

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISC APPL NO. 02-CV-MA-0058-2004

ISODO ABDUL **APPLICANT**

=VERSUS=

ARUA DISTRICT LOCAL)
GOVERNMENT)**RESPONDENT**

BEFORE: HON JUSTICE AUGUSTUS KANIA

RULING

The applicant, who is the Chief Administrative Officer of Arua District, brought this application purportedly under the provisions of section the Civil Procedure (Amendment)(Judicial Review) Rules 2003. The relevant Law under which this application should have been brought ought to have been section 36 of the Judicature Act and Rule 6(2) (b) of Order 42 A of the Civil Procedure (Amendment) (Judicial Review) Rules S .1. 75 of 2003. Though the enabling law for this application has not been cited I shall proceed to consider the application as if it had been brought under the relevant enabling law in the spirit of administering substantive justice in the spirit of Article 126(2)(e) of the Constitution of Uganda.

The applicant seeks for the following:-

1. That the proceedings of the Respondent's Council of the 23rd October 2003 and the subsequent interdiction of the applicant be quashed
2. That the interdiction of the applicant be declared null and void for illegality and breach of the principles of Natural Justice.
3. The applicant be reinstated as the Chief Administrative Officer of Arua District.
4. That the applicant be granted general and exemplary damages
5. That the costs of this application be provided for.

The application which is supported by the affidavit of the applicant dated 31st May 2004 and the applicant's supplementary affidavit dated 25th February 2005 is founded on the following grounds.

- c) That the interdiction of the applicant was done without following the legally set procedures

- d) That the said interdiction was unlawful and was contrary to the principles of natural justice
- e) That the interdiction amounts to victimization of the applicant and should be called and quashed.
- f) The applicant has been put to shame and disrepute and has suffered much inconvenience.

The respondent filed the affidavit of Constantine Imbatia in reply in which he contended the application is bad in law and barred by law, premature, frivolous and vexatious and should therefore be dismissed.

The brief back ground of this application is that in December 2002 the Council of the Respondent appointed a select committee to investigate alleged bad and deteriorating relations between councilors and technocrats and between technocrats themselves in the District to save it from disintegrating. The said Committee came up with its findings including allegations of abuse of office and incompetence against the applicant. The speaker of the Respondents council brought the contents of these allegations to the notice of the applicant and the applicant defended himself before the council meeting of the 29th and 30th April 2003 and the council purportedly forgave the applicant on condition that he did not repeat the alleged mistakes. On the 23rd October 2003 at a meeting in which the applicant was not in attendance and following communication from the chair to the effect that the officers implicated in the select committee report had not reformed, the council resolved to refer the select committee's report to the chairman District Service Commission. On receipt of the said select committee's report the chairman of the District Service Commission interdicted the applicant on the 19th day of February 2004 hence this application.

Mr. Donge, learned counsel for the applicant submitted that the Respondent's council resolved to refer the Select Committee's report to the chairman of the District Service Commission contrary to the principles of natural justice - audi alterem - in that the applicant was not given an opportunity of defending himself at the proceedings of the

23rd October 2003. Counsel contended that on the authority of **Marko Matovu & ors Vs Mohamed Sseviri & Anor Civil Appeal No. 7/78** and on the strength of **Article 21 of the Constitution of Uganda** the decision of the Respondent's council to refer the Select Committee's report to the Chairman District Service Commission without hearing the applicant was null and void. He also submitted that the same decision was also null and void because contrary to Section 55(4) of the Local Government's Act the Respondent's council did not refer the Select Committee's report together with a request for the type of action to take, Mr. Donge also contended that the resolution to refer the Select Committee's report was null and void for the additional reason that it was not supported by 2/3 of the council as provided for under Section 68(1) of the Local Government's Act. He argued that the assertion that the resolution to refer the report was unanimous is not expressive of the 2/3 requirement. Counsel also made reference to the supplementary affidavit sworn by the applicant which cited the L.C.V Chairman disowning the resolution as something doctored. Mr. Donge prayed that the applicant be awarded shs 80,000,000/= as general damages for mental pain and anguish and for defamation and shs 500,000/= in exemplary damages for illegal wanton and unconstitutional acts of the respondent. He also prayed that the application be granted with costs to the applicant.

Mr. Alaka, learned counsel for the Respondent, submitted that the Respondent's council had no authority to absolve or discipline the applicant and therefore there was nothing wrong in the council not telling the District Service Commission what to do when it forwarded to it the Select Committee's report. He argued that whereas the Local Governments Act lays down the procedure for the removal of a Chief Administrative Officer, there is no procedure as to how disciplinary control over a Chief Administrative Officer is to be exercised. Mr Alaka argued that because the District Service Commission exercises disciplinary control according to regulations governing its meetings the presence of the applicant was not required when he was interdicted. He contended that because the exercise of interdiction did not require fair hearing as was held in **Misc. Application No 851 of 2004 Cheborion Barishaki Vs the Attorney General**, the prayer to quash the interdiction should be rejected. Counsel for the Respondent submitted that it is superfluous to ask for the reinstatement of the applicant as the CAO since he has not been removed from office as indeed he himself describes himself in his motion as the Chief Administrative Officer of the Respondent District. He

argued that the claim of general damages in defamation is not maintainable because defamation should form a separate cause of action. Counsel submitted that the document to the supplementary affidavit be rejected because it offends section 60 of the Evidence Act. He prayed that the application be dismissed with costs.

The prerogative orders of Certiorari and prohibition are the means by which the High Court exercises its Supervisory jurisdiction over proceedings and decision of inferior courts, Tribunals and other bodies or persons who carry out quasi judicial functions or who are charged with the performance of public acts and duties. They serve as a control of Administrative action and decisions of Public bodies which affect the rights of the ordinary citizens. These prerogative orders are not intended to hinder the smooth running of Administrative machinery.

The scope of the order of certiorari is two fold;-

- a) To quash decisions which are ultra vires and void and therefore nullities in law.
- b) To quash decisions which are intra Vires but have an apparent error on the face of the record and have been irregularly arrived at and are therefore voidable.

The right and the reasons for which an individual may apply to the High Court for the prerogative order of Certiorari are contained in **Article 42 of the Constitution of Uganda which provides as follows:-**

‘42 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 decisions taken against him/her’ .

That the fair treatment envisaged in the above Article entails the right to be heard is clearly stated in the speech of **Lord Denning M.R in Breen vs. Amalgamated Engineering Union[1971] I All ER at page 1153 cited with approval in Marko Matovu and Ors vs. Mohamed Sseviri & Anr CACA 7/1978** at page 9;-

‘It is now well settled that a statutory body which is entrusted by statute with discretion must act fairly. It does not matter whether its functions are described as Judicial or quasi judicial on the one hand or as administrative on the other

hand or what you will still it must act fairly. It must in a proper case give a chance to be heard. '

In the instant case the Select Committee of the Respondent's council compiled a report accusing the applicant of abuse of office, corruption, incompetence's and misconduct. The said Select Committee also recommended to the Respondent's council that it takes appropriate action against the applicant under section 69(1) of the Local Government Act which is now section 68(1) of the said Act in the Laws of Uganda 2000, dealing with the removal of a Chief Administrative officer or a Town clerk from office. The said report is Annexure 'A' to the application.

The applicant was invited to the council meeting of the 29th - 30th of April 2003, the minutes of which are Annexure 'D' to the application to defend himself. The applicant gave an explanation of each and every allegation levelled against him. Without making a finding as to whether the applicant had exonerated himself or not the council resolved to purportedly forgive him apparently for the sake of reconciliation. I am of the view that the applicant was entitled to know from the council if in the light of his defence he was found to be guilty or innocent of the accusations against him.

In another council meeting six or so months later, at which the applicant was absent, and following the speaker's communication from the chair to the effect that the applicant was still involved in the activities for which the select committee had accused him, the council resolved unanimously to refer the Select Committee's report to the chairman of the District Service commission. Upon receipt of this said report the District Service Commission interdicted the applicant. The applicant's complaint is that both the council and the District Service Commission took action against him without being heard contrary to the principles of **audi alterem** and at that after the Council had absolved him and opted for reconciliation.

Mr. Alaka, learned counsel for the respondent submitted that it was not within the power of the council to forgive the applicant and that the applicant was not entitled to be heard before being interdicted by the chairman District Service Commission because the latter was fulfilling his administrative functions to ensure public administration ran smoothly. He relied on the decision of **Katusi .J. in Barishaki vs. Attorney General**

(Supra).

I agree with Mr. Alaka that the council has no power to forgive its CAO if he has been implicated in acts that render him liable for removal from office under section 18 of Local Government Acts, Laws of Uganda 2000. However the council can only put in motion the process of removing the CAO after satisfying itself that indeed the CAO is guilty of the accusation levelled against him. In the instant case after listening to the defence of the applicant the council did not come up with any finding as to whether the applicant was innocent or guilty of the allegations against him. Six months later, on the 23rd October 2003 following remarks in his communication from the chair by the speaker that the acts the applicant had been accused of were continuing, the council proceeded to pass a resolution referring the Select Committee' report to the chairman District Service Commission. The Speaker made those remarks casually and in passing. They were not the result of any investigations. The Speaker did not reveal the source of his knowledge that the abuses the applicant had been accused of and of which he was not proved guilty were continuing. The council also resolved to refer the report to the chairman District Service Commission when the applicant was absent thus denying him an opportunity to defend himself. The council's act of passing he resolution in the absence of the applicant greatly violated the cherished principle of natural justice of audi alterem.

Under Section 68(1) of the Local Governments Act Laws of Uganda 2000 which was Section 69(1) of the Local Governments Act 1997, under which the council resolved to refer the report of the Select Committee to the Chairman District Service Commission, such a resolution requires to be supported by 2/3 of the Council members. In minute 37/2003 of the council meeting of the 23rd October 2003 it is recorded that the resolution to refer the Select Committee's report to the chairman District Service Commission was passed unanimously. Mr. Donge submitted that section 68(1) of the act requires the 2/3 support to be expressed in percentage points and that unanimously does not express such point in percent points. I agree with the interpretation assigned to section 68(1) of the Local Government Act by Mr. Donge. When the minute of the meeting states that the resolution was supported unanimously does this means all the councilors including those who were not in the council meeting supported it. Did the councilors vote all in support of the resolution by show of hands or by secret ballot or by acclamation? Did any- body abstain? This introduces doubts and uncertainties as to

whether the council complied with the 2/3 requirement. It is true as submitted by Donge that when a decision affects the rights of an individual, the procedures laid down of arriving at such a decision must be strictly complied with. In the instant case the resolution put into motion the process of removing the applicant from his office and therefore that resolution should have been passed in strict compliance with section 68(1) of the Act. As that was not the case, the said resolution was passed irregularly.

Mr. Alaka submitted that the applicant in seeking the remedies in his application, was confusing the disciplinary control of the District Service Commission which under section 58(1) of the Local Government Act is independent and not subject to the direction or control of any person with the procedure of the removal of a Chief Administrative Officer under section 68(1) of the Local Government Act - Laws of Uganda 2000. He argued that though the procedure for the removal of a CAO is laid down, no procedure is laid down for the exercise of disciplinary control.

I beg to disagree as the above position is not borne out by the facts. The whole process from the time the council passed the resolution to the Chairman of the District Service Commission interdicted the applicant was intended to remove the applicant from the office of Chief Administrative Officer under Section 68(1) of the Local Government Act Laws of Uganda 2000. The resolution to send the Select Committee's report to the District Service Commission was made under Section 69(1) of Local Governments Act 1997 which is now Section 68(1) of the Laws of Uganda 2000 which deals with the removal of the Chief Administrative Officer. Again in Annexure "C" to the application the Speaker of the Respondent council in inviting the applicant to respond to the accusations states that the Select Committee was established under Section 69(1) of the Act. In turn in interdicting the applicant the Chairman District Service Commission refers to the above letter of the Speaker of the council. The above together with the fact that the resolution sent to the Chairman District Service Commission alleged against the applicant offences listed in section 68(1) of the Act all show that the acts of the council and the chairman District Service Commission were not mere disciplinary control but intended to remove the applicant from office. Having initiated the process of the removal of the applicant, the council ought to have strictly complied with the laid down legal procedure for removing a CAO. Section 25(1) of the Local Governments Act 2001 which amended section 69 of the Local Governments Act 1997 which Section 68 of the Act in the Laws of Uganda 2000 provides that with the exception of sub sections (3) (4)

(5) (6) AND (8) of section 15 of the Local Governments Act 1997 which is section 14 in the laws of Uganda the rest of the procedure for removing the L.C.V from office shall apply to the removal of the CAO. Sub section (2) of section 14 of the local Government Act Laws of Uganda 2000 which applies to the removal of a CAO provides that for purposes of removing the chairperson and therefore by inclusion the CAO a notice in writing signed by not less than one third of all members of the council shall be submitted to the Speaker;-

- a) Stating that they intend to pass a resolution of the council to remove the chairperson on any of the grounds set out in sub - Section (1)
- b) Setting out the particulars of the charge supported by the necessary documents where applicable, on which it is claimed that the conduct of the chairperson (in this case the CAO) be investigated for purposes of his or her removal

In the instant case before the resolution to the council under section 69 of the Local Governments Act 1997 no such notice signed by 2/3 of the members of the council was submitted to the Speaker apart from the Select Committee's report. The council violated this provisions and rule of procedure by passing a resolution under section 69 of the 1997 Act. The equivalent of which is Section 68 of the Act Laws of Uganda 2000 without submitting a notice signed by 2/3 of the members of the council to the Speaker. From the contents of Section 25 (2)(6) of the Local Governments (Amendment) Act 2001 and from the terms of Section 14(1) and 14(2) of the Local Governments Act - laws of Uganda 2000, a resolution passed under Section 69 now 68 of the Act Laws of Uganda is for the removal of the officers in that category. In the instant case the resolution of the council of the meeting held on the 23rd October 2003 under minute 37/2003 merely resolved to refer the Select Committee's report to the District Service Commission Chairman but the resolution was not to remove the applicant from office as envisaged under Section 68 of the Governments Act Laws of Uganda and Section 25 2(b) of the Local Governments (Amendment) Act 2001. Section 25(2)(b) of the Local Governments (Amendment) Act envisages that the council's resolution to remove the CAO be forwarded to the chairperson of the District Service Commission together with the necessary supporting documents. In my view these documents include the notice to

the Speaker signed by not less than 2/3 of the members of the council setting out the particulars of the charges against the CAO under Section 14(2) of the Act Laws of Uganda 2000. As such a purported resolution was not submitted with the above said notice because no such notice was prepared. The matter was irregularly referred to the chairperson District Service Commission.

Mr. Donge complained that the Chairperson District Service Commission acted wrongly by interdicting the applicant because he was not requested by the council to take any action against the applicant.

Section 55(4) of the Local Governments Act provides as follows;-

"(4) The District Service Commission shall in relation to its functions spelt out in subsection (1) act only upon the request and submission of the relevant council"

In the instant case the Respondents Council resolved to refer the Select Committee's report to the chairperson. The Resolution apart from not being accompanied with a notice signed by 2/3 of the Council members pursuant to Section 14 (2) of the Local Governments Act was not a resolution for the removal of the applicant. All the same the chairperson of the District Service Commission contrary to his mandate went a head to interdict the applicant. In doing so that chairperson acted in contravention of Section 55(5) of the Local Governments Act and thus exceeded his powers.

Mr Alaka submitted that the interdiction of the applicant by the chairperson should not be interfered with because it was done by way of disciplinary control. He argued that in the exercise of their duties section 58(1) of the Act makes them independent and not subject to the direction or control of any person or authority. Counsel argued that the interdiction can not be illegal because it was done by the body mandated to effect it and that in any case it did not require a fair hearing. He relied on the case of **Cheborion Birashaki vs. Attorney General (supra)** for this proposal.

That case was largely, if not exclusively, decided on the provisions of Regulation 36 of the Public Service Commission which reads;-

"Where a responsible officer considers that public interest requires that a public officer ceases to exercise the powers and functions of his office he shall interdict the officer from exercising those powers and functions if proceedings for his dismissal are being taken or about to be taken or if criminal proceedings are being instituted against him"

That regulation gives a lot of discretionary latitude to the responsible officer. He can act alone on his own if he considers that interdicting an officer is for the Public good. This is not the case with the District Service Commission. Before interdicting a CAO or Town Clerk the chairperson must have been requested to do so by a resolution supported by 2/3 of the members of the council. The council must also have properly arrived at the resolution by complying with the procedure set out in section 14(2) of the Local Governments Act which requires 1/3 of the members of the council to have signed the notice of its intention to remove any of the two officers and have it sent to the Speaker. In the instant case the council never sent a notice to the Speaker duly signed by 1/3 of the members of the council nor did the resolution of the council request the chairperson of the District Service Commission to remove the CAO. In interdicting the applicant when there was no valid resolution to remove him the chairperson of the District Service Commission acted irregularly and ultra Vires. I agree that the District Service Commission is independent and that in the performance of their duties they are not subject to the direction and control of any person or authority. This is true if they perform their functions according to the law. If however they act ultra vires and contrary to the procedure laid down by the law, their actions like any other bodies are subject to judicial review.

As Certiorari lies to a body acting without or In excess of jurisdiction or as breach of the rules of natural justice or irregularly contrary to set procedural rules and it has been demonstrated above in the above ruling that both the Council and the Chairperson acted contrary to the procedure laid down to remove the applicant and that the council acted contrary to the rules of natural justice and in violation of the principle audi alterem, an order of Certiorari hereby issues quashing the council proceedings leading to the Resolution which purported to remove the applicant by the Chairperson of the District Service Commission.

The applicant also prayed that as a consequential order the respondent should be

ordered to reinstate him as the Chief Administrative Officer. This is not really necessary as even the Respondent concedes that the applicant is the substantive Chief Administrative officer of Arua District. As both the resolution of the council and the interdiction are quashed the applicant automatically reverts to the substantive post of Chief Administrative Officer Arua District Grant an order reinstating him would be superfluous.

The applicant claims general damages for inconvenience and defamation. Mr. Donge proposed a figure of shs 80,000,000/=. Under Order 42 A rule (8) Civil Procedure (Amendment) (Judicial Review) Rules damages may be awarded to an applicant if

- a) He or she included in the statement in support of his or her application for leave under rule 4 of this order a claim for damages arising from any matter to which the application relates.
- b) The Court is satisfied that if the claim had been made on an action begun by the applicant at the time of making his or her application he or she could have been awarded damages.

I am of the view that to award such damages the applicant should prove them. I am satisfied that by the respondent denying the applicant an opportunity to be heard and by the Chairperson of the District Service Commission interdicting the applicant when a request to him to do so was not properly before him, the applicant suffered damages and inconveniences. He is accordingly entitled to damages. Mr. Donge did not however give a basis of his proposed shs 80,000,000/=. Considering the circumstances as a whole, I consider an award of shs 50,000,000/= by way of general damages will meet the justice of the case.

With regard to damages for defamation I am of the view that the applicant has not prove at all that the publications he based his claim on were defamatory. The matters were not helped when he did not even set out the offending publications No award will therefore be given under that head.

The applicant also prayed for exemplary damages. It is now trite that exemplary damages are awarded against Government for the wanton arbitrary, oppressive and unconstitutional acts of its servants. The acts of the respondent's council and the Chairperson of the District Service Commission in this instant case don't fit the description of being the type of the servants of the Government envisaged. All in all no damages can be awarded under this head.

In the result the writ of Certiorari hereby issues quashing the proceedings of the Respondent's council purportedly referring its resolution to the Chairperson of the District Service Commission and the interdiction of applicant by the chairperson of the District Service Commission. The respondent shall pay shs 50,000,000/= as general damages with interest at Court rate from the date of this ruling till payment in full. The Respondent shall also pay the costs of the application.

Signed

JUGUSTUS KANIA JUDGE

1.9.2005