THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT ARUA

MISCELLANEOUS CIVIL CAUSE No. 0009 OF 2016

ARIHO ABDON RUTEGA …… APPLICANT

VERSUS

THE GOVERNING COUNCIL OF
UGANDA COLLEGE OF COMMERCE, PAKWACH ……. RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This an application is made under Articles 28 (1), 42 and 50 of *The Constitution of the Republic of Uganda, 1995*, sections 33, 36, and 38 of *The Judicature Act*, The *Civil Procedure (amendment) (Judicial Review) Rules, SI 11 of* 2009 and sections 64 and 98 of *The Civil procedure Act* seeking orders of certiorari, prohibition, an injunction and general and punitive damages against the respondent.

The averments in support of this application are that the applicant was on 29th May 2012 appointed as the Principal of the respondent by the Education Service Commission and posted to the institution on 8th June 2012. The applicant served in that capacity and by virtue of that position, he was the Secretary of the respondent Governing Council. Following the respondent's meeting of 12th January 2016, the respondent resolved that the Ministry of Education be asked to recall the applicant and send the institution a replacement. The applicant avers that he was denied a hearing at that meeting and it is on that basis that he seeks the decisions to be quashed.

Soon thereafter, the applicant was on 1st March 2016 transferred by the Permanent Secretary to the Ministry of Education, Science, Technology and Sports to the Uganda College of Commerce, Soroti as Principal but this transfer was revoked on 4th April 2016 after the appointing authority "making consultations with various stakeholders," which the applicant contends included bad

reports about him clandestinely sent by the respondent. By a letter dated 4th July, the Minister of State for Higher Education appointed him a "member of the governing Council for Uganda College of Commerce Pakwach as Principal." The applicant contends that by that letter he was re-instated as Principal of Uganda College of Commerce Pakwach, and therefore when the responded rejected him and blocked him from being sworn in as a Council member on 17th June 2016, the respondent acted illegally, highhandedly and arbitrarily, more particularly since another person was appointed and sworn in by the respondent, for which reason he seeks an order of prohibition, an injunction, general and punitive damages.

The respondent opposes the application and in an affidavit in reply sworn by the respondent's Caretaker Deputy Principal, although acknowledging that the applicant was appointed and posted to the respondent institution, he was transferred to Uganda College of Commerce, Soroti and has never been posted back to the respondent. His tenure at the respondent institution had seen considerable student unrest which prompted the respondent to constitute a committee of inquiry into the causes of the unrest. When the respondent considered the findings of that committee, it resolved that the Ministry of Education be asked to recall the applicant and send the institution a replacement. The applicant participated in the proceedings. The respondent did not prevent the applicant from being sworn in as a member of the Council but rather on the specified date, he stopped along the way and turned back to Kampala for fear of his personal safety. In any event, his appointment as a member of the respondent Council was irregular since he had never been re-posted to the institution as Principal. The respondent did not send any damaging information about the applicant and therefore played no role in the revocation of the appellant's transfer to Uganda College of Commerce, Soroti.

Submitting in support of the application, Mr. Byamugisha Gabriel, counsel for the applicant argued that the respondent had unlawfully recommended the transfer, revocation of transfer and prevented the applicant from resuming his position as Principal and member of the respondent and for that reason deserves the reliefs sought. In response, counsel for the respondent, Mr. Samuel Ondoma argued that the decision to transfer the applicant taken by the Ministry of Education, Science, Technology and Sports was not in any way influenced by the respondent. He was afforded a fair hearing in the proceedings leading up to the recommendation of his transfer and had never been posted back to the respondent. He prayed for the dismissal of the application.

The undisputed facts are that the applicant was on 29th May 2012 appointed as the Principal of the respondent by the Education Service Commission and posted to the institution on 8th June 2012. The applicant served in that capacity and by virtue of that position, he was the Secretary of the respondent Governing Council. In the course of discharging his duties as Principal, differences arose between the applicant, the local community, staff and the student body. These differences were formally brought to the attention of the respondent at its meeting of 30th April 2015, on basis of representations made to it by the student representatives on the respondent Council in reaction to the applicant's written report presented to the meeting under minute No. 6/30/04/15. This prompted the respondent under resolution 6.6 to constitute "a Committee of Inquiry of five people to investigate the causes of students; strikes and unrest at the College." The Committee was tasked with the duty of recommending appropriate action not later than the end of May 2015. At the respondent's meeting of 29th May 2015, the Committee reported it had not completed its task yet and under minute No. 05/29/05/15 and under resolution 6.4, it was granted an extension until 15th June 2015 to conclude its work. The Committee finally presented its report at the respondent's meeting of 15th September 2015 upon which the respondent under minute No. 09/15/09/15 resolved to forward the report to the Permanent Secretary of the Ministry of Education, Science, Technology and Sports requesting that internal auditors from the Ministry be engaged in auditing the finances and procurements of the institution.

By the time of hearing the application, the Ministry of Education, Science, Technology and Sports had not sent any of its auditors as requested but officials from the Auditor General's Department had done their routine audit and were yet to send the respondent feed-back. Be that as it may, the respondent at its meeting of 12th January 2016, under minute 08/12/01/16 resolved to finalize issues relating to student unrest. The applicant, the Bursar and the student representatives were asked to leave the meeting during the subsequent deliberations but the matter remained unresolved and the meeting was adjourned to the following day. At the meeting of 13th January 2016, the respondent resolved, *inter alia*, that in order to "restore calm at the College and safeguard against the likely loss of life of the Principal" the respondent "hand him back" to the Ministry of Education, Science, Technology and Sports and in the meantime "the Deputy Principal Mr. Eton Marus be appointed a caretaker Principal pending the posting of another Principal to head UCC Pakwach." It was further resolved that the Chairperson of the

respondent writes to the Permanent Secretary Ministry of Education, Science, Technology and Sports to communicate these resolutions as fast as possible.

The applicant was on 1st March 2016 transferred by the Permanent Secretary to the Ministry of Education, Science, Technology and Sports to the Uganda College of Commerce, Soroti as Principal but this transfer was revoked on 4th April 2016 after the appointing authority "making consultations with various stakeholders." By a letter dated 4th July 2016, the Minister of State for Higher Education appointed him a "member of the governing Council for Uganda College of Commerce Pakwach as Principal." That is as far as the uncontested facts go.

The two parties contest the question whether the applicant was given a hearing before the respondent resolved to "hand him back" to the Ministry of Education, Science, Technology and Sports. They also contest the claim that the respondent had anything to do with the decision of the Permanent Secretary Ministry of Education, Science, Technology and Sports to transfer the applicant to the Uganda College of Commerce at Soroti and the subsequent revocation of that transfer. Finally, they contest the status of the applicant as Principal and Board member of the respondent and the claim that the respondent unlawfully prevented him from assuming his duties in that capacity.

The reliefs sought by the applicant are remedies granted under the powers of this court, of judicial review of administrative action. The nature of this power was explained in *John Jet Tumwebaze v Makerere University Council and 3 Others, H.C. Civil Application No. 353 of 2005 (unreported)*, to the effect that the power is meant to control 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. The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made. It generally is a power intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides* in decision making by a public body. Its purpose is to check whether choice or decision was made "lawfully" and not to check whether choice or decision is "sound." In seeking remedies by way of orders of certiorari, prohibition, an injunction and damages, the applicant lays claim to different reliefs with different sets of considerations and therefore they will be considered independently within the context of the facts.

In the context of this application, an order of Certiorari would issue against the respondent, being a public body, on account of having made administrative decisions which affect the rights of the applicant adversely, upon satisfaction of certain requirements. The order would issue to quash decisions of the respondent which are *ultra vires* or which are vitiated by error on the face of the record or are arbitrary and oppressive. On the other hand, Prohibition serves to prohibit the happening of some act or the taking of some decision which would be *ultra vires*. Thus while Certiorari looks at the past as a corrective remedy, prohibition looks at the future as a prohibitive remedy. Both, however, are discretionary remedies which a court will grant only judicially (see *In Re An Application by Bukoba Gymkhana Club [1963] E.A. 473)*.

The applicant presents a multi-pronged argument for seeking the two orders of certiorari and prohibition. The first is that the respondent's decision making process in "handing him back" to the Ministry of Education, Science, Technology and Sports, was *ultravires* the powers of the respondent and since the applicant was never accorded a hearing or any time to defend himself, which is unlawful under the principles of natural justice. The second is that in appointing various office holders including the Acting Principal to replace him, the respondent acted *ultra vires* since it is not vested with the power to do so. Thirdly, that in preventing the applicant from being sworn in and resuming his position as Principal and Secretary of the respondent, the respondent acted *ultravires*. The validity of these challenges requires examination of the powers of the respondent and the manner in which they were exercised in order to determine whether or not the orders are warranted.

According to section 78 (1) of The *Universities and Other Tertiary Institutions Act, 2001* as amended in 2003 and 2006, the Governing Council of a Public Tertiary Institution is its governing body and has the mandate to exercise general management of the affairs of the Tertiary Institution and general control of the property of the institution. Although the Act does not specify the duties involved in exercise of general management of the affairs of a Tertiary Institution and general control of the property of such institution, by established practice these duties ordinarily involve; - establishing policy and procedural principles, overseeing and monitoring academic activities, approving significant commercial activities, ensuring the establishment and monitoring of systems of control and accountability, including financial and

operational controls and procedures for handling internal grievances and for managing the conflict of interest, serving as the employing authority for staff in the institution, put in place suitable arrangements for monitoring his performance, make such provision as it thinks fit for the general welfare of students, safeguard the good name and values of the institution, ensure that proper books are kept, approve the annual budget and financial statements and to have overall responsibility for the institution's assets, property and estate, to name but a few. The respondent therefore within its administrative mandate when it set about finding solutions to student strikes and unrest at the College. The applicant challenges the manner in which it proceeded to do so.

The rules of natural justice are presumed to apply to bodies entrusted with judicial or quasi-judicial functions only. Although no such presumption arises with respect to bodies charged with performing administrative functions, in a purely policy-oriented traditionally administrative sphere of decision-making, however, when arriving at decisions with potentially serious adverse effects on someone's rights, interests or status in exercise of a purely administrative power, an administrative authority has a duty to act fairly which is a less onerous duty than that of observing the rules of natural justice demanded of such bodies when they act in a quasi-judicial capacity, such as when they undertake disciplinary proceedings. The duty to act fairly is specifically applicable to decisions that are likely to have serious adverse effects on someone's rights, interests or status. This duty to act fairly is flexible and changes from situation to situation, depending upon: the nature of the function being exercised, the nature of the decision to be made, the relationship between the body and the individual, the effects of that decision on the individual's rights and the legitimate expectations of the person challenging the decision (see *Baker v Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (S.C.C.*). That the doctrine of natural justice, as a legal doctrine which requires an absence of bias (*nemo iudex in causa sua*) and the right to a fair hearing (*audi alteram partem*), could be applied to administrative decision making not of a quasi-judicial nature was first allowed in *Ridge v Baldwin [1964] AC 40* in which the House of Lords found that the Brighton police authority which had dismissed its Chief Constable (Charles Ridge) without offering him an opportunity to defend his actions, had acted unlawfully (*ultra vires*) in terminating his appointment following criminal proceedings against him.

This duty to act fairly applies to public academic institutions too in exercise of their legislative mandate in the management of the administrative affairs of such institutions. For example in *Kane v Board of Governors of U.B.C., 1980 CanLII 10, S.C.C*. although the Canadian Supreme Court recognized that "it is the duty of the courts to attribute a large measure of autonomy of decision to a tribunal, such as a Board of Governors of a University, sitting in appeal, pursuant to legislative mandate," it nevertheless, intervened since in that case the Board had suspended a professor without first providing him with the opportunity to be heard and as such did not respect the rule of *audi alteram partem*.

In the instant case, there is no doubt that the respondent's resolution of 13th January 2016, to "hand him back" to the Ministry of Education, Science, Technology and Sports would affect the rights, interests and status of the applicant as Principal of the institution and Secretary of the respondent. This was a decision which not only placed the applicant's right to continue in his profession or employment at stake but also had the potential of grave adverse and permanent consequences upon his professional career. For that reason, it is an administrative decision that placed upon the respondent a duty to act fairly by observing a high standard of participatory rights guaranteed by the *audi alteram partem* rule and due process. The purpose of the participatory rights in a situation like this is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker. In *Wood v Woad, L.R. 9,* Kelly. C.B. held that the *audi alteram partem* rule "is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals," and further in *Fisher v Keane, 11 Ch. D. 353 at 363* by Lord Jessel, M.R., that "clubs, or by any other body of persons who decide upon the conduct …. ought not, as I understand it, according to the others, to blast a man's reputation for ever, perhaps to ruin his prospects for life, without giving him an opportunity of either defending or palliating his conduct."

According to the decision in *Baker v Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (S.C.C)*, the duty of fairness owed in these circumstances is more than minimal, and the claimant and others whose important interests are affected by the decision in a fundamental

way must have been given a meaningful opportunity to present the various types of evidence relevant to their case and have it fully and fairly considered. In determining whether the respondent in this case met that standard, it must be borne in mind that even though in such an administrative process certain ways and methods of judicial procedure may very likely be imitated, and lawyer-like methods may find especial favour from lawyers, but that the judiciary should not presume to impose its own methods on administrative or executive officers (see *Local Government Board v. Arlidge, [1915] A.C. 120*). The respondent was free, within reason, to determine its own procedures, which will vary with the nature of the inquiry and the circumstances of the case. It would be wrong, therefore, to ask of the respondent, in the discharge of its administrative duties, the high standard of technical performance which one may properly expect of a court. All that is required is for the respondent to have done its best to act justly, and to reach just ends by just means, i.e. acting honestly and by honest means. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice (per Lord Parmoor in *Local Government Board v Arlidge [1915] A.C. 120*).

The nature of this standard was explained in *De Verteuil v Knaggs and Another [1918] A.C. 557*, as “a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice." A high standard of justice is required when the right to continue in one's profession or employment is at stake (see *Abbott v Sullivan [1952] 1 K.B. 189*).The court will now proceed to examine whether the respondent met this standard in its proceedings leading up to this recommendation.

The first time complaints of mal-administration were brought formally to the attention of the respondent was at its meeting of 30th April 2015, on basis of representations made to it by the student representatives on the respondent Council, in reaction to the applicant’s written report presented to the meeting under minute No. 6/30/04/15. This prompted the respondent under resolution 6.6 to constitute “a Committee of Inquiry of five people to investigate the causes of students; strikes and unrest at the College.” The minutes indicate that the applicant attended that meeting. The minutes do not indicate that he was given an opportunity to make any relevant statement which he may have desired to bring forward to correct or controvert any of the

statements made to his prejudice but instead the meeting resolved to constitute a Committee tasked with the duty of investigating the accusations and recommending appropriate action.

In its report, annexure "F" to the affidavit in reply, under Chapter two related to the methodology used during the inquiry, the Committee listed the number of people it interviewed to have included "College Administration." It is not possible, from the way the report is structured, to tell whether the applicant was among the College Administration it interviewed and whether during its interaction with the applicant it gave him a fair opportunity to make any relevant statement which he may desired to bring forward to correct or controvert any information that had been brought forward to the Committee to his prejudice. One of the recommendations the Committee made though at page 18 of its report was that "the Governing Council members should meet the Staff, Students and Top Management separately and talk to them on the findings of the report."

The opportunity for the respondent to meet the Staff, Students and Top Management separately and talk to them on the findings of the report as recommended by the Committee presented itself at its meeting of 13th January 2016, where item 5 (a) of the agenda stated; "Interface with Principal on key findings arising from the report of inquiry." It is worth noting that in all its recommendations to the respondent, the Committee did not advise that it was necessary to "hand back" the applicant to the Ministry of Education, Science, Technology and Sports in order to "restore calm at the College and safeguard against the likely loss of life of the Principal." This was a resolution taken by the respondent independently upon its own consideration of the report.

Before coming to that decision, the proceedings of that day do not indicate that the applicant was ever given an opportunity to make any relevant statement which he may desired to bring forward to correct or controvert any information that had been brought forward to the respondent as part of that report or otherwise to his prejudice. The minutes of the previous day, 12th January 2016, indicate that under minute No. 08/12/01/16, when the report of the Committee came up for consideration by the respondent, the meeting resolved that "those interested parties to the report take leave of the room since it would mean conflict of interest. The Principal, Bursar and students' representatives left the room." There is no indication that any of them was re-admitted at the adjourned meeting of 13th January 2016. Despite item 5 on the agenda for that day having been "Interface with Principal on key findings arising from the report of inquiry," the minutes do

not indicate that the interface ever took place at all before the meeting resolved to "hand back" the applicant to the Ministry of Education, Science, Technology and Sports in order to "restore calm at the College and safeguard against the likely loss of life of the Principal."

Although this was not a disciplinary hearing in *strictu sensu*, the nature of the accusations and the resultant resolution made it akin to such proceedings. Considering the circumstances of the case, the nature of the inquiry, and the subject-matter which was being dealt with, the respondent ought to have realized the necessity of observing the *audi alteram partem* rule. In circumstances where that rule applies, unless expressly allowed by its rules of procedure or by necessary implication, the respondent should not have held private interviews with witnesses (de Smith, *Judicial Review of Administrative Action* (3rd. ed.) 179) or, *a fortiori*, hear evidence in the absence of a party whose conduct is impugned and under scrutiny. Such party must, in the words of Lord Denning in *Kanda v Government of the Federation of Malaya, [1962] A.C. 322*, at p. 337, " ... know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them. ... Whoever is to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The court will not go into the likelihood of prejudice. The risk of it is enough." As a result, on the balance of probabilities, the applicant has proved that the impugned decision was arrived at following a process in which he was denied a fair opportunity to make any relevant statement which he may have desired to bring forward to correct or controvert the information that had been brought forward to the respondent as part of that report or otherwise, to his prejudice.

There is no evidence to link the impugned Council resolution to the subsequent decision by the Permanent Secretary of the Ministry of Education, Science, Technology and Sports transferring the applicant to the Uganda College of Commerce, Soroti as Principal, by his letter of 1st March 2016 nor the subsequent revocation of this transfer on 4th April 2016 after "making consultations with various stakeholders." The arguments to the contrary are speculative and do not meet the evidential standard required in civil suits. The two administrative decisions therefore are unaffected by the respondent's failure to accord the applicant his *audi alteram partem* rights.

The import of the twin decisions taken by the respondent to "hand him back" to the Ministry of Education, Science, Technology and Sports and in the meantime appointing the Deputy Principal Mr. Eton Marus as "a caretaker Principal pending the posting of another Principal to head UCC Pakwach," was a *de facto* termination of the applicant's tenure as Principal of the Uganda College of Commerce, Pakwach. According to s 83 (1) of *The Universities and Other Tertiary Institutions Act, 2001*, the Principal and Deputy Principal of a Public Tertiary Institution is appointed by the Education Service Commission on terms and conditions that the Commission may determine. In any event, according to section 77 (8) of *The Universities and Other Tertiary Institutions Act, 2001*, where a vacancy occurs in the membership of the Governing Council, it is the Permanent Secretary who may appoint another person in that place to hold office for the remaining period of the person vacating office, and not the Council itself.

In the circumstances, the respondent neither had the power to remove the applicant from office nor to replace him with any other member of staff as it did. The role of the respondent in staff recruitment is specified by section 85 of *The Universities and Other Tertiary Institutions Act, 2001,* and it is limited to participating in the appointment of the Secretary, Registrar, the Bursar, and other senior administrative officers and the academic staff who are appointed by the Education Service Commission on the recommendation of the Appointments Committee. The action of replacing the applicant remained *ultra vires* until 1st March 2016 when he was eventually transferred by the Permanent Secretary of the Ministry of Education, Science, Technology and Sports and thereafter, the new office holder can only be posted by the same Permanent Secretary on appointment by the Education Service Commission. In the meantime, only a person appointed by the Permanent Secretary could hold office for the remaining period.

The applicant has therefore succeeded in proving that the respondent's resolution at its meeting of 13th January 2016, to the effect that in order to "restore calm at the College and safeguard against the likely loss of life of the Principal" the respondent "hand him back" to the Ministry of Education, Science, Technology and Sports and in the meantime "the Deputy Principal Mr. Eton Marus be appointed a caretaker Principal pending the posting of another Principal to head UCC Pakwach," was *ultra vires*. A decision may be illegal on the basis that the public body has no power to make that decision, or has acted beyond its powers. The two impugned decisions are

illegal on both counts and an order of certiorari hereby issues quashing the decision to "hand back" the applicant to the Ministry of Education, Science, Technology and Sports in order to "restore calm at the College and safeguard against the likely loss of life of the Principal," because of insinuations inherent therein that have the potential to adversely affect the applicant's right to continue in his profession or employment and consequential permanent consequences upon his professional career, yet he was never accorded his *audi alteram partem* rights in the steps leading up to that decision, and the decision appointing Mr. Eton Marus as "a caretaker Principal pending the posting of another Principal to head UCC Pakwach."

The other orders sought are that of prohibition and an injunction, stopping the respondent and its officers from implementing or otherwise taking further action on the basis of the impugned decisions or resolutions, which would be *ultra vires*. It is not clear to me what other action the respondent can take that is ancillary or in relation to the resolution to "hand back" the applicant to the Ministry of Education, Science, Technology and Sports. Since counsel for the applicant neither suggested any in his submissions, the two orders will not be granted on that ground.

The only other conduct complained of by the applicant in respect of which orders of this kind would be relevant is the respondent's refusal to receive and swear in the applicant as a "member of the governing Council for Uganda College of Commerce Pakwach as Principal," in accordance with the letter dated 4th July 2016, written by the Minister of State for Higher Education, appointing him as such. The purported appointment of the applicant in that capacity though is *ultra vires*.

According to section 77 (4) of *The Universities and Other Tertiary Institutions Act, 2001,* the Principal is the Secretary to the Governing Council. The Secretary therefore is an *ex officio* member of the respondent. It is a position held by virtue of being the Principal of the College i.e. one must be the duly appointed Principal of the College to be Secretary of the Council, and not *vice versa*. Since under s 83 (1) of *The Universities and Other Tertiary Institutions Act, 2001*, the Principal is appointed by the Education Service Commission, in order for the applicant to qualify for that position he must present a letter of re-appointment or posting instruction as the Principal Uganda College of Commerce, Pakwach issued by authority of the Education Service

Commission. He has not presented any positing instruction to that effect and the last communication from the appointing authority was the revocation of his transfer to Uganda College of Commerce, Soroti. According to *The Uganda Public Service Standing Orders, 2010, Section (F - c), para 5*, when posting public officers, the Responsible Officer must ensure that copies of the posting instruction are sent to the receiving station or institution. The positing instruction of 8th June 2012 was revoked by the transfer instruction of 1st March 2016 which was rescinded by the cancellation instruction of 4th April 2016. The letter by the Permanent Secretary to the Ministry of Education, Science, Technology and Sports dated 4th July 2016 attached as annexure "G" to the applicant's affidavit in support is neither a posting instruction nor a substitute thereto. For that reason, a posting cannot be inferred but must be specifically proved by presentation of a posting instruction to that effect. Revocation of the applicant's transfer to the UCC Soroti did not necessarily mean that he resumed his posting to UCC Pakwach. A public office cannot be held or occupied by mere inference or by necessary implication but by specific appointment and posting by the appointing authority or responsible officer. Without a fresh positing instruction, the applicant for all intents and purposes remains an un-deployed public servant.

On the other hand, according to s 77 (4) of *The Universities and Other Tertiary Institutions Act, 2001*, the only member of Council appointed by the Minister of Education is the Chairperson of the Governing Council from among three names forwarded by the Council. In the instant case, the applicant's appointment is made, not by the Minister but by the Minister of State for Higher Education and there is no evidence that he did so under delegated authority of the Minister neither is there evidence that his name was submitted to the Minister by the respondent. In any event, he could only have been appointed as Chairperson within the mandate of the Minister and not as Secretary. The respondent's refusal to receive and swear-in the applicant as a "member of the governing Council for Uganda College of Commerce Pakwach as Principal," therefore has legal justification. He cannot return and resume his duties as Principal and Secretary of the Council until the institution is presented with a positing instruction to that effect in accordance with *The Uganda Public Service Standing Orders, 2010, Section (F - c), para* 5. For those reasons, the claim for an order of prohibition and an injunction based on the assumed status of the applicant is misconceived and is hereby dismissed.

Lastly, regarding the applicant's claim for general and punitive damages, the question is whether damages should be obtainable by the applicant and this depends on whether he has proved to have suffered loss in consequence of the invalid administrative action, simply relying on that invalidity. Public law has traditionally not had the remedy of damages available for unlawful administrative action. The justification for such a gap in the remedial options available to the court is that it would otherwise stultify the proper administrative freedom of public authorities if the public purse was to be affected by their actions. Thus at common law, where there has been misfeasance in public office, there has not been the remedy of damages for unlawful administrative action in addition to judicial review.

However, rule 8 of *The Civil Procedure (Amendment) (Judicial Review) Rules, 2009* provides as follows;

> 8. Claims for damages.
>
> (1) On an application for judicial review the court may, subject to sub-rule (2) of this rule, award damages to the applicant, if—
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> *(a)* he or she has included in the motion in support of his or her application a claim for damages arising from any matter to which the application relates, and
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> *(b)* the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his or her application, he or she could have been awarded damages.
>
> (2) Order VI rules 1 to 5 shall apply to a statement relating to a claim for damages as it applies to a pleading.

Therefore, an award of damages in addition to grant of the prerogative orders where there has been an unlawful administrative act, is justifiable only if the elements of a recognized tort, breach of statutory duty, breach of contract or other cause of action can also be established. In the instant case, the applicant did not plead any particulars of loss and was unable to prove having suffered any specific loss in consequence of the invalid administrative action as would

have entitled him to an award of damages if the claim had been made in an action begun by him at the time of making his application. Evidence of such damage and loss would be better proved and considered in an ordinary suit.

In the final result, an order of certiorari hereby issues quashing the respondent's decision to "hand back" the applicant to the Ministry of Education, Science, Technology and Sports in order to "restore calm at the College and safeguard against the likely loss of life of the Principal," and the decision appointing Mr. Eton Marus as "a caretaker Principal pending the posting of another Principal to head UCC Pakwach." The claims for an order of prohibition, an injunction, general and punitive damages are dismissed. The applicant having succeeded only in part is awarded half of his costs of these proceedings. I so order.

Dated at Arua this 3rd day of November 2016.

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Stephen Mubiru
Judge