THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 118 OF 2021
MUGOYA PAUL :: APPLICANT
VERSUS
UGANDA BUREAU OF STATISTICS :::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] This application was brought by Notice of Motion under Articles 28 & 50 of the Constitution, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and the Judicature (Judicial Review) Rules S.I No. 11 of 2009, seeking for;

a) An order of Certiorari calling for and quashing the decision of the Respondent contained in a letter dated 31st March 2021 issued by the Chairman Board of Directors, UBOS purporting to terminate the services of the Applicant.
b) An order of Prohibition barring the Respondent, its servants or agents or any other person from implementing the impugned decision.
c) An order for general and punitive damages plus the costs of the application.

[2] The grounds upon which the application is based are summarized in the Notice of Motion and also set out in the affidavit sworn by the Applicant in support of the application. Briefly, the grounds are that the Applicant was employed as the Manager, Risk Management Division of the Respondent. The Applicant states that his constitutional right to a fair hearing was violated when the Respondent's Board Chairperson authored a letter terminating his contract without him being heard or tried by the Board. He further states that the Executive Director of the Respondent illegally constituted an Adhoc Disciplinary Committee to try him in contravention of the Human Resource

Manual. The Applicant avers that the said committee, particularly its Chairperson, was biased towards the Applicant and acted with conflict of interest, as the Chairperson was a complainant, prosecutor and judge in his own case. The Applicant thus avers that the committee acted in contravention of the right to a fair hearing when it denied him effective legal representation by denying his lawyer audience to talk during the proceedings. The committee also denied him further and better particulars of the charges levied against him, denied him an adjournment, and its decision was never communicated to the Applicant. The Applicant concluded that the impugned acts and decisions of the Respondent's officials were illegal and in breach of the principles of natural justice.

[3] The Respondent opposed the application through an affidavit in reply deposed by Chris Mukiza (PhD), the Respondent's Executive Director, who stated that the Applicant was employed by the Respondent as a Division Manager, Internal Audit in April 2009; he was rotated to the position of Divisional Manager, Finance Division in July 2010; and further rotated to the position of Division Manager, Risk Management Division in July 2020. While in the Risk Management Division, the Applicant absented himself from work on several occasions whereupon the Executive Director wrote to him seeking an explanation but no satisfactory explanation was given. The Deputy Executive Director Corporate Services also wrote to the Applicant over allegations of neglect to perform his duties and gross acts of insubordination but the responses made by Applicant were still unsatisfactory.

[4] The deponent further stated that on 27th January 2021, the Applicant was served with a notice inviting him for a disciplinary hearing for 11th February 2021 before the Top Management Disciplinary Committee over allegations of gross misconduct, insubordination, indiscipline and gross negligence. On 5th February 2021, an amended charge sheet was issued by the Executive Director

introducing an additional charge of causing financial loss. On 10th February 2021, the Applicant wrote seeking for further and better particulars over the charges, which the Respondent's Executive Director responded to on the same day providing the particulars requested for. The Applicant appeared for the disciplinary proceedings on 11th February 2021 with his lawyer but the Committee only allowed the lawyer to watch the proceedings and not to address them. The Applicant requested for further particulars and sought to make his response in writing. The Applicant received a more detailed explanation of the charges to which he made his response. The Committee considered the Applicant's response, made its report with recommendations that were forwarded to the Board of the Respondent. The Respondent's Board met and adopted the Committee recommendation terminating the contract of the Applicant over the alleged misconduct. By letter dated 31st March 2021, the decision of the Board was communicated to the Applicant. The deponent concluded that the decision to terminate the services of the Applicant was made rightly.

[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 **Mr. Luganda Alex** while the Respondent was represented by **Ms. Charity Nabasa**, a State Attorney in the Attorney General's Chambers. Counsel agreed that the hearing proceeds by way of written submissions that were duly filed. I have reviewed the submissions and taken them into consideration.

Issues for Determination by the Court

[7] Counsel for the Applicant proposed five issues but in my view, they boil down to three issues, namely;

a) **Whether the application is amenable for judicial review?**
b) **Whether the application raises any sufficient grounds for judicial review?**
c) **What remedies are available to the parties?**

Resolution of the Issues

Issue 1: Whether the application is amenable for judicial review?

Submissions by Counsel for the Respondent

[8] Counsel for the Respondent submitted that the application is not amenable for judicial review for the reason that the subject matter involves matters of private law over which the Applicant had alternative remedies. Counsel submitted that the Applicant was aggrieved by the decision to terminate his contract by the Respondent and that the appropriate action would have been instituting an ordinary suit. Counsel argued that where private rights have been allegedly breached under a contract, judicial review proceedings cannot apply. Counsel further cited *Section 7A of the Judicature (Judicial Review) (Amendment) Rules 2019* for the proposition that a court in considering an application for judicial review shall satisfy itself that the aggrieved person has exhausted the existing remedies available within the public body or under the law.

[9] Counsel further stated that after the decision terminating the Applicant's contract, it is provided for under *Section 12.6 of the Human Resource Manual* of the Respondent that the aggrieved party would lodge an appeal within 30 working days from the date of receipt of the punishment and that the Board shall be the final appellate authority and its decision shall be final. Counsel submitted that the Applicant never appealed to the Board of Directors despite knowing that it was the final appellate body. Counsel concluded that the application is not amenable to judicial review and should be dismissed.

Submissions by Counsel for the Applicant

[10] It was submitted for the Applicant that judicial review is not concerned with the decision but the decision making process, that the orders sought in judicial review are discretionary in nature and do not determine private rights; and the purpose is to ensure that the individual is given fair treatment. Counsel submitted that the Applicant filed this application within the three months' period required under the Judicature (Judicial Review) Rules and that the Applicant has sufficient interest in the matter having served as a senior manager in the Respondent organization. Counsel further submitted that the Respondent's Board of Directors which took the impugned decision of terminating the Applicant's employment without according him a hearing is the highest decision making body of the Respondent under its Human Resource Manual and as such there was no alternative internal appellate mechanism. Counsel argued that it was not legally and practically possible for the Applicant to appeal to the same body that took the decision of which he is aggrieved.

Determination by the Court

[11] The position of the law is that judicial review is concerned not with the merits of a decision but the decision making process. Judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. See: *Attorney General v Yustus Tinkasimire & Others, CACA No. 208 of 2013* and *Kuluo Joseph Andrew & Others v Attorney General & Others, HCMC No. 106 of 2010*.

[12] The *Judicature (Judicial Review) (Amendment) Rules 2019* provides for the factors to be considered by the Court when handling applications for judicial review. Rule 7A (1) thereof provides that;

"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".

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

[14] In this case, it was argued for the Respondent that the matter involved private rights concerning breach of the Applicant's employment contract for which the appropriate remedy would have been an ordinary suit. Counsel for the Respondent also argued that the application was prematurely instituted by the Applicant without having exhausted the existing remedy of appealing to the Board which was the final appellate authority on the matter. It is not disputed that the Respondent is a public body that is subject to judicial review. It is also noteworthy that the allegations brought by the Applicant in the present application are not simply seeking remedies for breach of contract but rather

consist of allegations of breach of established rules of natural justice in the course of terminating the Applicant's employment contract. The allegations raised by the Applicant are of a public nature, involve public law rights and are of concern to other persons that may be similarly affected at any point in time. In the event that any of the allegations are proved, the situation would call for the court's invocation of its supervisory powers and grant of appropriate prerogative remedies. It is, therefore, not correct as argued by the Respondent that the present case simply seeks the enforcement of the Applicant's private rights.

[15] On the aspect of exhaustion of alternative remedies, the position of the law is that where there exists an alternative remedy through statutory law or any procedures within the public body, then it is desirable that the alternative remedy should be pursued first. As such, the alternative remedy ought to be legally provided for and as or more effective than judicial review. See: *Leads Insurance Company Ltd v Insurance Regulatory Authority, CACA No. 237 of 2015*. In the present case, and as argued by the Applicant, the decision to terminate the Applicant's contract was passed and communicated by the Board of the Respondent. There was no way the Applicant would appeal to the same Board that had held a meeting, discussed and adopted the report of the disciplinary committee that had recommended the termination of the Applicant's contract. The Respondent's Human Resource Manual has no clear provision for such appeal and that manner of appeal cannot be envisaged under the law. As such, there is no evidence that any alternative remedy was available to the Applicant under the law or under the framework of the Respondent. The Applicant, therefore, brought this application properly under judicial review. In all, on this issue, the application is amenable for judicial review.

Issue 2: Whether the application raises any sufficient grounds for judicial review?

Submissions by Counsel for the Applicant

[16] Counsel for the Applicant challenged the decision of the Respondent on grounds of illegality and procedural impropriety or unfairness. Counsel pointed out three particulars of illegality and/or impropriety, namely; bias of the adhoc disciplinary committee, particularly its chairperson; improper constitution of the adhoc disciplinary committee; and failure by the Board to accord the Applicant an opportunity to be heard.

[17] On the issue of bias, it was submitted for the Applicant that the presence of Dr. Chris N. Mukiza, the Executive Director, who appointed himself chairman of the adhoc committee that tried the Applicant compromised the impartiality of the committee since he had preferred charges and was a complainant and witness in the same case. Counsel also submitted that the other members of the adhoc disciplinary committee like Vitus Mulindwa Deputy ED Corporate Affairs and Kansiime Pamella the Director Legal were his immediate supervisors, and were investigators in some of the charges against him and others were witnesses. Counsel stated that the Applicant had requested for presence of the above maned persons as his witnesses but the chairperson refused to honour the request. Counsel argued that as persons who had participated in several investigations and in the trial of the Applicant, their presence on the adhoc committee was inappropriate and prejudicial to the Applicant.

[18] Regarding the composition of the adhoc disciplinary committee, Counsel argued that the composition of the committee was an outright illegality and the purported trial of the Applicant was ultra vires. Counsel also stated that the committee conducted its proceedings in a manner that was unfair to the Applicant and in total breach of the rules of natural justice. Counsel relied on

the decisions in *Kuluo Joseph v Attorney General HCMC No. 106 of 2010; Amuron Dorothy v LDC HCMC No. 42 of 2016; Bwowe Ivan & Others v Makerere University HCMC No. 252 of 2013* and *Marvin Baryaruha v Attorney General HCMC No. 149 of 2016*.

[19] Counsel for the Applicant further submitted that the Applicant was not given an opportunity to be heard by the Board of Directors that took the decision to terminate his contract. Counsel stated that the Board just sat and unilaterally took the decision terminating his contract which was in utter breach of the Applicant's right to a fair hearing. Counsel cited the decisions in *Rosemary Nalwada v Uganda Aids Commission HCMC No. 45 of 2010* and *Eng. Pascal Gakyaro v Civil Aviation Authority CACA No. 60 of 2006* and invited the Court to find that the Board of Director's decision was null and void.

Submissions by Counsel for the Respondent

[20] In reply, Counsel for the Respondent submitted that there was no evidence of bias towards the Applicant. In response to the Applicant's claim on the use of unpalatable, strong and intimidating language in the charge sheet, Counsel submitted that the mere wording of the charge sheet cannot imply bias. Counsel pointed out that the charges were based on the Respondent's Human Resource Manual. Counsel submitted that the disciplinary committee comprised of six members and the Applicant alleged bias against the Executive Director because he knew that he was his supervisor and the charges against him were gross misconduct, refusal to obey instructions and dishonesty. Counsel stated that the Applicant had failed to prove any bias towards him by the members of the committee and this allegation should be ignored by court.

[21] Counsel further submitted that the Applicant was given a fair hearing since prior notice was given to him, he was allowed time to respond to the charges, a hearing was conducted where he was allowed to give his defence, he

was allowed legal representation since his lawyer was allowed to attend and was given time to make written submissions to the committee. Thereafter, the top management disciplinary committee reconvened to consider the written responses from the Applicant. Counsel stated that the Respondent carried out all the requisite steps that were necessary to accord the Applicant a fair hearing. As such, the decision to terminate the Applicant's contract was arrived at lawfully.

Determination by the Court

[22] Under *rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019*, it is provided that upon considering an application for judicial review, 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"*. Article 42 of the Constitution provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

[23] In that regard, the duty of the applicant in an application like this one is to satisfy the court on a balance of probabilities that the decision making body or its officers did not follow due process in making the impugned decision 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. It follows, therefore, that the court may provide specific remedies under judicial review where it is satisfied that the named authority has acted unlawfully. 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 irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: *ACP Bakaleke Siraji v Attorney General, HC MC No. 212 of 2018*.

[24] In the instant case, the Applicant's complaint is that the decision to terminate his contract was tainted with illegality and procedural impropriety or unfairness. I will begin with the allegation based on the ground of illegality. 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,* stated thus;
"*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, per 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''*.

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

[26] On the case before me, it was stated by the Applicant that the decision by the Respondent's Board to terminate his contract was made illegally. The Applicant did not set out any particulars of illegality. All he stated was that the

adhoc disciplinary committee that handled his matter was not the proper committee provided for under the Human Resource Manual and was not properly constituted. From the legal position set out above, it is clear that this complaint by the Applicant does not fall under the category of illegality. The provisions in the Human Resource Manual do not carry the force of law. They are internal procedural guidelines to assist the Respondent comply with the law. As such, while a breach of the provisions of the Manual may constitute a procedural impropriety, it does not amount to an illegality. On the present case, no case is shown to the effect that the Respondent had no legal power to take disciplinary action against the Applicant or to take the decision to terminate his contract. There is therefore no evidence either that the Respondent acted ultra vires its mandate or that it acted in abuse of its power. The Applicant's allegation based on the ground of illegality has, therefore, not been made out and it fails.

[27] Regarding the ground of judicial impropriety, as a ground for judicial review, "procedural impropriety" has been defined to mean "the failure to observe basic rules of natural justice or failure to act with procedural fairness toward the person who will be affected by the decision." See: *Council of Civil Service Unions & Others v 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 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 v Muni University, HCMC No. 0007 of 2016*.

[28] Procedural propriety calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause. The latter essentially

provides against bias. Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: *Byrne v Kinematograph Renters Society Ltd, [1958]1 WLR 762*.

[29] Let me begin with the complaint that the adhoc disciplinary committee was wrongly constituted and denied the Applicant his right to a fair hearing. *Section 12.3 of the Human Resource Manual* (the HR Manual) of the Respondent makes provision for a standing disciplinary committee which shall consist of four members specifically appointed as follows; a chairperson, selected from among the heads of Directorates or Departments appointed by the Executive Director in consultation with the Board of Directors; one member appointed bi-annually by the Executive Director; one member elected by the staff to represent the female gender; one member representing the human resource management section. The Court was not told by the Respondent as to whether the disciplinary committee as stipulated under the HR Manual was or was not in place. According to the Respondent, the disciplinary proceedings were handled by the Top Management Disciplinary Committee. This organ is not evidenced from the HR Manual. The Respondent attempted to explain that the reason as to why the disciplinary committee was constituted the way it was, presided over by the Executive Director, was because the Applicant being a member of management, the disciplinary committee as usually constituted would not handle his case as it would be composed of his fellow managers. This explanation, however, is not borne out by the provisions of the HR Manual.

[30] To begin with, the Respondent ought to have led evidence as to the composition of the existing disciplinary committee. In case the committee as constituted could not have tried the Applicant, then such would have constituted reason to form an adhoc disciplinary committee but still in

compliance with the HR Manual. According to the manual, the chairperson has to be a head of one of the directorates or departments, appointed by the Executive Director with consultation from the Board. From evidence, according to Section 1.7 of the HR Manual, the Respondent's organizational structure has 9 directorates headed by Directors and 7 Divisions headed by Managers. The Applicant was a Manager heading one of the Divisions, the Risk Management Division. Above the Directorates and Divisions were two Deputy Executive Directors. Clearly, there were sufficient members of the Respondent from whom to choose for a proper constitution of the disciplinary committee, whether standing or adhoc. I do not find any reason as to why the Committee had to be chaired by the Executive Director who, under the Manual, is the appointing authority of the chairperson and some members of the disciplinary committee. As such, the committee that handled the Applicant's case did not exist under the Respondent's framework. Its decision therefore becomes unlawful on the ground of procedural impropriety. In light of the above finding, the question as to whether the disciplinary committee conducted the proceedings in accordance with the rules of fair hearing becomes inconsequential since the committee is taken as never having existed in law.

[31] The next complaint was that the Board which passed the decision terminating the Applicant's contract never afforded the Applicant an opportunity to be heard. The evidence is that after the disciplinary committee heard the matter, it made a report which was placed before the Board of Directors of the Respondent. The Board convened a meeting at which they discussed the report and adopted the committee recommendations that included terminating the Applicant's contract. In my view, if the disciplinary committee had been properly constituted and had properly conducted its proceedings, the procedure adopted by the Board would not have been flawed. The Board was simply adopting a report made by its committee. At that level, it is not expected that the Board would conduct another hearing. There would be

no requirement that the person subject of the disciplinary proceeding would have to be invited into a board meeting of the Respondent. There is no such requirement either under the law or under the existing framework within the Respondent body. As such, no rules of natural justice were breached by the Respondent's Board adopting the recommendation of the disciplinary committee terminating the Applicant's contract. If the report of the disciplinary committee had been properly reached, this ground of the application would have failed.

[32] The last complaint is that the decision by the Respondent was tainted with bias. As shown in the legal position set out above, the rule against bias is one of the grounds for impeachment of a decision of a public body under the broader ground of procedural impropriety. The rule calls for impartiality on the part of the decision maker. According to **Mubiru J.** in *Dr. Lam Lagoro vs Muni University (supra) "Impartiality connotes absence of bias, actual or perceived. Impartiality of the decision making body is a critical feature of the right to a fair hearing which is captured by the Latin Maxim, nemo judex in causa sua debet esse (no one should be a judge in his own case). There are many different factual settings which could place the impartiality of a decision making body in question among such contexts are situations where the decision makers have or are perceived to have a pecuniary interest, either direct or indirect, in the outcome of the hearing before them. Another such context is where the relationship of the decision maker to one of the parties or counsel is sufficiently close to give a reasonable apprehension of bias''*.

[33] In the case of *Republic v Commissioner for Domestic Taxes Exparte Sony Holdings Limited [2019] eKLR*, it was stated that;
"Bias, whether actual or apparent, connotes the absence of impartiality. Bias may take many different forms but the main distinction is between actual and apprehended bias. A claim of actual bias requires proof that the decision maker

approached the issues with a closed mind or had prejudged the matter and, for reasons of either partiality in favour of a party or some form of prejudice affecting the decision, could not be swayed by the evidence in the case at hand. A claim of apprehended bias requires a finding that a fair-minded and reasonably well informed observer might conclude that the decision maker did not approach the issue with an open mind. Apprehended bias has been variously referred to as apparent, imputed, suspected or presumptive bias''.

[34] In this case, the allegations of bias concerned the presence and the chairmanship of the Executive Director on the adhoc disciplinary committee and some of the members that were said to have acted as investigators in some of the charges against the Applicant. As found herein above, there was no explanation or indeed justification as to why the Executive Director appointed himself to chair the disciplinary committee in total disregard of the provisions of the HR Manual. There is evidence on record that in his response to the warning letters served onto the Applicant before the setting up of the disciplinary hearing, the Applicant made allegations showing bad blood between the Executive Director and himself. The record also indicates that some charges involved the Applicant's conduct towards the Executive Director. Thirdly, the charges were preferred and signed off by the Executive Director as well as all the other documents concerning the disciplinary proceedings.

[35] From the foregoing, it is clear that the Executive Director had ample evidence before him to establish that he was not in a position of impartiality to handle the matter in which he was so personally involved. Clearly, he could not have an open or objective mind in the matter. I would agree that the Executive Director in essence acted as a complainant, prosecutor and judge. This constitutes an affront to the rule against being a judge in one's cause. As regards participation of the Executive Director as Chair of the disciplinary committee, the Applicant has established that the decision of the Respondent

was tainted with bias, sufficient enough to impeach the decision on the ground of procedural impropriety.

[36] It was further alleged by the Applicant that the participation of the other members of the committee was also tainted with bias since they were his immediate supervisors, some were the investigators in the matter and others were perceived witnesses of his. This claim by the Applicant could only stand in presence of actual evidence of bias. The danger with it is that if it is taken presumptively, it would lead to a situation under which the Applicant could not be subjected to any disciplinary proceeding on account of the fact that every individual has some knowledge of the issues that led to the disciplinary proceedings. Indeed, in this case, the Applicant attempted to make every member of the committee his witness. A member could not be required to disqualify themselves simply because the Applicant expressed an intention to treat them as witnesses. The Applicant had to lead actual evidence of the matter that would disqualify such a member from the committee. Of course, it is also questionable as to whether the Applicant intended to use the said persons as witnesses against their will.

[37] I should also point out that unlike proceedings before the court or judicial tribunals where the decision makers must be detached from the parties before them, internal disciplinary committees cannot have the benefit of having members that are totally detached from the facts that lead to disciplinary matters. In the present case, no evidence of actual or apprehended bias by the other members could have been proved if the committee had been properly constituted.

[38] In all, therefore, on the second issue, the Applicant has proved two instances of procedural impropriety; one being the improper constitution of the disciplinary committee and the other being bias on the part of the Executive

Director who chaired the adhoc disciplinary committee. The two instances are sufficient to impeach the decision of the Respondent terminating the Applicant's employment contract. Issue two is therefore answered in the affirmative to that extent.

Issue 3: What remedies are available to the parties?

[39] The Applicant prayed for an order of Certiorari calling for and quashing the decision of the Respondent contained in a letter dated 31st March 2021 issued by the Chairman Board of Directors, UBOS purporting to terminate the services of the Applicant. The Applicant has established that the said decision was unlawful on the ground of procedural impropriety. I therefore allow to and I do issue an order of Certiorari quashing the decision of the Respondent contained in the letter dated 31st March 2021 signed by the Chairman Board of Directors of the Respondent terminating the Applicant's employment contract.

[40] The Applicant also sought for an order of Prohibition barring the Respondent, its servants or agents or any other person from implementing the impugned decision. According to available evidence, the decision was already implemented. This prayer is therefore not available.

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

"8. Claims for damages

(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if,

(a) he or she has included in the motion in support of his or her application a claim for damages arising from any matter to which the application relates; and

(b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages."

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

[43] On the case before me, the facts and the law as above analyzed establish a case of breach of contract leading to wrongful deprivation of employment on the part of the Applicant. This would entitle the Applicant to compensation. Since the Applicant made a claim for damages in the Notice of Motion, I find this a fit and proper case for assessment of damages. Regarding the claim for general damages, the position of the law is that general damages are awarded at the discretion of the court and the purpose of the damages is to restore the aggrieved party to the financial position that he/she would have been in had the breach complained of not occurred and in as far as money can do. See: *EAPT Corporation Ltd v Dr. L.P Lodhia C.A No. 52 of 1974* and *Robert Cuossens v Attorney General SCCA No. 8 of 1999*.

[44] In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial bank v Kigozi [2002] 1 EA 305*. The damages available for breach of contract are measured in a similar way as loss due to personal injury. The court should look into the future so as to forecast what would have been likely to happen if the contract had not been entered into or breached. See: *Bank of Uganda v Fred William Masaba & 5 Others SCCA No. 3 of 1998* and *Esso Petroleum Co. Ltd v Mardon (1976) 2 ALL ER 29*.

[45] In their submissions, Counsel for the Applicant stated that the Applicant has been deprived of his economic rights/salary since 31st March 2021 when he was arbitrary terminated. Counsel further stated that the Respondent made media libelous attacks on the Applicant when they advertised his photos in the New Vision and Monitor News Papers of national and international coverage warning the whole world that they could deal with him at their own risk. Counsel argued that this further complicated his chances of alternative employment; which was all as a result of the Respondent's unlawful actions. Counsel proposed a sum of UGX 100,000,000/= as general damages as being fair and reasonable compensation to the Applicant.

[46] From the above evidence and circumstances, it is ascertainable that the Applicant has suffered loss and hardship as a result of the Respondent's conduct. I however note from the material on record that despite the procedural lapses committed by the Respondent, the Applicant was not totally blameless. One purpose of judicial review is to promote good governance practices within institutions and to assist institutional growth in that regard. The Court cannot ignore evidence of the clear state of disharmony and a rebellious path that the Applicant had taken as is evident on record. As such, whatever compensation that this Court is to order should not be viewed as if

the Court is awarding indiscipline or nurturing impunity on the part of employees. I must categorically state that public entities have the right to reign in on the discipline of their workers. They, however, must do so appropriately and within the law. Where the entity breaches the law or procedure, they hand over a free ticket to an undisciplined employee to take benefit of their indiscipline.

[47] On the matter before me, it appears from the record that the Applicant was paid his terminal benefits. The total silence over the issue gives me that impression. The compensation sought by the Applicant is thus for wrongful termination. Taking all the facts and the law as above analyzed, and taking the conduct of the Applicant I have commented upon to be a mitigating factor in favour of the Respondent, I award the Applicant a sum of UGX 20,000,000/= (Uganda Shillings Twenty Million only) as general damages. The present case discloses no circumstances for consideration of punitive damages. The same is accordingly ignored.

[48] Regarding costs, since the application has substantially succeeded, the costs of the application shall be paid to the Applicant by the Respondent.
It is so ordered.

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

Boniface Wamala
JUDGE