

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION No. 41 Of 2017

**IN THE MATTER OF AN APPLICATION FOR PREROGATIVE
ORDERS BY WAY OF JUDICIAL REVIEW**

NASIFU ISMAIL ::::::::::::::::::::::: **APPLICANT**

Versus

1. THE ATTORNEY GENERAL

2. JINJA DISTRICT LOCAL

GOVERNMENT

:::::::::::::::::::::

RESPONDENTS

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This is an application for Judicial Review filed under Article 42 of the Constitution of the Republic of Uganda, Sections 33 and 36 of **the Judicature Act**; Rules 3 (1) and (2), 4, 5, 6 and 7 of **The Judicature (Judicial Review) Rules**.

The applicant prays for orders that:

1. An order of mandamus issue compelling the Minister of Lands, Housing and Urban Development to appoint the applicant to serve on the Jinja District land Board.
2. An order of Prohibition, doth issue prohibiting the Minister of lands Housing and Urban Development from appointing any other person to the Jinja District Land Board in place of the applicant.

3. An order of Mandamus doth issue compelling the second respondent to forward the applicant's name and one other member for approval and appointment to the Jinja District Land Board.
4. A permanent Injunction doth issue restraining the Minister of lands, Housing and Urban Development and the 2nd Respondent from dropping and replacing the applicant on the Jinja District Land Board.
5. An order of Certiorari doth issue quashing the decision of the Minister of lands Housing and Urban Development to drop the applicant from being appointed to serve on the Jinja District Land Board and the decision to replace him.
6. General, Exemplary and Punitive damages.
7. Costs of this application
8. Any other relief the court deems fit.

The applicant relies on an attached affidavit which sets out in detail the evidence he relies upon. He avers that on the 15th day of February 2017 he was recommended to the Jinja District LC V Chairman by the Buwenge and Kakira Town councils to serve as a member of the Jinja District Land Board representing Town Councils. On the 17th of February 2017 the District Executive Committee sat and forwarded the names of the applicant and six others to the Minister of Lands Housing and Urban Development for approval.

On the 20th of February 2017 however, one Dr Joseph Muvawala wrote a letter to the Minister, which he copied to several others, protesting the appointment of the applicant in which he alleged that the applicant was a social misfit who should not serve in a public institution given his propensity to sponsor and participate in criminal dealings. He alleged the applicant was charged with murder of his father under Kibuli CID Hq CRB 24/2014, that the applicant was charged with theft of family property Jinja CRB 14/2016.

The applicant subsequently wrote to the Jinja District CID Officer who confirmed that the cited police files did not have complaints against him. an inquiry with the Chief Magistrates Court Jinja showed there were no pending charges against the applicant, and finally the CID Headquarters in Kibuli issued a report showing Muvawala's allegations as baseless.

The stated reports were sent to the Minister who was said to have directed the Jinja District Local Government re forward the applicant's name. In June 2017 the Jinja District Chairperson and Chief Administrative Officer under separate cover both forwarded the applicants name.

On the 26th of June 2016 the Minister declined to appoint the applicant citing numerous complaints against the applicant, including one lodged with the Inspector General of Government. The Minister stated that the Mayors of Bugembe and Kakira Town Council had now written nominating one Nabukalu Nusura Juma to represent Town Councils on the board and stated that the District Chairman regularise the nomination.

It was following the Ministers letter that the applicant swears that he has suffered mental anguish and filed the present application.

The respondent's oppose the application.

The Attorney General asserts that the application is brought in bad faith and that the Minister on the 2nd March 2017 advised the Jinja District Local Government on how to handle the applicant's issues. That the Minister, as a result, did not act irrationally or illegally in any way. The application has no merit

The 1st respondent also states that the application is stale as it has been brought outside the prescribed time.

The second respondent, Jinja District Local Government, also oppose the application.

The Jinja District Chairman swore an affidavit in reply and avers that they have not done anything in this matter that is illegal, irrational or procedurally improper that call for a Judicial Review. That the respondent presented the applicants name to the Minister for approval and it was the Minister who approved some names and excluded the applicants. That in the event the action of dropping the name is deemed unreasonable, then it should be attributed to the Minister and not to the 2nd respondent as the role of the 2nd respondent was to forward names for approval which was done.

That an application for mandamus ought to be preceded by a demand for the act to be done which demand was not made in the present case. If it had, then the applicant would have been furnished with sufficient information about the matter.

The 2nd respondent states that the application is time barred as the Ministers decision was made on the 2nd of March 2017 and yet the present application was lodged on the 24th of August 2017 outside the time prescribed by law.

The Chairman deposes that he did not sign a letter marked 'K' attached to the affidavit in reply and the signature attributed to him is an imitation.

That the claim for damages is not available to the applicant as it should have been brought by way of ordinary suit.

The Chief Administrative Officer (CAO) also swore a reply in which she denied a letter attributed to her and marked 'L' and attached to the reply.

There are rejoinders made. The applicant in one states that the application is in time and in another that he knows that the CAO authored annexure 'L'.

The applicant avers in another rejoinder that the District Chairman of the 2nd respondent acted illegally and irrationally when he failed to forward two names to the Minister as was required of him and that this contributed to the Minister failing to appoint the applicant. There are two rejoinder from one Maaka Said and Ntuyo Mohammad who both state that they saw the LC V Chairman sign the letter marked 'K' and attached to the application. He signed it in their presence.

The parties were granted leave to file written submissions which both have done. Each of the parties has raised preliminary points of law which I shall dispose of first.

The applicant states that the 2nd Respondents Affidavit in reply is argumentative, contains points of law and facts not within the deponent's knowledge and whose source he has not disclosed. The submission is that this offends Order 19 rr 3(1) and (2) of **the Civil Procedure Rules**. The argument is that the deponent raises several points of law regarding the issue of the writ of mandamus and the position of the law as to damages. The applicant submits that this offends the provisions of the law.

The paragraphs lay out what the respondents says is the position of the law and then in paragraph 22 states that what he has stated is true according to his knowledge.

I have seen nothing to persuade me that it would not be possible for the LC V Chairman to know what he states about the law. I have not been directed to the law that has been contravened either. In the result this objection is overruled.

The second objection is raised by both respondents. They state the decision complained against was made by the Minister on the 2nd of March 2017. This application was lodged 24th of August 2017. It is submitted therefore that the application offends Rule 5 of **The Judicature (Judicial Review) Rules**.

I have looked at the pleadings. It is clear that the decision of the Minister, of the 2nd of March 2017, ordered that investigations into allegations made against Nasifu Ismail (the applicant) be concluded before a decision on his appointment could be made. Clearly this was not a rejection. It is the decision of the 26th of June 2017 which is unequivocal. The Minister rejects the applicant in that letter.

Considering therefore that the applicant lodged this matter on the 24th of August 2017, he is clearly within the three months envisaged in Rule 5 as the limit within which to file an application for Judicial Review.

Both preliminary points are therefore dismissed.

This court shall now examine the merits of the application

I shall consider the following issues.

1. Whether the application discloses grounds for Judicial review
2. Whether the applicant is entitled to the remedies sought

1. Whether the application discloses grounds for Judicial review

As I see it, the facts in this matter are that Jinja District Local Government was reconstituting its District Land Board. The law requires that the Board include representatives of Urban and Municipal Councils. To that end, on the 15th of February 2017, both the Buwenge and Kakira Town Councils recommended the applicant, Nasif Ismail, for appointment. The Jinja District Executive Committee then sat on the 17th of February 2017 and agreed on seven names for nomination. The applicant was amongst the seven nominated and on the 20th of February 2017, the names were forwarded to the Minister.

On the same date, the 20th of February 2017, one Dr Joseph Muvawala, who is Katukiro of the Busoga wrote a letter to the Minister, which he copied to several

others, protesting the nomination and making the allegations already mentioned above.

It was after receipt of Muvawala's letter that the Minister wrote to the Chairman Jinja DLG indicating that upon receipt of Muvawala's accusations about the applicant's integrity, she could not approve him until investigations were carried out and gave two options as a way forward. The first was that the appointment of one other person on top of the applicant is stayed until the investigations are concluded. In the event of the conclusion of the inquiries then the names of the two would be resubmitted for approval. In the meantime the rest of the land board would be approved for appointment. It was this option that the Jinja DLG chose on the 6th of March 2017.

The applicant had meanwhile embarked on an effort to inquire into the allegations made by Muvawala. He wrote to the Officer in Charge CID Jinja, the Chief Magistrates Court Jinja and the Director of CID in Kampala. All three offices cleared the applicant of all accusations made.

Having received the clearance from police it appears the applicant informed the Jinja District Local Government who through the Chairman LC V and the CAO, on the 5th of March 2017 and 7th of June 2017, both wrote to the Minister indicating that the applicant had been cleared and forwarded his name for the Ministers consideration for appointment to the Jinja District land board.

The Ministers response is dated 26th of June 2017. She observed that there were endless petitions against the appointment of the applicant as a member of the land board. Then besides those petitions, another one copied to her but addressed to the IGG had been filed on the 15th of June 2017. The Minister decided that it was untenable to approve the applicant in light of numerous complaints. It appears the urban councils of Bugembe and Kakira made a fresh nomination of one Nabukalu Nusura Juma and the Minister accordingly advised the LC V Chairman to regularise this nomination and forward the name for her approval. It was following this communication from the Ministers that the applicant filed this application.

It would appear that save for denying the authorship of the letter dated 5th March 2017, resubmitting his name to the Minister, the 2nd respondent does not dispute these facts.

As there is no legal basis for the Ministers powers of appointment of District Land Boards, she cannot be compelled to use powers she does not hold to effect an appointment she cannot make.

Furthermore, there is no legislative framework the court can examine to determine whether the decision to reject the approval of the applicant was tinged with procedural impropriety.

It was held by Lord Hailsham of Marylebone with regard to the remedies in Judicial Review that,

....But 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 no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by law.

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized or joined by law to decide from itself a conclusion which is correct in the eyes of the court."

See: Chief Constable of North Wales Police vs Evans [1982] 3 ALL ER 141 at P.143 h-144

From this holding it is clear that the duty of this Court was to ensure that the applicant is treated fairly and in accordance with the law by the decision making authority and I have already found the Minister exercised a power not vested in her by the law.

In the same way the actions of the 2nd respondent in forwarding the names to the Minister for approval are not backed by law or other administrative authority. At least not any that this court has seen.

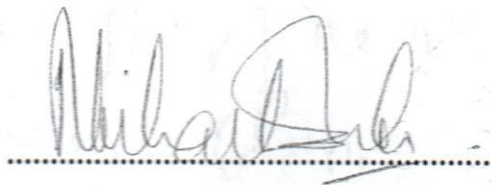
For that reason this Court cannot compel her to appoint the applicant or refrain her from performing any other act associated with the applicants appointment. Likewise

the second respondent ~~2~~nd cannot be compelled, restrained or prohibited in the manner prayed for by the applicant.

It is also not for this court, in an application such as this, to make a decision on the applicants appointment to the land board as its inquiry is limited to the decision making process. Remedy where a party is aggrieved by the actual decision taken lies elsewhere.

In the circumstances the application is untenable and is dismissed.

Considering that all parties took the standpoint Minister had the power of appointment in these circumstances, I shall order that each party shall bear its own costs.



Michael Elubu

Judge

10.11.17

21.11.17.

parier abel.
pro-Indigine
pro-Indigine; clear.

copy: Ruling delivered in the presence of
the same.

