

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-MA-0039-2004**

(Arising From HCT-05-CV-MA-33-2004)

IN THE MATTER OF RULE 5 OF THE LAW REFORM  
(MISCELLANEOUS PROVISION) (RULES OF COURT) RULES S. 1.74— 1

AND

IN THE MATTER OF AN APPLICATION FOR THE PREROGATIVE WRIT OF  
MANDAMUS AND PROHIBITION BY:

WAMARA CHRISTINE .....APPLICANT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

**RULING**

This is an application by Wamara Christine seeking the following orders:

- (i) The prerogative writ of mandamus commanding the Headmaster of Ntare School to assign responsibility to the applicant.
- (ii) The prerogative writ of prohibition stopping the Headmaster of Ntare School from evicting the applicant from the staff house the applicant is occupying and from removing the applicant from the staff pay roll.
- (iii) The costs of the application be borne by H. K. B. Ahimbisibwe, the Headmaster of Ntare School.

Following is the background to this application. In 1996 the applicant joined the staff of Ntare School as a Grade V teacher. For some unclear reasons her status has remained that of a non graduate teacher despite a Bachelor of Education degree the applicant obtained from Makerere University in the year 2001. In October 2002 the applicant left the school to study for a Masters'

degree in Human Rights. There is no evidence she obtained permission from the Headmaster before she left the school for the purpose. This is a requirement under the Teaching Service Commission (Amendment) Regulations, 1996. On 9th July 2003 the Headmaster of Ntare School on instructions of the Board of Governors wrote to the applicant indicating that no evidence existed that the applicant had been granted study leave. The letter, Annexure 'B' to the affidavit of Humphrey Ahimbisibwe, asked the applicant to produce documentary evidence of the same, if any, if she was not to be treated as one who had absconded from duty. The applicant was to produce such evidence not later than 30th July 2003. Apparently that evidence has never been produced. Annexure 'E' to the affidavit of Humphrey Ahimbisibwe is a letter from the Permanent Secretary, Ministry of Education and Sports. It too seeks evidence of grant of study leave from the applicant if she was not to be treated as one who had absconded from duty. That letter was written on 20th February 2004, six days prior to these proceedings being set in motion.

I shall start with the third remedy prayed for. It seeks for costs of this application to be borne by H. K. B. Ahimbisibwe, the Headmaster of Ntare School. Respectfully, I do not find it shown anywhere that that personality is party to the proceedings. Ahimbisibwe, the Headmaster of Ntare School wrote for or on behalf of the Board of Governors of Ntare School. Section 8 (2) of the Education Act, Cap 127 of the Laws of Uganda states in part:

‘A board of governors established under sub-section (1) shall, by the name of the school or group of schools for which it is established, be a body corporate having perpetual succession and a common seal, and may, in its corporate name sue and be sued,...’

I am persuaded by the submissions of counsel for the respondent that H. K. B. Ahimbisibwe, the Headmaster, in the circumstances is not a party to the proceedings and there is no basis for him to bear costs of the application. The prayer should fail.

Concerning remedies (i) and (ii) shown above I have already related to the genesis to this application. There is yet to be a response to the request for documentary evidence of grant of permission to the applicant to go on study leave. Since its production is in abeyance probable consequences of its production or non-production are uncertain. In the event grant of the remedies prayed for would be premature. Section 36 (2) of the Judicature Act is instructive:

‘No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.’

The emphasis above is added.

Consequently, after reading the submissions of both counsel, the pleadings and the relevant correspondence which is part of the pleadings I am inclined to withhold the orders prayed for.

This application is dismissed with costs.

P. K. Mugamba

Judge

30th August 2004

Applicant in court

Mr. Ngaruye for the applicant

Mr. Kwizera holding brief for Mr. Kwesiga for respondent

Ms Tushemereirwe court clerk/interpreter

Court:

Ruling read in open Court.

P. K. Mugamba

Judge