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**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBALE**  
**HCT – 04 – CV – MC – 0004 OF 2004.**  
(FROM HCT – 04 – CV – MC – 0003/2004)

- 1. ANGELLA ACHERE }
- 2. ANTHONY KALEBO }
- 3. DAMAN DAMBA } .....APPLICANTS
- 4. SUSAN KATOOKO }
- 5. YAHAYA HAMIRA }
- 6. ORIEBO ORONE }

**VERSUS**

**PALLISA DISTRICT LOCAL**  
**GOVERNMENT COUNCIL .....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI**

**JUDGEMENT**

The applicants sought the following according to their Notice of Motion:

- 1. An order of certiorari and prohibition quashing the council resolutions directing the applicants to vacate their respective offices with immediate effect.
- 2. An order of certiorari and prohibition quashing the council resolution directing the Chief Administrative Officer to stop payment of the emoluments of the applicants.
- 3. An order of mandamus to compel the respondent to permit the applicants to resume their offices and to be accorded all rights and privileges of members of the District Executive Committee.

4. An order that costs of the application be provided for.

The grounds of the application were two, first that the motion of censure was not presented, debated and resolved in accordance with the rules of procedure and the law, secondly that the said resolutions were passed in bad faith and the applicants were not accorded the right to a fair hearing contrary to the principles of natural justice.

The application was supported by the statements of facts from each of the six applicants, accompanied by the affidavits of the six applicants respectively. It is to be noted that the facts relied on by each of the applicants were practically the same. I will for most part in this ruling refer mainly or only to the affidavit of the 1<sup>st</sup> applicant.

The applicants sought the prerogative orders of this court of certiorari, prohibition and mandamus under S. 38 of the Judicature Act. These are discretionary orders of court and exercise of such discretion will be exercised judicially. *Re: An Application by Hirji Transport Service* [1961] EA 85, and *RE: Application by Bukoba Gamukama Club* [1963] EA. 478.

Halsbury's Laws of England 4<sup>th</sup> Edition Vol.1 Paragraph 147 states:

“ Certiorari lies, on an application of a person aggrieved, to bring the proceedings of an inferior tribunal before the High Court for review so that the court can determine whether they shall be quashed, or to quash such proceedings. It will issue to quash a determination for excess or lack of jurisdiction, error of law on the face of the record or

breach of the rules of natural justice, or where the determination was procured by fraud, collusion or perjury”.

In the present case, the applicants in their respective affidavits deposed that the rules of procedure of censuring a member of the district executive committee by council were not complied with.

Article 187 of the constitution provides for the vacating of office of members of the district executive committee. Article 187(2) thereof provides that a district council may by resolution supported by not less than  $\frac{1}{2}$  of all the members of the council pass a vote of censure against a member of the committee.

There appeared to be no dispute about the numbers of the members of the council who passed the motion of censure, as being below the number set out in the above provision of the constitution.

Article 187 clauses (3), (4), (5) and (6) of the constitution set out the procedure. These procedural provisions are reproduced in S.21 of the Local Government Act. I will set out these constitutional provisions in full:

“187

(3) Proceedings for censure shall be initiated by a petition to the chairperson though the Speaker signed by not less than  $\frac{1}{3}$  of all the members of the District Council to the effect that they are dissatisfied with the conduct or performance of the member of the executive committee.

- (4) The Chairperson shall, upon receipt of the petition, cause a copy of it to be given to the member of the executive committee in question.
- (5) The motion for the resolution of censure shall not be debated until the expiry of 14 days after the petition was sent the chairperson.
- (6) A member of the executive committee in respect of whom a vote of censure is debated under clause (5) of this Article is entitled during the debate to be heard in his or her defence”.

According to paragraph 4 of the statement of facts of the 1<sup>st</sup> applicant, she received a copy of the agenda of the council meeting, which had the agenda of the meeting as follows:

- (i) Prayers
- (ii) Communication from the chair
- (iii) Presentation of censure motion against members of the executive committee.
- (iv) Discussion of censure motion.
- (v) Hearing from members of the executive.
- (vi) Conclusion of the discussion
- (vii) Closure

That was the only information availed to the applicant about the motion to censure her. In paragraph 5 of the same statement, the applicant herein never received a copy of the motion of censure from the chairperson as required under Article 187(4). It is therefore not clear when or whether the chairperson received the petition of the motion of censure through the Speaker as required under Article 187(3).

There was no evidence of compliance with provisions of Article 187(5) which prohibit debate on the motion of censure until after the expiry of 14 days after the petition is sent to the chairperson.

Paragraph 6 of the statement of the 1<sup>st</sup> applicant was to the effect that when the council meeting commenced, the 2<sup>nd</sup> applicant raised the complaint that the applicants were not availed a copy of the motion of censure as required by the law. The chairperson sought to give an answer, but the meeting became rowdy and the complaint was simply dismissed. At that point all the applicants walked out of the council meeting in project.

Each of the statement of facts and affidavits of the applicants deposed to more or less similar facts. The respondent did not file any affidavit in reply. The evidence as given by the applicants therefore remained unchallenged. It will thus be accepted as the truth.

The procedure adopted by the council in the censure motion was not in compliance with the law. The provisions of the Local Government Act in S.21 thereof were violated. Even more seriously, the provisions of the constitution, the Supreme law of the land were not complied with.

Clause (4) of the Article 187 of the Constitution requires the chairperson to cause a copy of the petition to be given to the member of the executive committee in question. The reason is to give such a member an opportunity to know the charges or complaints and accusations regarding his conduct or performance which members of the council are complaining about.

Clause (5) of the same Article provides for at least 14 days before the motion of censure can be debated. This is intended, among other reasons, to enable the executive committee member in question time to prepare his or her defence. This could include consulting his or her attorneys.

Clause (6) is very specific. It grants the concerned member of the executive committee a right to be heard in his or her defence during the debate of the motion of censure. This goes to the right to a fair hearing. This is a fundamental right, which is inviolable and finds protection in article 44 of the Constitution.

The right of a person to be heard finds further sanctuary in the maximum *audi alteram partem*. This is a fundamental principle of natural justice. Each party must have reasonable notice of the case he or she has to meet, and given an opportunity of stating his or her case, and answering where possible or necessary, any arguments or accusations put forward against him and her.

The authors of O Hood Philips' Constitutional and Administrative Law – 7<sup>th</sup> Edition at page 672, when expounding the above principle that a person should not be condemned unheard quotes from an old case as follows:-

“ As was quaintly stated in Dr.Bentley's case (1723) ‘Even God himself did not pass sentence upon Adam before he was called upon to make his defence’. This was in a case cited by Hood Philips’ (Supra) as R v. Chancellor of Cambridge University (1716) 1 Str 557.

The meeting of the Council did not afford the applicants the opportunity to know before hand the complaints /changes, which were being put forward

against them in the motion of censure. They were not given the opportunity to prepare their respective defences. They were practically ambushed with the motion of censure. The principles of natural justice and their constitutional right to a fair hearing were violated. None of the six applicants was given a copy of the motion of censure before the motion was debated. The provisions of the constitution in Article 187, and S.21 of the Local Government act were not complied with.

It is to be kept in mind that one of the main objectives of certiorari is to prevent excessive exercise of power or to prevent the abuse of statutory authority or jurisdiction by public authorities. In *Sharp v. Welefield* [1891] AC 173, it was held that the primary objective of the order of certiorari was more to keep the machinery of Government operating properly (in accordance with the law) and in the public interest rather than to protect private interest of individuals.

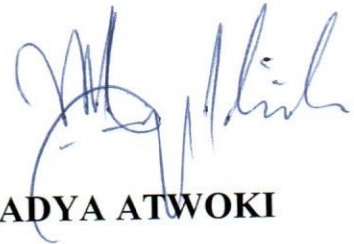
The council acted in breach of the provisions of the Constitution and the law. There was also clearly non compliance with the principles of natural justice. The council exercised its statutory power and jurisdiction excessively. Certiorari will certainly lie in this case.

The resolutions of the Pallisa District Council meeting of 30/1/2004 which purported to remove the applicants from office as members of the District Executive committee are hereby quashed, together with the consequential decision and directives contained in the letter dated 5/2/2004 by the Speaker addressed to the Chief Administrative Officer regarding "Emoluments of former members of the District Executive Committee".

I decline to make any orders of mandamus compelling the respondents to permit the applicants to resume their offices, as this has been over taken by events.

The applicants shall be paid the emoluments they were deprived of, for the relevant period, and which they were entitled to.

The respondent shall bear the costs of this application.



**RUGADYA ATWOKI**

**JUDGE**

**22/4/2006.**

Court: The Deputy Registrar of the court shall deliver this ruling to the parties.

**RUGADYA ATWOKI**

**JUDGE**

**22/4/2006.**