

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO.16 OF 2018

DR. BADRU SSESSIMBA----- APPLICANT

VERSUS

- 1. NAKASEKE DISTRICT SERVICE COMMISSION**
- 2. NAKASEKE DISTRICT LOCAL GOVERNMENT--- RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Sections 33, 36, 39 of the Judicature Act as amended, Rules 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 Articles 41 & 42 of the Constitution of Uganda and Order 52 r 1 & 3 of Civil Procedure Rules for the following Judicial review orders;

- 1.) An order of Certiorari issues to quash and set aside the decision of the respondents terminating the applicant's employment.
- 2.) An order of Prohibition prohibiting the 2nd respondent or anyone of them implementing the decision/recommendation of the 1st respondent effectively terminating the applicant's employment with Nakaseke District as the District Health Officer.
- 3.) An Order of Injunction to stop the respondents their agents or anyone acting under their direction from implementing and/or enforcing the respondents' direction or order terminating the applicant's employment.
- 4.) A declaration that the order or direction of the respondents terminating the applicant's employment, and prior to direction from the Permanent Secretary of Public Service Commission is null and void, invalid and/ or illegal for among others depriving the applicant the right to be heard being contrary to Articles 28, 42 and 44 of the Constitution and being in contravention of the rules of natural justice and the applicable law.
- 5.) The direction/order of the 2nd respondent requiring the applicant to effect a hand over be halted pending the determination of the application for judicial review.

- 6.) A consequential order declaring the applicant as still the appointed District Health Officer.
- 7.) General damages.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applicant-Dr. Badru Ssessimba but generally and briefly state that;

- 1) The applicant was duly appointed as a District Health Officer by Luwero District Service Commission and posted to/in Nakaseke District Local Government as of 15th March 2007 and acted as such to date.
- 2) In its letter dated 23rd April 2007 the Chief Administrative Officer (CAO) Nakaseke District duly recognised the said posting of the applicant.
- 3) That the respondents as administrative bodies and vide letter dated 19th January 2018, without according the applicant a hearing unceremoniously notified and opted to terminate the applicant of his employment as District Health Officer.
- 4) That the acts of the respondents offend and are contrary to Articles 28, 42 and 44 of the Constitution of Uganda and natural justice.
- 5) That the respondent(s) are in advanced stages of implementing its decision, to effect the termination and require the applicant to hand over office.
- 6) That the applicant has no other remedy in the circumstances than to apply for the order of certiorari, injunction and prohibition.

The respondents opposed this application and they filed an affidavit in reply through Edith Mutabazi-The Chief Administrative Officer.

The Chief Administrative Officer contended that at the time she assumed duties in the Nakaseke she found the applicant had been interdicted on orders of Dr Diana Atwine Director Health Monitoring Unit on account of gross mismanagement and had been arrested vide CRB182/2012 and subsequently charged at the Anti-Corruption Court.

On 20th August 2015, the District Service Commission lifted the interdiction but directed that since the applicant was still in court, he could not be entrusted with funds while still facing criminal charges in Anti Corruption Court.

That the applicants previous files of employment were transferred from Masaka, Wakiso and Luwero districts and it was noted that the applicant had been dismissed from Masaka and Wakiso Districts.

That it was discovered that the re-employment of the applicant into Nakaseke District Local Government after he had been dismissed was in contravention of the Uganda Public Service Standing Orders 2010.

That the respondent sought guidance from Permanent Secretary Ministry of Public Service guided that the re-appointment applicant after October 2004 was null and void since he had been dismissed from Public Service. Accordingly the applicant was interdicted and his case referred to the District Service Commission to effect the decision of Permanent Secretary Ministry of Public Service.

At the hearing of this application the parties were directed to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Two issues were proposed for court's resolution;

1. Whether the applicant's termination and rescission of his appointment was illegal and justifies judicial review?
2. What are the remedies are available?

The applicant was represented by *Mr Bukenya Abbas* whereas the respondents were represented by *Mr Turyakira Anaclat*.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.*

For one to succeed under Judicial Review it is trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

Preliminary Objection

The respondent's counsel raised an objection to this application premised on that fact that the applicant has not exhausted the available remedies before seeking judicial review. It follows therefore that when the applicant's appointment was terminated by the respondent, he was at liberty to seek redress from the Public Service Commission by way of appeal as provided under Article 166(1) (e) of the Constitution.

In the case of **R vs Chief Constable of Merseaside Police Exparte Calveby & others (1986) ALL ER 257 at 263**, it was held as follows:

I respectfully agree to the divisional court that the normal rule in cases such as this is that an applicant for judicial review should first exhaust whatever other rights he has by way of appeal.

Similarly, in **Preston vs IRC (1995) 2ALLER 327 at 330** which was quoted with approval by Bamwine. J. As he then was in **Micro Care Insurance Limited vs Uganda Insurance Commission Misc. Application No.0218** of 2009, Lord Scarman stated:

My fourth position is that a remedy by way of judicial review is not available where an alternative remedy exists. This is a position of great importance. Judicial review is a collateral challenge; where parliament has provided appeal procedures, as in the tax statute, it will only be very rarely that the court will allow collateral process of judicial review to be used to attack an appealable decision

In the instant case, the Constitution provides a procedure an aggrieved party by the decision of the District Service Commission must follow. The applicant has not pleaded by affidavit or otherwise that the remedy available is not adequate or shown any other sound reason not to have followed that procedure. The right procedure in this case was for the applicant to appeal to the Public Service Commission before resorting to judicial review which is a discretionary remedy.

In the case of **Kyomuhendo Rex & anor vs Kyenjojo District Service Commission & another Misc. Application No. 0007 of 2011**, the applicants' application for Judicial review was dismissed on grounds that there existed alternative remedies in the Public Service Commission.

In view of the above analysis, it is our humble submission that this application should be dismissed since judicial review remedies will not be available where alternative remedies do exist.

This court has noted that in some cases, it is not a requirement that a party should exhaust the available remedies but it is advisable to explore all such alternate procedure to get the same remedies.

In this present case it is clear that the Chief Administrative Officer sought for an opinion from the Permanent Secretary-Ministry of Public Service and this would imply that the appellate body was involved though indirectly in the decision made by the respondents.

The Court has discretion to give remedies in judicial review even if alternative remedies exist.

I therefore find that this application is properly before this court.

ISSUE ONE

Whether the applicant's termination and rescission of his appointment was illegal and justifies judicial review?

The applicant's counsel submitted that the 1995 Constitution of Uganda under **Article 42** provides for the Right to just and fair treatment in administrative decisions.

The above Article requires that a Public body which seeks to exercise administrative powers to take an administrative decision ought to comply with the applicable rules of natural justice. It is also expected to act within the law, its powers and jurisdiction and should not arrive at a decision which is so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it, as per ***Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B 223.***

The applicant contends that his employment was terminated by the respondent without being granted an opportunity to be heard, unfairly and unlawfully. Worse still there was no reason whatsoever why the respondent purportedly terminated the services of the applicant “**with effect from the date of appointment**”.

The affidavit of the Chief Administrative Office particularly para 22 alleges that the applicant was given ample opportunity to be heard. However, nothing is there to show that the applicant was ever granted a fair hearing by the respondent.

According to the affidavit in reply under para 25, nowhere in the minutes of the District Service Commission are the reasons for termination stated. **In fact there was no termination as per the said minutes that are extracted from the interface.**

The District Service Commission opted to terminate the services of the applicant citing the Public Service Standing Orders 2010 particularly Section (A – I), as per the letter addressed to the applicant dated 5th Dec 2015 marked as Annexure K₁.

The applicant's counsel submitted that it is really shameful to read that a whole District Service Commission could write a letter indicating that the appointment of the applicant in 2007 under minute No. 24/2007 breached or was in contravention of the Public Service Standing Orders 2010

particularly chapter (A – I) which standing orders were not in existence at the time of the said appointment.

In logic and under the 1995 Constitution, the law does not operate retrospectively. For the applicant to have been dismissed under rules that were not in place at the time of his recruitment was erroneous, illegal, null and void and unlawful. He cited the case of ***DARLINGTON SAKWA & ATHANASIUS RUTAROH vs THE ELECTORAL COMMISSION & 44 OTHERS, CONSTITUTIONAL PETITION NO. 08 OF 2006***, the Constitutional Court had this to say; Courts of law are generally against retrospective operation of statutes. It is, for example, a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such construction appears very clear in the terms of Act, or arises by necessary and distinct implication” In the Kenyan case of ***Municipality of Mombasa vs. Nyali Ltd 1963 EACA 371-4*** it was held inter alia that:- *“Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation.....one of the rules governing construction is that if the legislation affects substantive rights it would not be construed to have retrospective operation unless a clear intention to that effect is manifested”*.

The attempts by the Nakaseke District Service Commission to apply the Public Service Standing Orders 2010 retrospectively to affect an appointment of 2007 is unreasonable and a shameful act that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it. There is no reason whatsoever that necessitated this decision except bias and witch-hunt.

The Public Service Standing Orders Vol. 1 which were operational at the time of appointment of the applicant did not bar re-engagement of an officer who was dismissed. This means it was always at the discretion of the recruiting authority. As per the minutes of the Nakaseke District Service Commission (NDSC) Minute No. NSK/DSC/113/2016, **the applicant informed them that he had relayed all the information about his previous employment to Luwero District Service Commission during the interview. This was never challenged and stands.** According to the circumstances, it means that having heard from the applicant, the Luwero DSC was satisfied that the applicant was competent, fit and proper for the job and the circumstances of his dismissal could not be used to deny him the opportunity or deny the Health Sector his competence.

Therefore, to say that the appointment was irregular is misguided and the termination shouldn't have been an option. The applicant did not have any power to interfere with the exercise of jurisdiction by the Luwero DSC during his appointment. In the interview leading to his appointment, the applicant relayed all the necessary information to the commission and it was up to it to exercise its discretion and either appoint him or reject him. Having exercised its discretion that way because it found it appropriate, which was lawful, the applicant cannot be condemned.

In the case of **MISCELLANEOUS CAUSE No. 0003 OF 2016 ARUA KUBALA PARK OPERATORS AND MARKET VENDORS' COOPERATIVE SOCIETY LIMITED vs**

ARUA MUNICIPAL COUNCIL, a decision of a public body can be challenged under judicial review if the decision was taken due to, among others, *“proceeded on a mistaken view of the law (error of law on the face of the record)”*.

It is evident that the decision of NDSC was based on a mistaken or deliberate misinterpretation or misapplication of the law and ought to be overturned. The applicant’s second interdiction of 11th November 2016 was unlawful as it was therefore based on bias, mistake of law and/or deliberate misapplication of the law to disadvantage the applicant.

As such, the applicant’s termination and rescission of the appointment was unreasonable, biased, illogical, illegal and unlawful for which the applicant ought to be granted the remedies sought.

Secondly, the applicant could not be dismissed basing on the fact that there were allegations against him before the Anti-Corruption Court. The 1995 Constitution of Uganda is very clear. Under 28 (3), every person charged with a criminal offence is presumed innocent until proved guilty by a competent Court. The applicant was interdicted on allegations of doubtful accounting. Although this was the case, he could not be victimized because he has been charged with a criminal offence for which he has not been found guilty. For the DSC to have chosen to act on mere allegations further shows how biased the commission was. It appears to have had a predetermined outcome which is contrary to principles of natural justice.

The applicant’s authority was reduced to being a mere District Health Officer in title with practically no authority. As per the letter from NDSC lifting the interdiction, the commission decided that he should not be given responsibilities of vote controller for the department until his case is disposed of in the Anti-Corruption Court.

This manifests how the commission was already condemning and treating the applicant as a criminal. In fact the degree of suspicion with which he was being treated was suspicious itself. The commission was demonstrating bias and unfairness even when the process of court was on going.

It has to be noted that the duties of a head of department which office the applicant occupied, are spelt out in the **Local Government Finances and Accounting Regulation 2007- Statutory Instrument No. 205 of 2007** among which is vote controller. There is nothing therein that empowers the District to trim the powers of an officer that are granted by a legislation when it is not provided for.

In *High Court MISCELLANEOUS CAUSE No. 0003 OF 2016 ARUA KUBALA PARK OPERATORS AND MARKET VENDORS’ COOPERATIVE SOCIETY LIMITED Vs ARUA MUNICIPAL COUNCIL*, the court stated inter alia *“The purpose of judicial review is to check that public bodies do not exceed their jurisdiction and carry out their duties in a manner that is detrimental to the public at large”*. It further stated that *“Traditionally judicial review is premised on allegations that a public body;- acted without powers (lack of jurisdiction); went beyond its powers (exceeded jurisdiction); failed to comply with applicable rules of natural justice; according to the record, proceeded on a mistaken view of the law (error of law on the*

face of the record); or arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it”.

The process leading to the termination of the applicant involved exceeding the commission’s mandate which makes the final decision unlawful, illegal and untenable for which the applicant ought to be awarded the remedies sought.

Thirdly, the applicant was interdicted beyond the mandatory 6 months. As per Minute No. NSK/113/2016, the applicant’s interdiction was lifted as it had exceeded the mandatory period of 6 months. The applicant was interdicted on 18th April 2012. The interdiction was lifted in 24th August 2015. This was slightly more than 3 years since he was interdicted. This therefore meant that he remained interdicted for an unlawful period of 2.5 years. This was a manifestation of bias. In fact the interdiction was as per the Minute No. NSK/113/2016 lifted because they wanted to avoid the colossal sums of money that the applicant might demand of this lawlessness and not because they observed the law. This form of abuse of the law to the detriment of others must be condemned and the applicant seeks punitive damages.

The CAO in her affidavit in reply shows how consultations were made with the Permanent Secretary, the Solicitor General and others, this did not amount to fair hearing, that none of those offices required or summoned the applicant to defend himself. They decided to consult themselves and therefore any decision that was to be taken should have concerned them and not the applicant as he was never a party to their correspondences.

Further, on the allegations of irregular recruitment, the applicant was summoned on 5th Dec 2016 for a hearing intended to take place on 12th Dec 2016. This time cannot have been sufficient to enable the applicant adduce any other evidence to show the regularity of his appointment.

The applicant’s counsel submitted that the termination and rescission of appointment of the applicant was illegal and unlawful.

Respondent’s submission

The respondent’s counsel argued that the submission by the applicant’s counsel that the applicant was not granted an opportunity to be heard is in fact not true. The evidence on record clearly shows that the applicant was accorded a fair hearing prior to his termination.

The evidence on record is as follows:

Prior to being employed by Nakaseke District Local Government, the applicant had been dismissed from Masaka and Wakiso District Local Governments. The copies of the applicant’s dismissal letters are attached to the respondent’s affidavit in reply marked as **C1** and **C2** respectively.

The applicant had appealed to Public Service Commission against Masaka District Local Government but his appeal was rejected. A copy of the decision of the Public Service Commission is attached to the respondent's affidavit in reply marked as **Annexure D**

Upon discovery of the above information which the applicant had not disclosed while applying for a job with the respondent, the Chief Administrative Officer wrote to the applicant requesting him for an explanation within seven days why disciplinary action should not be taken against him. A copy of the letter is attached to the respondent's affidavit in reply and marked as **Annexure E**

On 3rd September 2016, the applicant submitted his response. A copy of the applicant's response is attached to the respondent's affidavit in reply and marked as **Annexure F**.

Following the applicant's response, the Chief Administrative Officer sought guidance from the Permanent Secretary Ministry of Public Service. The Permanent Secretary Ministry of Public Service guided that the re-appointment of the applicant after October 2004 was null and void since he had been dismissed from Public Service. A copy of the letter is attached to the respondent's affidavit in reply and marked as **Annexure G**.

Following the advice of the Permanent Secretary, Ministry of Public Service, the applicant was on 8th November 2016 interdicted on grounds of irregular appointment. A copy of the letter of interdiction is attached to the respondent's affidavit in reply and marked as **Annexure I**

On 5th December 2016, the applicant was invited to appear before the District Service Commission in defence of the allegations against him. A Copy of the letter of invitation is attached to the respondent's affidavit in reply and marked as **Annexure K1**. The Chief Administrative Officer was also invited to the same session of the District Service Commission. The letter inviting the Chief Administrative Officer is marked **Annexure K2**

On 12th December 2016, the applicant and the Chief Administrative Officer appeared before the District Service Commission. After hearing both the applicant and the Chief Administrative Officer, the District Service Commission found the applicant culpable but advised to seek the advice from among others the Solicitor General. The minutes are attached to the respondent's affidavit in reply as **Annexure L**.

On 30th October 2017, the Solicitor General opined and advised that the applicant's services be terminated.

Following the advice of the Solicitor General, the applicant's appointment as District Health Officer was accordingly terminated.

The respondent's counsel contended that the applicant was accorded a fair hearing as stipulated under Articles 28 and 44 of the Constitution and other relevant laws.

The applicant's counsel also argued that the District Service commission relied on the Public Service Standing Orders 2010 in dismissing the applicant and yet the same were not in existence at the time of the applicant's appointment.

According to Annexure L of the respondent's affidavit in reply (Minutes of the District Service Commission), the District Service Commission noted as follows at page 27:

It would be paramount to consult with Public Service Commission and other relevant authorities like Ministry of Public Service, Ministry of Health and Solicitor General for clarifications on the irregularity of the appointment of Dr. Ssesimba and the bone of contention on the following issues:-

- a. The two seemingly unclear laws in the Public Service Standing orders it. The previous Public Service Standing Orders, Volume 1 which was still operational when Dr. Ssesimba applied for the job DHO and under which he was employed in service but was silent about re-engagement in service; and the new public service Standing orders 2010, which was clear and specific about re-employment in service but was not operational when he was re-employed in service.*
- b. The irregularity of Dr. Ssesimba's re-employment in service and the subsequent rescinding of his appointment given the above mentioned circumstances.*

Following the above resolution of the District Service Commission, the Solicitor General was consulted and in a letter of 30th October 2017, the Solicitor General opined as follows:

According to your letter from secretary to the DSC-Nakaseke, to the Public Service Commission, Dr. Ssesimba was dismissed from Public Service by Masaka DSC on 25th October 2004, he appealed against the decision in November 9th of 2004 and his appeal was not accepted in a letter dated 14th Feb 2005.

This in essence, was a rejection to re-employment under Public Service.

He further, knowingly, omitted these details from his application form to the Public Service.

The Standing Orders make provision for what is authorized. Where there is no provision to particular circumstance the responsible Permanent Secretary shall decide what to do.

The Permanent Secretary of Ministry of Public Service in a letter dated 11th October 2016, addressed to the CAO Nakaseke and gave you (Nakaseke CAO) guidance as to the matter of Dr. Ssesimba and observed that in accordance to Section A-1 of the Public Standing Orders, re-employment of Dr. Ssesimba after October 2004 was null and void since he had been dismissed from Public Service and advised the case to be submitted to the District Service Commission for the appointment to be rescinded.

The Chief Administrative Officer-Edith Mutabazi- further to this recommended in her report to the District Service Commission to have Dr. Ssesimba appointment rescinded

This office therefore agrees with the report and further advises that the District Service Commission rescind Dr. Ssesimba Badru appointment from Public Service.

The respondent's counsel agreed with the opinion of the learned Solicitor General and submitted that the applicant's appointment was legally terminated on grounds of irregular appointment.

Regulation 11 of the Uganda Public Service standing Orders 2010 which was saved from the Uganda Public Service Standing Orders Vol. 1 provides as follows:

Standing Orders make provision for what is authorised. Where there is no provision, there is no authority. Anything done for which there is no provision is, therefore, void.... If Standing Orders fail to make provision for a particular circumstance, the matter should be referred to the Responsible Permanent Secretary who shall decide what shall be done and, if necessary, whether Standing Orders shall be suitably amended.

In this case, the Public Service Standing orders Vol.1 were silent on the re-appointment of a person who has been previously dismissed from Public Service.

Upon discovering the irregularity in the appointment of the applicant (since he had previously been dismissed from Public Service), the Chief Administrative Officer referred the matter to the Permanent Secretary of Ministry of Public Service for guidance as provided for in the Standing Orders. In her letter dated 11th October 2016, she opined as follows:

The details therein have been carefully studied and it has been observed that in accordance with the provisions of Section A-I of the Uganda Public Service Standing Orders, re-employment of Dr. Ssesimba after October 2004 was null and void since the officer had been dismissed from the Public service.

According to the respondent's counsel it is clear that the termination of the applicant's appointment was done according to the Uganda Public Service Standing Orders, Vol.1 which were in force at the time of his appointment. Since they were silent on the re-appointment of a person previously dismissed from Public Service, the Chief Administrative Officer referred the matter to the Permanent Secretary who guided that the applicant's appointment was null and void since he had been dismissed from Public Service.

The arguments of the applicant's counsel on the rule against retrospective application of legislation do not therefore arise.

The respondent's counsel also wished to bring it to the attention of court's attention that the applicant, knowing that he could not be re-employed into public service after being dismissed from the same concealed information relating to his previous employment.

The District Service Commission at page 21 of Annexure L (Minutes of the 24th District Service Commission Meeting) observed as follows:

After scrutinizing his application forms (PSC Form 3(1972) which he used to secure employment as District Health Officer in Nakaseke District; it was established that he did not disclose details of his previous employment as it was required by Public Service Standing Orders Section (A-j) (5) (6), (A-c)(17)

Dr. Ssesimba Badru; had personally filled PSC Form 3 (1972) and had signed on the form on 26/12/2006;in assurance that to the best of his knowledge, what he had filed was true and correct which was a deceitful manner.

The respondent's counsel contended that that the applicant's appointment was procured through lies, misrepresentations, and irregularities that this Court cannot sanction.

In *Twinomuhangi vs Kabale District and others [2006] HCB 130* at page 131, it was observed as follows:

The remedy of judicial review is not concerned with the merits of the decision complained of but rather the decision making process itself. The purpose is to ensure that the individual is given a fair treatment by the authority to which he has been subjected. In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.

The decision making process that led to the termination of the applicant's appointment was legal, rational and fair. This application cannot therefore stand.

The process that led to the applicant's termination of appointment was fair, legal, and rational. The applicant is therefore not entitled to any of the remedies he seeks. It also follows that the amounts claimed are unsustainable, speculative and without any legal basis.

Decision

This case had a funny history before the applicant was finally terminated from his employment. The Chief Administrative Officer stated that by the time she was posted at this district in 2015, she found that the applicant had been interdicted on the orders of Dr. Diana Atwine, Director Health Monitoring Unit on account of gross mismanagement and the applicant was charged at the Anti-Corruption Court.

The interdiction was lifted on 20th August 2015 by the district service commission but it directed that the applicant could not be entrusted with funds while still facing criminal charges in court.

It is not clear from the affidavit of the CAO how and why the applicant's files of his previous employment were sought from Masaka, Wakiso, and Luwero. Was this an act of witch hunt or

routine examination of all the staff of the district who had had previous employment? It could appear that it was purposely done to target the applicant and whatever was intended to be achieved is best known to the person who ordered for the files.

It is further not clear to this court whether there was a complaint against the applicant in respect of his current employment other than the matter which was pending in the Anti-Corruption Court.

It appears that the complaint that led to the review of the applicant's employment arose from his acrimonious relationship he had with the Chief Administrative Officer as shown in the minutes of District Service Commission page 7 as follows;

“She tried to explain to Dr. Ssesimba those circumstances but could not understand her; but he continued with his threats and harassments to CAO; coupled with his unfortunate correspondences to the Ministries of Health and Local Governments; maligning, despising and undermining CAO's performance and that of the entire district.

Meanwhile she started getting information regarding his previous employment from her colleagues and in the process she established that according Public Service Standing Orders Dr. Ssesimba was not worthy being in Public Service anymore having been previously dismissed from service by Masaka and Wakiso Local Governments respectively.”

The CAO had a problem or issues with the applicant and indeed found a solution of dealing with it. She caused an inquiry into the previous appointment of the applicant in order to find a reason of dismissing the applicant from employment premised on having been dismissed from the previous public service employment.

It can be seen from the sequencing of events, that the applicant's interdiction was lifted on 24th August 2015 and later after a year on 29th August 2016 the CAO wrote to the applicant requesting him to explain why disciplinary proceedings should not be taken against him.

In order to satisfy herself with the predetermined decision of having the applicant dismissed from employment, the CAO sought a legal opinion from the line Ministry responsible for Public Service and also a legal opinion from the Solicitor General.

The disciplinary proceedings taken against the applicant were purposely intended to legitimise the intended dismissal of the applicant and that cannot be deemed a fair hearing since the circumstances surrounding the entire case was premised on bad faith.

By the time the applicant was engaged or employed in 2007 the alleged issue of being employed after he was dismissed from previous employment was raised as contended by the DSC . The members observation 12 clearly stated that;

“ The commission would seek further investigations with Luweero DSC to establish whether it was indeed minuted during their deliberations that he had revealed his previous Employment background during oral interviews”

It appears they did not carry out any further investigations to establish whether it was indeed captured in the minutes of Luweero District Service Commission. This amounted to condemning the applicant on insufficient and inconclusive findings and clearly shows the predetermined position that was guided by the CAO of ensuring that the applicant be dismissed at whatever cost.

The actions of Luweero District Service commission as indicated in the minutes was an exercise of discretion when they were faced by a situation that was not envisaged under the Public Service Standing orders on re-employment/engagement. This exercise of discretion could not be reversed by the different Service Commission. Since they found in the circumstances prevailing then in 2007 that the applicant was fit to be re-appointed notwithstanding having been dismissed from another district it would not be proper to reopen the exercise of discretion. Any attempt to reverse the exercise of discretion in 2007 using circumstances after 10 years would be illegal and ultra vires the powers conferred by law.

Discretion means essentially, making a choice between two or more options. So the courts insist that the decision maker actually makes that choice in each case; that is, applies its mind to the different possible decisions, which it would make and chooses between them. See *Public Law in East Africa by Ssekaana Musa* page 105.

The re-employment of the applicant by Luweero District Service Commission cannot be termed illegal after 10 years when the law did not forbid it. The actions of Nakaseke District Service Commission to re-open the case of the applicant’s employment in order to justify the intended dismissal was tainted with malice and bad faith and an abuse of authority by the public body. As noted earlier the background to the problems of the applicant were instigated by the CAO due to the acrimony with the applicant.

The legal opinions sought from the Permanent Secretary-Ministry of Public Service and Solicitor General on the re-engagement of the applicant cannot stand and they are not premised on any legal interpretation of any law and they are merely factual opinions that are not supported by the prevailing legal circumstances in 2007. If the same opinions were sought in 2007 when the applicant was about to be engaged in employment, it would have been different but not at this level after 10 years with changed circumstances.

The actions of the District Service Commission were improper and perpetuated by malice and personal dishonesty on the part of the members making the decision arising out of mistaken interpretation of what they are empowered to do, contributed by an excess zeal in the public

interest. The decision to reopen the applicant's employment was perpetuated by malice and dishonesty with the sole reason to find reason or justify the intended dismissal of the applicant.

The unexplained lack of investigation from Luweero District Service Commission whether the issue of previous employment or dismissal ever arose during the proceedings is supportive of presumption of exercise of power for improper purposes by Nakaseke district Service Commission in order to perpetuate an illegality or a wrong object of ensuring that the applicant is dismissed.

ISSUE TWO

What remedies are available to the parties?

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

The decision of the Nakaseke District Service Commission terminating the appointment of the applicant and rescinding minute No. 24 of 2007 is quashed for illegality.

General damages

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See ***Benedicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011****

The applicant did not guide court on the nature of the loss or injury suffered apart from stating that *"the acts of the respondent has put ridicule and disrepute to my career, and has caused me great inconvenience for which I seek general damages, in the estimation of Ug. Shs. 500,000."*

In the submissions of the applicant, he sought compensation for 1,000,000,000/= General damages of 500,000,000/= and punitive damages of 100,000,000/=. The above are not supported by any evidence and there is no basis whatsoever.

This court awards the applicant a sum of 20,000,000/= as damages for inconvenience suffered since the illegal termination of appointment.

The award of general damages shall carry interest of 15% until payment in full.

The application is allowed with to costs against the respondents.

I so Order

SSEKAANA MUSA
JUDGE
26th /10/2018