

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 0225 OF 2008

KANAKULYA IBRAHIM ::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

INSPECTOR GENERAL OF GOVERNMENT ::::::: RESPONDENT

BEFORE: HON. JUSTICE J.P.M TABARO

RULING

On 4-12-2008 Court heard an application for leave to invoke judicial review, under S.38 of the Judicature Act (Cap 13 Laws of Uganda, as amended by Act 3 of 2002, O.47A Rules 2 (1a), 4(1), (2), (10) and 7(1) of the Civil Procedure Rules. The ruling on the matter was reserved until today, the 9th December 2008. the matter is fairly complex, in connection with the facts, but with diligence the issues can be sharply defined. The applicant is an education officer assigned duties in the District of Kamuli.

It would appear in or around 1997 the District Service Commission, of Kamuli recruited a number of teachers into its service. Subsequent to the recruitment exercise the applicant Ibrahim Kanakulya, was accused of fraudulently entering 50 names of teachers to the recruited list. Later the Inspector General of Government, the respondent, received a complaint in respect of the alleged fraud. The IGG carried out investigations and came to the conclusion that the applicant was guilty of fraud and accordingly recommended that the applicant be dismissed from service. Instead of dismissing the applicant from service, the District Service Commission, of Kamuli carried out investigations and came to the conclusion that he was innocent, and likewise exonerated him.

Following the findings of the Kamuli District Service Commission the IGG carried out further enquiries with a under range covering the question of validity or authenticity of the applicant's academic qualifications. He holds a teaching certificate, diploma in education – a bachelor's

degree, and a master's degree, in education, and a master's degree, in education, in 2005. the IGG came to the conclusion that the applicant falsified his progress certificates and so it was recommended by the IGG that:-

- (1) The applicant's Grade III Teaching Certificate be cancelled.
- (2) Makerere University should cancel the degree award made to the applicant.
- (3) Uganda Christian University Mukono should cancel the Master of Education of award now in the name of the applicant.
- (4) The Chief Administrative officer (CAO) Kamuli District should forward the case of Kanakulya to the District Service Commission for immediate dismissal with disgrace, from Public Service and conduct unbecoming of a holder of such service.
- (5) The DPP should prosecute the applicant, Ibrahim Kanakulya for contravening the Penal Code.

The applicant for his part counters that he was framed by Kamuli District Service Commission who were guilty of falsifying the pay-role for teachers for fraudulent gain and he unearthed the fraud.

The graveman of his complain before this Court centres on the following:-

- i. He claims that when he appealed the findings of the IGG he was denied access to the original records he wished to rely upon, and so he complains that he was not accorded fair hearing.
- ii. Applicant contends that the IGG lacks jurisdiction to order the respective academic institutions to cancel the applicant's academic awards.
- iii. The IGG lacks power to order removal from office, of the applicant, in the circumstances.
- iv. The IGG has taken measures which may irretrievably prejudice the applicant.

The applicant therefore prays for leave to pursue judicial review in order to canvass for issuance of:-

- a) Certiorari for quashing the decisions of the IGG.
- b) Prohibition against the impeding cancellation of his academic awards.
- c) Injunction to stop or halt removal of the applicant from Public Service/District Service, of Kamuli.
- d) Injunction against the IGG for stay of implementation of IGG directives and or recommendations.

High Court has of late decided several cases of judicial review, in connection with what the applicant requires to establish so as to be permitted to apply for judicial review. In terms of 0.47A Rule 4(1) of the Civil Procedure Rules, is, would by SI 75 of 2003, Judicial review cannot be invoked unless Court first grants leave to do so.

In the case of Kasoro Williams & Others Vs. Bundibugyo District, Local Government, HCT-01-CV-MA-0015-2004 before L.N. Mukasa (Ag.J) as he then, was, it was made clear that what is required is a prima facie case indicating that rules of natural justice have been violated, or there is fundamental irregularity in procedure, among other things. Last week on the case of W.D. Kitamirike Vs. URA, Misc. APP. 556/2008, before this Court similar principles were considered and applied.

The IGG powers and spelt out in the Constitution of The Republic of Uganda, and the IGG Act (Cap.167 Laws of Uganda). Of course the powers of the IGG have in the past been contested in the Constitutional Court. It appears to me to be necessary to enquire as to whether the Inspectorate of Government (IGG) failed to observe rules of natural justice or in its proceedings against the applicant, and whether its acts were outside its mandate as stipulated in the Constitution. All these matters call for inquiry so as to decide whether or not the applicant received a fair hearing. The application is granted. Since the applicant faces the prospect of losing his livelihood should the dismissal be upheld, it is only fair that he retains his appointments of his complaint before this Court Under 0.47 and 10(a) CPR as amended by SI 75

of 203 the granting of this application shall operate as a stay of any orders made by the respondent. The costs of this application shall be in the cause.

J.P.M Tabaro

Judge

9-12-2008

9-12-2008 Parties not present, Exparte application.
 Mr. R. Walubiri for applicant.
 Ruling delivered.

J.P.M Tabaro

Judge