THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DVISION)

MISC. CAUSE NO. 0032 OF 2010

SSEBUDDE JOSEPH==========APPLICANT

VERSUS

INSPECTOR GENERAL OF GOVERNMENT==========RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING:

The application for Judicial review was brought under rules 3, 4 and 6 of the Judicature (Judicial Review) Rules, S.1 2009 No.11. It is for the following reliefs:

1. That the prerogative order of certiorari be granted to quash the decision contained in the letter to the Chief Administrative Officer, Luwero District dated 22/01/2010 and the accompanying report of the respondent against the applicant.
2. Order of prohibition forbidding the implementation of the recommendations contained in the said letter in as far as it relates to the applicant.

From the records, the respondent received a complaint that Luwero District Service Commission advertised the post of Town Clerk Wobulenzi and that several applicants were confidentially contacted by the agents of the interview organizers to solicit bribes and that the persons who pledged highest were the ones short listed.

The insinuation was that since the applicant had got a job, he had pledged highest or was among those who pledged highest. After the respondent's investigations, it was recommended that the appointment of the applicant as Town Clerk be rescinded and the post re-advertised because it was marred with irregularities.

At the conferencing the parties agreed that:

1. Applicant is Town Clerk of Wobulenzi Town Council.
2. He applied for the job.
3. He had qualifications for the job.
4. He was investigated by the IGG and recommended for termination.

Issues:

1. Whether the applicant was accorded a fair hearing.
2. Whether the respondent's report was addressed to an appropriate body for its implementation
3. Remedies.

Counsel:
Mr. Abaine Bulegeya for the applicant
Mr. Hosea Lwanga for the respondent.

Issue No. 1: **Whether the applicant was accorded a fair hearing.**

According to the applicant, the respondent's letter forwarding the report to the Chief Administrative Officer dated 22/1/2010 headed "Report on

Alleged Financial Mismanagement of Luwero District Officials" contains allegations of solicitation of bribes by unnamed agents of the interview organizers from the jobs applicants which allegation was not proved against the applicant. His complaint is that he was never given an opportunity to cross-examine the complainants who complained against him to the respondent and made serious allegations of bribery and suspected compromise of the Luwero District Service Commission (the DSC) thus no fair hearing was accorded him.

He contended that he responded to the advertisement for the job which specified the requirement of the Post of Town Clerk and did not at all influence the DSC nor did he compromise it for his selection.

In reply to the above complaint, the respondent, through one Josline Birungi, an Advocate in the Directorate of Civil Litigation with the respondent, contends that the respondent received **an unanimous** (sic) complaint that the applicant was illegally, irregularly and unlawfully appointed as the Town Clerk of Wobulenzi; that the (the applicant) had bribed members of the District Service Commission and compromised the same; that he was given a fair hearing, responded to the allegations levied (sic) against him and recorded a statement capturing all the allegations levied (sic) against him.

I would think that by 'unanimous' in paragraph 6 of Ms Birungi's affidavit she intended to say 'anonymous' and 'levied' to mean 'levelled'. In the written submission, learned counsel for the respondent contends that the allegations stated in the complaint were brought to the attention of the applicant as one of the individuals interviewed; that the applicant recorded a statement and only chose to respond to the allegations relating to his academic qualifications ignoring the rest; and that the records perused during the investigations (attached to the report) show that the applicant was given the job even before the interview was conducted.

I have addressed my mind to the able arguments of both counsel. As learned counsel for the applicant has correctly observed, judicial review is not an appeal from a decision, but a review of the manner in which the decision was made. The primary purpose of the prerogative orders is to make the machinery of government operate properly and in public interest. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate the rights of the parties as such, but to ensure that public powers are exercised in accordance with the basic standards of legality. The court is not, therefore, entitled on an application for judicial review to consider whether the decision was fair and reasonable except of course if the same is illegal, unfair and/or irrational. There are two main concepts in judicial review, that of natural

justice and that of **ultra vires**. What is in issue here is not the concept **of ultra vires** but **natural justice**.

The rules of natural justice apply to all judicial and quasi-judicial bodies, and provide, for example, that hearings must be unbiased. Other principles of natural justice include the right to have one's case considered – **audi alteram partem**, including to the right to notice of the case against one, and the right to have notice of the hearing.

In instant a case, it is an admitted fact that the applicant applied for a job. He had the requisite qualifications. However, no sooner had he settled on the job after appointment than some people raised complaints against him. The complaint was that he had bribed his way to obtain the job.

The applicant contends that he was never given an opportunity to cross-examine the complainants and was thus denied a fair hearing.

The argument appears not to appeal to the respondent. According to him, he is by law empowered and required to protect whistle blowers under the Whistle Blowers Act 2010 and the Inspectorate of Government Act 2002.

With the greatest respect to the respondent, I do not think that the Whistle Blowers Act 2010, if it had come into force by 22/01/2010, gives solace to him. I do not think that the Act takes away the general rule which is that a party must be given an opportunity to be heard before its rights are prejudiced or affected by a decision. True, the respondent may have acted within the law and rules governing his institution. However, having heard Mr. Bulegeya's arguments, the applicant's ground is based on one simple rule of natural justice, namely, the right of a party to be heard before they are found liable. Whether the information comes from whistle blowers or not, the rule embraces the whole notion of fair procedure and due process.

An authority on this point is the old English case of **R Vs University of Cambridge (1723) 1 Str 557** where the University of Cambridge had deprived Bentley of his degree without giving him opportunity to be heard. Without delving into too much detail, Bentley was able to have the act of the University declared a nullity because he had not first been heard in his own defence.

Consequently, in the instant case, since the applicant had the necessary qualifications for the job he had applied for and was given by the DSC, justice demanded that he should not have been condemned without being heard. And what would being heard entail in a case such as this? The answer lies in Article 28(1) of the Constitution. It provides that in the determination of civil rights and obligations, or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law. I did observe in **Rose Mary Nalwadda Vs Uganda Aids Commission HCMC No. 0045 of 2010** (unreported), that a fair hearing, under Article 28 of the Constitution means that a party should be afforded opportunity to, inter alia, hear the witnesses of the other side testifying openly; that he should, if he so chooses, challenge those witnesses by way of cross-examination; that he should be given opportunity to give his own evidence, if he so chooses, in his defence; and that he should, if he so wishes, call witnesses to support his case. The Supreme Court emphasized this point in **Charles Twagira Vs Uganda, Criminal Appeal No. 27 of 2003.**

I should perhaps add that under Article 44 (c) of the Constitution:

"**Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-**

(a)----------

(b)----------

(c) the right to fair hearing".

It is clear from the record of the proceedings constituting the impugned Report that the IGG considered the accusation against the applicant proved by the whistle blowers' information to him and yet the applicant did not have the opportunity to contradict those accusations since the whistle blowers could not come out to identify themselves. He did not have the opportunity to defend himself before any properly constituted body that could determine his guilt or innocence. The implication is that he was condemned unheard, without his case being heard by an independent court or tribunal established by law. In these circumstances, the decision to terminate his employment cannot be said to have been arrived at through fair procedures and due process. In my view this ground should succeed. I would therefore answer the first issue in the negative and I have done so.

Issue No.2: **Whether the respondent's report was addressed to an appropriate private body for its implementation.**

I have addressed my mind to the arguments of both counsel on this point.
I would of course agree with the argument of learned counsel for the respondent that addressing a report to a wrong party would not ipso facto invalidate an otherwise valid report.

Having said so, I am of the considered view that although the respondent had the power to investigate and recommend as he did, the powers must be read together with the constitutional safeguard as to fair trial or hearing.
In **Ridge Vs Baldwin & Others [1964] A.C 40,** one of the leading authorities on termination of employment relationships, it was held, and I agree, that even if the respondents had power of dismissing without complying with the regulations, they were bound to observe the principles of natural justice. It was held in that case that a decision

reached in violation of the principles of natural justice, especially the one relating to the right to be heard, is void and unlawful. In **Eng. Pascal R. Gakyaro Vs CAA Court of Appeal Civil Appeal No.60 of 2006** the court observed that the appellant was being deprived of an office of a public character with the attendant statutory benefits. That the principles of natural justice demanded that he be given an opportunity to be heard in his defence for whatever worth it might be. That the overall effect of a denial of natural justice to an aggrieved party renders the decision void and of no effect.

In view of the court's finding that the applicant was condemned unheard, implying that the respondent's decision to recommend that the applicant's services be terminated was null and void, I do not consider it necessary to bother myself with analysis of the arguments in issue No.2 even for academic purposes.

He has made two prayers:

1. That the prerogative order of certiorari be granted to quash the decision contained in the respondents letter to CAO Luwero dated 22/01/10 and the accompanying report of the respondent in as far as it relates to the applicant.
2. Order of prohibition forbidding the implementation of the recommendations contained in the said letter, also in so far as it relates to the applicant.

In view of what I have said herein above, I have found merit in both prayers. I accordingly grant them.

Learned counsel for the applicant has submitted that his client was greatly inconvenienced and harassed by the illegal acts of the respondent. He has prayed for a sum of Shs.50m as general damages. I do not think that the applicant merits this award or at all, especially so since there is no such prayer in his application. I have therefore not awarded him anything.

As regards costs, the usual result is that the loser pays the winner's

costs. This practice is of course subject to the court's discretion, so that a winning party may not necessarily be awarded his costs. In the instant case, the applicant made no prayer as to costs in the notice of motion. He has raised it in the written submissions. The application notwithstanding, the applicant is still holding the office of Town Clerk Wobulenzi. The IGG's recommendations have not materially affected his appointment and occupation of the said office.

In recognition of the general rule that costs follow the event and in accordance with the inherent powers of this court under Section 98 of the Civil Procedure Act, the applicant shall be decreed half his taxed costs of the application.

Orders accordingly.

Dated this 28th day of October 2010.

Yorokamu Bamwine

JUDGE