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

**MISC. CAUSE NO. 37 OF 2015**

**MUGISHA FRED……..APPLICANT**

**VS**

1. **ATTORNEY GENERAL**
2. **NAKASONGOLA DISTRICT LOCAL GOVERNMENT**
3. **MAKERERE UNIVERSITY**

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

**RULING**

The applicant through his advocates Kiiza Tumwesigye Ssemmambo Advocates, sought orders under Judicial Review Rules for the following orders:

a. Certiorari , quashing the decision of the respondents that the applicant was not eligible to be admitted on the Uganda Government Sponsorship Scheme District Quota for Nakasongola district;
b. Mandamus compelling the respondents to admit the applicant on the scheme for the academic year 2014/2015;
c. Re-imbursements of tuition and functional fees paid by the applicant to the third respondent.

The respondents filed affidavits in reply in opposition to the application.

I have carefully examined the affidavits in support and affidavits in reply.

I have also carefully considered submissions of all counsel. Ms. Kibedi & Co. Advocates appeared for the 3rd respondent; while the 1st and 2nd respondents were represented by Attorney General's chambers.

**The applicant's case**

It was the applicant's case that he was born in Katikakaru, Kakooge sub county, Nakansongola district ; attended primary school at Ekitangaala primary school; Uganda certificate of Education at Ekitkangaala secondary school, and Cornerstone Leadership Academy and that all three schools are located in Kakooge sub county, Nakasongola district.

On application to the public universities joint admissions board (PUNJAB) for admission to Makerere University under the government sponsorship scheme for the Nakasongola district quota, he went to Nakasongola to collect his verification and he was informed he was not on the list yet he qualified having been born in Katikakuru , Kakooge sub county, Nakasongola district and having studied from within the same sub county and district.

In his affidavit in rejoinder, the applicant affirmed that Kitendeli village where his father is born is on the boundary between Luwero and Nakasongola and at the time of filling PUNJAB forms, he honestly believed it was in Nakasongola district.

The applicant was aggrieved and prayed for the prerogative orders of certiorari, and mandamus.

**The respondents' case**

It was the 1st and 2nd respondents' case that the applicant did not qualify for Nakasongola district quota because he was born to his father Rwabogo Andrew whose birthplace is Kitendeli , Kakooge sub county , Luwero district.

It was further their case that in the PUJAB form , although, the applicant gave Kitendeli, Kakooge sub county, Nakasongola as his father's birthplace, the LC III chairperson of Kakooge sub county Nakasongola district confirmed to Kasozi Suleiman CAO of Nakasongola that Kitendeli parish is found in Kamira sub county, Luwero district.

The 2nd respondent's case basically is that it was simply enforcing a government policy in taking into consideration district of origin as opposed to place of birth of the applicant .

It was the 3rd respondent's case that its role was to implement the decisions of the 1st and 2nd respondents and therefore was wrongly added as a party.

What emerges from the foregoing analysis is that while the applicant was born in Katikakaru village, Kakooge sub county, and studied in Kitangaala primary and secondary schools as well as Cornerstone secondary school all in Luwero district, his parents place of origin is indicated in the PUNJAB form as Kitendeli , Kakooge sub county, Nakasongola district , a fact conceded by the applicant except he maintains that it is on the border between Luwero and Nakasongola.

No issues were framed for resolution but from my understanding of the pleadings and the evidence adduced by both parties , the main issues are:

1. Whether the case is amenable to judicial review
2. Whether the process of determining access to government sponsorship is tainted with illegality, impropriety or irrationality and specifically, whether the 2nd respondent wrongly took into consideration the parents' place of birth as opposed to that of the applicant.
3. Remedies

**Whether the case is amenable to judicial review**

Article 42 of the Constitution confers on all persons the right to be treated fairly and justly when appearing before an administrative official or body . An aggrieved person has a right to apply to court for redress.

This case is unique in the sense that a 'hearing' in the traditional sense was not conducted but rather the second respondent verified eligibility of the applicant for the district quota government sponsorship enrolment in accordance with criteria set by the 1st respondent. Therefore, the applicant was not entitled to be heard physically but the 2nd respondent had a duty to be fair and act within the law in the verification process. To this extent, the case is amenable to judicial review to ascertain that due process was observed.

The 3rd respondent's counsel submitted that it was wrongly sued because its role in the verification process is limited to implementing the decision of the 1st and 2nd respondent. Indeed it was the Ministry of Education that generated a provisional list that the Permanent secretary sent to the 2nd respondent for verification. It was therefore unnecessary to add the 3rd respondent as a party to the application.

**Whether the verification process followed by the 2nd respondent was tainted with illegality, impropriety or irrationality , specifically, and specifically, whether the 2nd respondent wrongly took into consideration the parents' place of birth as opposed to that of the applicant.**

It was the contention of counsel for the applicant that his father's birthplace is an ultra vires consideration in as far as determining the district of origin is concerned.

An evaluation of the affidavits on record as well as supporting documents reveals that Home district and district of origin are used interchangeably ( affidavit of Sentongo Charles refers).

In the minutes marked A attached to Kasozi's affidavit, the objective of the meeting was to verify whether the list of students selected by the 1st respondent provisionally, sat their exams from Naksongola district and whether it is their district of origin.

The letter from the Permanent Secretary Ministry of Education marked E attached to the affidavit in reply of Kasozi also refers to district of origin .

The District Executive Committee discussed each student on the list and found that the applicant did not qualify because Kitenteli village, where his father Rwabogo Andrew comes from could not be traced in Nakasongola district and is found in Kamira sub county , Luwero district.

It was the contention of counsel for the applicant that the 2nd respondent went beyond its powers when it ignored the fact that the applicant is born in Katikakuru village , Kakooge sub county in Nakasongola district but chose to rely on the parents' birthplace of Kitenteli which is outside Nakasongola district. Birth certificate of applicant marked Annex. A to the affidavit in support of the applicant refers. In other words, counsel for the applicant contends that the 2nd respondent considered an ultra vires consideration or illegal consideration when determining eligibility for the district quota.

The authorities cited by all counsel in their submissions are all relevant to the determination of this application but I will pick on only a few of them.

In **High Court Land Division MA 18 of 2012 Mugabi Edward v Kampala District Land Board and another**, the learned judge , citing a textbook on Constitutional and Administrative Law, explained what amounts to illegality as a ground for judicial review. It means

- an authority must not exceed its jurisdiction by purporting to exercise powers which it does not have;
- it must direct itself properly on the law;
- it must not use its powers for an improper purpose;
- it must take into account all relevant considerations and disregard irrelevant considerations;
- and must not act in bad faith.

In the instant case, the 2nd respondent was authorized by the Ministry of Education to carry out the verification of students eligible for government sponsorship and the criteria given as

'**district of origin and sitting exams in a school within the district.**'

The 2nd respondent performed its verification function and found that the applicant was not eligible.

The 2nd respondent that verified the applicant's district of origin did so in a transparent manner in a meeting held on 30th July 2014 in the district Chairperson's office and minutes recorded. The committee was concerned with district of origin as opposed to birthplace the applicant wanted them to.

In the applicant's understanding, place of birth means where he was actually birthed. This is a flawed reasoning because it would lead to a hap harzard standard for verifying eligibility for the district quota system and defeat the purpose for which it was designed.

Counsel for the applicant's contention that the birth place of the applicant's father is irrelevant is not tenable because in our communities, ancestry is traced to place of origin of one's parents.

Furthermore, the Public Service Standing orders make reference to **'place of origin**' in several of the orders. For instance, at pages 305-306 , government provides transport to 'place of origin' for an officer who suffers ill health or on termination of employment .

The applicant made reference to some guidelines to the Ministry of Education on how to verify students under the district quota system , but these guidelines have never been formally issued.

The 2nd respondent was duty bound to rely on its understanding of district of origin consistent with ordinary usage in the public service ; instructions from the Ministry of Education and the policy behind the district quota system ,to arrive at the conclusion that the applicant was not qualified. I therefore find no illegality in the interpretation placed on '**district of origin'** by the 2nd respondent as this was consistent with ordinary usage, and the policy behind the district quota system. The 2nd respondent acted within the ambits of its powers to verify students and lawfully took into account the birthplace of the parents as the place of origin.

Therefore I find that the verification process was free from any impropriety or illegality.

**Whether the applicant is entitled to any remedies**

The above finding disposes of the application but in case I am found to have erred, I will look into quantum of damages.

**Damages**

The applicant prayed for 13,170,000/ being the total cost of tuition, accommodation and meals for the duration of the course. The special damages were proved by receipts and bank slips.

As it is not disputed that the applicant is on private sponsorship, I would have accepted the claim for tuition and accommodation and meals expenses to the tune of 13,170,000/.

As for general damages, these would not be awarded because the applicant would have recovered expenses.

This application is accordingly dismissed.

As the applicant is a student who is still dependent on his parents, I will award no costs to the 1st and 2nd respondents. However, for the reason that the 3rd respondent was wrongly sued, the applicant will pay the 3rd respondent's costs spent on disbursements only.

**DATED AT KAMPALA THIS 24TH DAY OF NOVEMBER 2016.**

**HON. LADY JUSTICE H. WOLAYO**