

**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE: CLAIM NO. 043 OF 2016 ARISING FROM HCT-CS 0015 OF  
2013**

**SEMPIIRA JOHN BAHATI .....CLAIMANT**

**VERSUS**

- 1. MASAKA MUNICIPAL COUNCIL ..... RESPONDENT**
- 2. MASAKA DISTRICT LOCAL GOVERNMENT**

**BEFORE**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

- 1. MR. ANTHONY WANYAMA**
- 2. MS. ROSE GIDONGOS**
- 3. MR. EBYAU FIDEL**

**AWARD**

The claimant brought this case against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for;

- a) A declaration that his reduction in rank by the 2<sup>nd</sup> Respondent Service Commission from senior internal Auditor U3 to Internal Auditor U2 was illegal

- b) A declaration that the 1<sup>st</sup> Respondent's town clerk's implementation of the demotion was illegal
- c) An order that the claimant be reinstated to his post of senior Internal Auditor scale U3U and be paid his remuneration from the time of his demotion,
- d) General damages
- e) Costs of the suit

### **BRIEF FACTS**

The claimant was employed by the 1<sup>st</sup> Respondent as a Senior Internal Auditor scale U3U having been appointed on promotion on the 3/03/2006.

The IGGs report implicated him in a case of abuse of office, authority and embezzlement of funds by Masaka Municipal Council officials. The Chief Administrative Officer (CAO) was directed by the Permanent Secretary Ministry of Local Government to take disciplinary action against him. The CAO submitted him for disciplinary action before the District Service Commission (DSC) of Masaka District.

The Commission demoted him and he challenged the decision of the DSC hence this suit.

The Respondents denied involvement in the demotion but admitted issuance of DSCs decision and in the alternative and without prejudice they contended that the demotion was proper and lawful. That the suit was without basis, premature, frivolous and vexatious.

### **ISSUES**

At scheduling the parties agreed on the following issues:

1. Whether the claimant was lawfully demoted by the 2<sup>nd</sup> respondent from the rank of Senior Internal Auditor U3 to Internal Auditor U4?
2. Whether the 1<sup>st</sup> respondents Town Clerks implementation of the demotion was lawful?
3. What are the remedies available?

## EVIDENCE

At the hearing the claimant was the sole witness of his case while the respondents called 3 witnesses including the Secretary to the District Service commission, the Deputy Chief Administrative Officer Masaka District and the Town Clerk Masaka Municipal Council.

It was the claimant's case that he had worked as Senior Internal Auditor of the 1<sup>st</sup> Respondent for 14 years. According to him he worked diligently and at all times abided by the laws and regulations governing his office.

He testified that the IGGs report had exonerated him therefore the CAOs action against him was illegal and irregular. He said that although the CAO acted on the directive of the Permanent Secretary, Ministry of Local Government the directive was illegal.

In his opinion the Permanent Secretary should have directed the Town clerk and not the CAO because the Town Clerk was his supervisor and not the CAO.

He further testified that he was aware of the allegations levied against him and he had appeared before the Commission and defended himself. He got to know that the Commission had demoted him on 13/10/2010.

It was his testimony that the IGGs report had found him incompetent and lacking capacity because of his involvement in Okaying irregular expenditure. He admitted to his participation in mobilising funds without disclosing their sources .He testified that the funds were meant to facilitate Ministry of Local Government staff who were coming to inspect the Municipal Council. It was his testimony that this was his third appearance before the Commission, the previous two occasions having been due to his failure to scrutinise the personnel department hence loss of funds through erroneous payments of nurses salary arrears- he was cautioned and the second time, on allegations of shooting a Member of Parliament who was allegedly having an affair with his wife - he was arrested by the police and the reprimanded by the commission.

According to him Masaka Municipal Council erred when they communicated to him the decision to demote him and yet they were not the ones who had not submitted him to the Commission for disciplinary action.

It was his testimony that the CAO had no powers to direct a Town Clerk because the Town Clerk was self-accounting.

The respondents through, RW1, Nakabuye Phiona, who in her written and oral testimony testified that she was a Personnel Officer and served as secretary to the District Service Commission which role included giving Legal advice.

It was her testimony that the Commission had received a submission from the CAO to take disciplinary action against the claimant. That the disciplinary hearing was based on the IGGs Investigation report on abuse of office and embezzlement by the Municipal Council Officials' and it had implicated the claimant. The report had

implicated the claimant in a case of diversion of funds to bribe inspectors from the Ministry of Local Government. It was her testimony that the claimant was demoted by the DSC and its decision was implemented by the Town Clerk.

She further testified that the decision to demote the claimant was arrived at after considering his written response to the allegations, his record, the record of passed appearances before the Commission and interrogating him.

RW1 also testified that the claimant had failed as an Internal Auditor, to provide the necessary guidance to prevent the loss of funds and instead was involved in the misuse of the funds he was supposed to secure. She confirmed that the Town Clerk was the claimant's immediate supervisor.

RW2 : Mr.Semwogere Fredrick the Deputy CAO represented the CAO in this matter. In his written testimony and in cross examination, he testified that according to Section 64 of the Local Governments Act CAP 243, the CAO was the head of Public Service at the District and was supervisor of all local governments Public Servants in the District including the claimant. He said the CAOs role was to ensure effective implementation of all Government programmes.

He testified that the CAO had been directed by the Permanent Secretary to implement the recommendations in the IGGs report and that as head of administration at the District he was mandated to make the such submissions to the DSC for disciplinary action to be taken.

RW2 further testified that a Municipality was under a District and it was considered a lower local government.

It was his testimony that the CAO as head of Public Service in the District, supervised the Town Clerk although , the Town Clerk, also reported to the PS Ministry of Local Government. He said the town Clerk was independent of the CAO.

He further testified that the submission the CAO made to the Commission was lawful, because the Town Clerk and the whole of the Municipality Management had also been implicated in the IGGs report. The CAO had to therefore step in as the head of Public Service and under the instruction from the PS he had to submit the claimant to the DSC. In his opinion the claimant should have sued the IGG or the PS and not the respondents.

RW3: Mr Ahibisibwe Innocent testified that he was the Town Clerk of Masaka Municipal Council the 1<sup>st</sup> Respondent. In his written testimony and in cross examination, he testified that as Town Clerk reports to the Permanent Secretary Ministry of Local Government.

He testified that he had communicated the decision of the DSC to the claimant.

It was his testimony that at the time the CAO made the submission to the DSC the Town Clerk had been dismissed and the position was vacant although the Deputy Town Clerk was in office but had no instructions regarding the claimant's case.

He further testified that the decision to demote the claimant was made after he had been appointed the new Town Clerk of Masaka Municipal Council and that's why the decision was given to him to communicate to the claimant. He said the CAO was instructed by the PS in writing and the letter was on court record.

It was his testimony that the procedure for submission would have been for the Town Clerk to make a formal submission to the DSC clearly stating the offence committed and its basis then the DSC makes an independent decision.

He further testified that the claimant should have raised his grievances about the DSCs decision to the Public Service Commission but he did not. In his opinion the claimant was suing a wrong party.

### **SUBMISSIONS.**

Both parties filed written submissions for which the court is grateful. The claimant was represented by Learned Counsel Tusingwire Andrew and the Respondents by Learned state Attorney Mwebaze Ndibarema.

#### **1. Whether the claimant was lawfully demoted by the 2<sup>nd</sup> respondent from the rank of Senior Auditor U3 to Internal Auditor U4?**

Mr. Tusingwire Counsel for the claimant contended that the Respondents had not controverted the claimant's evidence about him formally denying the allegations against him, about the illegality of the CAOs subsequent submission of the claimant to the DSC of the 2<sup>nd</sup> respondent and the unlawful implementation of the DSC decision by the Town Clerk of the 1<sup>st</sup> respondent. Counsel argued that it was the Town Clerk who is the accounting officer of the Municipality and thus he should have been the one to submit the claimant to the DSC and not the CAO. He contended that the submission of the claimant to the District Service Commission by the CAO was unlawful and irregular because it was contrary to section 55(4) and 65(2) of the Local Government Act Cap 243.

Section 55(4) provides that:

***“The District Service Commission shall in relation to its functions spelt out in subsection (1) act only upon the request and submission of the accounting officer.”***

And

Section 65(2) provides that:

***“The Town Clerk shall be the head of the administration of the relevant urban council and shall be responsible for the expending of the councils funds and be accounting officer of the relevant Council.***

He further contended that the CAO should have referred the unlawful directive back to the Permanent Secretary Ministry of Local Government. Counsel argued that the CAO was aware he had flouted the rules of procedure because in his letter marked annex “E” he directed the Acting Town Clerk to implement the decision of the DSC and in his view he should have done the same at the time of making the submission. He asserted that the rules of procedure as laid down should be observed and followed by Public Officers at every level and the violation of the same led to unlawful demotion of the claimant.

Mr. Mwebaze Learned Counsel for the respondents on the other hand contended that the origin of the submission was the report of the Inspector General of Government (IGG) which drew its mandate and power from the Constitution of the Republic of Uganda 1995 as Amended and the Inspectorate of Government Act No. 5 of 2002. He submitted that the IGG had power to investigate, cause investigation arrest, cause arrest, prosecute, cause prosecution among others, in respect of cases involving corruption, abuse of authority or public office. The IGG also had jurisdiction over all leaders and public officers serving in various offices including a

local government council or local government unit or committee of such council or unit including the claimant.

He refuted the assertion that the submission to the DSC could only have been made by the Town clerk and not the CAO because section 55(4) does not expressly bar the CAO from making a submission in a case arising from a Municipal Council neither does it render a decision arising out of such submission null and void.

It was Counsels submission that the CAO was answerable to the Permanent Secretary Ministry of Local Government, he was under the instructions of the PS and was thus obeying the lawful orders of the PS, who was his supervisor.

Counsel Submitted that PW2 had stated in his testimony that by the time the CAO received instructions from the PS the Town Clerk who was among the Officers implicated in the IGGs report had been dismissed. As head of Public Service of the District therefore, he had to fill the Gap and make the submission.

Counsel asserted that Section 64 of the Local Governments Act clearly stipulates that the CAO is the head of Public Service of a district and it mandates him or her under subsection (1) (a) to;

***"...give guidance to the Local government Councils and their departments in the application of the relevant laws and policies ...***

***(c) ... supervises, monitor and coordinates the activities of the District and lower Councils employment and departments and ensuring accountability and transparency in the management and delivery of councils services..."***

***And under subsection (3a) ... to initiate disciplinary action and all submissions in respect of all the Town clerks of Town Councils and Town Boards ..."***

The above sections according to counsel meant that the CAO supervises the claimant among other employees of the District. It was counsel's submission therefore that the CAO in making the submission was only fulfilling his obligation under the law.

On whether in demoting the claimant the rules of natural justice were observed

Counsel for the claimant did not submit on this point. Counsel for the respondent on the other hand highlighted Article 28 (1) of the constitution 1995 which is the basis of the principle underlying the right to a fair hearing before courts and tribunal established by law, Article 42 which provides for the same principle to be applied in Administrative proceedings, and Section 66 of the Employment Act which makes a fair hearing mandatory in disciplinary hearings. Counsel also highlighted case law.

It was his submission that the claimant in his testimony had shown that he had been heard by a properly constituted panel, the DSC, that he knew the charges that had been levied against him, that he was given adequate time to prepare his defence and he did defend himself. He prayed that court therefore determines this issue in the negative.

**Whether the 1<sup>st</sup> respondent Town Clerk implementation of the demotion was lawful?**

Counsel for the claimant insisted that the claimant's submission to the Commission was unlawful and it therefore followed that the Commission's decision and its implementation was unlawful.

Counsel for the respondent reminded Court that he had already submitted that under section 64 of the Local Governments Act, the CAO as head of Public Service at the District, had the mandate to supervise all staff of the District including the Town Clerk. He asserted that in communicating the decision of the DSC through the Town Clerk the CAO was simply exercising his supervisory role to delegate the Town Clerk. In his opinion that in the premises, the Town Clerk could not be faulted for following the lawful directives of his supervisor.

## **RESOLUTION**

We have considered the able submissions of both counsel and now proceed to carefully analyse the case before us.

From the record and in evidence before this court, it is not disputed that the claimant was demoted from the rank of Senior Internal Auditor to Internal Auditor of the 1<sup>st</sup> respondent. The demotion was due to findings by the IGG that he had been involved in the diversion of the 1<sup>st</sup> respondents funds. It is also not disputed that his name was submitted to the DSC for disciplinary action by the CAO of the 2<sup>nd</sup> respondent and the DSC decision was communicated to him by the Town Clerk of the 1<sup>st</sup> respondent.

The claimant contended that the CAOs submission was unlawful because the CAO was not his supervisor and therefore the submission the CAO of the made to the DSC was unlawful. In his opinion the submission to the DSC should have been done by the Town Clerk who was his immediate supervisor. The claimant also believed that the Town Clerk should not have implemented the CAOs directive to communicate the DSC decision to him because the Town Clerk was not the one who had made the submission in the first place.

**We shall start by answering the question whether the claimant was lawfully demoted by the 2nd respondent from the rank of senior Internal Auditor U3 to Internal Auditor U4?**

Section 64 (1) ( c) of the Local Government Act CAP 243 (supra) clearly provides that the CAO is the head of Public Service in the District and the head of administration in the District Council and shall be the Accounting officer of the District. Section 64(2) (c) sections further stipulates as one of his functions, the function to ***“Supervise, monitor and coordinate the activities of the District and lower local council’s employees (our emphasis) and departments and to ensure accountability and transparency in the management and delivery of the Councils services...”***

Subsection 3(a) of the Local Government Amendment Act 2010 further empowers the CAO as follows;

***“...the chief administrative officer shall initiate disciplinary action and make submissions in respect of Town clerks and town boards...”***

The record shows that the Permanent Secretary Ministry of Local government had directed the CAO to implement the IGGs report by taking disciplinary action against the claimant. The claimant was among the top management officers of the 1<sup>st</sup> respondent who were implicated in the report in a case of diversion of the 1<sup>st</sup> respondent’s resources. Following this directive the CAO requested the claimant to respond to the allegations and the submitted him to the DSC for further action. The Town Clerk had also been implicated and later dismissed.

We have scrutinised the Local Governments Act and find no provisions precluding the CAO from taking action which he took in this case. The CAO is the head of Public

Service and head of Administration in the district. One of his key functions is to monitor and supervise among others the District employees and ensure proper management and accountability in the District including the Municipality.

We have no doubt in our minds that the CAO lawfully exercised his mandate to submit the claimant to the DSC for disciplinary Action.

Having resolved that the CAO had not erred in submitting the claimant for disciplinary action, we now proceed to resolve whether the claimant was actually lawfully demoted. Counsel for the claimant argued that the by wrongfully submitting the claimant to the DSC the CAO had caused him to be wrongfully demoted.

Counsel for the respondents on the other had asserted that the respondents had taken cognisance of the importance of the Principles of Natural Justice by giving the claimant a fair hearing in accordance with Article 28 (1) and Article 42 of the Constitution of the Republic of Uganda 1995 as amended, case law and Section 66 of the Employment Act which makes a fair hearing mandatory in disciplinary hearings and this was not disputed by the claimant. Counsel had established that the claimant had been given a fair hearing by highlighting the claimant's testimony in his submissions. This evidence was not controverted by the claimant. On the basis of this evidence we find that the claimant had a fair hearing of his case.

The claimant during cross examination said the IGG had faulted him for failing to advise the management of Masaka Municipal Council as Senior Internal Auditor which lead to the loss of the 1<sup>st</sup> respondents funds. The claimant admitted to his participation in the diversion of the funds. He said:

***“... the gist of the matter is double payment of salaries... it was agreed to mobilise funds without disclosing the source of the funds...”***

The claimant as the Senior Internal Auditor of the 1<sup>st</sup> respondent was expected to raise a red flag or use his “green pen” to prevent this, but instead he facilitated the diversion! The manual on the **PUBLIC SERVICE JOB DESCRIPTIONS AND SPECIFICATIONS FOR JOBS IN LOCAL GOVERNMENTS** provides that the purpose of the Senior Internal Auditor is ***“to pre- audit payments to ensure compliance with accounting principles and regulations and monitor and examine operations to ensure value for money.”***

The claimant failed to play this role hence the loss of 1<sup>st</sup> respondent funds. It is our considered opinion that the DSC acted with leniency because what the claimant did amounted to causing financial loss to the 1<sup>st</sup> respondent, which is an offence under the Anti- corruption Act with a penalty of imprisonment. The Commission only demoted him. The claimant had the responsibility to secure the 1<sup>st</sup> respondents resources but he failed in this responsibility.

We therefore find that his demotion was lawful and he should count himself lucky because he could have been prosecuted for causing financial loss to the 1<sup>st</sup> respondent. His prayer for reinstatement to the position of Senior Internal Auditor is therefore denied. This issue is determined in the negative.

**On whether the 1<sup>st</sup> respondent’s town clerks implementation of the demotion was lawful?**

We have already resolved that the claimant’s demotion was lawful and that the CAO had the mandate and power to supervise all District staff including the claimant. By virtue of Section 64(3a) of the Local Government Amendment Act

2010, the Town Clerk is answerable to the CAO and is therefore obliged to obey the CAO directives. In the premises the Town Clerks issuance of the District Service Commission's decision to the claimant was lawful. This issue is also decided in the negative.

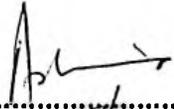
**What are the remedies available?**

We found that the claimant had been lawfully demoted. We also found that the implementation of the demotion by the Town Clerk was lawful, therefore his prayer for general damages, remuneration from the time of his demotion and reinstatement to the position of Senior Internal Auditor are denied.

**CONCLUSION**

The Claim fails and no order as to costs is made.

Signed:

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE ..... 
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA ..... 

PANELISTS

- 3. MR. ANTHONY WANYAMA
- 4. MS. ROSE GIDONGOS
- 5. MR. EBYAU FIDEL



DATE: ... 27<sup>th</sup> Oct / 2016 .....