

The Republic of Uganda
In The High Court of Uganda at Soroti
Miscellaneous Cause No. 0012 of 2022

- 1. Aguti Janiffer
- 2. Eroju Stephen
- 10 3. Etobu Stephen
- 4. Elipu Samson
- 5. Kalume Rose
- 6. Abwala James
- 7. Akope David
- 15 8. Ekaku Jimmy
- 9. Mwanika James Patrick
- 10. Erisu George William
- 11. Olado Naboth
- 12. Aciria Noah
- 20 13. Anyait Mary Kevin
- 14. Onyait Charles
- 15. Oriokot Robert Bagio
- 16. Onyang Charles
- 17. Odongo Julius Aba
- 25 18. Asimo Dinah Rose
- 19. Asio Mary
- 20. Aarakit Margaret
- 21. Akurut Loyce
- 22. Abuo Betty
- 30 23. Acedo Petua
- 24. Odeke Moses
- 25. Ocara Charles
- 26. Asekenye Grace
- 27. Ederu Faustine
- 35 28. Akunyo Irene
- 29. Amulen Alice Mary
- 30. Ousi Joseph Francis
- 31. Oguya John Robert
- 32. Okello David

.....Applicants

Versus

40

Lubuuka David (The Chief Administrative Officer Kapelebyong District Local Government) Respondent

Before: Hon. Justice Dr Henry Peter Adonyo:

Ruling:

45 1. Background:

This is an application by way of notice of motion brought under section 36 (1) (a) and 37 of the Judicature Act Cap 13, Rules 3(a), 5(1) and (6) of the

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5 Judicature (Judicial Review) Rules 2009 and section 98 of the Civil Procedure Act for orders that;

a) An order of mandamus doth issue compelling the Chief Administrative Officer of Kapelebyong District Local Government to issue the applicants with appointment letters.

10 b) Costs of this application be provided for.

The grounds of this application as set out in the application and the applicants' affidavits are that the applicants applied for various positions in Kapelebyong DLG following an advertisement by the District Service Commission.

15 The applicants are stated to have been shortlisted for interviews for the respective positions applied for, were interviewed and all emerged successful in their respective positions and the District Service Commission communicated the results to the applicants and respondents.

20 However, the respondent has without any lawful excuse refused to issue the applicants with appointment letters and it is in the interest of justice that this application be allowed.

In addition to the above, the applicants in their affidavits add that sometime in November 2021 the District Service Commission of Kapelebyong DLG issued an advert for the positions including Head
25 Teachers, Deputy Head Teachers, Education Assistants II, Senior Land Management Officer, Senior Education Officer and Senior Education Assistant.

30 Following this advert, the applicants each all duly submitted their applications with all the requisite documents for the various advertised positions.

5 Subsequently, each of them were shortlisted and invited for interviews which they passed with the District Service Commission on the 31st of May 2022 notifying each of them as the successful candidates in writing.

10 However, on the 13th of June 2022, the respondent Chief Administrative Officer, wrote to Kapelebyong District Service Commission asking for a review of the applicants' appointments based on a number of identified issues. On the 1st July 2022, the District Service Commission wrote back to the respondent addressing all the issues raised in respect of the appointments of the applicants and asking the respondent to within one (1) issue appointment letters to each of the applicants.

15 The respondent defied the directions of the District Service Commission and without any lawful justification to date refused/rejected to comply with the directive of the District Service Commission.

The inaction of the respondent led the applicants to seek court intervention.

20 In his reply, the respondent stated that around August 2021, the Chief Administrative Officer, Kapelebyong District Local Government (DLG) submitted a request for recruitment of various personnel to Kapelebyong District Service Commission to fill the employment structure with specific guidelines of job description and personal qualification for each post in accordance with Public Service job descriptions and personal specifications for jobs in Local Government Manual.

25 That the Kapelebyong District Service Commission subsequently published an advert calling for interested applicants who meet the required job descriptions, specifications and qualifications from the Ministry of Public Service websites to apply for the advertised jobs.

5 Then around May 2022, the Chief Administrative Officer (CAO) Kapelebyong DLG received notifications from the District Service Commission (DSC) Kapelebyong to issue appointment letters to various persons who had been successfully interviewed. That the CAO Kapelebyong upon perusal of the personal files forwarded to him by the
10 DSC Kapelebyong, discovered that some of the forwarded persons who included the applicants did not meet/have the minimum qualifications specified in the Public Service Job Description and personal specification for jobs in Local Government, among other things.

That in line with the guidelines issued by the Public Service Commission ,
15 the CAO Kapelebyong brought the alleged irregularities to the notice to the DSC Kapelebyong on the basis of the fact that as the head of technical and administrative team, he was accountable to have appointed competent to the district service, public servants in accordance with guidelines issued by the Public Service Commission.

20 That the CAO has further written to the Public Service Commission seeking guidance on appointment of the applicants.

That the issuance of the appointment letters to the applicants would amount to illegality contrary to the clear guidelines, circulars and manuals for the job description and personal specification issued by Public Service.

25 That the respondent cannot be compelled to commit Government to employ personnel who do not meet the minimum qualification set by Government for its employees.

In rejoinder, the applicants stated that the respondent has no powers to question the District Service Commission and the letter to the Public
30 Service Commission was written to the Public Service Commission only as

5 an afterthought for it was written after the respondent had been served with this instant application and as such acted extraneously his powers.

That there is no legal provision that grants the respondent powers to deny the applicants their appointment letters after the DSC had directed that he appoints the applicants who were the successful parties in interviews
10 conducted by the DSC.

Accordingly, the applicants asked this court to find that the act of the respondent in refusing to issue them with appointment letters was irrational and illegal.

2. Submissions:

15 Two issues were submitted on by the parties, that is;

a) Whether the respondent has powers to direct the District Service Commission of Kapelebyong District Local Government to review its decisions?

b) What remedies are available to the parties?

20 Regarding Issue No.1, M/s Engulu and Co. Advocates for the applicants, submitted that the applicants bring this application pursuant to their right embedded in Article 42 of the Constitution which provides that any person appearing before an 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
25 respect of any administrative decision taken against him or her.

Counsel submitted that the respondent is an administrative official whose office is established under section 63 of the Local Government Act with his functions stipulated under section 64 of the same Act.

Counsel further submitted that section 54 and 55 of the same Act
30 establishes the District Service Commission and its function which

5 amongst others includes appointment of persons to hold or act in any office in the service of the District and that section 58 emphasizes independence of the District Service Commission.

Counsel added that upon perusal of the above provisions the respondent is found to have no powers to interfere with the decisions of the District
10 Service Commission and by so doing otherwise then that would amount to interfering with the independence of the District Service Commission. That in the instant case the applicants were appointed for various position in Kapelebyong District by the District Service Commission which then directed the respondent to issue appointment letters but that the refused
15 to do so while purporting to direct the District Service Commission to review its decision.

Counsel stated that the decision by the respondent to refuse to carry out the directives of the DSC was irrational and not backed by any law and that such an administrative decision should be subjected to judicial
20 review.

See: ***Associated Picture Houses LTD vs Wednesbury Corporation [1948] 1 KB and 1947 2 ALL ER***

Counsel also relied on the definition of irrationality as was made in the case of ***Ojangole Patricia and 4 Ors vs AG MC No. 303 of 2013***
25 where court defined irrationality as;

“... a gross unreasonableness in the decisions taken or act done, that no reasonable authority addressing itself to the facts and to the law before it would have made such a decision.”

30 Counsel further submitted that the actions of the respondent in not implementing the directions of the District Service Commission and

5 further purporting to direct the District Service Commission to review its own decision was not defensible in law as he has no powers to do the same.

10 Counsel further submitted that by the respondent refusing to follow the directive of the DSC, he assumed power not vested in him by law and only purported to seek guidance from the Public Service Commission after he was served with the instant application as can be verified by a letter attached to this application and marked as Annexure "E" in which even he admits to having no powers to review the decisions of the District Service Commission or to make decisions different from the District Service
15 Commission thus meaning that the respondent accepted that he had acted in the manner he did well knowing that he had no legal mandate to do so which is the highest level of impunity and abuse of power which needs to be checked by this Honourable court.

20 With regard to the second issue counsel submitted that the applicants were seeking for an order of mandamus to compel the respondent to sign their appointment letters as directed by the District Service Commission of Kapelebyong District Local Government and that section 36 of the Judicature Act provides for the prerogative writ of mandamus as one of the remedies the High Court is empowered to issue in situations such as
25 the instant one as was held in the case of ***Combined Services Ltd Vs Attorney General and Another MA 648 No. 2015 [2017] UGCommC 15*** by Hon. Lady Justice Flavia Ssenoga Anglin, who while considering a similar situation as the instant one, went on to point out the circumstances which an applicant must establish in order to obtain the
30 writ of mandamus, and these are :-

a) That a clear legal right and corresponding duty in the respondent.

- 5 b) That the specific act or thing which the law requires that particular officer to do has been omitted to be done by him.
- c) Lack of any alternative.
- d) Whether the alternative remedy exists but is inconvenient, less beneficial or less effective or totally ineffective.

10 Relating the above circumstances to the instant application, counsel submitted that this application is proper one for the issuance of the writ of mandamus as the applicants were the successful candidates after proper interviews for various positions by the District Service Commission and had the right to receive their appointment letters signed by the
15 respondent which they did not receive.

 Secondly, counsel submitted that that the law requires that the respondent to issue appointment letters to the applicants after receiving communication from the District Service Commission and that whereas the Respondent confirms in his pleadings that he did receive such
20 communication he has not done so to date.

 And finally, counsel submitted that the applicants have no alternative remedy to the writ of mandamus and so this court ought to find that this application is a proper one in which the writ of mandamus should issue in addition to this court be pleased to award the applicants the costs of this
25 application pursuant to section 27 of the Civil Procedure Act.

 The Attorney Generals Chambers, representing the respondent CAO, submitted first on two preliminary objections, one that he acted in judicial capacity and he second objection relates to the application being premature before this court that there are still internal mechanisms
30 pending and as such this application cannot be heard. The internal mechanisms referred to is the guidance sought by the CAO from the Public Service Commission as such not amenable for judicial review.

5 In submitting so, Counsel for the respondent stated that under Rule 7A of
the Judicature (Judicial Review) (Amendment) Rules 2019 the court in
considering an application for judicial review must satisfy itself that the
application is amenable for judicial review, the aggrieved person has
exhausted remedies available within the public body or under the law and
10 the matter involves an administrative public body or official.

Counsel further submitted that in *Everret vs Griffith [1921] A.C. 631*
Lord Moulton stated that if a man is required in the discharge of public
duty to make a decision which affects by legal consequences the liberty or
property of others and he performs that duty and makes a decision
15 honestly in good faith, it is a fundamental principle of law that he is
protected.

Counsel stated that the above holding qualifies the decision of the CAO as
a judicial act and as such it should be free from criminal or civil proceeding
for the respondent, who is a public officer, executed his duties as head of
20 public service in the District to ensure that all recruited persons were
possessed of the minimum technical requirement in accordance with
Public Service job descriptions and technical requirements.

Counsel additionally submitted that the respondent sought guidance from
the Public Service Commission as provided under Article 166(d) of the
25 Constitution and as such there was still an ongoing mechanism to resolve
the applicants' issue.

Accordingly, Counsel prayed that this court find that this application is
premature before this court.

Regarding the merit of the application, relating to the first issue Counsel
30 submitted that the District Service Commission under Article 198(5) of
the Constitution and section 55 (8) of the Local Government Act is

5 enjoined to perform its functions in conformity to standards established
by the Public Service Commission and the applicants in this instance were
appointed in total disregard of public service job descriptions and
technical requirements for the posts they had applied for and such the
District Service Commission irrationally modified the application of the
10 set standard to suit the applicants, selectively.

That the law required the District Service Commission to act only upon
request and submission of the relevant council and to conform to
established standard of the Public Service Commission was not in vain but
rather obliged them to exercise their independence under section 55(8)
15 within the prescribed parameters.

Counsel submitted that the decision of the Respondent was legal to curb
the illegality perpetuated by the Kapelebyong District Service Commission
when it purported to modify the job descriptions and the technical
requirements of public service.

20 Counsel further submitted that under section 64 of the Local Government
Act, he is the head of public service in the district and the head of
administration of the district council to which the district service
commission directly reports to and as such he is endowed with powers to
make submissions for recruitments to the Commission.

25 Counsel additionally submitted that irrationality speaks to the principle
of natural justice that no reasonable authority addressing itself to the facts
and law before it would arrive at such a decision.

That in the instant case no reasonable accounting officer would commit
government resource to employ persons without the required minimum
30 qualification established by public service.

5 With regard to remedies counsel submitted that the grant of judicial
review remedies is discretionary and it does not automatically follow that
if there are grounds of review to question any decision, action or omission,
then the court should issue any of the remedies available as was held in
James Nkuningi Ssembajja vs Secretary Public Service
10 ***Commission and Attorney General***. Accordingly, Counsel prayed
that this application be dismissed as the applicants were not entitled to an
order of mandamus or costs of the application.

In rejoinder, M/s Engulu for the applicants, submitted on the preliminary
objection raised by the respondent. Counsel submitted that this a special
15 kind of application for special remedies provided for under the law with
the purpose of restraining administrative bodies or officials from abusing
their powers.

In making this assertion, Counsel relied on rule 3 of the Judicature
(Judicial Review) (Amendment) Rules 2019 which defines judicial review
20 as the process by which the High Court exercises its supervisory
jurisdiction over the proceedings and decisions of subordinate courts,
tribunals and other bodies or persons who carry out quasi-judicial
functions or who are charged with the performance of public acts and
duties. (Emphasis mine)

25 Counsel further submitted that this position of the law shows that this
kind of application can be brought against an institution or an individual
with administrative functions as in the instant case.

He further submitted that the case ***Everett vs Griffith [1921] AC 631***
as raised by the counsel for the respondent was out of context as it does
30 not apply in this case.

5 And as to whether the application is premature, counsel submitted that
the respondent has not pointed what alternative remedies are available to
the applicants before filing the instant application and furthermore, that
it was true that the respondent only wrote to the Public Service
Commission for guidance after he was served with the instant application.
10 That the respondent's claim that filing this application before guidance is
received from Public Service Commission is erroneous is it is not backed
by any law.

Counsel further argued that the respondent cannot purport to seek
guidance from the Public Service Commission after he had failed to act as
15 directed for doing so would amount to double jeopardy in respect of the
applicants.

Accordingly, Counsel submitted that this application is proper before this
court and ought to be determined on its merits.

3. Determination:

20 Before I proceed to determine the merits of this application, I am obliged
to consider the preliminary objection raised by the respondent.

First of all, the said objection is noted to have neither been pleaded nor
raised at any prior occasions when this file came for mention and
scheduling.

25 That inaction goes against Order 6 rule 28 Civil Procedure Rules which
provides that points of law may be raised in pleadings and it should be
borne in mind that courts have consistently held that in the interest of
justice, objections, should be raised at the earliest opportune time so as
not to only save time and cost but to provide.

30 This notwithstanding, the respondent raised a preliminary objection that
the applicants sued the wrong party.

5 Essentially on this, counsel for the respondent, submitted that the
respondent being the CAO had carried out a judicial act which act exempts
him from civil or criminal proceedings meaning that he cannot be sued in
his personal capacity for acts he did in performance of his duties as he
acted as an administrative officer in the due course of his employment as
10 a public officer.

That contention may be true but The Judicature (Judicial Review) Rules
allow persons aggrieved by administrative decisions to seek remedy
against the administrative body/ official in court.

In the instant case the applicants bring this application against the
15 respondent because he is the one who in the course of his duties opted not
give them appointment letters.

I would agree with counsel for the applicants that the authority of *Everett
vs. Griffiths [1921] AC 631* as cited by counsel for the respondent was
quoted out of context, for in that case, the claim against the defendant was
20 brought in an action for negligence and the decision arising from it was
that of a magistrate who was held to have acted reasonably and *bona fide*
and was not in breach of statutory duty which cannot be compared to the
instant case with the magistrate being found to have made a judicial
decision and the questions determined therein related to immunity of
25 judicial officers from personal liability arising from exercise of their
judicial functions. In the instant matter the circumstances surrounding
the issues raised herein are entirely different for the respondent is firstly
a CAO not a judicial officer and he refused to act as directed by the DSC
administratively. For such inactions, the remedy of judicial review exists
30 as a check to the exercise of power by administrative bodies/officials. The
first preliminary objection is thus considered brought out of context and
is overruled.

5 The second objection relates to the application being premature before this court.

Counsel's sole focus was that there were still pending internal mechanisms available to the applicants and as such this application should be deferred and should not be heard. As noted by the applicants
10 the respondent did not specify the exact alternative remedies the applicants should have sought. The only inkling this court can garner from the averments and documents attached to this application in relations to the internal mechanisms available to the applicants relates to the guidance sought by the CAO from the Public Service Commission in
15 regards to the appointments of the applicants.

However, that guidance appears to be an afterthought for it is clear from the record herein that the CAO only sought guidance by way of a letter from the Public Service Commission on the 29/08/2022 after he had been served on the 24/08/2022 with court process in this instant
20 application which was filed on the 22/08/2022.

This action by the respondent of writing to the Public Service Commission on the 29/08/2022 after he had been served with court process on 24/08/2022 is an indication that had the applicants had not sought court intervention, then the respondent CAO would have quietly sat in his office
25 and done nothing in relations to the directive issued to him by the District Service Commission which was in favour of the applicants.

Furthermore, there is also no clear indication by the respondent as to what process the letter will go through and what proceedings will result after the Public Service Commission has received his letter.

30 That lacuna leaves the applicants with this application as their only secure remedy. I would thus accordingly find that there is no merit in the

5 objections raised by the respondent and would overrule it and proceed to determine this application on its own merits.

As to the merit of this application, an application for Judicial Review which seeks for the writ of mandamus, is provided for under section 36 (1)(a) of the Judicature Act which states that;

10 **(1) The High Court may upon application for judicial review, grant any one or more of the following reliefs in a civil or criminal matter—**

(a) an order of mandamus requiring any act to be done.

This above provision of the law is augmented by Rule 3(1)(a) of the
15 Judicature (Judicial Review) Rules as amended in 2019.

The Judicature (Judicial Review) Rules as amended in 2019 under Rule 1A provide for the objectives of judicial review, specifically they state that;

The objectives of these Rules are—

20 **(a) to ensure that individuals receive fair treatment by the authorities to which they have been subjected;**

(b) to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality and that the opinion of an individual judge, is not construed as that of the authority;

25 **(c) to ensure clarity, consistency and uniformity in the handling of applications for judicial review; and**

(d) to ensure adherence to the constitutional right to a fair trial and expeditious hearing.

5 Rule 7A of the Judicature (Judicial Review) Rules provides factors to consider in handling applications for judicial review thus;

(1) The court shall, in considering an application for judicial review, satisfy itself of the following—

(a) that the application is amenable for judicial review;

10 **(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.

15 **(2) The court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that, as a result, there was unfair and unjust treatment.**

In the instant case, the applicants applied for various positions as advertised by the Kapelebyong District Service Commission, they were shortlisted for interviews and they passed and the Commission communicate this to them as well as to the respondent CAO of their decision with the latter officer required to issue the applicants with appointment letters.

25 The respondent CAO did not do so as required but decided to write back to the District Service Commission raising some anomalies which he allegedly had sighted in the applicants' credentials which he deemed would require the DSC to take note of and rectify. The DSC made an exhaustive reply to the concerns CAO and even further directed him to act
30 and issue the applicants with appointment letters but to date, the

5 respondent CAO simply ignored the 2nd directive of DSC and has still not issued the applicants with the obligatory appointment letters.

It should be borne in mind that the respondent is the CAO Kapelebyong DLG and is a public officer who carries out quasi-judicial functions and in the performance of his public and administrative duties his disregard of
10 his duty of not issuing appointment letters to the applicants is neglect of duties. That is the very reason why the applicants came to this court on the basis that his inaction was irrational and illegal.

According to **Rule 3A of the Judicature (Judicial Review) Rules** as amended it is provided that any person who has a direct or sufficient
15 interest in a matter may apply for judicial review.

In respect of this application, this application is deemed amenable for judicial review for the Applicants have shown by affidavit evidence that they are persons who have direct sufficient interest in the matter in issue since they are aggrieved by the decision of the respondent CAO not to issue
20 them with appointment letters after being directed by DSC which is the relevant statutory authority which deposition has not even been denied by the Respondent.

In my considered view, the main issue in this matter for determination as seen in the pleadings, affidavit evidence and submissions of parties is
25 whether the respondent CAO has the power to disregard the directive of District Service Commission.

District Service Commissions are statutory bodies provided for under Section 54 of the Local Government Act. Their functions are provided for under Section 55 and these include;

30 (1) **The power to appoint persons to hold or act in any office in the service of a district or urban council, including the**

5 **power to confirm appointments, to exercise disciplinary control over persons holding or acting in such offices and to remove those persons from office, is vested in the district service commission.**

10 **(2) When considering recruitment of staff in a specialised discipline, other than education or health services, the commission shall, under the guidelines provided by the Public Service Commission co-opt at least two persons specialised in that discipline on the commission.**

15 **(3) When considering recruitment of staff in the education or health services, the commission shall use guidelines provided by the Education Service Commission or Health Service Commission.**

20 **(4) The district service commission shall in relation to its functions spelt out in subsection (1) act only upon the request and submission of the relevant council.**

(5) (Not Applicable)

(6) (Not Applicable)

(7) (Not Applicable)

25 **(8) In the performance of its functions a district service commission shall conform to the standards established by the Public Service Commission for the public service generally.**

Section 58(1) of the said Act further provides for the independence of a district service commission in the following terms;

5 **(1) Subject to Article 166(1)(d) of the Constitution, the district service commission shall be independent and shall not be subject to the direction or control of any person or authority.**

On the other hand, the office of the Chief Administrative Officer (CAO) is provided for under Section 63 of the Local Government Act.

Section 63(1) of the said Act provides that the CAO shall be appointed by the **DISTRICT SERVICE COMMISSION!** (Emphasis mine)

The CAO's functions under section 64 of the said Act are;

15 **(1) The chief administrative officer shall be the head of the public service in the district and the head of the administration of the district council and shall be the accounting officer of the district.**

(2) The chief administrative officer shall—

20 **(a) be responsible for the implementation of all lawful decisions taken by the district council;**

(b) give guidance to the local government councils and their departments in the application of the relevant laws and policies;

25 **(c) supervise, monitor and coordinate the activities of the district and lower council's employees and departments and ensure accountability and transparency in the management and delivery of the council's services;**

(d) develop capacity for development and management of the planning function in the district;

- 5 **(e) supervise and coordinate the activities of all delegated services and the officers working in those services;**
- (f) have custody of all documents and records of the local government council;**
- (g) act as a liaison officer between the district council and**
10 **the Government;**
- (h) advise the chairperson on the administration of the council;**
- (i) assist in the maintenance of law, order and security in the district;**
- 15 **(j) carry out any other duty that may be assigned by the district council from time to time.**

20 **(3) In addition to the duties under subsection (2), the chief administrative officer shall perform all statutory duties and functions which he or she is required to do under any other law.**

(4) The office of the chief administrative officer shall not remain vacant for more than three months after the office falls vacant.

25 The Revised Guidelines from the Public Service Commission to the District Service Commissions reiterate the above functions and under item 4.6 provides for implementation of District Service Commission decisions and directives.

30 **Guideline: 4.6.1 provides that after the District Service Commission Minutes have been confirmed and produced by the Secretary to the District Service Commission, the**

5 **Minutes should be distributed to the Chief Administrative Officer or Town Clerk(s) for immediate implementation. (Emphasis mine).**

10 **Guideline 4.6.2 provides that on receipt of the Minutes, the Chief Administrative Officer or Town Clerk should take appropriate action as directed under the various Minutes e.g. issuing letters of confirmation in appointment, issuing letters of appointment or dismissal from 35 the District Local Government Service, etc. as the case may be, within one month.**

15 **Guideline 3.3.3 states that in the event that the Chief Administrative Officer or Town Clerk has a difficulty in implementing a decision of the District Service Commission, he or she should communicate back to the Secretary, District Service Commission pointing out areas of difficulty and making recommendations for possible solutions**

20 From the above, it is clear that while the CAO as the head of the public service and administration in a district can communicate back to the Secretary, District Service Commission pointing out areas of difficulty and making recommendations for possible solutions, he has **NO POWER** at all to ask the District Service Commission to avoid implementing the decision of the DSC for the Guidelines provides that once the CAO has received the decisions and directives from the District Service Commission, **the only role he plays is that of implementation and where he finds difficulty in implementing the directives he communicates the same back to the commission and makes recommendations for solutions.**

5 Nothing in the law or the guidelines gives him the power to direct the act otherwise than directed by the District Service Commission in the course of its duties.

This is because Section 58(1) of the Local Government Act was put in place to avoid such situations as the instant one as it clearly provides for the
10 independence of the District Service Commission when it states that **District Service Commission shall not be subject to the direction or control of any person or authority.**

It is therefore clear that the respondent had no authority to direct the District Service Commission to review its appointment of the applicants.
15 He could only indicate what inconsistencies he saw and make recommendations.

Therefore, when he wrote to the District Service Commission on the 13th of June 2022 concerning the applicants' qualifications, work experience, the forms used in application and need for the presence of a technical
20 person during shortlisting and interviewing and advised the District to review the above appointment, while he was within his powers to point out those anomalies and make appropriate recommendations, the CAO acted *ultra vires* his powers when he decided not to implement for the second time the decision of the DSC which took into account his
25 recommendations and directed him accordingly. It is not for the CAO to choose whether to obey or not the directive of the DSC. He can only recommend and hope for the best.

In the instant matter, it is clear that after the CAO had made his recommendations to the District Service Commission after he had been
30 directed to issue for the first time appointing letters to the applicants, the District Service Commission considered the CAO's concerns on the 27th of June 2022 when it convened and responded to the concerns and

5 recommendations of the CAO by dealing with all the issues he had raised, made its decision again and provided to the CAO a lengthy and detailed response to him giving reasons for each of its decision on the issues raised including the applicable laws, regulations and guidelines that guided them in their decision.

10 The detailed response is not reproduced here but essentially the Commission belaboured to interpret the relevant provisions of the law which governs it and also indicated the various levels of experience and the academic qualifications for each of the applicants had, which qualified them for their various positions they have been appointed into and at the
15 end the District Service Commission still went on to direct the CAO, *inter alia*, that he implements its decisions as soon as possible because the one month's period provided by the Public Service guidelines for issuing appointments had elapsed.

The respondent still ignored the 2nd decision of the District Service
20 Commission. That second inaction prompted the applicants to seek for judicial review in this court.

In a bid to negate his duties, the CAO disobedient and unmanageable as and feeling so important, instead of carrying out the duties for which he took the official oath to undertake, decided, upon being served with this
25 application, ostensibly to then write to the Public Service Commission seeking guidance on the appointments made by the Kapelebyong District Service Commission. In his letter, which is marked annexure "E", the CAO gives a brief on how the applicants came to be appointed, his issues with the process and how he requested the District Service Commission to
30 review its decision but that in their reply the District Service Commission did not do so and no proper justification was given. He thus sought the intervention of the Public Service Commission.

5 What is interesting is that in this letter the respondent CAO admits that he had no mandate to overlook the lawful decisions or even review decisions of the District Service Commission.

That stubbornness is a sign of the ultimate impunity and should not be left unpunished as of lawful orders for the position of the law is very clear.

10 The office of the CAO is a subordinate officer to the District Service Commission which is a constitutional body mandated to interview and the appoint suitable persons to a district service. The role of the CAO is one *vis a vis* District Service Commission is one of declaring vacant positions to the District Service Commission who thereafter carrying out its
15 constitutional mandate has the powers to direct the CAO to issue letters of appointment. The CAO is mandated to respect the decisions and directives of the District Service Commission instead of purporting to disregard it.

The inaction of the Kapelebyong CAO in not heeding to the directing of
20 the DSC is indeed an act of impunity which cannot be left unpunished.

If the CAO had any disgruntlements, then he should have forwarded the same immediately after the second directive of the DSC to the Public Service Commission which has the mandate to guide and coordinate district service commissions with such grievances determined within the
25 timeline provided before the expiry of the thirty days for persons appointed by district service commissions under Article 166 of the Constitution.

The CAO had the opportunity to do so but he did not do so only purported to raise his disquiet after the applicants had filed this instant application.
30 By this afterthought act, the CAO showed high levels impunity.

5 The public service established procedure machinery is clear and must at all times be strictly followed if the public is to have confidence in it.

Where the procedure is clearly laid out by law, then the onus on the implementing officer is even higher and such procedure can never be ignored or negated for doing so would attract substantial chastisement for
10 the perpetrator.

In respect of the action of the CAO of not implementing the decision of the Kapelebyong District Service Commission, I would find that the CAO Kapelebyong had no power to refuse appoint the applicants into the positions into which the applicants had been appointed to by the District
15 Service Commission for the Kapelebyong District Service Commission's decision is the only body in that district which has the powers to do so not even the Public Service Commission which can also only advise the said Kapelebyong District Service Commission where necessary but cannot even overrule it. The inaction of the CAO was thus illegal and irrational.

20 The second issue for consideration pertains to the remedies available to the parties. The applicants are now seeking the writ of mandamus to compel the respondent to sign their appointment letters as directed by the District Service Commission.

As already found above under issue one above, the instant application is
25 clearly a proper case where a person who is required to act by virtue of being in a position in public service by the authorised body decides not to do so through impunity. Such persons can only be compelled and so the issuance of the writ of mandamus against the respondent is warranted.

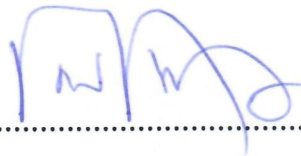
Accordingly, an order of mandamus is hereby issued compelling the
30 Respondent CAO to sign the appointment letters of the Applicants as has been directed by the Kapelebyong District Service Commission and this

5 should be done not later than one month from the date of this ruling with any failure to do so would lead to the respondent CAO to be cited with the contempt of this court order.

4. Orders:

- This application is found to have merit and it succeeds.
- 10 - The action of the CAO of not signing the appointment letters for the applicants after Kapelebyong District Service Commission had directed him to do so is found to be illegal and irrational.
- An order of mandamus doth issue compelling the Respondent to sign the appointment letters of the applicants as directed by the
15 Kapelebyong District Service Commission immediately and in any case not later than one month from the date of this ruling with any failure to do so leading to the CAO to be cited with the contempt of this court order.
- The Applicants are awarded costs of this application.

20 I do so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

2nd March 2023