

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**MC 233 OF 2016**

**CATHERINE AMAL V EQUAL OPPORTUNITIES COMMISSION**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

The applicant through her advocates Nandaah , Wamukoota & Co. Advocates sought the following prerogative orders:

1. Certiorari quashing the decisions or directives or order passed by the respondent on 25.8.2016 terminating the services of the applicant and or removing her as Secretary and Accounting Officer of the respondent.
2. A permanent injunction restraining the respondent from implementing its decision.
3. Prohibition restraining the respondent or any person claiming similar authority from implementing its decision.

The applicant also sought general damages .

The application was brought under articles 28(1) , 42 and 44 of the Constitution and sections 36 and 38 of the Judicature Act , Equal Opportunities Act 2007, Public Service Commission regulations 2009 and Judicature Review Rules.

The respondent was represented by Ms Nambale, Nerima & Co. Advocates and filed an affidavit in reply of Sylvia Muwebwa Nambi , chairperson of the respondent.

At the commencement of the hearing, three issues were framed for trial

1. Whether this is a proper case for judicial review
2. Whether the procedure adopted by the respondent for terminating the applicant was lawful
3. Remedies.

**The applicant's case**

It was the applicant's case that she is the Secretary of the respondent but her services were terminated on 25.8.2015 without sufficient grounds and without being given an opportunity to defend herself. Furthermore, that she was denied an opportunity to access her office so as to secure documents to enable her respond to allegations made against her by the respondent's chairperson in a letter dated 7.8.2016. This letter required the applicant to respond in writing to the allegations raised therein and to meet the respondent on 25.8.2016.

While conceding that the applicant did not appear before the respondent Commission as directed, counsel for the applicant submitted that by declining the applicant access to retrieve documents necessary for her defense and proceeding in her absence, the respondent irrationally condemned the applicant unheard which is a breach of the principles of natural justice.

Counsel cited several authorities in support that I will refer to later.

### **The respondent's case**

It was the respondent's case that the applicant was suspended from her position as Secretary of the Commission for financial and human resource mismanagement by a resolution of the Commission members on 26.4.2016; she challenged the suspension vide MC 419 of 2016 and her application for a temporary injunction as dismissed on 1.9.2016.

Furthermore, that the applicant was invited to appear before the Commission on 25.8.2016 to respond to allegations against her in the respondent's letter dated 7.8.2016 but she did not. That the respondent made follow up telephone calls on 17<sup>th</sup> and 18<sup>th</sup> August 2016 pleading with her to respond to the summons but she did not respond to the allegations nor appear on 25.8.2016. It was then that the respondent terminated her contract with the Commission and paid her one month's salary in lieu of notice as per her contract of employment.

Counsel was also concerned that the applicant was regurgitating the same issues raised in MC 419 of 2016 before Hon. Justice Musota who dismissed her application for judicial review of her suspension on 26.4.2016.

## **Resolution of the issues**

Whether this is a proper application for judicial review

Counsel for the respondent submitted that this complaint for wrongful dismissal is inappropriate for judicial review and that the right procedure is by suit. Counsel submitted that in judicial review, court is not concerned with the correctness of the decision but with the propriety of the process.

It was counsel's submission that the applicant was invited to respond to allegations and to appear before the Commission but she was adamant and moreover, the Commission acted within the contract of employment in terminating her services.

Counsel for the applicant submitted that the applicant complains about the procedure adopted by the respondent and therefore this is an appropriate case for judicial review.

The orders of certiorari, prohibition and injunction are prerogative in nature and therefore exercised sparingly by the High Court. **Osborn's law dictionary 9<sup>th</sup> edition** gives their purpose as

*'...to prevent officials from exceeding the limits of their authority or compelling them to exercise their functions in accordance with the law'*

In **MC 43 of 2014 Khabusi Building Contractors Ltd and two others v PPDA** in an application for certiorari and prohibition, Hon. Justice Musota held that

*'the court's jurisdiction is exercised in a supervisory manner not to vindicate rights but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality.'*

In the often cited case of **Chief Constable of North Wales Police v Evans [1982] 3. All. E. R page 143h -144a**, in an application for judicial review, the court held

*'...it is important to remember in every case that the purpose of remedies is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the individual judges for that of the authority'*

The applicant complains that she was condemned by the Commission unheard in breach of the principles of natural justice but more importantly, the applicant was dismissed from employment. The applicant in this application challenges the procedure adopted by the respondent where she was not heard in her defense when in fact she was summoned but did not appear.

In effect, the applicant wants this court to believe that her failure to attend the disciplinary proceedings and the decision to terminate her employment contract give rise to two distinct causes of action. I am of a contrary view because her dismissal from employment is what gives her a cause of action is remedied by ordinary suit and not by judicial review. Her failure to attend the proceedings forms part of the evidence in a suit for wrongful dismissal but does not give rise to a possible remedy in judicial review. The non attendance of disciplinary proceedings and the final decision are closely interlinked.

This point was considered by Hon. Justice Y. Bamwine as he then was in **MC 93 of 2009 Machacha Livingstone and anor v LDC** where the applicants were dismissed from employment and complained that they were not heard. The court held that the applicants did not show lack of an alternative remedy or that the alternative remedy was ineffective whereupon the application for judicial review was dismissed.

Prerogative orders will only issue where there is no alternative remedy and the applicant has one. In the premises the first issue is answered in the negative. This issue disposes of the application and I need not belabor the remaining two issues.

This application is accordingly dismissed with costs to the respondent.

**DATED AT KAMPALA THIS 9<sup>TH</sup> DAY OF DECEMBER 2016.**

**HON. LADY JUSTICE H. WOLAYO**