

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO: HCT-00-CV-MA-961 OF 2004

BAMANYA GERSOM. ::::::::::::::: PLAINTIFF

VERSUS

RATTAN SINGH, SARWAN

SINGH AND EVARISTOR MUGABI ::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

RULING:

The Applicant brought our application in court under Article 28, 42, 50, 172 and 173 of the Constitution; Section 3 of the Judicature (Amendment) Act No 3 of 2002, and Rule 6 (2) (b) of the Civil Procedure (amendment) (Judicial Review) Rules, SI 75 of 2003 seeking a Myriad of relief's which include but are not limited to orders of certiorasy, injunctions, mandamus, declarations and prohibition.

When the application was called out for hearing Ms. Kiryabwire Angella learned State Attorney representing the attorney General moved Court on a preliminary point of objection. Shortly put the objection was that the application was time barred in view of the provisions of section 39 (1) of the Judicature Statute as amended, Rule 5 (1) of the Civil procedure (Amendment) (Judicial Review) Rules and Statutory Instrument 75 of 2003. The period for applying for judicial review therein given is three months and learned counsel contended that the application was brought outside this period.

Mr. Rwaganika learned Counsel for the Applicant was not caused. In our argument which was a bit difficult to comprehend; he contended, it appears to me, that time did not begin to ran until the Permanent Secretary, Public Service wrote to the Secretary Education Service Commission indicating that the Ministry of Education and Sports was treating the Applicant unfairly and directed that Applicant be redeployed.

I now proceed to examine the merits of the objection raised.

Rule 5 (1) of the Civil Procedure (Amendment) (Judicial Review) Rules, 2003 provides as here under following:

“5(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.”

Rule 5 (2) of the said Rules provides as follows:

“(2) Where the relief sought is an order of certiorari in respect of any Judgment, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings if that decision is delivered in an open court, but where the judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates, (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by post.”

The application before me does not set out the grounds for the application.

It simply states that:

“THIS APPLICATION is made under the provisions of the Law aforesaid and based upon reasons and grounds set out in the affidavit of BAMANYA GERSHOM, the applicant filed herewith and any other affidavit(s) that may be filed hereafter and upon the reasons and grounds set in herein below and as shall be read and relied upon at the time of hearing the application.”

The nearest one can get to a Semblance of a ground on which the application Is probably grounded is where it is a covered:

“6. That the Permanent Secretary, Ministry of Education and Sports, Mr. F. X.

Lubanga, took a decision to set the applicant dismissed from Public Service contrary to the principles of natural justice.

“7. The interdiction letter contains materials which are greatly injurious to the credit, character and reputation of the applicant and the Applicant has thereby been greatly injured in his reputation, office and occupation and has been brought unto public scandal, hatred, ridicule and contempt.

8. The Permanent Secretary, Ministry of Education and Sports took a decision to remove the applicant from office without just cause.
9. The Permanent Secretary, Ministry of Education and Sports acted unlawfully when he denied the applicant deployment and purported to retire him in Public interest.
10. That it was irregular to retire the Applicant in public interest without giving him a hearing.”

From the above, I think with respect that it can safely be assumed that the act complained of is the interdiction of the Applicant and his eventual retirement in Public Interest. If I am right in so assuming, it can be seen that the dates on which those acts complained of one not given.

It is because of this comma that learned Counsel for the Attorney General referred this Court to the annexures attached to the application, and to those I must now turn.

But perhaps before that I should first deal with the contention of the learned Counsel for Applicant that time must be taken to ran time the 16th of August 2004 when the Permanent Secretary, Public Service wrote to the Secretary Education Service Commission indication that the Ministry of Education and Sports was treating the Applicant unfairly and directing the redeployment of the Applicant. With the greatest respect this argument is colourless. As properly pointed out by Ms. Kiryabwire for the Attorney General, this was Inter-Ministerial Communication to which Applicant was not entitled access. Indeed this Communication was not copied to him. He must have accessed it by furtive means. How then could it regulate his affairs? This argument is completely unavailing.

From Annexure “A” to the application it is crystal clear that Applicant was interdicted from duty with effect from the 31st October 2002.

Annexure “g” to the application leaves no room for doubt that Applicant was retired from the Public Service of the Republic of Uganda in the public interest on 25th June 2003 when the letter retiring the Applicant was received by him as stated in paragraph 16 of his affidavit in support of the application. In my humble ruling the period for judicial review purposes started to run from this day i.e. 25/06/2003. Any other ruling to the contrary appears to me to be out of time with the reality of this case.

The application for review was not filed until the 16th of November, 2004, No reasons have been put forward for this obvious litigious somnolence.

It appears to me with respect that the objection ought to be sustained. This application is accordingly dismissed on account of being out of time.

Respondent will get the taxed costs of this application. I order accordingly.

J.
Judge

7/02/2005

Akampungiga for Applicant
Kiryabwire for Attorney General
Gabatanzi Clerk
Ruling read

J.
Judge
07/02/2005

