manual was not put before the Court for interpretation and evaluation. I take it that the parties did not find its provisions contentious.

[27] Given that the contract in issue and the relevant Human Resource Manual placed no obligation on the Respondent to constitute a hearing or to assign reasons before exercising discretion to renew or not to renew this category of employment contract, the conduct of the Respondent was in line with both the terms of the contract and the governing instrument, the Human Resource Manual. The decision, therefore, passes the test of legality since it was exercised within the apparent boundaries and was exercised in the manner intended by the relevant legal instruments. I have not found any evidence to satisfy the Court that the discretion was not exercised reasonably or in good faith, or that the decision was reached arbitrarily or capriciously. The Respondent appears to

have acted within the terms agreed upon in the relevant instruments. It ought to be understood that the present action is not challenging the legality of the contract or the Human Resource Manual. As such, a decision cannot be taken by the Court that has the effect of either re-writing the contract or impeaching or varying the relevant Manual. Within the relevant boundaries, the Applicant has not proved that the decision by the Respondent was affected by any illegality. This ground of the application is not made out and it accordingly fails.

Procedural Impropriety

[28] Procedural impropriety as a ground for judicial review has been defined to mean “the failure to observe basic rules of natural justice or failure to act with procedural fairness towards 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. 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 common law 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).

[29] The claim by the Applicant is that he was not given a fair hearing before the Respondent’s Board made the decision not to review the decision refusing to renew his contract. It was argued that such amounted to breach of the procedure under clause 12 of the Respondent’s Human Resource Manual. Looking at the one-page copy of the manual that was annexed to the Applicant’s affidavit in rejoinder, I note that clause 12 of the Respondent’s Human Resource Manual provides for staff grievance management mechanisms and the appeals envisaged therein relate to dissatisfaction with the decision of a head of department, a staff who has a grievance against the head of department, and the

normal appellate process. It further provides for a right of appeal to board-appointed staff to the Board of Directors by way of a letter addressed to the Chairperson of the Board, copied to the Commissioner General, the Commissioner Responsible for Board Affairs and the relevant head of department. It appears to me that the above provision relates to appeals from decisions arising from departments in relation to staff appointed by the Board and does not envisage appeals against the decisions of the Board. It is an internal grievance management mechanism for staff within the body and not in place for handling grievances against decisions of the Board.

[30] As such, contrary to the belief by the Applicant, the appeal mechanism pointed out above was not applicable to the kind of grievance addressed to them by the Applicant. Since the Applicant led no other evidence indicating that the Board of the Respondent had rules of procedure that they were bound to follow and that they had failed to follow the same, I have found no instance of failure to adhere to the rules of natural justice on the part of the Respondent. As I have already indicated in the earlier ground, there is no evidence that the Respondent had a requirement to provide a hearing before taking the impugned decision. Further, it was also clear in the terms of the contract and the relevant Manual that the possibility of renewal of the contract was not automatic and that the Applicant did not expect a hearing before the taking of that decision. As such, there was no legitimate expectation of the Applicant that was breached. In the circumstances, I have found no instance of procedural impropriety or unfairness occasioned by the Respondent over the impugned decision. This ground of the application also fails.

Issue 3: Whether the Applicant is entitled to the remedies prayed for?

[31] In light of the above findings, the application by the Applicant was partly incompetent on account of time limitation and has also been found to be devoid of merit. As such, the Applicant is not entitled to any of the remedies claimed in

the application. The application is accordingly dismissed. However, given the plight that the Applicant finds himself in, I will order that each party bears their own costs.

It is so ordered.

Dated, signed and delivered by email this 10th day of November, 2023.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long, sweeping horizontal line extending to the right.

Boniface Wamala
JUDGE