

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA  
MISCELLANEOUS CAUSE NO. 0005 OF 2021

IN THE MATTER OF ARTICLE 42 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995

AS AMENDED

AND

IN THE MATTER OF SECTION 98 OF THE CIVIL PROCEDURE ACT, SECTION 33, 36, & 38 OF THE  
JUDICATURE ACT AND RULES 3 (1) (a), (3) (2), 4, 6 AND 7 OF THE JUDICATURE (JUDICIAL  
REVIEW) RULES SI. NO. 011 OF 2019

AND

IN THE MATTER OF A DECISION BY THE APPOINTMENTS BOARD OF MUNI UNIVERSITY AND  
REV. FR. PROF. ODUBUKER PICHU EPIPHANY TO TERMINATE THE APPOINTMENT OF REV.  
FR. PACUTO SOLOMON NGOS AS CHAPLAIN TO ST. MARY'S CHAPLAINACY OF MUNI  
UNIVERSITY.

REV. FR. PACUTO SOLOMON NGOS ..... APPLICANT

VERSUS

1. MUNI UNIVERSITY
2. REV. FR. PROF. ODUBUKER PICHU EPIPHANY ..... RESPONDENTS

BEFORE: Hon Justice Isah Serunkuma.

RULING

This is an application brought under Article 42 of the Constitution of Uganda as amended,  
Sec. 98 of the CPA Cap 71, Sections 33 & 39 Judicature Act Cap 13, Rules 3 (1) (a), (2) & 3,  
4, 6, 87 Judicature (Judicial Review) Rules SI 71-1 seeking for such declarations and orders  
namely;

1. A declaration that the respondents' act of terminating the employment contract of  
the applicant vide letter dated 06<sup>th</sup> April 2021 without due process, fair hearing and  
compliance with the provisions of the Constitution of Uganda, University and Other  
Tertiary Institutions Act 2001 as amended, the Public Service Act and regulations  
thereto, Public Service Standing Orders and Muni University Terms and Conditions

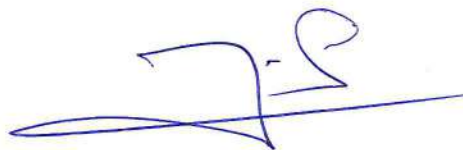


of Service Human Resource Manual, 2016 is unilateral, high handed, arbitrary, unreasonable, clothed with procedural impropriety, erroneous, irrational, unjust, illegal and therefore unlawful.

- 5 2. A declaration that the respondents' act of terminating the applicant's employment on the grounds of appointment as a Curate of Indriani Catholic Sub-Parish and in-charge of schools thereunder by the bishop of Arua Diocese vide letter dated January 13, 2021 without according and affording him a fair hearing is against the principles of natural justice therefore unlawful, unjust and laced with bias.
- 10 3. A declaration that the acts of the 2<sup>nd</sup> respondent in forcing the applicant to handover St. Mary's Chaplaincy of Muni University to Rev. Fr. Dr. Owiko Robert Leku vide letter dated January 18 2021 without resignation, termination and or dismissal from the 1<sup>st</sup> respondent's employment and without following due process of handover and takeover provided for in the Human Resource Manual 2016 of the 1<sup>st</sup> respondent is clothed with bias, bad faith and abuse of power.
- 15 4. A declaration that the acts of the 2<sup>nd</sup> respondent in disregarding the request and advice of the 1<sup>st</sup> respondent's vice chancellor vide letter dated February 15 2021 is hence clothed with bias, bad faith, and therefore unlawful.
- 20 5. An order of certiorari calling the record of proceedings, relating to the steps taken in terminating the employment contract of the applicant with the respondent quashed as the same resulted in a decision that is unfair and unlawful.
6. An order of prohibition to issue against the respondents or any of its officers and agents from unlawfully preventing the applicant from exercising his duties and deriving benefits therefrom as a permanent employee of the 1<sup>st</sup> respondent.
- 25 7. A permanent injunction prohibiting the respondents from recruiting anyone in the position of the applicant as it has not fallen vacant.
8. An order for general damages for the general inconveniences suffered by the applicant due to the actions of the respondents.

In addition to the application, the applicant supported the same with his affidavit in support in which he laid out several grounds for lodging this application. The grounds as summarily laid out include;

- 5 1) That on the 14<sup>th</sup> October 2014, the respondents requested the diocese of Arua for personnel suitable for the service in the university as chaplain vide letter **Reference MU/ADM/0009**.
- 10 2) That on the 14<sup>th</sup> April 2015, the bishop in response to the said letter nominated and recommended the applicant as a suitable person for the employment hence forwarding the same to the respondents for consideration vide letter reference **BSOO/MI80/15. (A copy of the letter is marked "A")**.
- 3) That on the 14<sup>th</sup> August 2015, the respondents invited the applicant for an interview to be carried out on the 26<sup>th</sup> day of August 2015 at the respondent headquarter. **(A copy of the invitation letter is marked "B")**.
- 15 4) That the applicant was interviewed on the 26<sup>th</sup> day of August 2015 for the position of Chaplain of St. Mary's Catholic Church Muni University by the appointments board and was successful and appointed on probation vide appointment letter dated 4<sup>th</sup> September 2015. **(A copy of the appointment letter is marked "C")**.
- 20 5) That upon completion of the probation period with satisfactory performance, the respondent vide letter dated 25<sup>th</sup> April 2017 was confirmed as a permanent staff by the appointments Board. **(A copy of the confirmation letter marked "D")**.
- 25 6) That during the applicant's service, he variously served in different capacities and on the 13<sup>th</sup> January 2021, the bishop of Arua diocese appointed him as a curate of Indriani Catholic Sub-Parish and in charge of schools therein, which appointment the applicant had not yet responded up to date. **(A copy of the appointment letter is marked "G")**.
- 7) That following the appointment by the bishop, the 2<sup>nd</sup> respondent personally and unilaterally wrote an instruction letter on the 18<sup>th</sup> January 2021 to the applicant directing him to hand over chaplaincy to Rev. Fr. Dr. Owiko Robert Leku without



the knowledge of the appointments board and the university management and with bad intentions and ill will. **(A copy of the handover letter is marked "H")**.

5 8) That further the 2<sup>nd</sup> respondent in his bad faith and personally being interested in the termination of the applicant from the service in the 1<sup>st</sup> respondent, wrote a letter authorizing the human resource officer to remove him from the payroll of the 1<sup>st</sup> respondent before any committee would sit to determine the applicant's faith. **(A copy of the letter is marked "I")**.

10 9) That the university vice chancellor wrote a letter on the 15<sup>th</sup> February 2021 vide **Reference No. MU/CR/100/116/1** to the University Secretary (herein before and after referred to as the 2<sup>nd</sup> respondent) advising him to comply with the university human resource manual, which was totally disregarded. **(A copy of the advice letter is marked "J")**.

15 10) That under the manipulation of the 2<sup>nd</sup> respondent, the Appointments Board terminated the applicant on the 6<sup>th</sup> April 2021 without due regard to the principles of natural justice on the ground or reason of the applicant's appointment as a curate of Indriani Catholic sub-parish which is contrary to the laws of Uganda and the human resource manual of the university. **(A copy of the termination letter is marked "K")**.

20 11) That the 2<sup>nd</sup> respondent in his personal capacity, personally wrote a letter assigning the Rev. Fr. Dr. Owiko Robert Leku the roles the applicant was performing before he was terminated. **(A copy of the letter is marked "L")**.

25 12) That the applicant has never committed any act contrary to the 1<sup>st</sup> respondent's human resource manual or accused of any unbecoming character so as to give rise to his termination.

13) That the 2<sup>nd</sup> respondent acted with impunity, bad faith and bias throughout the termination process by misleading the bishop and the appointments board by flouting the procedure of appointment of the applicant.

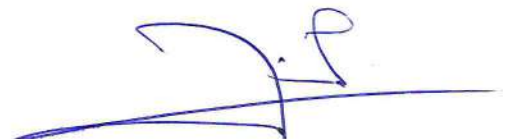
14) That the actions of the 2<sup>nd</sup> respondent have caused the applicant irreparable damage, inconveniences and mental anguish.

15) That it is in the interest of substantive justice that this application be considered that it meets the standard of judicial review and is allowed.

In their response, both respondents deponed their affidavits in reply as hereunder;

**Mr. Ijosiga Abdul Wahid**, the Senior Human Resource Officer of the 1<sup>st</sup> respondent  
5 deponed an affidavit on its behalf stating as hereunder;

- 1) That the 1<sup>st</sup> respondent shall raise a preliminary objection that the application is bad in law and improper and not amenable for judicial review before this court since it is an employment/ labour dispute between an employee and employer which should have been filed to the labour officer and later the industrial court.
- 10 2) That paragraphs 2, 3, 4, & 6 of the applicant's affidavit are admitted to the extent that on the 14<sup>th</sup> day of October 2014, the 1<sup>st</sup> respondent indeed requested the bishop of diocese of Arua to nominate a person to assist take care of spiritual wellbeing of Muni University and the applicant was nominated and seconded.
- 15 3) That the applicant did not apply for the position of chaplain, he was not shortlisted and interviewed on merit for the same position by the appointments board but was merely recruited on the basis of his nomination hence the moment the diocese chose to transfer the applicant to another catholic parish within the diocese, Fr. Solomon Pacutho's nomination, appointment and engagement with Muni university as a chaplain stood terminated.
- 20 4) That in reply to paragraph 11 of the applicant's affidavit, the applicant like any other university staff was assigned in the course of his duty as chaplain to do other tasks which did not attract any remuneration and or special assignment.
- 5) That in further reply to paragraph 11, the bishop of the diocese of Arua transferred and appointed the applicant curate of Indriani Catholic Sub-Parish in Adjumani  
25 district effective 18<sup>th</sup> January 2021 as per letter dated 13<sup>th</sup> January 2021.
- 6) That in reply to paragraphs 13 & 14 of the applicant's affidavit, the bishop of Arua diocese further nominated Rev. Fr. Robert Owiko Leku to fill the vacant position of chaplain in another letter dated 13<sup>th</sup> January 2021.



- 7) That in reply to paragraph 16 of the applicant's affidavit, the Appointments Board of Muni University in its 39<sup>th</sup> meeting held on the 25<sup>th</sup> march 2021 under **Minute 12.4/MUAB/0033/2021** resolved that the appointment of the applicant as the chaplain of St. Mary's Chaplaincy be terminated and be given 2 months' in lieu of notice since he had been transferred by the bishop of the diocese of Arua to Indriani Catholic Sub-Parish effective 18<sup>th</sup> January 2021.
- 8) That there was no need for the applicant to appear before the appointments board because there was no disciplinary case against the applicant that required him to be given a fair hearing by the appointment board. **(A copy of the minutes of the meeting of the appointments board is marked "G")**.
- 9) That in reply to paragraphs 17 & 18 of the applicant's affidavit, the 2<sup>nd</sup> respondent by virtue of his position of university secretary, he is the secretary of the appointments board and so there was no malice, ill motive, bad faith, ill will and personal interest on his part to terminate the applicant.
- 10) That in reply to paragraphs 20 – 32 of the applicant's affidavit, the applicant's employment contract with muni university who is his employer was terminated and duly paid the required 2 months' notice in lieu.
- 11) That it is just, fair, logical and proper that this application is dismissed with costs to the applicant as it lacks merit and is bad in law.
- 20 The 2<sup>nd</sup> respondent also deponed his affidavit personally based on the same information as deponed by the 1<sup>st</sup> respondent except where new information was introduced as hereunder;
- 1) That the 2<sup>nd</sup> respondent shall also raise the same preliminary objection as the 1<sup>st</sup> respondent and that, the applicant has not exhausted all the existing remedies under the law.
- 2) That the applicant is bound by the vows and promises he took at the time he was admitted to the Novitiate, took the oath of perpetual profession, and thus could not refuse his appointment and transfer by the bishop of the diocese of Arua as curate on

Indriani. (A copy of the applicant's application for admission to the novitiate and oath of perpetual profession are marked "A" & "B").

### *Representation and hearing*

At the hearing, Counsel Onencan Ronald of M/s Oketcha Baranyanga & Co. Advocates represented the applicant, while Counsel Samuel Ondoma of M/s Alaka & Co. Advocates represented both respondents. The parties were granted leave by this court to file their written submissions that shall be relied on in determination of this matter.

### *Submissions for the applicant*

#### *Preliminary objection*

Based on the respondents' affidavits in reply to the application, counsel submitted that 2 preliminary objections were raised including; that the application is bad in law and improper and not amenable to judicial review since it is an employment labour dispute and that the applicant has not exhausted all the remedies under the law. Regarding whether the application is bad in law and improper since it is an employment labour dispute, counsel 15 relied on **Public Law in East Africa by Ssekaana Musa at page 37**, which defined judicial review. Counsel further relied on two Kenyan decisions of court of appeal; **Republic Vs Attorney General and Registrar Societies; Misc. Application No. 0768 Of 2004 and Nyongesa & Others Vs Egerton University College (1990) KLR 693** where court observed that; *"the law relating to judicial review has not reached the furthest or the last frontier and that 20 courts must endeavor to expand the grounds of intervention depending on the circumstance before them. Courts are loath to interfere with decisions of domestic bodies of any bodies and tribunals including college bodies. However, courts will interfere and quash decisions of any bodies when moved to do so where it is manifest that decisions have been made without fairly and firstly hearing the person concerned as the other side"*.

Counsel further submitted that the applicant contends that he was not accorded hearing, a fact not disputed by the respondents hence violating his rights under the constitution. 25 Counsel added that the termination is based on the appointment of the applicant by the



bishop of the Arua diocese concluding that this court is clothed with the jurisdiction to entertain this application.

Regarding exhausting all the available remedies, counsel submitted that there is no substantive law that stipulates succinctly that for any judicial review, the applicant must first exhaust all the remedies before the grant of the judicial review orders. Counsel further stated that whereas **Rule 7A (1) (b) of the Judicial Review (Amendment) Rules 2019** provides that the court shall in handling applications for judicial review satisfy itself that the aggrieved person has exhausted the existing remedies available within the public body as under the law. He added that the University and Tertiary Institutions Act 2001 under Section 57 (1), provides that a member of staff may appeal to the university tribunal against the decision of the appointments board within 14 days after being notified of the decision. (See also: Section 14 of the Public Service Act 2008).

Counsel further relied on **Regulation 8:11:6** of the 1<sup>st</sup> respondent's **Human Resource Manual** which provides that if an employee subjected to disciplinary action has reasonable grounds to believe that the due process of the law and the principles of natural justice have not been followed, he or she may appeal to the relevant authority, including a court of law. In addition, counsel relied on **Water and Environment Media Network U Ltd & Others Vs NEMA & Another; Consolidated Miscellaneous Cause No. 239 of 2020** where it was held that,

*“even in the face of an alternative remedy, the discretion lies with the high court to entertain the application for judicial review. No flexible rules can be laid down for the exercise of discretion in this regard. However, the broad policy consideration for this principle of exhaustion of alternative remedies must be upheld to avoid short-circuiting or circumventing statutory procedure. It is only where the statutory remedies are still suited to meet the extraordinary situations that may have arisen in the circumstances of the particular case..... the requirement of exhaustion of alternative remedies should not be used by decision makers/administrators to frustrate the efforts of an aggrieved person as to shield the administrative process from judicial scrutiny”.*



With reference to Section 54 & 56 of the University and Tertiary Institutions Act 2001, counsel argued that it's within the knowledge of the respondents that the tribunal is not constituted and appointed and therefore the applicant could not appeal to any authority which is non-existent hence the only refuge is the court of law. Counsel added that the applicant was not subjected to any disciplinary procedures neither is he having any disciplinary matter against him since he was only removed for having been appointed a curate. Counsel prayed that preliminary objections be overruled and the application heard on its merits.

***Respondents' submission on the preliminary objection***

10 Counsel relied on the Employment Act specifically Section 93 and 94 and Rule 5 of the Judicature (Judicial Review) (Amendment) Rules 2019, the case of **Dr. Peter vs Kyambogo University & Anor; HCMA No. 0023 of 2017** and submitted that based on the pleadings before this court, the subject matter is a labour dispute which should be exhausted and handled under the Employment Act 2006. Counsel added that judicial review does not  
15 determine private rights and that its purpose is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected. (See: **John Jet Tumwebaze Vs Makerere University Council & 2 Others; Misc. Cause No. 0353 of 2005, Kasibo Joshua Vs Commissioner of Customs URA; HCMA No. 044 of 2007** among others.

20 Counsel further submitted that the applicant is seeking for declarations, which are matters, which concern final determination of his private rights in his employment contract with the respondents that is something which is to be done in normal civil suit but not through judicial review. Counsel added that the applicant has very clear opportunity to complain to labour office as required by Employment Act 2006 so that all his dispute and rights under  
25 the employment contract can be resolved by the labour office but he has not exhausted it. Counsel prayed that the preliminary objection be allowed, application dismissed with costs to the respondents, and that the applicant be advised to file his complaint to labour officer and industrial court as required.



### *Applicant's Submissions in Rejoinder*

Counsel argued that the case before this court is that enshrined in the doctrine of fundamental human rights as per Article 42 of the Constitution as amended and other provisions of the law as indicated in the pleadings and judicial review rules thereto. Counsel  
5 further argued that termination under the employment act is premised on the fact that there is a dispute between the employer and employee preferably on the discipline of the employee who then is subjected to disciplinary procedures. Counsel reiterated the fact that the respondents admitted that there was no disciplinary offence committed by the applicant to warrant him appear before a tribunal for disciplinary process. Counsel added that that there  
10 is no indication that the applicant was seconded to the university with a condition that once the bishop recalls him, he will cease to be a university employee, but that the applicant's appointment was on a permanent establishment and the bishop having been aware of this reminded the university that the appointment of the university chaplain is according to the university policies and not the church. Furthermore, counsel submitted that the respondents  
15 would like the court to believe that the applicant was given notice in lieu of payment with no proof of the notice thus praying that the objections be overruled.

### *Court analysis of the preliminary objection.*

The preliminary objections as raised by the respondents were that;

- a) Application is bad in law, improper, and not amenable for judicial review since it is an  
20 employment labour dispute.
- b) Applicant has not exhausted all remedies under the law.

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

The purpose of judicial review is to ensure that the individual is given fair treatment by the authority to which he or she has been subjected. Judicial review is not used to enforce private rights. In **Mrs. Anny Katabaazi-Bwengye Versus Uganda Christian University Miscellaneous Cause No.268 of 2017**, it was held that, *“The principal is that judicial review involves the exercise of the Court’s inherent supervisory jurisdiction in respect of activities of public authorities in the field of public law. As such, judicial review is only available against a body exercising public functions in a public law matter. In essence, a person seeking a remedy under judicial review must satisfy requirements. First, that the body under challenge must be a public body or a body performing public functions. Secondly, the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private rights. See Judicial Remedies in Public Law 5th Edition, Sweet & Maxwell, 2015 (page 9)”*.

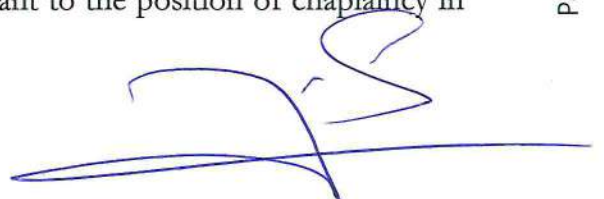
Rule 2 of the Judicature (Judicial Review) Rules 2019, defines a public body to mean any corporation committee board, or similar body whether corporate or incorporate established by an act of parliament for purposes relating to any written undertakings of education among others for the benefit of the public or any section of the public. Muni University is being established under the **University and Other Tertiary Institutions (Establishment of Muni University) Instrument 2013** makes it a public body.

Counsel for the respondents submitted that the subject matter is a labour dispute, which should be exhausted and handled under the Employment Act, 2006 .That judicial review does not determine private rights and as such, the applicant had to exhaust options provided for under the Employment Act by instituting a complaint with the labour officer.

Rule 7A of the Judicature (Judicial Review) Rules 2019, in considering such applications, the court shall satisfy itself among other issues that the aggrieved person has exhausted the existing remedies available within the public body or under the law.

The major task is find out what other options were available to be exhausted by the applicant before resorting to this honorable court for redress.

In determination of this, we have to look at the laws and rules or regulations governing the appointment, confirmation and termination of the applicant to the position of chaplaincy in



Muni University. According to the appointment on probation letter marked **annexure “C”** paragraph 2, the appointment of the applicant was subject to the constitution of the republic of Uganda, the Universities and Other Tertiary Institutions act 2001 as amended, Muni University terms and conditions of service (under review), the Public Service Act and the regulations made thereunder, Public Service Standing Orders, Muni University human resource manual 2016 and other applicable laws.

In the termination letter marked **annexure “K”** addressed to the applicant, in paragraph (e), the university secretary stated that,

*“it is therefore a practice at Muni University that appointment for the position of Chaplains is based on nomination by the diocese of Arua of a suitable candidate but not through advertisement of vacant positions and shortlisting by appointments board as otherwise it would be as per the human resource manual. Note that Muni University is within the pastoral jurisdiction of Arua diocese. It therefore operates as secondment of staff as provided under Section 2:11 of Muni University Human Resource Manual”.*

He further stated under paragraph (f) that, *“the appointment of chaplains in Muni University is based on nomination by their religious institutions as suitable person for the position of chaplain, thus, once the religious institution decides to nominate a new candidate as suitable person for the same position and transfer, the previously nominated candidate, the previous candidate shall cease to serve as chaplain once the appointments board has noted or taken decision to end the appointment”.*

This is supported by clause 2:11 of the Muni University Human Resource Manual where it is stated that the university council may have special arrangements with an organ of government or the private sector or an international institution to offer employment to a suitable person on secondment terms from those organs or bodies. However, such terms of service for the seconded member of staff will be subject to negotiation between the two parties and or a memorandum of understanding signed by the two parties.

According to the evidence from both parties, the applicant was the first person to ever be nominated, appointed and confirmed by the 1<sup>st</sup> respondent as the first chaplain of the institution and the laws, rules and regulations that governed the contract between the

applicant and the 1<sup>st</sup> respondent are clear as per the appointment letter. Despite the fact that in the termination letter, the university secretary refers the applicant's appointment as a practice for the 1<sup>st</sup> respondent, a practice that does not seem to have been in existence for a good period and as such would not be deemed to be called a practice. Secondly the referral to clause 2:11 of the human resource manual as above by the respondents, does not seem to have existed and no proof of it is indicated by the respondents to have existed in correspondences as evidenced by annexures "C" & "D" of the affidavit of the 2<sup>nd</sup> respondent in reply to the motion.

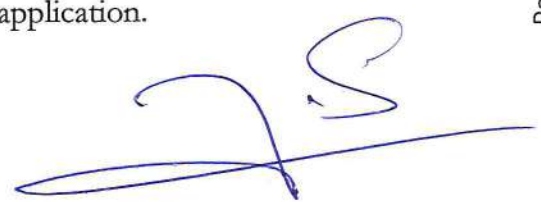
Notwithstanding all the above, I believe that the law prevails as per the clause 1.1.3 of the human resource manual which indicates that in case of a conflict between the law and the terms of the manual, the law shall prevail. Therefore, the laws that prevail include; the University and Tertiary Institutions Act 2001 as amended and its regulations, public service act and its regulations as well as the Public Service Standing Orders among others since the applicant as per annexure "D" (letter of confirmation), was admitted to the permanent establishment until his date of retirement.

Section 57 of the University and Tertiary Institutions Amendment Act 2006 "(1) a member of staff may appeal to the University Staff Tribunal against a decision of the Appointments Board within fourteen days after being notified of the decision.

(2) In any appeal under subsection (1), the Tribunal shall within forty-five days confirm, vary, amend or set aside the decision appealed against or give such decision as it thinks appropriate.

(3) A member of staff aggrieved by the decision of the Tribunal under subsection (2) may within thirty days from the date he or she is notified of the Tribunal's decision apply to the High Court for judicial review....."

According to the above provisions of the law it is quite clear that the applicant's available remedies included appealing to the university tribunal which now does not exist as it has not yet been established. Henceforth the other available remedy to the applicant is apply for judicial review to the high court, which he did through this application.



As such, both preliminary objections are hereby overruled and I will henceforth proceed with the determination of the application.

***Submissions of the application***

Both parties made submissions on three issues including;

- 5
1. Whether the termination of the applicant is tainted with illegality, irrationality and procedural impropriety.
  2. Whether the 2<sup>nd</sup> respondent acted with bias, ill will and abused his public office.
  3. What are the available remedies?

10 ***Whether the termination of the applicant is tainted with illegality, irrationality and procedural impropriety.***

Counsel for the applicant argued that the contention before the court is that the termination of the appellant is tainted with illegality, irrationality and procedural impropriety. Counsel submitted that the applicant was a permanent employee of the 1<sup>st</sup> respondent, which is not contested by either respondent. Counsel further stated that the applicant was terminated  
15 unlawfully, illegally without rationale and without being accorded a hearing an act, which is ultravires, and without following procedure as laid out in the human resource manual. That the applicant; *was not informed of the decision against him, he was not invited to explain his side on the decision of his bishop, he was not aware of any disciplinary actions and or any action against him until the termination letter was given to him, the communications (annexures B,C,D,E, F of the application) between*  
20 *the applicant and the respondents, none has ever been copied to the diocesan authorities meaning the applicant's employment with the respondents was personal, and he only received a letter instructing him to handover.*

Counsel concluded that these are gross violations of the applicant's rights, irrational and procedurally improper and thus the decision taken to terminate the applicant was invalid ab  
25 initio thus inviting this court to issue grant the remedies prayed for.

In reply, Counsel for the respondent submitted that the procedure for terminating the applicant was not in any way tainted with illegality, irrationality and procedural impropriety. Counsel added that the termination with payment of 2 month's salary in lieu of notice was effectively handled by the appointments board of the 1<sup>st</sup> respondent and approved by the university council and as such all provisions of the applicable laws were duly complied with.

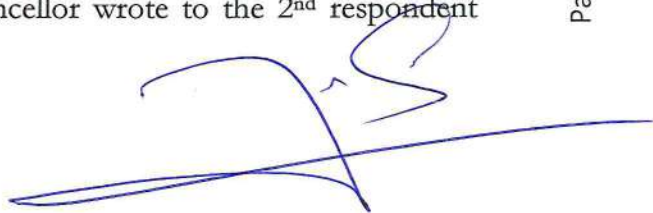
Counsel further submitted that according to the university secretary, there was no need for the applicant to appear before the appointments board since there was no disciplinary case against him. Counsel added that the appointments board of the respondent is not a court and that there is no statute that provides for how they could handle this type of dispute and handle fair hearing thus their decision was proper and fair in the circumstances. Counsel stated that the appointments board is a master of its own procedure provided they could achieve the degree of fairness appropriate to their task.

Counsel relied on section 58 (i), 58(5) and 65 (i) (a) of the Employment Act to submit that the applicant was terminated with payment of 2 month's salary in lieu of notice which the applicant received as required by the law thus accepting his termination hence making the decision to be fair, rational and legal.

***Whether the 2nd respondent acted with bias, ill will and abused his public office?***

Counsel stated that the 2<sup>nd</sup> respondent is the university secretary of the 1<sup>st</sup> respondent and virtue of section 33(1) of the University and Other Tertiary Institutions Act 2001, he or she shall be the secretary to the university council, the accounting officer and as such shall be responsible to the vice chancellor. Counsel stated that there is nowhere in the substantive laws or regulations and the human resource manual that the university secretary is responsible for promotions, demotion, and or removal of an employee as this is the preserve and responsibility of the appointments board through human resource department.

Counsel submitted that upon receipt of the appointment of the applicant by the bishop as a curate, the 2<sup>nd</sup> respondent wrote a letter for him to handover office. Counsel added that the applicant further deponed that the university vice chancellor wrote to the 2<sup>nd</sup> respondent



advising him to handover his role to the human resource officer, which was disregarded, and the same was not denied in the affidavit in reply. Counsel added that the actions of the 2<sup>nd</sup> respondent to take the issue of the applicant personally upon himself to write to the applicant to handover office and instructing the accounts office to delete the applicant from the pay roll, a responsibility which is not vested in him is not only biased, malafide, ill will but also in bad faith and an abuse of office by not respecting procedures enshrined in the constitution and other laws related therein.

Furthermore, counsel stated that the averments of the 2<sup>nd</sup> respondent in his affidavits are attempts to put things right, which cannot be atoned by any means of explanation and or reason.

In opposition, counsel for the respondent stated that the 2<sup>nd</sup> respondent did not act with ill will, bias and abuse of his public office since no proof has been adduced to that effect by the applicant. Counsel added that the affidavits of the respondents clearly indicate that what the 2<sup>nd</sup> respondent did was within his capacity as the secretary and accounting officer. Counsel further argued that the letter dated 13<sup>th</sup> January 2021 written by the 2<sup>nd</sup> respondent for the applicant to handover office was based on the letter of the bishop of Arua diocese that appointed the applicant as a curate of Indriani Catholic sub-parish in Adjumani.

***What are the available remedies.***

Whereas the applicant prayed for the orders as hereinabove mentioned based on the evidence adduced, counsel for the respondents stated that the only remedy available in the instant application is to dismiss it with costs as it lacks evidence, merit and that it frivolous and vexatious.

***Court analysis of the main application***

It is trite law that judicial review is governed by the Judicature (Judicial Review) Rules 2009 in tandem with the Judicature (Judicial Review) (Amendment) Rules 2019 whose major objective in relation to the present case is to ensure that public powers are exercised in



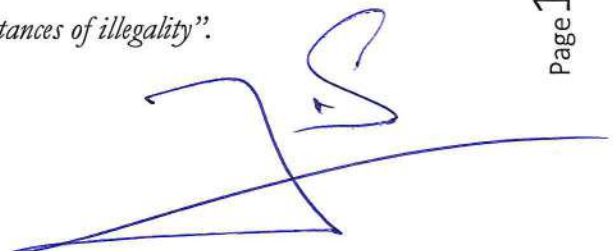
accordance with the basic standards of legality, fairness and rationality and that the opinion of an individual judge, is not construed as that of the authority. Henceforth, having carefully perused the submission of both counsel, in tandem with the authorities adopted I will proceed to deal with the determination of the application. I will determine the first two  
5 issues jointly and later the third issue.

Hence the issue that will be resolved is; whether the termination of the applicant is tainted with illegality, irrationality and procedural impropriety and whether the 2nd respondent acted with bias, ill will and abused his public office.

The applicant faults the respondents for termination of his service from the position as a  
10 chaplain at Muni University on the basis that he had been appointed by the bishop as a curate of Indriani Catholic Sub-Parish and in charge of schools therein. The applicant further faulted the respondents for not being accorded a fair hearing as per the rules of natural justice embedded in article 28 of the constitution of the republic of Uganda. However according to the respondents as per paragraph 5 of their affidavits in reply, the  
15 applicant was lawfully terminated having been merely recruited on the basis of nomination by the bishop of diocese of Arua who is the competent authority to nominate him for the position as a serving priest. In addition to that, the respondents argued in their submissions that having terminated the applicant, he was paid two month's salary in lieu of notice for the termination as per section 58 of the Employment Act 2006.

20 **In Pastoli Vs Kabale District Local Government Council and Others 2008 E.A Pg. 300**, Justice Kasule elaborated, "in order for the application for judicial review to succeed, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety". His lordship proceeded and defined each of the grounds as;

25 *"Illegality is when the decision-making authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without jurisdiction or ultravires or contrary to the provisions of a law or its principles are instances of illegality".*



*Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision.*

*Procedural impropriety is when there is failure to act fairly on the part of the decision-making authority in the process of taking a decision ..... it may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument.....”*

According to paragraph 2 of the letter of appointment on probation of the applicant, it was stated that, “the appointment is subject to the Constitution of the Republic of Uganda, universities and other tertiary institutions act 2001 as amended, Muni university terms and conditions of service (under review), the public service act and its regulations made thereunder, public service standing orders, other laws applicable and administrative instructions issued from time to time”. Further, in a letter dated 13<sup>th</sup> January 2021 marked **annexure “G”** as attached to the applicant’s affidavit, the bishop of Arua Diocese appointed the applicant as a curate of Indriani Catholic Sub-Parish in charge of schools and the respondents were also copied with the said letter. In addition, another letter nominating another Rev. Fr. to replace the applicant was sent on the same day by the bishop.

According to the minutes of meeting of the 39<sup>th</sup> appointments board held on the 25<sup>th</sup> march 2021 marked **annexure “G”** as attached to the affidavit of the 1<sup>st</sup> respondent, under the 13<sup>th</sup> minute, the appointment status of Rev. Fr. Solomon Ngos Pacutho and handover of St Mary’s Chaplaincy Muni University was presented to the appointments board by the Senior human resource officer. In their discussions, the board considered both the sections of the law as well as the human resource manual in relation to the facts beforehand. In their resolutions and being the first chaplain since the opening of the university, concluded that the appointment of the applicant was under secondment and as such, he was to be terminated with a two-month’s salary in lieu of notice. The rationale is because the appointment for the applicant was based on the nomination by the diocese of Arua and not the normal procedures undertaken by the university to recruit their staff.

Accordingly, I find that the procedures followed were not illegal or irrational in any way since there was no disciplinary action to be taken against the applicant but rather that his nomination to a new office would not allow him properly to continue to serve in the office of chaplain of the University.

- 5 Regarding the issue of bias by the second respondent by fact of addressing the applicant with a letter dated 18<sup>th</sup> January asking him to handover his position to the newly appointed Rev. Fr., since he acted in disregard of the advice from the vice chancellor. Annexure "J", a letter from the vice chancellor to the university secretary, advised the university secretary on how to handle the transfer of the applicant.
- 10 According to the evidence before this court, the university secretary acted with no form of bias as noted from the fact that the appointments board held its meeting on the 25<sup>th</sup> march 2021 to discuss the issue and later issued a termination letter dated 06<sup>th</sup> April 2021 to the applicant. In addition to that, the applicant was paid 2 months' salary in lieu of notice which was accepted by the applicant as per section 58 (5) of the Employment Act 2006.
- 15 Secondly despite the fact that Bishop advised the 2<sup>nd</sup> respondent on how to handle the transfer of the applicant by letter as stated in the applicant's affidavit and submissions, the 2<sup>nd</sup> respondent was not under any duty to follow the same as the bishop (church) and Muni University are two different entities that can handle different issues without depending on each other. As such, the 2<sup>nd</sup> respondent was not under duty to follow the advice of the
- 20 bishop. Having followed the right procedures as exhibited in the evidence before this honorable court I find that there was no bias or ill will exhibited in the actions of the respondents.

In that regard, there is no need to determine the issue regarding the available remedies it is already overtaken by events. This application is dismissed for lack merit. Each party shall

25 bear its own costs.

**I so order.**



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Dated and Delivered on this 31<sup>st</sup> Day of March 2023.

A handwritten signature in blue ink, appearing to be 'Isah Serunkuma', written over a solid horizontal line. Below the solid line is a dotted horizontal line.

Isah Serunkuma

5 JUDGE