THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-MC-0019-2014

LUGOLOBI HAROLD BRUCE……..APPLICANT
VERSUS
TORORO DISTRICT LOCAL GOVERNMENT…….RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This was an application brought by Notice of Motion under Articles 24, 42 and 44 of Constitution, Section 33, 36 and 38 of Judicature Act Cap.12, (as amended by Act No. 3 of 2002), Rule 3 and 6 of the Judicature (Judicial Review) Rules SI No. 11 of 2009, the Civil Procedure Rules SI No. 71-1.

The application sought for orders of certiorari, prohibition and permanent injunction against the respondent. A declaration that Respondent's decisions are *ultra-vires*, illegal and unreasonable, general damages and costs.

The application was supported by the affidavit of **Lugolobi Harold Bruce** (applicant) whose import was that;

1. The decision of the Respondent made through Tororo District Service Commission on 20th August 2014 to severally reprimand the applicant is illegal, and is a breach of principles of natural justice and is *ultra vires*.
2. The decision of the Respondent made through the District Service Commission of 20. August. 2014 minute 158/2014 appointing the applicant on transfer within

service is illegal and in breach of the principles of natural justice and is **ultra vires**.

3. That the Tororo District Commission flouted the provisions of the Public Service Commission Regulations and Uganda Public Service Standing Orders.

That the actions of the Tororo District Service Commission regarding disciplinary procedure were irregular, and unlawful. Details are as per the affidavit in support of the motion.

Respondent filed an affidavit in reply in which **Mr. Oswan Vita Kitui** deponed that, applicant was not performing his duties as Assistant Chief Administrative Officer, and him as Chief Administrative Officer wrote to him about it. Inspite of the writings the applicant ignored, hence the disciplinary measures taken against him. (See paragraphs 4-13 of affidavit).

In paragraphs 14-20 the Respondent depones that the Tororo District Service Commission considered his submission, summoned the applicant, heard him on the complaint and lawfully recommended that he be reprimanded and re-designated as sub-county Chief/Senior Assistant Secretary scale U3. He further replied to issues raised as to irregularity, impropriety, abuse of law etc and averred that the procedures, regulations and principles of natural justice were all followed and not violated.

In submissions counsel for applicant argued the merits of the case under three bold heads:-

(1) Illegality.
(2) Irrationality.
(3) Procedural impropriety.

The arguments on each bold head shall inform the style I will adopt in resolving each argument as responded to by Respondents, guided by the law, facts and evidence on record.

(1) Illegality.

The beginning point in any case of Judicial Review is to remind the court that:

> "*Prerogative orders look to the control of the exercise and abuse of power by those in public offices, rather than at providing final determination of private rights which is done in normal civil suits*."

See: *John Jet Tumwebaze v. Makerere University Council and 3 Others Civil Application No. 353 of 2005*.

The import of the above case, is a restatement of the common law of practice of the courts that:

> "*While exercising judicial review jurisdiction the court ensures that executive authorities do not exceed their lawful jurisdictions or authority. Most importantly, the court ensures that even within jurisdiction, public powers are exercised prudently, reasonably, fairly in good faith, and in full accord with the legitimate expectations of those affected.*
>
> *In so doing, the High Court ensures that due consideration is accorded to the factors relevant to the exercise of power and that the procedures prescribed for the exercise of power and the rules of natural justice are fully adhered to*."

(See *Peter Kaluma: Judicial Review Law Procedure & Practice 2nd Edn (Law Africa) page 7*).

The courts have since held, that:

> "*The grounds, a combination or any of them that an application must satisfy in order to succeed for judicial Review application are illegality, irrationality and procedural impropriety.*"

See: *Council of Civil Service Union v. Minister of Civil Service (1985) AC 22*.
According to this case,

> "*Illegality is when the decision making authority commits an error of law in the process of taking a decision.*
> *An exercise of power that is not vested in the decision making authority is such instance. Acting without jurisdiction or ultravires are instances of illegality. A decision maker who incorrectly informs himself/herself as to the law or who acts contrary to the principles of the law is guilty of an illegality*."

The applicant referred to the Affidavit in Reply (paragraph 7,8 and 9) where applicant was written to by Chief Administrative Officer, also (paragraphs 11, 12, 13) of same affidavit showing that Respondent made submissions to the Tororo District Service Commission, which heard the matter and later reprimanded applicant. He then argued that this action by the Chief Administrative Officer, (Respondent) offended the Standing Orders, under disciplinary Procedures Rules 5(c) which he stated as requiring warning to be valid for 12 months before suspension, interdiction or other disciplinary measures. He argues that no oral or verbal warning was ever given to the applicant neither was there a written warning letter. He further argued that the Tororo District Service Commission who handled the disciplinary matter contrary to the rules of natural justice that allows one to be heard. He referred to the guidelines from the Public Service Commission to the District Service Commission of 2009 under 5:8:1(d) requiring that background information on the officer must be obtained before transfer within service.

The above according to applicant, amounted to contravention of principles of law and respondent is guilty of illegality.

In reply the Respondent, generally referred to the case of *MPUNGU AND SONS TRANSPORTERS LTD V. AG AND ANOR. 2006 HCB (1) (27)*, and averred that the rule is that natural justice including the right to a hearing depends on the nature of the case. He argued that in the circumstances of the case, the steps taken by the Chief Administrative Officer to write to applicant, was fair and answered the test of a fairness. He referred the test of fairness. He referred to the Affidavits in reply and annextures thereto to infer that the Chief Administrative Officer as a responsible officer acted rightly and within the law and accorded him a fair hearing.

On illegality he argued that under Public Service Standing Orders 2010 Section (F-S) paragraphs 5, was not a 'strict interpretation' section but informative that disciplinary action was a likely consequence. He referred to the Minutes and averred that the applicant was accorded a fair hearing. He pointed out that the applicant is not an Assistant Chief Administrative Officer substantively but a Senior Assistant Secretary. This post is the same as a sub-county chief. He was not demoted; but retained his position as Senior Assistant Secretary.

The submission in rejoinder is a restatement of applicant's earlier prayers.
The statement of the law is properly put. The only question remaining for this court is to examine is whether the actions of the Chief Administrative Officer, and the Tororo District Service Commission, offend the rules of natural justice which require them to act within the law. Did they commit any error of law in the process of taking the decision?
Applicant's only reference to the law contravened is in the standing Orders provided under the provisions of Disciplinary Procedure Rules 5(c).

In their response the respondents show in the affidavit sworn in support by **Mr. Oswan Vita Kitui** the Chief Administrative Officer, that no such violation occurred. (See paragraphs 7, 8, 9, 16, 17, 18, 20, 21 of the affidavit). They refer to Annex 'A', 'B', 'C', 'D', 'E' & 'F' to show that appellant was dully notified, and all legal procedures were taken.

The Regulation above requires that a final written warning under the signature of the Responsible officer should, when given, be valid for a period of twelve (12) months. Re-occurrence of the offence should lead to suspension and interdiction or other disciplinary measures."

According to the "**Concise Oxford Dictionary**" (7th Edition) the word "warning" means "to give notice or to announce."
To "warn" is "to give notice to", "to put on guard, or to admonish (a person) of danger of consequences of future or unknown circumstances…."

Again the "**Pioneers English Dictionary**" (1819); defines warning as "a hint, intimation, threat etc of harm or danger" "Advise to beware or desist."

The sum total of the above definitions, shows that the use of the word "warning" here is meant to mean that the Responsible officer should issue notice to the officer that there is an impending threat, harm, or danger arising from their conduct which if not corrected and addressed, but violation continues within the period of 12 months, disciplinary action is likely to accrue. The above warning informs the officer to take heed that they are "on notice", or "under surveillance" or "under observation" and can be disciplined, if the offensive conduct persists within the stated period of 12 months.

Contrary to what applicant states in his Notice of Motion (paragraph 6) and Affidavit of **Lugolobi Harold Bruce** in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16- alluding to illegality, the court agrees with the position as stated by Respondent in his affidavit in Reply under paragraphs 7, 8, 9, 16, 17, 18, 19, 20, 21 and Anexes 'A', 'B', 'C', 'D', 'E' and 'F' and finds that ample notice/warning was given to the applicant. The exhibits show that the Responsible Officer (Chief Administrative Officer) acted within the law. He wrote to the applicant via Anex 'A' a general letter of compliance regarding his duties on 3/March 2014. He depones in paragraph 5, 6, and 7 why he was prompted to write annex 'A'. **Mr. Lugolobi** in his affidavit in support paragraph 4, 5, and 7 acknowledges these steps and in paragraph 6 acknowledges having responded. This means he received the notice and warning letter he complains of in paragraph 7 that "*instead the Chief Administrative Officer notified me that I had refused to provide the essential documents whereas not….*"

From that moment, the applicant had been put on notice that all was not well. He needed to reform his conduct and perform. However the Chief Administrative Officer said he did not do so. (Paragraph 17 of **Mr. Oswan Vita Kitiu**'s affidavit). It was on account of that failure that the Chief Administrative Officer was forced to take action. He depones to this in paragraph 11 as follows:

> "*That because of Mr. Lugolobi Harold Bruce's failure to respond to my requests I wrote to him letter dated 22nd May 2014 to show cause why by 4th June 2014 disciplinary action should not be taken against him for disobeying official and lawful instructions*."
> (Annex 'C').

In my view annex 'C' amounts to a strong warning that the Responsible officer is contemplating gross action. This warning couldn't wait for expiration of 12 months. It

has to be construed as a notice to put him on notice that from the date of warning that for the next twelve months, the recipient (Appellant) was vulnerable for anticipated disciplinary action, if he did not comply with the warning.

It's therefore not true to assert that the Chief Administrative Officer should have waited for 12 months to expire before taking action. That is not the law or procedure.

The Tororo District Local Government, on receiving the recommendations of the Chief Administrative Officer acted on them. I find that the affidavit of **Oswan Vita** and exhibits annexed as 'D', 'E', 'F' and Applicant's affidavit paragraph 10, 11, 12, 13, 14, 15, 16, 19 and 20 all give the chronology of how the Tororo District Service Commission got involved in this matter.

The law requires a Responsible Officer to forward the recommendation for Disciplinary action to the District Service Commission. The District Service Commission is meant to apply Rules of natural Justice and fair play when handling the matter. See *NAKIBULE V. A.G. Constitution Petition 55 of 2013*:

The Constitutional Court held that (referring to Article 28 of the Constitution) that:

> "*In 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*."

And under "42" that:

> "*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 decision taken against him or her*."

The applicant was informed of his right to be heard. The respondent attached Anex 'D' submission to District Service Commission by Chief Administrative Officer, Annex 'E'

minutes of Tororo District Service Commission of 21st, 22nd, 23rd, 29th and 1st August 2014. He also attached Annex 'F' minutes of the meeting of District Service Commission of 20th and 21st August 2014. Annex 'D' and 'F' respectively which are minutes of the District Service Commission.

They indicate that the committee:

1. Summoned applicant. (Minute 146/2014. Annex 'E').
2. Informed him of the Chief Administrative Officer's submission.
3. Informed him of the need to defend himself 0 (Annex 'F' Minute 157/2014).
4. Gave him ample time to go and prepare.
5. Listened to his defence.
6. Deliberated the matter.
7. Considered the submission.
8. Made recommendations.
9. Under Min. 158/2014 of Annex 'F' took a decision to uphold the Chief Administrative Officer's recommendation to offer the officer appointment as Sub-county Chief/Senior Assistant Secretary.

Contrary to what applicant alleges in his affidavit he supplied no information/evidence to prove that he was denied a hearing. The minutes show an elaborate defence offered by applicant before the District Service Commission. He even supported his submission with documentary evidence. That meant that he had ample time to prepare. The steps that the Tororo District Service Commission followed were legal, fair and sensitive to the applicant's legal rights. I am persuaded by the contents of **Mr. Oswan**'s affidavit and annextures thereto to believe the Respondent that applicant was accorded a fair hearing. No illegalities are therefore proved and this ground fails.

2. **Irrationality**

The applicant's argument is that the Tororo District Service Commission, acted irrationally when under Minute 158/2014 they appointed the applicant on transfer within service as a sub-county Chief/ Senior Assistant Secretary.

I have examined the evidence on record.

Irrationality is when the decision making authority acts so unreasonably that in the eyes of the court no reasonable authority addressing itself to the facts and the law would have made such a decision.

> *"…… such decision must be outrageous and illogical*."

(See *Council of Civil Service Union v. Ministry of Civil Service* (supra). The question is, was the decision of Tororo District Service Commission irrational, illogical and outrageous?

In taking the decision, according to the minutes, (Annex 'F' Minute 158/2014) the Commission noted thus:

> "*The members considered the recommendation and noted that the said officer had demonstrated a high degree of indiscipline and had failed to perform his core functions….the deployment to the Sub-county would pave way for closer monitoring of his performance by his Supervisor….. They therefore resolved to uphold the recommendation of the Chief Administrative Officer……*"

This court is concerned with the decision making process, not the genuinety of the decision. Did the tribunal act irrationally in reaching that finding? My answer is "No" because;

(i) They deliberated the matter.

(ii) Were informed by the nature of complaint (indiscipline).

(iii) They listened to the defendant.

(iv) Were guided by a submission.

(v) Did not direct, on how the re-designation should be technically done. All they looked for was the correction of the evil of indiscipline of the officer, and how to ensure better performance. They then agreed with the Chief Administrative Officer's proposal to have him re-designated. The decision was neither irrational nor *ultra vires*.

However that aside, the Chief Administrative Officer in his affidavit paragraphs 4, 5, and 21, depones that applicant is employed as Senior Assistant Secretary and was only deployed as Assistant Chief Administrative Officer in charge West Budama County. Also Applicant on his Notice of Motion and affidavit paragraph 3 shows that he was promoted to Senior Assistant Secretary in January 2006. (Annex 'A.1, 'A.2' and 'A.3'). He does not mention anywhere therein the post of Senior Assistant Secretary/Chief Administrative Officer from which the re-designation to Sub-county Chief/Senior Assistant Secretary-originates.

I have looked at Annex 'A.1', 'A.2' and 'A.3'.
Annex 'A' of 24.Sept.2014, offers him appointment as Sub-county Chief/Senior Assistant Secretary-salary scale U3L (10,831,339p.a.-11,887,964 p.a.).
Annex A1, is of 6/Dec/2002 shows appointment as Assistant Secretary Probation. Annex A2 is confirmation as Assistant Secretary on 13.12.2005. 'A.3' is promotion to Senior Assistant Secretary on 25.1.2006. The salary scale is U3 (7,957,737-8,733,371) p.a.

From the record there is no letter appointing applicant as an Acting Chief Administrative Officer. It would appear he was merely assigned duties as Acting Chief

Administrative Officer. The substantive post he held up to time of disciplinary action was therefore that of Senior Assistant Secretary as per letter on record ref. CRD.11298 (Annex 'A.3'). If he was therefore redeployed as Senior Assistant Secretary/Sub-county Chief; this to me appears an ordinary deployment of staff by the Chief Administrative Officer. It was not in any way a demotion, or a departure from the Public Service Standing Orders; or Public Service Commission Regulations. An appointment on transfer within service, retains the officer's personal benefits and data from time he joined service. It does not at all affect his public service record. I therefore do not find anything *ultra vires* in the District Service Commission recommendations as above. Annex 'A.3' had a condition which was that: "when occasion demands you will serve in any part of the district by normal posting instructions."

These are considerations which in my view the authorities took in making the decision. It was therefore a rational decision and I do not find any irrationality. The ground also fails.

3. Procedural Impropriety

This is where the decision making authority fails to act fairly in the process of its decision making. This includes failure to follow rules of natural justice, "*AUDI ALTERAM PARTEM*"- the right of a party to a cause not to be condemned unheard.

Here applicant's contention is that when the Chief Administrative Officer wrote to him to show cause he requested for a copy of the allegations but got none but instead the Chief Administrative Officer wrote to the disciplinary committee. When he appeared in the committee he requested for the allegations but still the District Service Commission declined. He was hence condemned contrary to the rules of natural justice.

However in answer, the Respondent shows vide the affidavit in reply paragraph 16, 17, 18, 19, 20 and 21 that applicant's allegations in his affidavit paragraphs 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20 and 22 are all false. Apart from what is stated by the parties vide their affidavits, the only other source of information on record are the annextures. The applicant does not have any annextures showing a contrary position to that shown by the minutes annexed by the Chief Administrative Officer as Annex 'E' and Annex'F'. The import of all this is that its appellant's word against that of the Respondent. I have already found that the Tororo District Service Commission acted within the law, and hence going by the record, I find that allegations by applicant that he was not given copies of the information he requested for are not proved. The minutes exhibited as 'E' and 'F' for Respondent, and affidavit in reply in paragraphs referred to above sufficiently answer the applicant to show that he was not denied a hearing. There was no procedural impropriety.

I find that the District Service Commission actually professionally handled the matter. This ground also fails.

In the final result, I find that the applicant is not entitled to any of the reliefs sought. For the said above reasons, this application is dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

26.03.2015