

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 055 OF 2023

FRANCO BAGUMA ::: APPLICANT

VERSUS

1. THE COMMISSIONER GENERAL,
UGANDA REVENUE AUTHORITY
2. UGANDA REVENUE AUTHORITY ::: RESPONDENTS

BEFORE: HON. JUSTICE EMMANUEL BAGUMA
RULING

1. This Application was brought by way of Notice of Motion under Articles 28(1), 42, 44 (c) and 173 of the Constitution of the Republic of Uganda, section 36 of the Judicature Act, Cap 13, Rules 3, 6,7 and 8 of the Judicature (Judicial Review) Rules SI No.11 of 2009 for orders briefly that;
 - i. A declaration that the termination of the Applicant’s employment in disregard of the investigation Report Reference No. URA/SCR/73/2020 and URA/SCR/78/2020 is ultra vires.
 - ii. A declaration that the termination of the Applicant’s employment based on alleged acts of abetting offences which were not brought to his attention and not subjected to a fair hearing is ultra vires to the law.
 - iii. A declaration that the termination of the Applicant’s employment on untried grounds that he was culpable of abetting of offences when he recorded in the inspection act that the two units imported by Ssuubi Motors Ltd as new whereas not thereby committing offence No.51 of the URA offence schedule, was unfair.
 - iv. A declaration that the decision to terminate the services of the Applicant was irrational, illegal, and based on improper motives
 - v. An order of certiorari be issued to quash the decision of the Respondents to terminate the Applicants employment.
 - vi. An award of general damages, payable jointly or severally by the Respondents to the tune of UGX. 1,300,000,000/= (Uganda Shillings One Billion Three Hundred Million Only) being due to the Applicant for the reputational damage, premature and wrongful termination of

employment, loss of income, inconvenience, emotional trauma, victimization, harm to professional standing, retaliation and harassment suffered as a result of the malicious actions of the Respondents against him and

vii. Costs of this Application be provided for.

2. The Application is supported by the affidavit sworn by **FRANCO BAGUMA** whose details are on record but briefly states that;

i. On 2nd December, 2020, I received an invitation to appear before the Assistant Commissioner Staff Compliance on 4th December, 2020 for alleged poor verification of the units vide customs entries UGKLA im7-s54962, 2018 and UGKLA IM754956

ii. On 4th December, 2020, I received a statement before the URA staff compliance whereby I explained how I verified the two units of vehicles and how I had already been cautioned for writing poor verification accounts

iii. On 8th December, 2022, I appeared before the MDC where I was asked to explain what I know about the units. I explained the detailed facts to the committee. I also showed the MDC that based on the year of manufacture, the mileage, the appearance and condition of the two units, the vehicles were new. I also informed them that I had already been issued with a caution in 2020 over the same two units.

iv. On 20th December, 2022 I was served with a letter terminating my employment services with effect from 21st December, 2022.

v. On 23rd December 2022, I wrote to the secretary staff appeals committee, appealing against the decision of the MDC made on 8th December, 2022

vi. On 20th January, 2023, I was served with a letter informing me that the SAC had sat on 13th January, 2023 and had upheld MDC decision to terminate me from the service of the Uganda revenue authority.

vii. That I was therefore denied a fair hearing due to the Respondents' sheer lack of transparency and their denial of full disclosure of the accusations against me during the hearing, contrary to the Respondents' established Human Resource Management Manual.

3. In reply the Respondents opposed the Application in an affidavit deposed by **TAYAHWE SHEBA** who briefly stated that;
- i. The 1st Respondent shall at the hearing of this Application raise a preliminary objection that the Application does not disclose any claim against the 1st Respondent as a person and shall pray that the same is dismissed with costs to the 1st Respondent.
 - ii. The Respondents shall at the hearing of this application raise a preliminary objection to the effect that this Application is incompetent for relating to a matter of private law and the same is not amenable for judicial review and offends Rule 7A of the Judicature (Judicial Review) Amendment) Rules, 2019 and the Respondent shall pray that the Application is dismissed
 - iii. This Application is premature since the Applicant has not exhausted the existing remedies available to him under the law.
 - iv. On 2nd December, 2020, the Applicant was invited for compliance interview vide: URA/SCR//78/2020 scheduled for 4th December, 2020 in relation to alleged poor verification of units vide customs entry UGKLA IM7 S54962, 2018 and UGKLA IM7S549556,2018 vide ref URA/SCR/78/2020
 - v. The management disciplinary committee meeting that was held on 20th December, 2022 found the Applicant culpable of abetting of offences when he recorded in the Inspection Act the 2 units imported by Ssuubi Motors (U) Ltd were new whereas not thereby committing offence No.51 of the URA offence schedule on which ground the committee decided to terminate the Applicant from the Respondent's service effective 21st December, 2022 in accordance with the Respondents' Human Resource Management Manual.
 - vi. On 23rd December, 2022, the applicant appealed the MDC decision to the staff appeals tribunal
 - vii. On 13th January, 2023, the staff Appeals Committee held a meeting and considered the Applicant's appeal and on 16th January, 2023 communicated its decision to the Applicant upholding the MDC decision to terminate the Applicant from the services of the Respondent.

4. In rejoinder the Applicant averred as follows;
 - i. That the Application is valid and well within the law as the hearing was tainted with illegality, and procedural impropriety leading to unfair and unjust treatment.
 - ii. That the Application is amenable for judicial review as it involves both public and private acts by an administrative body and as shown in paragraph 2 of the affidavit in support of the application.
 - iii. That among the several other remedies that I am asking from this court Honorable court are general damages and the labour officer does not have jurisdiction to award the same

5. **Legal Representation**

Counsel Martin Mbanza Kalemera Represented the Applicant while M/s Mpumwire Christine together with Mr. Edmond Agaba Represented the Respondents.

6. At hearing counsel for the Applicant informed court that he will raise three issues in his written submissions for court's determination while counsel for the Respondents told court that he will also raise preliminary objections. Both counsel agreed to handle the P.Os and the main issues together in their written submissions.
7. However, Counsel for the Applicant framed **four issues** for court's determination to wit;
 1. **Whether or not the Applicant was denied the right to be heard**
 2. **Whether or not the Applicant was accorded a fair hearing**
 3. **Whether the Respondent's 20th/12/22 decision to terminate the Applicant's services was illegal and irrational.**
 4. **Remedies available to the parties**

8. **Submissions by counsel for the Applicant**

9. **Issue No. 1:**

Whether or not the Applicant was denied the right to be heard

10. Counsel submitted that the conduct of the staff Appeals Committee (SAC) as an Appellate committee determining an appeal without inviting the Applicant

for hearing was a clear denial of his right to be heard, which is a gross violation of the principles of fair hearing and natural justice and an illegality as the Human Resource Management Manual makes it mandatory and yet it was not followed.

11. Counsel referred to paragraph 12 and annexure A10, Para.13 and annexure A11 and he stated that paragraphs 16(a), 16(b), 16(d), and 16(e) of the affidavit in support corroborates the above paragraphs to the effect that the Staff Appeals Committee had held a meeting to consider his appeal without either inviting the Applicant for the hearing or giving him any notice of the hearing.
12. Counsel concluded by submitting that Clause 11.2.4 of the Respondent's Human Resource Manual provides for the staff appeals committee and paragraph (e) (ii) provides that the secretary shall fix a date for the hearing of the matter and serve a hearing notice to the complainant/applicant. Counsel also referred to the case of Ridge Vs. Baldwin [1964] AC 40 where court emphasized that the right to be heard is essential to ensure fairness and the proper administration of justice.

13. Issue No. 2:

Whether or not the Applicant was accorded a fair hearing

14. Counsel submitted that the Applicant was not accorded a fair hearing at the proceedings by the Management Disciplinary Committee and the Staff Appeals Committee. He argued that had the investigation report been provided to the Applicant early enough, it would have been part of his evidence to show that he was already exonerated since the procedure suggested by the CCD guidelines was annulled and the EACCMA procedure was the one applicable.
15. Counsel submitted that the Applicant was not accorded any fair hearing at the proceeding by the Staff Appeals Committee.
16. Counsel further submitted that the omissions by the Respondent are a gross violation of the principles of fair hearing and natural justice which go to the core of justice. He referred to the quotes by John Grisham; "that there is

always such a rush to judgment which makes a fair trial hard to get”. He argued that such is a case where there was rushed procedure at the MDC and at the SAC which led to grave procedural impropriety of being terminated on offences that were already subject of the 2020 caution, and relying on a basis that was contrary to both the recommendations of the investigation report of reference No. URA/SCR/73/2020 and URA/SCR/78/2020 (Annexure “A15’) and the provisions of the customs laws.

17.Issue No. 3:

Whether the Respondent’s 20th/12/22 decision to terminate the Applicant’s services was illegal and irrational.

18.Counsel cited the case of Kercan Vs. Ag. M.C 308 of 2017 where it was held that “proof of any ground is sufficient. For one to succeed under Judicial Review, it is trite that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

19. Counsel submitted that the Respondents committed various illegalities in the decision making process to terminate the Applicant. He argued that the 2nd Respondent has an established Human Resource Management Manual which inter alia provides for internal disciplinary forums for their staff and how these forums ought to conduct themselves.

20.He submitted that the Respondent’s conduct and proceedings were marred by procedural impropriety through failure to observe basic rules of natural justice or failure to act with procedural fairness towards the Applicant who was later to be affected by their decision.

21.Counsel submitted that the said motor vehicles were released basing on the transaction value method which is the price actually paid or payable for the vehicles since they were new vehicles.

22.Issue No. 4:

Remedies available to the parties

23.Counsel prayed for general damages of 1, 300,000,000/= and the costs of the Application.

24. In the affidavit in reply and at hearing, counsel for the respondent indicated that he will raise preliminary objections and both counsel agreed that the P.Os should be argued in their written submissions of the main application which was granted.

25. Counsel for the Respondents raised two preliminary objections to wit;

1. **Whether the application is amenable for judicial review**
2. **Whether the applicant has exhausted the remedies available under the law.**

26. **Submissions by counsel for the Respondents on the preliminary objections**

27. **P.O No.1**

Whether the Application is amenable for judicial review?

28. Counsel for the Respondents submitted that the subject matter of the Application is a dispute arising under an employment contract to wit an agreement letter dated 16th June, 2005 issued to the Applicant by the 2nd Respondent as employee and employer respectively. Hence, the relationship between them is a private arrangement

29. Counsel added that the Employment Contract between the Applicant and the 2nd Respondent herein and anything arising thereunder is a matter of private law, and not public law. Further, that the rights and obligations created in/ by the Employment Contract are of a private nature which follows that the enforcement of any right of a private nature cannot be or become a matter of public law and as such cannot be dealt with by way of judicial review.

30. Counsel submitted that this being a matter of a private nature, the Applicant ought to have filed a formal labour claim to address his concerns raised in the Application. He argued that this application is not amenable for judicial review.

31. P.O No.2

Whether the Applicant has exhausted the remedies available under the law?

32. Counsel submitted that the Applicant has not demonstrated that he does not have an alternative remedy, or if at all the alternative remedy exists, that the same is inconvenient or less effective. He argued that the Applicant had recourse to the labour office and subsequently industrial court but chose to apply for judicial review. He cited S. 93(1) of the Employment Act and also referred the case of Former Employees of G4s Security Services Uganda Ltd Vs. H4s Security Services Uganda Ltd, SCCA No. 18 of 2010.

33. Submissions by counsel for the Applicant on the Preliminary Objections

34. P.O No.1

Whether the Application is amenable for judicial review?

35. Counsel for the Applicant submitted that this Application is amenable for judicial review and this Honorable Court has jurisdiction to determine the instant Judicial Review Application. He contended that one of the Applicant's main complaints is that the Respondent (Statutory) body, in exercising its powers to terminate the Applicant's contract, did not comply with the law. Counsel argued that there was a gross violation of the Applicant's rights to a fair hearing and to be treated justly and fairly by an administrative body.

36. He further submitted that judicial review remedies are available in contracts of employment, as it raises mixed questions of public law rights and private law rights which cannot be divorced from each other. Counsel cited the case of *NDA & another vs. Florence Nakachwa Court of Appeal Civil Appeal No. 281 & 286 of 2017 at pages 11-12*

37. P.O No.2

Whether the applicant has exhausted the remedies available under the law.

38. Counsel submitted that the Applicant exhausted all the internal mechanisms within the Respondents and per his cause of action, judicial review is his only remedy in law. He cited the case of Birimbo Aaron Vs. UHRC, Misc. No. 0076

39. In conclusion, counsel submitted that in the instant application, the applicant is seeking to enforce principles of natural justice and the procedure that the 2nd Respondent, a public body, used to come to an erroneous decision.

40. In rejoinder Counsel for the Respondents reiterated his submissions in chief and prayed that the application be dismissed to allow the parties exhaust the available remedies in the labour courts.

41. **Court's determination on the P.Os**

42. Since counsel for the Respondents raised two P.Os, I found it prudent to first resolve them before handling the merit of the Application.

43. **P.O No.1**

Whether the Application is amenable for judicial review?

44. According to the *Black's Law Dictionary at page 1013* 11th Edition Thomson Reuters, 2019, Judicial Review is defined as *a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional.*

45. In the case of **Commissioner of Land Vs. Kunste Hotel Ltd [1995-1998] 1 EA (CAK)**, Court noted that;-

“Judicial Review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that an individual is given fair treatment by an authority to which he /she is being subjected.”

46. In the instant Application, it is evident from the affidavit in support specifically paragraphs 14, 15 and 16 that the Applicant is challenging the decision making process alleging that he was not given fair treatment by the Respondents to which he was subjected to unfair treatment which falls within the ambit of judicial review.

47. This court therefore has power to review the actions of the Respondents which are being challenged.

48. It is my finding that this Application is amenable for judicial review.

49. P.O No.1 is overruled.

50. **P.O No.2**

Whether the Applicant has exhausted the remedies available to him under the law?

51. In the case of **Oyiki Sirino & Ors vs Kampala University HCMC No. 129 of 2022**, Court noted that “the rule on exhaustion of existing remedies is a rule of discretion on the part of the court and the exercise of the discretion is stricter where the challenge by the aggrieved party is premised on merits of the decision rather than the decision making process. Where the challenge is directed against the decision making process, the judicial review option may be more preferable given the particular circumstances of a given case.”

52. In the instant Application, under paragraph 15 the Applicant is seeking for several other remedies among others general damages, that the labor officer does not have jurisdiction to award.

53. In addition, the Applicant is challenging the decision making process and the judicial review option is more preferable given the circumstances of this application.

54. In the view of the above, preliminary objection No.2 is dismissed.

55. Having resolved all the Preliminary Objections in negative and since the P.Os have not disposed off the application, I will now proceed to consider the Application on its own merit.

56.Submissions by counsel for the Respondents on merit

57.Issue No. 1:

Whether or not the Applicant was denied the right to be heard?

58.Counsel submitted that the duty of the Staff Appeals Committee was not to hear witnesses afresh but may require the Appellant to provide more information if needed.

59.Counsel submitted that the Applicant was not terminated abruptly, but rather the management of the 2nd Respondent took the necessary steps to address the concerns and ensured that the Applicant was aware of the required standards and procedures.

60.Counsel argued that the decision to terminate the Applicant was not taken lightly but followed a thorough investigations conducted by the Management Disciplinary Committee which comprises of qualified individuals who assess disciplinary matters in a fair and unbiased manner. He submitted that the termination decision was based on substantial evidence of the Applicant's persistent violations and the potential harm it could cause to the 2nd Respondent's vision and values.

61.Issue No.2:

Whether or not the Applicant was accorded a fair hearing?

62.Counsel submitted that throughout the disciplinary processes before both the MDC and the SAC, the Applicant was provided with ample opportunity to present his case, provide all necessary explanations or evidence, and be heard by the Management Disciplinary Committee. Counsel stated that the principles of natural justice and due process were adhered to in reaching the termination decision. He submitted that the Applicant was called to defend himself, given a right to produce any documents and list witnesses he may wish to attend the disciplinary hearing. Counsel argued that all this is a clear indication that the Applicant was afforded a fair hearing. The fact that the Applicant chose to defend himself without calling any witnesses in his favour was entirely up to him.

63. He submitted that the decision by the Management Disciplinary Committee to terminate the Applicant was justified and not an abuse of power. It was in accordance with its policies aimed at upholding its values, and maintaining compliance with relevant law and regulations.

64. Issue No. 3:

Whether the Respondent's decision of 20th/12/22 to terminate the Applicant's services was illegal and irrational?

65. Counsel submitted that the Departmental Disciplinary Committee, Management Disciplinary Committee, and the Staff Appeals Committee followed due process of disciplinary processes as stipulated in the 2nd Respondent's Human Resource Manual.

66. Counsel submitted that the Management Disciplinary Committee diligently reviewed all relevant information, including the cautionary history, before reaching a decision. He added that the decision to terminate was made in accordance with the prescribed procedures and guidelines, ensuring fairness and the due processes which were upheld throughout the disciplinary proceedings.

67. Counsel submitted that from the record, it is apparent that there was procedural propriety when the 2nd Respondent conducted the Applicant's disciplinary process and a rational decision of terminating the Applicant's employment was made after going through all the disciplinary processes.

68. Issue No. 4

Remedies available to parties.

69. Counsel submitted that the applicant has not made out a case justifying exercise of the court's discretion in his favour and prayed that the application be dismissed with costs to the Respondents.

70. Analysis of court.

71. I have looked at issues No. 1 and 2 and I will resolve them jointly.

72. Issues No. 1 and 2:

Whether or not the Applicant was denied the right to be heard.

Whether or not the Applicant was accorded a fair hearing.

73. In the case of **Kenya Revenue Authority Vs. Menginya Salim Murgani Court of Appeal Civil Appeal No. 108 of 2009**. The Court of Appeal noted as follows; *“There is ample authority that the decision making bodies other than courts and bodies whose procedure are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task is for them to decide how they will proceed.”*

74. In the instant case, the applicant in his affidavit in support paragraph 10 stated that; *“on 8th of December, 2022, I appeared before the MDC where I was asked to explain what I know about the units. I explained the detailed facts to the committee. I also showed the MDC that based on the year of manufacture, the mileage, the appearance and condition of the two units, the vehicles were new. I also informed them that I had already been issued with a caution in 2020 over the same two units.”*

75. Further the applicant in his affidavit in support under paragraph 12 stated that; *“On 23rd December 2022, I wrote to the Secretary Staff Appeals Committee, appealing against the decision of the management disciplinary committee made on 8th December 2022.”* The Applicant attached a copy of his appeal against the Management Disciplinary Committee decision dated 23rd December, 2022 marked A10 giving a detailed explanation of his case.

76. In corroboration of the above evidence, the Respondents in affidavit in reply paragraph 13 stated that; *“The applicant was invited for a disciplinary hearing before the MDC on 8th December, 2022 to answer the allegations of alleged abetting of offences when he recorded in the inspection acts that 2 units imported by Ssuubi Motors U Ltd were new whereas not thereby committing offence No. 51 of the Uganda Revenue Authority offence schedule*

and the copy of the offence notification form was attached and marked annexure C”

77. The Respondents further in paragraph 15 of the affidavit in reply stated that; *“On the 23rd December, 2022 the Applicant appealed the MDC’s decision of termination to the Staff Appeals Tribunal.”* Where the Applicant gave a detailed explanation of his case.
78. From the above analysis, the Applicant was given an opportunity to be heard at MDC when he appeared and gave a detailed explanation of the facts about his case. *See Para.10 of the affidavit in support.*
79. It should also be noted that the applicant submitted a detailed appeal against the MDC’s decision before the SAC which was evaluated and upheld. *See Annexure 10 to the affidavit in support.*
80. The staff appeals committee had enough information to base on to achieve the required degree of fairness to resolve the Appeal. In my view, the Respondents took all the necessary steps to address the concerns of the applicant when the decision of the MDC was upheld.
81. It is my finding therefore on the above issues that the Applicant was not denied a right to be heard and was accorded a fair hearing hence, in the circumstances he did not suffer any prejudice.
82. *Issues No. 1 and 2 are answered in the negative.*
83. **Issue No. 3:**
Whether the Respondent’s 20th/12/22 decision to terminate the Applicant’s services was illegal and irrational.
84. In the case of **Pastori Vs. Kabale District Local Government Council & Others [2008] 2 EA 300** Court noted that;

“In order to succeed in an application for judicial review, the application has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety.”

85. In the instant case, the Respondents followed the due process of disciplinary steps as stipulated in their Human Resource Manual. The investigations were carried out and the applicant was given an opportunity to present his case before MDC and the decision was made. The Applicant appealed to the SAC and his appeal was considered based his appeal submitted on 23rd December, 2022 where the decision of the MDC was upheld.

86. From the evidence on record, the MDC reviewed all the relevant information including the cautionary history dated 6th of February, 2020 and came up with the decision to terminate the Applicant's employment which was in accordance with the prescribed procedures and guidelines where the staff appeals committee based to uphold the decision of MDC.

87. In the final analysis, it is my findings that the Respondents' decision of 20th December, 2022 did not amount to illegality, irrationality or impropriety to warrant exercise of this court's supervisory power to grant judicial review.

88. Issue No.3 is answered in the negative

89. *Issue No. 4:*

Remedies available to the parties.

90. Having answered all the issues in the negative, the Applicant is not entitled to any of the relief sought.

91. In conclusion, this application fails with the following orders;

- (i) The Application is hereby dismissed.
- (ii) The decisions and orders of the Staff Appeals Committee are upheld.
- (iii) Considering the nature and circumstances of this judicial review, no order as to costs.

GIVEN under my hand and seal of this court and delivered by email on **27th** day of **September, 2023**

Emmanuel Baguma
Judge.

