THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 0133 OF 2022

KIGANDA DANIEL::APPLICANT

VERSUS

MAKERERE UNIVERSITY::RESPONDENT

Before: *Hon. Justice Dr Douglas Karekona Singiza*

Ruling

1 Introduction

Makerere University (the respondent) occupies a special place in Uganda as the nation's leading public research and teaching institution, and its historical role in imparting knowledge over the generations is acknowledged far and wide. As with any other public institution of higher learning, all the staff that serve it expect to work under rules that are clear and fair. Accordingly, the Makerere University Staff Appeals Tribunal (hereafter, the Tribunal) was established to adjudicate on conflicts that members of staff may have with the university in the course of their employment and to do so fairly and in compliance with our country's laws and regulations.

This application is concerned with the alleged failure by the respondent to implement the orders of the Tribunal. The latter, apparently, had ruled in favour of the applicant, Mr Kiganda Daniel, with orders that he be appointed to the job he applied for even though he scored below the pass mark required for it. The position in question was filled by other candidates who scored above the pass mark. The respondent did not implement those orders – hence the present application.

1.1 Background

The motion before me is outwardly straightforward, yet it raises complex questions that must be answered.[1]

The applicant was employed by the respondent on 21 May 2010 as an Administrative Assistant (Information Systems) in the office of the Academic Registrar. Later, on 1

[1] The motion was brought under articles 28 and 42 of the Constitution of Uganda; sections 98 of the Civil Procedure Act, Cap 71; sections 14, 33, 37, and 38 of the Judicature Act, Cap 13; and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules SI 71-1.

July 2013, he was promoted by the respondent's Appointments Board to the position of Senior Administrative Assistant in the same office.

In 2018, the applicant applied for the advertised positions of Principal Registrar and Senior Assistant Registrar. He was shortlisted for both positions, and invited for interviews. However, he scored 50 per cent and was not appointed to any of the positions on the grounds that he scored below the pass mark of 60 per cent. All the applicants who scored above 60 per cent were appointed to the positions, with their appointments taking effect on 5 and 6 June 2018.

In July 2018, the applicant lodged an appeal to the Tribunal, contesting the way in which he was interviewed and seeking several orders from it. The Tribunal made its ruling on the matter on 17 August 2021, and held that the applicant had been treated unfairly during the interview process for the position of Principal Registrar. The Tribunal ordered that the respondent's Appointments Board appoint the applicant as Principal Registrar – an order which the respondent did not carry out.

1.2 Representation

During the filing of the motion and submissions, the applicant was represented by *M/s Lule Godfrey & Mulumba Co. Advocates*, while the respondent was represented by its Directorate of Legal Affairs. In every case before me, this court observes the courtesy of acknowledging the counsel's work when the pleadings and submissions are impressive, as they indeed are in this instance. However, for reasons of time and space, I shall refrain from recapitulating all the arguments that were put forward.

1.3 Grounds in the motion

The applicant contends that the decision by the respondent in not implementing the orders of the Tribunal was unlawful, and thus seeks an order for mandamus, together with a host of other remedies summarised below:

1. A declaration that the respondent is in contempt of the orders of the Tribunal to appoint the applicant as the Principal Registrar.
2. A declaration that the respondent's refusal to follow the orders of the Tribunal to appoint the applicant as the Principal Registrar was illegal, unjust, and discriminatory.
3. An order of mandamus directing the respondent to implement the orders of the Tribunal.
4. An order directing the respondent to pay the applicant all the accumulated salary difference of UGX 105,559,058 (one hundred and five million, five hundred and fifty-nine thousand, and fifty-eight shillings) due to him since 5 June 2018 (the effective date of his appointment by the Tribunal) and up until the date of his having filed this suit.
5. An order directing the respondent to pay the applicant UGX 5,003,801 (five million, three thousand, and eight hundred and one shillings), which is the amount of the accumulated arrears of the Social Security Fund (NSSF) the applicant would have earned as Principal Registrar since 5 June 2018.
6. An order directing the respondent to pay the applicant compensation of UGX 300,000,000 (three hundred million shillings) for the injury or damage, including financial loss, anguish and inconvenience, which he suffered due the respondent's contempt of the Tribunal's order.

1.4 Affidavit evidence

The applicant's affidavit evidence mainly reiterates the grounds in the motion. The most pertinent of the complaints are summarised below:

1. The applicant applied for two of the positions advertised by the respondent, and was shortlisted for both and interviewed, but was not appointed to either of them because his score did not meet the 60 per cent pass mark.

2. He appealed to the Tribunal, contesting the way that the interviewing process for the positions was conducted, and was successful, with the Tribunal finding that he had been treated unfairly.

3. The Tribunal then ordered the respondent's Appointments Board to appoint him as the Principal Registrar.

4. Several letters to the respondent requesting that the Tribunal's orders be implemented were ignored, even though the orders had never been varied, set aside, or appealed against.

In turn, the respondent relies on the depositions of Mr Yusuf Kiranda, the Makerere University Secretary/Accounting Officer, to dispute the applicant's allegation. In this regard, the respondent does not dispute the set of events as deponed to by the applicant, and therefore the applicant's narration of events from the time that the positions were advertised until the recruitment process took place is not disputed. Also undisputed is the evidence dealing with the findings of the Tribunal, in which an order was made to appoint the applicant as the Principal Registrar.

The contention in Mr Kiranda's deposition appears to be that the Tribunal's order presented the respondent with a dilemma, given that, at the time the orders were made, the position had been filled by the successful candidate – as such, there was no vacancy to which the applicant could have been appointed, as directed by the Tribunal. In any case, the argument goes, the orders were made outside of the statutory timeframe of 45 days.

The respondent also questions the Tribunal's mandate to order its Appointments Board to employ any person. The respondent's reasoning is that the Appointments Board's power to recruit or appoint staff derives solely from an Act of Parliament. Moreover, pointing to the practical difficulties in implementing the Tribunal's orders, the respondent argues that for every vacancy that falls open, there must be funds to meet the salary and other emoluments.

According to the respondent, it is thus not possible under the existing framework to appoint the applicant to the position as ordered.[2] The respondent ends by pointing out that the application is, at any event, barred by time and should therefore be dismissed.

2 Issues for determination

1. Whether the respondent is in contempt of the Tribunal's orders, and if so, whether this application raises any issues for judicial review.

2. What remedies are available to the applicant?

2.1 Submissions of the parties

While the applicant's submissions were somewhat scanty, the arguments that were advanced do raise pertinent questions.

[2] See the Establishment Notices of the Ministry of Public Service and the Public Finance Management Act, which stipulate that no public institution shall recruit any person without ascertaining the availability of the vacancy and the wage, and obtaining clearance from the Ministry of Public Service.

Issue 1

According to the applicant, in terms of sections 55–57 of the Universities and Other Tertiary Institutions Act (UOTIA), a decision of the Tribunal must bind the respondent. Given that the powers of the Tribunal are derived from an Act of Parliament, a failure by the respondent to put the orders of the Tribunal into effect without any reason infringes the applicant's rights to a fair hearing.

But that is not all. The applicant then points out that the failure to implement the Tribunal's orders is *prima facie* evidence of an illegal exercise of power or abuse of authority. In essence, the argument is that, unless appealed against, the respondents cannot elect not to implement such orders. The implication here is that any refusal to abide by the orders of the Tribunal, or any delay in doing so, is a breach of the law which is subject to the oversight power of this court.

Issue 2

The applicant makes the point that the framework which establishes the Tribunal vests the latter with the power to protect the rights of staff members. However, the lacuna is that the same framework does not provide for an enforcement mechanism through which staff may enforce the Tribunal's orders. Accordingly, the only means by which remedies by the Tribunal may be executed is by way of judicial review compelling.[3]

[3] See Rule 3 of the Judicature (Judicial Review) (Amendment) Rules of 2019. See also *Dr. Elizabeth Kaase v Makerere University* Miscellaneous Cause No. 205 of 2018, where Ssekaana J asserts that an applicant for an order of mandamus needs to prove the existence of a clear legal right and corresponding duty on the respondent, the certainty of an act or thing, which the law requires that a particular officer should do, has been omitted by him and an alternative recourse for any remedy that inconvenient, less beneficial, or totally ineffective.

It is also maintained here, in the same breath, that once the statutory duty to implement the orders of the Tribunal to appoint the applicant as the Principal Registrar is established, it becomes easy for this court to issue the orders prayed for. It is maintained, furthermore, that this court should then direct the respondent to pay the applicant the accumulated salary difference of UGX 105,559,058 and other privileges due to him since 5 June 2018, which was the 'effective date for his appointment' by the Tribunal. According to the applicant, the prayer for general damages of UGX 300,000,000 is for the injury he had suffered because of the respondent's refusal to obey the orders of the Tribunal.

3 Submission of the respondent

Issue 1

In regard to issue 1 above, the respondent made submissions under two separate heads of arguments. The first concerns whether the respondent was in contempt of the Tribunal's ruling, and the second, whether the application itself is competent before this court.

3.1 Whether the respondent is in contempt of the Tribunal's ruling

The main argument by the respondent here is not significantly different from that of the applicant. The respondent reiterates the principle that any allegation of contempt of court must be proven under the following four circumstances:

1. the existence of an order under the authority of the court;
2. evidence that the order was served or brought to the notice of the contemnor;
3. non-compliance with the order by the respondent; and

4. the non-compliance was willful and *mala fide.*[4]

It is noted that the Tribunal's orders do not enjoy the same legal status as the orders of a High Court, which is the reason that the respondent does not wholly concede on the first and fourth elements.[5] It remains that the respondent's major contention that the alleged non-compliance with the Tribunal's orders was not willful and/or with *mala fides*, it cannot fall under the ambit of illegality and thereby trigger this court's oversight power. In furtherance of these arguments, the respondent faults the Tribunal for making its orders on 17 August 2021 – and thus outside of the 45-day rule.[6] At any event (the submission goes), the applicant should have filed the application before the Tribunal because the latter is clothed with the jurisdiction to handle the question of contempt of its own orders.[7]

3.2 Whether the application is competent under judicial review

The respondent argued that, due to the following suppositions, the application before this court is not one that falls under the judicial review framework:

1. The application was not filed within the prescribed period and no leave was granted by this court to extend it. Reference was made to the fact that the Tribunal's decision was taken on 17 August 2021, yet the application was filed on 27 September 2022, 14 months after the alleged wrong.

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[4] The respondent relied on the Supreme Court decision in *Ssempebwa & Ors v Attorney General* [2019] 1 EA 549.

[5] In terms of rule 2 of the Judicature (Judicial Review) Rules, whereas a tribunal is defined as a 'court', its decisions are in fact subject to this very court's oversight power. The Tribunal should therefore be considered as an internal dispute resolution mechanism of the respondent, one whose orders can never be equated to those granted by this court.

[6] See section 57(2) of UOTIA.

[7] See *Geoffrey Odongo & Ors v Francis Atoke and Raymond Ayebazibwe v Barclays Bank & Ors* Miscellaneous Application No. 283 of 2012, a decision on which the respondent relied.

2. The respondent did not act illegally because it did not undertake any act outside of the legal framework under which it operates.

3. On the contrary, the decision not to appoint the applicant was not intended to breach the existing legal framework under which the respondent operates.

4. A rational public officer would have taken the same course of action given that the ruling of the Tribunal was out of time, that there was no vacancy or wage, and that implementing the decision would lead to contravention of the Public Finance Management Act and other laws.

5. The respondent's actions were procedurally proper given that the respondent had not scored the pass mark of 60 per cent.

4 Addressing two preliminary points

In view of the arguments raised by the respondent, two key preliminary points are noted in regard, first, to the time limit on the application, and, secondly, the non-exhaustion of local remedies. I have elected to consider the rest of the points that may remain answered later in this ruling.

4.1 Time limit

It is pellucidly clear that an application for judicial review must be brought immediately when a decision is made, or at least within three months of the date of the decision.[8] The principle is that once time has run out for an applicant, subsequent developments cannot revive it.[9] As has been stated elsewhere, every applicant in a judicial review should always know that a judge will not easily extend the time

[8] See section 5(1) of the Judicature (Judicial Review) Rules.

[9] See *Nicholson v England* [1926] 2 K.B. 93; *Arnold v Central Electricity Generating Board*: HL 22 October 1987.

unless evidence is presented to show that there are good reasons that stopped the applicant from filing the application within the required time.[10]

In the present case, the Tribunal made its ruling on 17 August 2021, but the respondent did not implement the decision. The applicant wrote to the respondent several times – for example, on 31 August 2021, 22 November 2021, and 1 March 2022 – but the respondent did not reply to the applicant's requests.

4.2 Assessment

I continue to highlight the importance of time limits in litigation, as many other courts have done in their various ways. The view of the courts remains that a litigant cannot treat statutory time limits lightly as if they mean nothing to him or her. No matter how valid the claims may be, no colourful words will deflate the defendant's shield arising from those limitations.[11] The requirement is that permission must be obtained first from the court to enlarge the time lest the application be wrongly before court. For judges who consider time limits as auxiliary to quick justice, the approach remains that

> where rules have prescribed time for bringing an action and also the remedy for failure to bring the action in the prescribed time and a party fails to avail itself of either option, such a party cannot throw itself at the mercy of court because the court can no longer have any spare remedy to offer.[12]

[10] See *Attorney General of Uganda v General David Sejusa* (Civil Appeal 196 of 2016) [2022] UGCA 23.

[11] *Kilama-Lajul v Uganda Coffee Development Authority & Anor* (Miscellaneous Cause No. 270 of 2019).

[12] See *In the matter of an application for Judicial Review by Dawson Kadope v Uganda Revenue Authority (URA)* CV-CS-MC-0040-2019.

I do not agree that it is a correct position in law that there is no time limit within which to implement the orders of a Tribunal.[13] While it is true that the existing frameworks refer to time limits for applications rather than for enforcement, our civil rules of procedure provide separately for time limits for the enforcement of court orders.[14] That aside, the view of this court is that there is no evidence that the applicant had run out of time.

4.3 Non-exhaustion of local remedies

In its head arguments, the respondent takes the view that the applicant approached this court prematurely because he should have taken the contempt-of-orders proceedings before the Tribunal instead. This argument is an objection alluding to the non-exhaustion of local remedies. Indeed, courts in this country take exception whenever a party attempts to circumvent readily available internal dispute resolution mechanisms.[15] I have previously discussed the courts' rationale for this approach, one which to my mind is not difficult to grasp in view of the cost of litigation and the ever-increasing workloads that judges face.[16]

In regard to the rule on the exhaustion of local remedies, I myself always adopt the approach that Chenwi takes in discussing the African Court on Human and Peoples' Rights. The author's preference for a flexible approach is thus acknowledged, with the consideration, that, if no remedies are available at all to exhaust, the rule must

[13] See *Ekau v Dr. Aceng* (Misc Application No. 746/2018) 2019 UGHCCD 134 (17 June 2019) per Ssekaana J. The suggestion that the execution of a court order is open-ended is probably not good law. While it is true that any court order must be obeyed by those at whom it is directed, there are many instances in our laws of procedure where a decree under a suit can in fact become unenforceable with the passage of time.

[14] See generally section 35(1) of the Civil Procedure Act Cap 71.

[15] *Microcare Insurance Limited v Uganda Insurance Commission* CV-MC No. 218 of 2009.

[16] *Classy Photo Mart Limited v Commissioner Customs Uganda Revenue Authority* CV-MC No. 30-2009 per Kiryabwire J.

always be resolved in favour of the applicant.[17] Given the evidence that the respondent did not reply to the request by the applicant, it would be unfair to penalise the applicant for not exhausting any remedies from the Tribunal.

I hereby dismiss the two objections regarding time limits and the non-exhaustion of local remedies, and proceed to hear the application on its merits.

5 The oversight role of courts in judicial review

'Judicial review' refers to the oversight role that courts play in regard to the processes by which public bodies and public officials exercising statutory functions make decisions.[18] Courts have warned time and again that they need to tread cautiously in recognition of their own narrow mandate to exercise such oversight.[19]

As regards the nature of the remedies that are available in judicial review, many courts in Uganda have discussed this in detail. There is no doubt by now that those remedies are discretionary and in fact may not be considered at all, even when an affront to certain procedural requirements is apparent.[20]

Be that as it may, whenever decisions against public bodies are challenged on account of illegality, irrationality, or procedural impropriety, three remedies are triggered. These are (1) *certiorari,* (2) mandamus*,* and (2) prohibition. Each of the writs available in judicial review operates differently depending on the act complained of. In this case, the focus is on the remedy of mandamus.

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[17] Chenwi L 'Exhaustion of local remedies rule in the jurisprudence of the African Court of Human and Peoples' Rights' *Human Rights Quarterly John Hopkins University Press* 41(2) May 2019 pp. 374–398.

[18] See *Oyaro John Owiny v Kitgum Municipal Council* MC No. 0007 of 2018.

[19] See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24, 40–41, which cites *Wednesbury Corporation* [1948] 1 KB, 228.

[20] See *Credit Suisse v Allerdale Borough Council* [1997] QB 306 at 355D.

6 The nature of the complaint before this court

It is noted that the applicant's complaint hinges largely on illegality as a ground for judicial review because of the respondent's alleged refusal to implement a lawful order of an adjudicating body, namely the Tribunal. Features of the supposed irrationality of the respondent's decision must be examined too.

6.1 Illegality of the decision

'Illegality' occurs when the decision-making authority commits an error of law in the process of taking or making the act. Illegality as a ground in judicial review entails that the decision-maker is aware of the legal regulatory framework that may limit his or her decision-making power but nonetheless elects to circumvent it.[21]

The complaint here is that, in terms of the provisions dealing with the establishment of the respondent's Tribunal, the respondent must abide by the Tribunal's orders as a matter of law.[22] Thus, non-compliance with the Tribunal's decision without any reason is unfair and a breach of the applicant's rights to a fair hearing. In turn, such breaches are *prima facie* evidence of an illegal exercise of power or abuse of authority that may be subjected to the oversight function of this court. The respondent does not take this manner of reasoning lightly, and insists that the decision not to appoint the respondents was, in the main, intended to prevent the possibility of contravening the existing frameworks.

The question of whether the respondent's action was illegal turns around the question of contempt of the Tribunal's orders. In my view, the answers to these questions are not overtly clear. Just because the Tribunal's orders had not been

[21] See *Council of Civil Service Union v Minister for Civil Service* [1984] 3 ALL ER 935 at 950 per Diplock J.
[22] Sections 55–57 of UOTIA.

implemented for one reason or another does not by itself trigger an oversight role for this court unless four conditions are met. The examination of these four conditions inevitably deals with the ground of irrationality.

6.2 Irrationality of the decision

A decision is irrational if it is so 'out-of-this-world' that no sensible person would have made a similar decision on the facts available at the time. It is important to avoid failing into the usual traps here: simply because a decision is wrong does not make it irrational, unless of course it is 'unreasonably' wrong.[23]

This court does not need to pour a lot of ink on the meaning and parameters of the term 'tribunal' in order to determine if a person who defies any of a tribunal's orders and decisions may ultimately be in contempt. Indeed, there is sufficient guidance from the courts as to what that the term means, with the upshot of it being that a tribunal is in many instances like a court of law.[24]

Before a court of law can consider a complaint of contempt of court orders, there must be an order of the court; the persons against who it has been made must be aware of the order; and the person against whom the order was taken out must have disobeyed it. The operative criteria are that the failure to comply with the orders of a court was deliberate, unjustified, and done with *mala fide*.[25] The views of Bashaija

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[23] See *Council of Civil Service Union op cit* at 950 per Diplock J.

[24] See *Lukyamuzi v Attorney General Electoral Commission* (Constitutional Appeal No. 2 of 2007) 2010 UGSC 52 (31 March 2010) per Tumwesigye JSC (as he then was), who relied extensively on the *Oxford Advanced Learners' Dictionary* of *Current English* (Sixth Edition) to define the term 'tribunal' with reference to a court that is sitting in judgment in a particular depute before parties or a person that has been given authority to resolve a dispute.

[25] *Ssempebwa op cit.* See also *Stanbic Bank (U) Ltd & Anor v The Commissioner General*, URA MA 42 of 2010**.** All the authorities cited by this court are concerned with alleged contempt of the High Courts' own decisions and not the decisions of other quasi-judicial bodies.

J on the uncompromising nature of the obligation to obey court orders are considered good law. It is argued that a court of law should rarely accept any excuse that may justify why its own orders have been defied.[26] The reason for this position is not hard to fathom: its overriding consideration is to safeguard the rule of law and the integrity of courts.[27]

6.3 Examination

It is a given that decisions of the Tribunal are binding on the respondent and its staff. In terms of section 57(2) of UOTIA, the Tribunal is vested with the power to 'confirm, vary, amend, or set aside' the decision of the University Appointments Board or '*give such decision as it thinks appropriate'* [emphasis added]. It is also noted that in terms of section 57(3) and (4) of UOTIA, any staff of the university that is dissatisfied with a decision of the Tribunal may approach the High Court for the usual judicial review remedies.[28]

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[26] *See Erasmus Masiko v John Imaniraguha, Christopher Mulenga & Commissioner Land Registration* High Court Misc. Appn. No. 1481 of 2016. In this case, the judge wholly adopted the reasoning of the court in *Hadkinson v Hadknison* [1952] 2 All ER 567. The use of the word 'rarely' here suggests that there are some instances where the general rule above may be departed from if good reasons exist.

[27] See *In the Matter of Collins Odumba* [2016] eKLR per Marete J. This decision relies on *Johnson v Grant* 1923 SC 789.

[28] Section 57 of the UOTIA provides:

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 (sic) confirm, vary, amend or set aside the decision appealed against or give such decision as it thinks appropriate.
3) *A member of staff* [emphasis added] 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.
4) On an application to the High Court under this section, the High Court may make such orders as it may consider just.'

The assertion that a serious jurisdictional question hindered the respondent from implementing the decision of the Tribunal given the statutory 45-day rule is an argument that cannot be dismissed easily. It is a given that any breaches to statutory time limits will always attract serious sanctions by court.[29] In any case, there are sufficient other rational considerations, discernible from the averments in motion and the reply thereto, as to why the Tribunal's orders were not implemented.

Once these reasons are considered valid, then the last element of contempt of the Tribunal's orders must fail. What remains is for the respondent to demonstrate that there were good and justifiable reasons by not to implement the Tribunal's orders. It must also be demonstrated that the decision not to implement those orders was without any malice.

6.4 Discussion

This court notes that the respondent had no vacant positions with which to cater for the Tribunal orders, since the orders were issued three years after the appointments were made. The reasoning of the respondent was that it had to consider the availability of a vacancy and wage, and obtain clearance from the Ministry of Public Service. The following five specific reasons advanced by the respondent are considered:

In *James Kisoro v Makerere University and 4 others* Miscellaneous Cause No. 162 of 2021, Ssekana J took a strict approach by holding that the university could not exercise its right to challenge the Tribunals' decision at all. He held that '[it] is only the staff member who may apply for judicial review to challenge the tribunal decision'. It cannot be true that the phrase 'a member of staff', as used in subsection 3 of section 57 of UOTIA, can extinguish the right of the university to challenge the decisions of the Tribunal under the ordinary rules of judicial review. In my view, given the more liberal tenor of the current framework, any person can in fact challenge a decision of a public body so as long as sufficient interest is demonstrated. See note 3.

[29] See para 4.2 of the ruling.

1) Since 2018, there have been no additions to the respondent's organisational structure to cater for the orders of the Tribunal.

2) The payment of the salary of the applicant in retrospect would contravene section 79 of the Public Finance Management Act.

3) The retrospective appointment inevitably would compel the respondent to pay a salary difference for services not rendered, considering the outcome-based budget that the respondent operates under.

4) The evidence shows that the applicant scored a 50 per cent mark during the interview for the position of Principal Registrar, yet the required pass mark was above 60 per cent.

5) Complying with the Tribunal's orders would not only set a dangerous precedent, but also pose a risk of numerous legal actions by other candidates who in fact had performed better than the applicant.

7 Decision

In view of the five considerations above, I now must decide whether the decision by the respondent not to implement the Tribunal's orders was 'willful', 'unlawful' and with '*mala fides'*.[30] When applied to the complaint before this court, the cumulative meaning of these words would suggest that in not implementing the Tribunal's orders, the respondent's decision must have been intentional, contrary to the law, and made with spite against the applicant.

[30] See Bryan G (ed) *Black's Law Dictionary* West: Thomson Reuters 1999, which defines the words 'willfully' with reference to a deliberate act intended to hurt another regardless of the consequences; 'unlawful' with reference to doing something that the law does not permit or approve of; and '*mala fides'* with reference to a deceitful act.

I have considered the evidence that, to help it determine the applicant's appeal, the Tribunal had requested information about the respondent's staffing structure in the office of the Academic Registrar, but without success. While this may pass as evidence of intransigence on the part of the respondent, I do not accept that such intransigency can also be construed as evidence of intent not to comply with the later orders of the Tribunal.

There are many reasons for this view. Notably, there is evidence that the respondent was constrained by other legal frameworks that indeed make it an offence to spend money without an approved budget and activity. In fact, in terms of the principles of public finance, an accounting officer who breaches this legal requirement commits an actionable wrong and is personally liable.[31]

I now turn to the last element, namely whether the respondent's decision not to implement the Tribunal's orders was with any malice. I have considered the evidence that only candidates who scored a mark of 60 per cent or above could be appointed to the position. The dilemma then would be that, were the respondent to have appointed the applicant as Principal Registrar, other candidates who also failed the interviews could approach the Tribunal for consequential orders. The spectre this raises is a situation in which the respondent's job placement structures and budget inevitably become bloated and impossible to operate. In my view, considering these risks, are sufficient rational reasons explaining the failure to implement the Tribunals orders.

The final orders are that the application fails and is therefore dismissed with no orders as to costs.

[31] See section 43 of the Public Finance and Accountability Act No. 6 of 2003 and Rule 26 of the Public Finance and Accountability Regulation SI No. 72 of 2003.

Douglas Karekona Singiza

Acting Judge

23 February 2024