THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLENEOUS CAUSE NO. 0322 OF 2021

(CIVIL DIVISION)

BARBRA AWIDI MICHELLE :: APPLICANT

VERSUS

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

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought this application by Notice of Motion under Article 42 of the Constitution of the Republic of Uganda, Sections 36 and 38 of the Judicature Act, Rules 3(1)(a) and 6(1) of the Judicature (Judicial Review) Rules, 2009 seeking for orders that;

a) An order of Certiorari does issue quashing the decision and orders of the Respondent dismissing the Applicant summarily for being illegal (ultra vires), procedurally irregular and irrational.
b) A declaration that the Respondent failed to observe and expend a fair trial to the Applicant by dismissing her on new allegations that were not subjected to a hearing.
c) A declaration that the Respondent's Staff Appeals Committee is without jurisdiction to try any matter as a committee of first instance in disciplinary matters.
d) An order of Mandamus compelling the Respondent to reinstate the Applicant to her position and/or in lieu thereof pay her damages for unfair termination to the tune of UGX 80,000,000/=.
e) Costs of the application be provided for.

[2] The grounds upon which the application is based are summarised in the Notice of Motion and also set out in the affidavit sworn in support of the application by the Applicant. Briefly, the grounds are that upon advertisement of various vacancies by the Respondent on 16th July 2019,

the Applicant applied for and was employed by the Respondent as Officer Customs (Grade One) on 11th March 2020, which job she accepted on 14th March 2020. The Applicant stated that on 18th May 2020, she received a call from an officer in the Internal Audit and Compliance Department of the Respondent informing her that the Respondent needed to find out some information, specifically that she had forged a certificate in customer care and computer introduction to secure the job. Then on 13th July 2020, the Applicant was served with a summary dismissal letter on grounds that she had forged the above said certificate. The Applicant lodged an appeal before the Staff Appeals Committee challenging the legality and rationality of her dismissal but the appeal was dismissed on ground of having no merit. The Applicant then wrote to the Commissioner General of the Respondent over her unfair treatment over the matter. The Commissioner General reconstituted the Staff Appeals Committee which reviewed the decision summarily dismissing the Applicant, carried its own investigations in relation to the forgery, but instead dismissed the Applicant on entirely a new issue that was not before the Committee, totally without jurisdiction and without a hearing. The Applicant concluded that the conduct by the Respondent was not only egregious but was as well unjust, unfair and illegal and it is in the interest of justice that the application is allowed.

[3] The Respondent opposed the application through an affidavit affirmed by **Sabah Ahmed**, the Acting Assistant Commissioner Human Resource in the Corporate Services Department of the Respondent, who agreed that the Applicant was appointed by the Respondent on 11th March 2020 and she accepted the appointment on 14th March 2020. The deponent stated that subsequently, the Respondent conducted a vetting of the Applicant's academic qualifications whereby it was discovered that she had presented a forged customer care and computer introduction certificate in support of her application for the job. The Applicant was later cleared of this finding on a second review by the Respondent. The deponent stated that on 18th May 2020, the Respondent through its Internal Audit and Compliance Department had made inquiries about the forged certificate to which the

Applicant appeared and made a statement. On 13th July 2020, the Respondent dismissed the Applicant from its employment effective 14th July 2020 in accordance with the employment contract and the Human Resource Management Manual. On 30th July 2020, the Applicant appealed against her dismissal to the Staff Appeals Committee on grounds that the dismissal was not backed by the findings of the investigation and that she had not been accorded a fair hearing. On 10th September 2020, the Applicant was informed that her appeal had been considered, found without merit and her dismissal had been upheld. On 21st October 2020, the Applicant wrote to the Respondent seeking a second review of her dismissal. On 10th December 2020, the Applicant was invited to appear before the Staff Appeals Committee on 18th December 2020, where she appeared and her appeal case was reviewed. On 28th September 2021, the Respondent issued its appeal decision upholding the earlier dismissal, on the basis that the Applicant's Data Analytics Certificate attached for the position of Officer Domestic Taxes was not authentic and the decision to terminate the Applicant was maintained on account of lack of integrity.

Representation and Hearing

[4] At the hearing, the Applicant was represented by **Mr. Joseph Angura** and **Ms. Gertrude Mutesi**, while the Respondent was represented by **Mr. Bakashaba Donald** and **Mr. Kwerit Sam**. It was agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel. I have considered the submissions in the course of determination of the matter before court.

Issues for Determination by the Court

[5] Two issues are up for determination by the Court, namely;

a) *Whether the decision of the Respondent was illegal, irrational and or procedurally improper?*
b) *Whether the Applicant is entitled to the remedies prayed for?*

Resolution of the issues

Issue 1: Whether the decision of the Respondent was illegal, irrational and or procedurally improper?

[6] I will start by pointing out the function of the court in a matter brought before it upon an application for judicial review. Judicial review is concerned not with the merits of the decision but with the decision making process. Essentially, judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality. The duty of the court therefore is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice. See: *Attorney General v Yustus Tinkasimmire & Others, CACA No. 208 of 2013* and *Kuluo Joseph Andrew & Others v Attorney General & Others, HC MC No. 106 of 2010*.

[7] Under *rule 7A (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019*, it is provided that upon considering an application for judicial review, the "*court shall grant an order for judicial review where it is satisfied that the decision making body or officer did not follow due process in reaching the decision and that, as a result, there was unfair and unjust treatment*". Article 42 of the Constitution provides that any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

[8] It follows therefore that the court may provide specific remedies under judicial review where it is satisfied that the named authority has acted unlawfully. A public authority will be found to have acted unlawfully if it has made a decision or done something: without or in abuse of the legal power

to do so (unlawful on the grounds of illegality); or so unreasonable that no reasonable decision-maker could have come to the same decision or done the same thing (unlawful on the grounds of unreasonableness or irrationality); or without observing the rules of natural justice (unlawful on grounds of procedural impropriety or unfairness). See: *ACP Bakaleke Siraji v Attorney General, HC MC No. 212 of 2018*.

[9] In the present case, the decision of the Respondent was challenged on grounds of illegality, procedural impropriety and/or irrationality. I will deal with the allegations concerning each ground separately.

The Ground of Illegality

[10] Illegality has been described as the instance when the decision making authority commits an error in law in the process of making a decision or making the act the subject of the complaint. Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality. **Lord Diplock** in the case of *Council of Civil Service Unions v Minister for Civil service (1985) AC 375,* stated thus;

"*By illegality as a ground for judicial review, I mean that the decision maker must understand correctly the law that regulated his decision making power and must give effect to it. Whether he has or not is, per excellence, a justifiable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercised''*.

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

[12] On the matter before me, none of the allegations raised touch the legal power of the Respondent to take disciplinary action against the Applicant. I have also found no case of abuse of power by the Respondent of the nature that would amount to illegality. The errors allegedly committed by the officers or organs of the Respondent are of the nature pointing to breach of procedure or the rules of fairness. As such, they are to be considered under the ground of procedural impropriety and not as instances of illegality. Therefore, no allegation based on the ground of illegality has been made out on the case before me.

The Ground of Procedural Impropriety

[13] As a ground for judicial review, "procedural impropriety" has been defined as "the failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision." See: *Council of Civil Service Unions & Others v Minister for the Civil Service [1985] AC 374*. Under the law, procedural impropriety encompasses four basic concepts; namely (i) the need to comply with the adopted (and usually statutory) rules for the decision making process; (ii) the requirement of fair hearing; (iii) the requirement that the decision is made without an appearance of bias; (iv) the requirement to comply with any procedural legitimate expectations created by the decision maker. See: *Dr. Lam – Lagoro James v Muni University (HCMC No. 0007 of 2016*.

[14] Procedural propriety in public law matters calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*) and the prohibition against being a judge in one's cause (the rule against bias). Natural justice requires that the person accused should know the nature of the accusation made against them; secondly, that he/she should be given an opportunity to state his/her case; and thirdly, the tribunal should act in good faith. See: *Byrne v Kinematograph Renters Society Ltd, [1958]1 WLR 762*.

[15] It is clear from the present facts that the Applicant is challenging three decisions by the Respondent, namely; one summarily dismissing her without a hearing; the second by the Staff Appeals Committee purporting to hear her matter as a committee of first instance and upholding the dismissal; and the third by the Staff Appeals Committee purporting to review the decision on first appeal and arriving at a finding based on a matter that was not subject of the prior investigation and process.

[16] On the first allegation, it was stated that the Applicant was verbally called by an officer in the Internal Audit and Compliance Department of the Respondent and was informed of an allegation of having relied on a forged customer care and computer introduction certificate from the Kent Foundation Training Institute in Masindi. The Applicant went to the office and made a statement to which she attached a statutory declaration vehemently denying having forged the said certificate. The Applicant further stated that she learnt that the Respondent despatched an investigating officer by the name of Isaac Muhindo who travelled to Masindi and carried out investigations which revealed that the said institution had existed at the time the Applicant obtained the impugned certificate but had closed thereafter. To her surprise, the Applicant was, on 13th July 2020, served with a dismissal letter on ground that she had forged the said certificate and without any hearing at all. Counsel for the Applicant submitted that this decision was reached in contravention of the rules of natural justice and in breach of the cardinal principle of fair hearing in accordance with Articles 28(1) and 42 of the Constitution.

[17] In response, it was stated for the Respondent that the Applicant was dismissed during her probationary period. Counsel relied on the provisions under sections 66 and 67 of the Employment Act 2006 and clauses 4 and 6 of the employment contract between the parties for the argument that the requirement of notification and hearing prior to dismissal is not a prerequisite during the probationary period of an employee's contract and

that, as such, the Applicant was properly dismissed within the precincts of the law.

[18] As I have stated earlier on in *Mark E. Kamanzi v National Drug Authority & Another, HCMA No. 138 of 2021,* it ought to be understood that there is a difference between a probationary contract within the meaning of section 2 of the Employment Act on the one hand, and a contract containing a clause for a probationary period. In terms of section 2 of the Employment Act 2006, a probationary contract is a separate agreement, strictly for probation for a period of six months, renewable up to not more than another six months. However, including a term as to probation in a full term or fixed contract does not make a contract a probationary one. The probationary period only becomes part of the contract. Also See *Mauda Atuzarirwe v URSB HCMC No. 249 of 2013* and *Ben Rhaeim Aimen v Granda Hotels (U) Ltd, Industrial Court Labour Appeal No. 002 of 2023*.

[19] The argument for the Respondent in this case is that the Applicant was not entitled to notice before termination or a hearing by the Respondent's Management Disciplinary Committee because she was still serving on probation whereas the stated procedure was applicable only to confirmed staff. I need to point out that the Respondent's Counsel did not cite any provision within the Human Resource Manual that sets out the position that the disciplinary procedure set out within the Manual does not apply to officers serving on probation.

[20] Regarding the law, mention was made of section 67(1) of the Employment Act which provides that section 66 of the Act does not apply where a dismissal brings to an end a "probationary contract". Section 66 of the Act provides for notification and hearing before termination of an employment contract. Under sub-sections (1) and (2), it is provided as follows;

> *"(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of*

misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall before reaching a decision to dismiss an employee, hear and consider any representations which the employee on grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1), may make".

[21] In relying on section 67 of the Employment Act, Counsel for the Respondent argues that the requirement for notice as set out under section 66 above does not apply to a person serving under a probationary contract, like the present Applicant was. The first question, therefore, is whether the present Applicant was serving under a probationary contract. The contract herein in issue, a copy of which is attached to the affidavit in reply as Annexure "A", does not specifically state that it is a probationary contract. The relevant parts of the contract states as follows;

"Appointment as Officer in the Customs Department

I am pleased to inform you that the Management of Uganda Revenue Authority (URA) has offered you appointment as ***Officer Customs (Grade One)*** *in the Customs Department on the following terms and conditions of service:*

1. ***Effective Date of Appointment***

   The effective date of appointment shall be 23rd March 2020.

2. *…*

3. ***Conditions of Service***

   The terms of your employment will be bound and interpreted in conformity with the Human Resource Management Manual (HRMM) and any other policies on Human Resources as may be introduced by the Authority …

4. ***Probation***

You will serve a probationary period of six months with effect from your reporting date. Your confirmation in service of the Authority shall be subject to a satisfactory academic background check results, performance appraisal report or any other assessment that the Authority will deem necessary for assessing your suitability for confirmation into the service of the Authority … Failure to meet any one or a combination of the criteria mentioned above may lead to termination of your employment contract".

[22] I find the above contract vague on the aspect as to whether it is a probationary contract. Although it, as well, contains no term indicating it is a fixed term contract of more than six months, the inclusion of a term as to confirmation upon completion of the six months (and not appointment upon completion of probation) denies it the quality of it being a probationary contract. In my considered view, for a contract to be purely probationary, so as to deny the probationary employee some essential rights enjoyed by the employees of the organisation, it should state that it is probationary and that upon successful completion of probation, the person will be formally appointed or given an employment contract. Simply providing a term as to probation does not make a contract a probationary one. This is the case in the present matter. Under the law, ambiguity in a contract has to be interpreted against the person who was better placed to avoid or eliminate the ambiguity. In this case, the Respondent drew the employment contract and was the controlling authority behind the contract. The Respondent stands to suffer the negative effect of the ambiguity.

[23] As it is, therefore, the claim that the Applicant was not entitled to notice or a hearing on the basis that this right was excluded under section 67 of the Employment Act on account that the decision was bringing to an end a probationary contract, is not made out by the Respondent.

[24] The second reason the above claim could not be established by the Respondent is based on the legal requirements under Articles 28(1) and 42 of the Constitution. Article 28(1) of the Constitution provides for every

person's right to a fair hearing during determination of civil rights and obligations. Although the full application of this right is triggered in the case of proceedings before a court or tribunal established by law, it is imperative that the right is observed every time a person's right stands to be affected by a particular proceeding. It ought to be noted that one of the elements of procedural propriety in decisions by public authorities or officers is the common law requirement for a fair hearing. The provision under Article 28(1) of the Constitution thus makes it an obligation on the part of any public body to observe the principle of fair hearing. Under Article 44(c) of the Constitution, no derogation is permissible from the right to a fair hearing. Further, under Article 42 of the Constitution, any "person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her".

[25] The above legal position, in my view, makes it imperative that before any decision that has the possibility of affecting a person's fundamental or other right is taken by any public official or body, the potential victim has a right to be heard. In that regard, even if the Respondent had established that the Applicant was serving under a probationary contract, the provision under section 67 of the Employment Act would be subservient to the constitutional provisions highlighted above. In view of this position, the conduct on the part of the Respondent of summarily dismissing the Applicant without affording her an opportunity to be heard was in breach of her rights to a fair hearing and of being treated justly and fairly. As already stated herein above, procedural propriety in public law matters calls for adherence to the rules of natural justice which imports the requirement to hear the other party (*audi alteram partem*). Natural justice requires that the person accused should know the nature of the accusation made against them; he/she should be given an opportunity to state his/her case; and the tribunal should act in good faith. See: *Byrne v. Kinematograph Renters Society Ltd (supra)*.

[26] It is clear, in the present case, that these essential requirements were breached by the Respondent. The Applicant was verbally informed of a serious allegation of forgery of an academic certificate. Although she recorded a statement, she was not shown any materials upon which the allegation was based for her to counter the same or make an input thereto. Even when the Respondent's officer went to Masindi to conduct an investigation, the same was done behind the Applicant's back and she was not made privy to any of the information obtained. Indeed, according to the Applicant, even when she discovered the information that was obtained by the Respondent's officer, it was in stark contradiction of the decision that had been taken by the Respondent. This, in my view, is the kind of scenario that is intended to be avoided by requiring rules of natural justice to be adhered to.

[27] Incidentally, the Respondent's Human Resource Manual sets out clear provisions towards adherence to the rules of natural justice. Under section 11.2.3(i) of the Manual, staff shall be notified of the offences preferred against them in a prescribed form which shall state; (i) the nature of offence (ii) the date, time and venue of hearing (iii) the required documents and (iv) the evidence of receipt or acknowledgment. Under section 11.2.3(l), a staff that is subject to disciplinary proceedings; (a) has a right to be heard, (b) may call in other staff as witnesses, (c) may cross examine any person called as a witness in support of the case, and (d) may have access to documents produced in evidence. All the above clear provisions in the Respondent's Human Resource Manual were ignored and breached. This is an instance of procedural impropriety on the part of the Respondent that has been established by the Applicant.

[28] The second decision of the Respondent challenged by the Applicant is that of the Staff Appeals Committee that purported to hear her matter as a committee of first instance and upholding the dismissal by the Respondent's management. According to section 11.2.4(b) of the Human Resource Manual, the function of the Staff Appeals Committee is to preside over

proceedings arising from; (i) appeals by staff who are dissatisfied with decisions of the Management Disciplinary Committee regarding disciplinary matters; (ii) appeals by staff who are dissatisfied with the decision of the Head of Department pertaining to a grievance presented by staff; (iii) staff who have a grievance against any Head of Department; (iv) all disciplinary cases for staff at the rank of Manager and above; (v) consider any other staff appeals that may come to them through normal appellate process.

[29] On the case before me, it has already been established that no hearing was conducted by the Management Disciplinary Committee against the Applicant. Indeed, the Respondent agreed to this position explaining that the said procedure only applied to confirmed officers in the employ of the Respondent; which position has been rejected by the Court. The Applicant also averred that she requested for the record of proceedings upon which her dismissal was based so as to lodge her appeal and none was provided. No such record has also been adduced before the Court. As it is, therefore, there was no hearing upon which any appeal by the Applicant to the Staff Appeals Committee was premised. The jurisdiction of the Staff Appeals Committee could not have been triggered under paragraph (i) of section11.2.4(b) of the Human Resource Manual. The other paragraphs under the section clearly did not apply to the Applicant's circumstances

[30] It was alleged by the Applicant that the Staff Appeals Committee purported to hear the disciplinary matter against the Applicant as though it were a committee of first instance. I have found no rebuttal of this averment. It is further corroborated by the fact that there was no record of proceedings upon which the appeal could have been premised. As such, the Staff Appeals Committee assumed a function not bestowed to it and acted improperly. Its decision upholding the summary dismissal by the Respondent's management was null and void on account of procedural impropriety and unfairness.

[31] The third decision of the Respondent challenged by the Applicant is of the Staff Appeals Committee purporting to review the decision made on first appeal and arriving at a finding based on a matter that was not subject of the prior investigation and process. It is shown in evidence that when the Applicant complained to the Commissioner General of the Respondent after the decision upon the first appeal, the Commissioner General constituted another Staff Appeals Committee, which made its own investigations and conducted a hearing to which the Applicant was invited. To the Applicant's surprise, the Committee silently absolved her of the earlier allegation of forgery of a customer care and computer introduction certificate but found her guilty of forging a Data Analytics certificate in another application she had made earlier to the Respondent, distinct from the one concerning the disciplinary proceedings.

[32] I am in agreement with the Applicant's Counsel that the procedure adopted by the Staff Appeals Committee during the second review was defective on several fronts. First, the Committee had no power to act as if it were a committee of first instance. Secondly, there was no valid decision for them to review. Thirdly, it was grossly defective for the committee to replace the charge that had been brought against the Applicant with another that was never notified to the Applicant, and to which the Applicant never furnished any explanation. There is no evidence that the Committee took recourse to the power to amend the charge as no such occurrence arose during the hearing. The Applicant first learnt of the new allegation when the decision upholding her dismissal was communicated to her. The matter subject of the new allegation was not part of the contract relevant to the impugned dismissal. The conduct by the Staff Appeals Committee was, therefore, grossly irregular and constitutes an instance of procedural impropriety in that regard.

[33] In the result, the Applicant has sufficiently established instances of procedural impropriety and unfairness capable of impeaching the decision of

the Respondent dismissing her from her employment. The Applicant, therefore, succeeds on this ground of the application.

The ground of Irrationality or Unreasonableness

[34] In judicial review parlance, irrationality refers to arriving at a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. See: *Council for civil Service Unions (supra).* In *Dr. Lam – Larogo (supra)*, it was held that in judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision making process. It is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

[35] In the instant case, the evidence is that the case against the Applicant was that of forgery of a certificate in customer care and computer introduction from Kent Foundation in Masindi. It was shown by the Applicant that the said Institute existed at the time she obtained her certificate but was for unknown reasons closed by the time investigations pertaining to this case were conducted. The Applicant states that during the appeal process before the Staff Appeals Committee, she adduced evidence showing that she was a former student in that institute before its abrupt closure. To her shock, the Staff Appeals Committee on the first occasion ignored that evidence and upheld her dismissal on ground of forgery of an academic certificate. On the second occasion, the Committee appears to have exonerated the Applicant on that charge but did so silently, without communicating that position to the Applicant. To her further dismay, her dismissal was still upheld basing on a charge that had never been brought against her through the entire process.

[36] In view of the above set of circumstances, I am in total agreement with the Applicant that the Respondent's decision does not fall within the range

of possible, acceptable outcomes that could be defensible given the law and the set of facts before the Court. The decision by the Respondent was, therefore, irrational in that regard and the application also succeeds on this ground.

Issue 2: Whether the Applicant is entitled to the remedies sought?

[37] In view of the above findings, the application by the Applicant has succeeded on grounds of procedural impropriety and irrationality. The Applicant is thus entitled to the declaration that that the Respondent acted unlawfully when it failed to observe the principle of fair hearing and the rules of natural justice when it took the decision dismissing her from her employment with the Authority, thereby acting with procedural impropriety and irrationality. The decision of the Respondent is thus vitiated and the Applicant is entitled to a writ of Certiorari quashing the decision of the Respondent dismissing the Applicant on account of procedural impropriety and irrationality. The Applicant had sought for an order of Mandamus compelling the Respondent to reinstate the Applicant to her position. She however abandoned this relief rightly pointing out that it may be pointless to compel an employer to continue employing an undesired employee. In lieu, thereof, I will consider the prayer for damages for unfair termination as sought by the Applicant.

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

> *"8. Claims for damages*
>
> *(1) On an application for judicial review the court may, subject to sub rule (2), award damages to the applicant if,*

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

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

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

[40] On the case before me, the facts and the law as above set out establish a case of unfair termination of an employment contract leading to wrongful deprivation of employment on the part of the Applicant. This would entitle the Applicant to compensation. Since the Applicant made a claim for damages in the Notice of Motion, I find this a fit and proper case for assessment of damages.

[41] The settled position of the law is that general damages are a direct natural or probable consequence of the act complained of and are awarded at the discretion of the Court. The purpose of the damages is to restore the aggrieved person to the position they would have been in had the breach or wrong not occurred. See: *Hadley v Baxendale (1894) 9 Exch 341; Charles Acire v M. Engola, H. C. Civil Suit No. 143 of 1993* and *Kibimba Rice Ltd v Umar Salim, SC Civil Appeal No. 17 of 1992*. In the assessment of general damages, the court should be guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. See: *Uganda Commercial bank*

v. Kigozi [2002] 1 EA 305. Under the law, general damages are implied in every breach of contract and every infringement of a given right.

[42] In the present case, the Applicant lost employment and a possibility of progress in her career. Counsel for the Applicant proposed a sum of UGX 80,000,000/= as being a fair award for the pain and embarrassment suffered by the Applicant. I have taken into account the fact that with an allegation of forgery of academic documents, the Applicant is likely to face considerable difficulty in securing alternative employment. The situation is further worsened by the fact that when the Respondent found the allegation not made out, they silently abandoned it and pinned another instance of forgery against the Applicant. I therefore find that the Applicant deserves compensation by way of award of a reasonable sum of money and I find the sum proposed by the Applicant's Counsel fair enough to meet the ends of justice. I thus award the sum of UGX 80,000,000/= to the Applicant in general damages.

[43] Although in their submissions Counsel for the Applicant prayed for interest on the general damages, no such prayer was contained in the pleadings. That claim is therefore disregarded. The Applicant is however entitled to the costs of the application and the same are awarded against the Respondent.

[44] In the result, the application by the Applicant has succeeded and is accordingly allowed with the following declaration and orders;

a) A declaration that that the Respondent acted unlawfully by failing to observe the principle of fair hearing and the rules of natural justice when it dismissed the Applicant, thereby acting with procedural impropriety and irrationality.
b) A Writ of Certiorari doth issue quashing the decision of the Respondent dismissing the Applicant on account of procedural impropriety and irrationality.

c) An order awarding a sum of UGX 80,000,000/= (Uganda Shillings Eighty Million only) to the Applicant as general damages to be paid by the Respondent.
d) An order for payment of the costs of the application by the Respondent.

It is so ordered.

Dated, signed and delivered by email this 9th day of January, 2024.

Boniface Wamala
JUDGE