THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

APPLICATION FOR JUDICIAL REVIEW

MISCELLANEOUS CAUSE NO. 013 OF 2020

SHEIKH SHUAIB ADAM NTEGEKA::APPLICANT

VERSUS

SHEIKH IRUMBA MOHAMMED

KAIGA HAMZAH

SHEIKH KALEMIRE SULAITI JUMA

SHEIKH SULAIMAN ABDU BWAYO

UGANDA MUSLIM SUPREME COUNCIL:: RESPONDENTS

RULING BY JUSTICE GADENYA PAUL WOLIMBWA

The Applicant brought this Application for prerogative orders by way of judicial review under Articles 28(1), 42, 44 and 50 of the 1995 Constitution of the Republic of Uganda, Section 36 and 38 of the Judicature Act Cap. 13 (as amendment), Rules 3, 4,5,6 & 7 of the Judicature (Judicial Review) Rules S1 11 of 2009 seeking for orders that;

a) The decision of the 1st Respondent contained in the letter dated 14.4.2020 dismissing the Applicant from the Imamship of Hoima Town Mosque is ultra vires the powers of the 1st Respondent, improper, illegal and irrational;
b) An order of certiorari to call and quash the letter dismissing the Applicant from the Imamship of Hoima Town Mosque dated 14.4.2020;
c) A declaration that the decision of the 1st Respondent adopting the findings and recommendations of the Investigation Report by 2nd, 3rd and 4th Respondents dated March 2020 to dismiss the Applicant from the Imamship of Hoima Town Mosque on 14.4.2020 was irrational, unlawful and void;

d) A declaration that the investigation by 2nd, 3rd and 4th Respondents was irregularly and illegally conducted, biased, did not accord the Applicant a fair hearing and the resultant report dated March 2020 is illegal, null and void;
e) An order of certiorari to call and quash the investigation report by the 2nd, 3rd and 4th Respondents dated March 2020;
f) An order of prohibition issues to stop the 5th Respondent from enforcing the decision communicated in the letter by the 1st Respondent dated 14.4.2020 or taking any further action premised on the said letter and the investigation report by the 2nd – 4th Respondents dated March 2020;
g) General damages; and,
h) Costs.

The grounds of the Application are contained in the Affidavit of Sheikh Shuaib Adam Ntegeka but briefly, they are;

1. That the Applicant is the Imam of Hoima Town Mosque and has diligently served in the capacity from 9.7.2019 when he was appointed to that position by Hoima District Kadhi Sheik Ashiraf Kugonza.
2. The 1st Respondent acting with bias and without lawful justification resisted the Applicant's occupation of the office of Imam Hoima Town Mosque.
3. That the 1st Respondent appointed the 2nd – 4th Respondent who are not known in the structure of the 5th Respondent to investigate the Applicant consequent to which the 2nd – 4th Respondents conducted a sham investigation without following due process, did not accord the Applicant a fair hearing and in the end compiled a lopsided and biased report against him.
4. The 1st Respondent adopting the findings and recommendations of the investigation report by the 2nd – 4th Respondents dismissed the Applicant from the position of Imamship Hoima Town Mosque on 14.4.2020 without a disciplinary hearing or hearing at all.
5. The Respondents acted in breach of and/or without complying with the law, the constitution of the Uganda Muslim Supreme Council, policy guidelines, procedures and rules.

6. The 1st Respondent arbitrarily dismissed the Applicant from the office of Imam Hoima Town Mosque under a grave procedural impropriety occasioning an injustice to the Applicant.
7. The decision of the 1st – 4th Respondents for which the 5th Respondent is liable are illegal, irrational and were procured under procedural improprieties.
8. The decisions of the Respondents to dismiss the Applicant from the office of Imam are highhanded, illegal and done in total disregard of the principles of natural justice and the provisions of the Constitution of the Republic of Uganda.
9. That it is just, fair and equitable that this application be granted.

The Respondents opposed this application and filed an affidavit in reply sworn by the 1st and 2nd Respondents. In brief, the 1st Respondent swore the affidavit on his behalf and the 5th Respondent stated that the appointment of the Applicant as Imam Hoima Town Mosque was unconstitutional and invalid and hence there was no need to subject him to disciplinary proceedings. That it was within his mandate to dismiss the Applicant having been ordered by the Secretary General and hence his dismissal was legal and justified under the Uganda Muslim Supreme Council Human Resource Policies and Procedures Manual. That he appointed the 2nd to the 4th Respondents to help conduct disciplinary proceeding against the Applicant and that it was done with transparency and accorded the Applicant with a fair hearing.

The 2nd Respondent briefly stated that him, the 3rd and 4th Respondents were appointed as a committee by the 1st Respondent to carry out investigations against the Applicant. That during their investigation, they accorded the Applicant the right to be heard and that their decision was independent and impartial free from any bias.

Representation

The Applicants were at the hearing represented by Mr. Simon Kasangaki of M/S Kasangaki & Co. Advocates while Baryabanza & Co. Advocates represented the Respondents. Both counsel filed written submissions to argue the application.

Issues

The following issues were framed for the determination of the Application.

1. Whether the application is amenable for judicial review.
2. Whether the procedure and decision to dismiss the Applicant from the Imamship of Hoima Town Mosque was tainted with illegality, irrationality and impropriety.
3. What remedies are available to the Applicant if any?

Whether the application is amenable for judicial review.

Counsel for the Respondents raised the issue that the remedy for judicial review is not available to the Applicant since at the time of the Applicant's impugned dismissal the Applicant was illegally holding the office of Imam Town Mosque. He referred court to *annexure "A"* to the Applicant's affidavit in support of the application, in which the Applicant was appointed by the District Kadhi, Hoima district on the 10th day of July 2019 under Article 19 and 20 of the Constitution of Uganda Muslim Supreme council (UMSC) which does not confer power upon them to appoint Imams.

He submitted that Article 19 and 20 of UMSC Constitution deals with Muslim District Councils and Muslim District Committees not appointment of Imams making it unconstitutional. That according to the 1st Respondent the said appointment was declared null and void by the Regional Council of Sheikhs on ground that the procedure of appointing Imams as provided for under Article 21 of UMSC Constitution was never followed. That *annexure "A1"* to the 1st Respondent's affidavit in reply shows the minutes in particular 02/BTMR/CSHS-8/19 and minute 03/BTMR/CSHS-8/19 shows that the Applicant's appointment was nullified by the Regional Council of Sheikhs on 23rd day of August 2019.

He further submitted that the Applicant having been illegally in office at the time of the impugned decisions, he was not entitled to be subjected to any disciplinary proceedings before he was removed from the said office which he held illegally and therefore, it was superfluous for him to be subjected to disciplinary proceedings. He submitted that judicial review is not available to such a person, like the Applicant, who was removed from office in which, he was appointed in contravention of the 5th Respondent's constitution.

He referred court to **Augustine Nteziryayo & Anor vs. Uganda criminal revision No. HCT - 12-CV-001 of 2013** (unreported) where Justice Byabakama Mugenyi Simon, as he then was, while

relying on the case of **Mukula International Ltd vs Cardinal Nsubuga and Another [1982] HCB 11**, held that **a court of law cannot sanction what is illegal and illegality once brought to the attention of court overrides all questions of pleading including admissions made thereon.** Further to the above, counsel for the Respondent submitted that the Applicant did not file an affidavit in rejoinder which means that the he did not controvert the evidence of the Respondents to the fact that his appointment was in contravention of the UMSC Constitution and that the same was declared null and void by the Regional Council of Sheikhs.

The Applicant in his Affidavit in rejoinder filed on 20th May 2020 confirmed that he is qualified to hold the position of Imam and was duly appointed as Imam of Hoima Town Mosque.

Determination

Judicial review is defined under Rule 3 of the Judicature (Judicature Review Rules 2019 to mean;

> **"....the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties".**

In **Wanyama George Stephen vs Busia District Local Government H.C.M.A No. 0225 of 2011,** it was held inter alia that;

> **"The right to apply for judicial review is now constitutional in Uganda by virtue of Article 42; which empowers anyone appearing before an administrative official or body a right to be treated justly and fairly with a right to apply to a court of law regarding the administrative decision taken against such a person. This right, to just and fair treatment in administrative decisions cannot be derogated according to Article 44".**

The question is whether these principles apply to the instant application. The Respondents submitted that the Applicant's appointment as the Imam did not comply with Article 21(7) as provided in the Uganda Muslim Supreme Council constitution. That his appointment letter shows he was appointed under Article 19 and 20, which, are clearly not, provisions relating to appointment of Imams.

Article 21(7) of the Uganda Muslim Council Constitution states as follows;

"The Juma Mosque Imam shall be appointed by the District Kadhi on recommendation of the County Sheikh and on the advice of the District Council of Sheikhs from a list of three names proposed by the Juma Mosque Committee".

The appointment letter marked as *annexure "A1"* to the application which the Respondents relied to say that his appointment flouted the law, clearly shows that before the Applicant was appointed, there was a Council of Sheikhs meeting which had sat on 9th July, 2019 to decide on his appointment. The appointment letter which, is in issue, was signed by the District Kadhi who has the authority to appoint an Imam as provided for in the law.

Whereas, the Respondents stated that the Applicants' appointment was nullified by the Regional Council of Sheikhs, no evidence was led to confirm that the Applicant was dismissed for misconduct. Indeed, the Respondents did not seem to be sure, as to whether the Applicant's appointment was declared null and void. This benefit of the doubt can only go to the Applicant, who insisted that his appointment was lawful. It is therefore, the finding of this court that the Applicant, was rightly appointed and since he was dismissed by a public body, his case fits well in judicial review as per the principles set above.

Whether the procedure and decision that led to the dismissal of the Applicant from the Imamship of Hoima Town Mosque was tainted with illegality, irrationality and impropriety.

Mr. Simon Kasangaki, counsel for the Applicant submitted that Justice Yorokamu Bamwine, defined judicial review in the case of **Clear Channel Independent (U) Ltd V Public Procurement And Disposal Of Public Assets Authority Cause No. 156 Of 2008,** as the process by which, the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions, duties, or acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law.

Counsel for the Applicant cited Article 42 of the Constitution which is the foundation for judicial review and guarantees the right to just and fair treatment in administrative decisions. He submitted that the remedies available to an Applicant under judicial review proceedings have been widely interpreted and discussed in the case of **John Jet Tumwebaze v Makerere University Council**

and 3 others Civil Application 353 of 2005 to include prohibition, certiorari, declaration and mandamus.

He further submitted that certiorari is sought to quash the decision while prohibition is meant to restrain its execution. That certiorari and prohibition will ordinarily lie to control administrative decisions of statutory authorities or bodies or persons exercising statutory authority. That the means of certiorari are a means of controlling bodies of persons having legal authority to determine questions affecting the rights of others and having the duty to act judicially.

He submitted that it is trite that a challenge to a quasi-judicial body's exercise of discretion can be sustained if bad faith is exhibited or where there is absurdity and legally relevant issues ignored or where improper motives are demonstrated or where the spirit of the statute was frustrated. See: **R v Secretary of State for Environment, Ex parte Hammersmith & Anor [1991]1 A.C 521**

Mr. Kasangaki further submitted that in order for one to succeed in an application for judicial review, the Applicant has to satisfy court that the matter complained of is tainted with a combination of illegality, irrationality and/or procedural impropriety.

He submitted that it is trite that when an administrative body does something, which it has in law no capacity to do or does it without following the proper order, it is said to have acted illegally and it would be a ground for applying for orders of certiorari, mandamus or prohibition because such an act is beyond its powers and hence ultra vires.

Furthermore, he submitted that the question for the court to determine is not whether the error can be corrected but whether such decision is reviewable. In the case of High Court, where such error is found, the order of mandamus may be issued compelling the body to do its duty, or in case it did not have jurisdiction, its decision may be quashed by issuing the order of certiorari, the likes of the one sought herein.

Counsel for the Applicant submitted that the following illegalities are glaring in the 1st Respondent's decisions and conduct cited in the affidavits in support of the application;

a) The 1st Respondents conduct of appointing the 2nd – 4th Respondents who are not known in the structure of the 5th Respondent ,to investigate the Applicant consequent to which the 2nd – 4th Respondents conducted a sham investigation without following due process, did not accord the Applicant a fair hearing and in the end compiled a lopsided and biased report against him;
b) The 1st Respondent adopting the findings and recommendations of the investigation report by the 2nd – 4th Respondents and dismissing the Applicant without according him fair hearing or disciplinary action on the 14th April 2020; and
c) The 1st Respondent acting in breach of and or without complying with the law, the constitution of the Uganda Muslim Supreme Council, policy guidelines, procedures and rules in arbitrarily dismissing the Applicant.

He further submitted that it was clear that the 1st Respondent illegally appointed the 2nd - 4th Respondents to illegally investigate the Applicant. He submitted that it was plain that 1st Respondent relied on the investigations of the illegal committee to dismiss the Applicant without according him a fair hearing or disciplinary action as mandated by the law, the constitution of the Uganda Muslim Supreme Council, policy guidelines, procedures and rules. He submitted that these illegalities prejudiced and victimized the Applicant contrary to the principles of natural justice and the provisions of the 1995 Constitution of the Republic of Uganda. He submitted that based on these illegalities, the Applicant had made out a case for which the writ of certiorari, mandamus or prohibition should issue.

Counsel for the Applicant referred the court to the Human Resources Policies and Procedures Manual of the UMSC at page 40 annexed to the 1st Respondent's affidavit in reply which establishes Disciplinary Committees that handle matters of discipline for employees like the Applicant. He submitted that it is only these bodies, that have the mandate to discipline employees like the Respondent and not the Committee that was appointed by the 1st Respondent. He then invited the court to quash the findings of the illegal committee which the 1st Respondent appointed because it was not among the structures of the UMSC and that besides, it had not conducted its proceedings legally and never accorded the Applicant a fair hearing.

He further stated that the decision by the 1st Respondent to dismiss the Applicant on 14th April 2020 was motivated by bias and was unlawful. He further stated that procedural impropriety arises when there is failure on the part of the decision maker to act fairly either by not observing the rules of natural justice or to acting without procedural fairness towards one to be affected by the decision, or by failing to adhere and observe procedural rules expressly laid down in the instrument by which such authority exercises jurisdiction to make a decision. See: **Al-Mehdawi Vs Secretary of State for the Home Department: [1990] Ac 876.**

He submitted that the decisions of the Respondents were contrary to the law, the constitution of the Uganda Muslim Supreme Council, policy guidelines, procedures and rules, which are binding on all Muslims and their leaders in Uganda and amounted to arbitrarily and high handed dismissal of the Applicant. He also submitted that the dismissal of the Applicant was done in total disregard of the principles of natural justice and the provisions of the 1995 Constitution of the Republic of Uganda and therefore, occasioned the Applicant a miscarriage of justice that ought to be declared a nullity and an order of certiorari issued to quash the same. He submitted that the Respondent should have duly notified the Applicant of the charges against him and availed exhibits and other accusations levelled against him in addition to giving him an opportunity to give his defense in writing or represented by counsel with the right to cross examine the witnesses of the defense and present his witnesses. He added that the Applicant should have also been given the verdict of the committee. He submitted that since the Respondents flouted all these cardinal principles the outcomes of the report of the committee ought to be set aside.

In reply, counsel for the Respondent submitted that the 1st Respondent acted on behalf of the 5th Respondent, being the Regional Kadhi and therefore, had jurisdiction to dismiss the Applicant from the office. He submitted that the 1st Respondent dismissed the Applicant on the instruction of the Hon. Secretary General of UMSC, as evidenced by *annexure "C"*. That under Art 13(4) and (8) of the UMSC Constitution, the Secretary General has executive and general powers over the employees of the UMSC in the districts and can delegate his powers to any of his subordinates. Counsel for the Respondents further submitted that the appointment of the 2nd to the 4th Respondents to investigate the Applicant was regular. He told court that the dismissal of the Applicant was as a result of various complaints against the Applicant from the Muslim faithful, which necessitated the 1st Respondent to report the Applicant to all the organs of the 5th Respondent

in the region including the Regional Council of sheikhs and later the secretary General of the UMSC. He submitted that following the report, the regional Council of Sheikhs passed a resolution and instructed the 1st Respondent to discipline the Applicant. The Secretary General of the UMSC, also instructed the 1st Respondent to appoint a committee of reputable Muslims to investigate the Applicant and advise him on the way forward.

That therefore, the 1st Respondent had power to decide which persons should assist him in investigating the Applicant. That the 1st Respondent appointed the 2nd to the 4th Respondents, on instructions of the Secretary General to investigate the Applicant and that in so doing, the 1st Respondent never breached the constitution of the UMSC. That basing on that, there was nothing irregular or improper in the 1st Respondent's appointment of the 2nd to the 4th Respondents to assist him in investigating the Applicant.

The Respondents' counsel further stated that the Applicant was accorded a hearing by the investigating committee comprising of the 2nd to the 4th Respondents. He submitted that the Applicant was invited to attend the committee and defend himself against the indictments and complaints against him by the Muslim faithful which, are annexed to the affidavit in reply of the 1st Respondent. That the Applicant attended the hearing of the complaints and indictments, heard the evidence against him by the complainants, and never expressed any interest to cross-examine the witnesses against him. That the Applicant defended himself and never told the committee that he needed time to call witnesses as per the invitation letters annexed to the Applicant's affidavit in support of the application.

Counsel for the Respondent referred court to *annexures "A"* & "A2" -the minutes of the meeting between the Applicant and the 2nd and 4th Respondents where the Applicant was interviewed and his responses recorded. Furthermore, counsel submitted that the Applicant willingly appeared before the committee of the 2nd to the 4th Respondents and never questioned its authenticity.

Counsel for the Respondents further submitted that the committee acted independently and impartially without anyone's direction or influence. That the committee made its report basing on the evidence adduced against the Applicant, which was handed over to the 1st Respondent and a copy to the Applicant.

Furthermore, counsel for the Respondents submitted that the Applicant did not adduce sufficient evidence to prove that he was never given a hearing considering that he even attached invitation letters, which is sufficient proof that he was indeed, given a hearing. That the Applicant was subjected to disciplinary proceeding by the 1st Respondent through the 2nd to the 4th Respondents, a committee appointed by the 1st Respondent to help him investigate the Applicant.

Further to the above, the Respondents counsel submitted that the 1st Respondent upon receiving the report of the investigative committee invited the Applicant to attend the meeting on 30th March 2020, but he never honoured the invitation. The Respondents' counsel submitted that the Applicant by his own volition chose not to be heard and cannot therefore blame the Respondents. He further stated that the 1st Respondent has always acted upon complaints brought against the Applicant without bias contrary to what the Applicant alleged.
In conclusion, counsel invited the court to dismiss the application with costs for being unmeritorious.

Determination
Judicial review is founded on article 42 of the Constitution which provides that:

> **"Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her".**

The rationale of article 42 of the constitution is to protect vulnerable persons who appear before public bodies that wield a lot of power and are prone to abusing those powers either through over stepping their mandates or acting in a capricious or unreasonable manner. It is for this reason that the law has set minimum standards of behavior for public bodies to insulate the vulnerable segments of society from their excesses. But this is not an open cheque. An Applicant seeking judicial review must prove that the actions of the Respondent are illegal, irrational or riddled with impropriety or that he or she was denied the right to be heard (or specifically that he or she was not accorded the right to natural justice).

The purpose of judicial review is concerned not with the decision but with the process leading to the decision. Judicial review is therefore not an appeal but rather an assessment of the manner in which a decision was made or an audit of the process leading to the decision that is a subject of the application. Judicial review is largely not concerned with the correctness of the decision arrived at but the manner in which a public authority acts or exercises its powers in arriving at the decision. A very good decision will be set aside if the process leading to that decision is wrong. Judicial Review, also exists to ensure that those who appear before quasi-judicial institutions or bodies are accorded administrative justice and natural justice which underpins the right to a fair and just hearing. In **Koluo Joseph Andrew & Others Vs. The Attorney General Misc. Cause No. 106 of 2010,** the court held that **judicial review exists to ensure that** public powers are exercised in accordance with the basic standards of legality, fairness and rationality. Finally, the ultimate aim of judicial review is to ensure that a person affected by the decision has been fairly treated and that his or her rights under public law are protected and enforced. See: Principles of Civil Procedure by Jeffrey Prinsler (SC).

The case for the Applicant's against the Respondents as can be gathered from the pleadings and evidence is that the 1st Respondent, who has always been biased against him from the time he was appointed as an Imam illegally appointed a committee outside the structures of the UMSC to investigate him following accusations made against him by a section of Muslims. That this committee did not accord him full trial rights to make out his case including giving him the nature of the charges and right to cross examine and call witnesses and that he was fired from his job based on the recommendations of this illegal committee. The Applicant, also contends that the committee acted illegally and their powers were exercised improperly, illegally and irrationally and that it paid no regard to the principles of natural justice when dealing with his case. Lastly, the Applicant contends that the 1st Respondent, dismissed him from his post without according him the right to be heard and on the basis of an illegal report.

From the evidence on record, the Secretary General of the UMSC, after complaints were filed against the Applicant, tasked the 1st Respondent to appoint a Committee to investigate the Applicant. The 1st Respondent appointed a committee comprising of the 2nd to the 4th Respondents, as evidenced in a letter attached as *annexure "C"* to the 1st Respondent's affidavit in reply dated 28th February 2020. The committee was mandated with investigating the allegations against the

Applicant and report to the 1st Respondent. The Committee heard from the complainants and the Applicant and thereafter wrote a report, which formed the basis for the 1st Respondent's decision to dismiss the Applicant.

The Applicant, who was not opposed to disciplinary processes against him blamed the Respondents for not adhering to the law, the Constitution of Uganda, the Constitution of the Uganda Muslim Supreme council and the Human Resource Policies and Procedures Manual for the Uganda Muslim Supreme Council, when handling allegations against him. He said that as a result of these breaches the investigation was illegal, irrational and improper.

Annexure *"E"* to the 1st Respondent's affidavit in reply gives the procedure to be followed in case of misconduct. Page 40 regulation 18.5 of the said Manual lays out the procedure to be followed for administering disciplinary action. The regulation requires that an employee suspected to have committed a misconduct, should be notified in person of the relevant facts and afforded an opportunity to reply to the case against him.

The Applicant was dismissed on 14th April 2020 and the key question is whether the procedure for dismissing him was tainted with illegality, impropriety and irrationality.

The 2nd Respondent swore an affidavit in which he states that having been appointed with the 3rd and 4th Respondents, to carry out investigations into the misconduct of the Applicant they summoned the Applicant and the complainants to appear before the committee to give evidence. That the Applicant appeared twice and defended himself. The 2nd Respondent referred court to annexure "A" showing the defense of the Applicant. Annexure A, lists the questions the Applicant was asked and the Responses he gave. Questions 12 and 13 on the said annexure, does not however, tell much in regards to the complaints brought against the Applicant other than the documentary evidence of the various complaints against him. There seemed to be no complaints against the Applicant from the people they allegedly brought to give evidence against him as no responses are being given to the questions asked. The committee seemed to be the one intending to show that the Applicant had started getting out of hand instead of the alleged complainants. The Committee appeared to be the accuser and the judge and yet their mission was to investigate complaints against the Applicant by listening to the complainants and the Applicant and thereafter make a reasoned

and balanced report to the 1st Respondent who had appointed them. The Committee failed in this regard and therefore, their report could not be fully relied on to indict the Applicant without any additional evidence and safeguards.

In reaching this finding, I am mindful that the 2nd Respondent in paragraph 6 and 7, of his affidavit, deponed that the Applicant appeared before them and defended himself and upon being satisfied that the Applicant was guilty of misconduct, they recommended that the Applicant should be relieved of his duties. In paragraph 8 of his affidavit in reply, he deponed that the Committee, gave the Applicant and his accusers ample time to present their case and further states in the preceding paragraphs that they acted independently and impartially without being influenced by anybody in doing their investigations and denied violating the rules of natural justice. That may well be but the fact that the committee was acting as the accuser and judge negative these noble aspirations that the 2nd Respondent alluded to above. As the saying goes impartiality and independence must not be done but should be seen to be done or put it simply those charged with observing impartiality and independence must walk the talk, which in this case the Committee failed to do.

With regard to the actions of the 1st Respondent are concerned, it is not disputed that the investigation against the Applicant were based on the directive of the Secretary General of UMSC. However, it should be noted that *annexure 'B"* dated 11th July 2019 to the Applicant's application shows the 1st Respondent opposed the appointment of the Applicant as the Imam of Hoima town Mosque even before he was officially appointed. Unsurprisingly, the 1st Respondent, was the same person, the Secretary General of the UMSC tasked to constitute a committee to investigate him. The 1st Respondent being conflicted and biased against the Applicant, should not have accepted to investigate the Applicant for obvious reasons. The 1st Respondent, should have politely declined the role of investigator and judge. It was therefore, not surprising that at the end of the investigations, the Applicant was dismissed by the 1st Respondent. It is a principle of natural justice that no person can judge a case in which they have an interest. The committee was working for the 1st Respondent and it could not be trusted to form an independent opinion without being influenced by the 1st Respondent who was already biased.

In regards to whether the 1st Respondent acted ultra vires in dismissing the Applicant, it should be noted that in the case of **Rebecca Nassuna vs Dr. Diana Atwine & 3 others H.C.M.C No. 322**

of 2018 court stated that acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality.

In the instant case, evidence has been adduced showing that the 1st Respondent selected a committee which was to investigate the Applicant. However, there was no disciplinary hearing as provided for in the manual since the committee itself was already biased. The partiality of the committee, can be seen from the proceedings of the committee, where despite having not found the Applicant guilty of the accusations levelled against him, they nonetheless recommended for his dismissal. The procedure as provided for on page 45 under regulation 18.5 was never followed. The Applicant also states that the impugned decision of the 1-4th Respondents for which the 5th Respondent is liable was illegal, irrational and procured under procedural improprieties.

To discuss the irrationality of the decision of the Respondents, it should be noted that irrationality was defined in **Dott Services Ltd & Another vs AG HCMA No. 137 of 2016** quoting the case of **Council of Civil Service Union & Another vs Minister of Civil Services [1985] 1 AC 374**, that; **Irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority addressing its mind to the facts and the law before it would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards.**

A careful evaluation of the evidence clearly shows that the Applicant was never preferred to be the Imam of Hoima Town Mosque especially by the 1st Respondent. Looking at *annexure "B"* to the Applicant's application, the 1st Respondent opposed him before he was appointed by the district kadhi as the Imam of Hoima Town Mosque. Further evidence is seen in *annexure "F"* where the alleged complaints started flowing in the moment he was appointed being addressed to the 1st Respondent. Then the decision of the committee as selected by the 1st Respondent shows that notwithstanding the committee not finding him guilty for anything, they went ahead and recommended that he should be dismissed from being the Imam of Hoima Town Mosque. The committee was like a conspiracy against the Applicant which clearly shows that the decision they reached on was irrational.

It was contended that the Applicant participated in the committee meeting in regards to the charges against him since he was asked questions and he answered, and concluded that he had been given a hearing. The fact that the Applicant was asked some questions during the investigations did not constitute the right to a fair hearing. In the **Election Petition 4 of 2009 Peter Bakaluba Mukasa** , it was observed that the right to a fair hearing connotes a hearing by an impartial and disinterested tribunal; a proceeding which hears before it condemns , which proceeds upon inquiry , and renders judgment only upon consideration of evidence and facts as a whole. I should also emphasize that the right to be heard also demands that the accused is given full and prior notice of allegations against him or her to enable him or her formulate and prepare their defense, which was not fully done in this matter. See **Amuron Dorothy vs. LDC HCT. Misc. Cause 042 of 2016**.

Furthermore, it was difficult for the investigative committee to offer the Applicant a fair hearing because it was appointed by the 1st Respondent, who opposed the appointment of the Applicant as the Imam of Hoima Town Council Mosque. There is also no evidence that the committee availed to the Applicant prior notice of the allegations against him to enable him prepare his defense. There was no disclosure of the case and evidence as required by the law. The applicant was never afforded the opportunity to cross examine the complainants who had allegedly filed complaints against him from the time he was appointed as the Imam of Hoima Town Mosque. The report as relied on by the Respondents does not show how an inquiry was carried out by the committee. The report compiled against the Applicant does not represent the true facts gotten from the meeting they had with the Applicant as no one seemed to be accusing the Applicant of any misconduct during the investigations as per *annexure "A"* but the report says otherwise.
The way I understand it, is that the right to be heard reserved under the constitution is meant to be accorded fully to every person. It is not even contended that he admitted liability when he was questioned during the process. However, the law on rules of natural justice require that a reasonable opportunity to be heard be afforded in clear terms.

In Uganda, the rules of natural are embedded in the Constitution under Articles 28, 42 and 44 which guarantee every person a right to a fair hearing before an administrative body. The case of **Ojangole Patricial & 4 others vs Attorney General H.C.M.C No. 303 of 2013,** underscores the application of the rules of natural justice. Citing **Halsbury's Laws of England 5th Edition 2010 Vol. 61 para 639, it is stated that;**

> **"The rule that no person shall be condemned unless that person has been given prior notice of the allegations against him/her and a fair opportunity to be heard (the audi alteram partem rule) is a fundamental principle of justice. This rule has been refined and adopted to govern the proceedings of bodies other than judicial tribunals; and a duty to act in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract, to conduct themselves in a manner analogous to courts."**

The first aspect of the rule of natural justice is adherence to the protection of the right to a fair hearing. The right is provided for under Article 28 and 42 of the Constitution. It is sacrosanct and non-derogable right under Article 44. The right to a fair hearing was restated in **Thugitho Festo vs Nebbi Municipal Council quoting the case of Onyango Oloo vs. Attorney General [1986 – 1989] EA 456,** where the Court of Appeal of Kenya held as follows:

> **"The principle of natural justice applies where ordinary people reasonably expect those making decisions which affect others, to act fairly and they cannot act fairly and be seen to have acted fairly without giving the opportunity to be heard....There is a presumption in every interpretation of statutes that rules of natural justice will apply and therefore the authority is required to act fairly and so to apply the principles of natural justice....."**

From the above principles on fair hearing, can it be said that the Applicant herein was given the right to be heard just because he was asked a set of questions which he answered? As already stated above, the committee was not impartial while deliberating on the issues concerning the Applicant, he was never given the opportunity to prepare his defense as required by law, he was not afforded the opportunity to cross examine the complainants and no serious inquiries seem to have been carried out before the Applicant was dismissed from being the Imam of Hoima Town Mosque. It is therefore, clear that the Applicant was never give a fair hearing by the Respondents as the committee was tainted with bias and could not come to an impartial decision.

In the case of **Twinomuhangi Pastoli vs Kabale District Local Government & 2 others [2006] HCB 130**, at page 31, it was held, inter alia that procedural impropriety refers to when there is the

failure to act fairly on part of the decision making authority in the process of making a decision. The unfairness may be in the non-observance of the rules of natural justice.

The evidence as presented before court shows there was unfairness by the Respondents in dealing with the Applicant's dismissal as the Imam of Hoima Town Mosque. Counsel for the Respondents further stated that the Applicant closed himself out of being heard when he refused to attend the meeting that was scheduled for 30th March 2020 while referring to *annexure "I"* to his affidavit. There is no evidence that the said annexure was inviting the Applicant to attend so that he could defend himself and neither is there evidence that he received the communication to attend.

From the foregoing evidence as adduced, it is clear that the whole procedure of dismissing the Applicant from being the Imam of Hoima Town Mosque was tainted with illegality, irrationality and was improper.

What remedies are available to the parties?

The remedies ordinarily issued in the judicial review are declaration, certiorari, mandamus and prohibition and they are discretionary in nature.

I have found that the Respondents acted with material irregularity in subjecting the Applicant to an illegal investigation before a committee that was biased against him as indicated by its recommendation to dismiss the Applicant and yet they had not found him guilty of the allegations made against him. I have also found that the Applicant was subjected to disciplinary procedures outside the staff manual of the UMSC. The Committee that was appointed to investigate the Applicant was a stranger to the recognized structures under the UMSC. That being the case, the decision to dismiss the Applicant was therefore ultra vires, irrational and riddled with irregularities. The decision of the Respondents are therefore quashed and set aside set aside.

The Applicant asked for general damages of UGX 200,000,000 but did not give the factual basis for this figure in as much as he suffered embarrassment, inconvenience and mental anguish following his dismissal. The Applicant will not be awarded two hundred million shillings but is entitled to reasonable damages to compensate him for the injuries suffered. I was referred to the case of **Sheik Abdulai Rajab & 3 others v Sheik Abubakar Singa & 2 others HCMA No. 28**

of 2013 at Arua where court awarded the Applicants UGX. 6,000,000/=. This was way back in 2013. I therefore consider general damages of twenty million to be paid severally and jointly by the 1st and 5th Respondents, who failed in their responsibilities, as sufficient compensation to the Applicant.

In the premises, I allow the application and do hereby order that;

a. An order of certiorari is issued against the Respondents quashing the dismissal of the Applicant from the Imamship of Hoima Town Mosque.
b. A declaration that the procedure and investigation carried out was illegal, improper and irrational.
c. The 1st and 5th Respondents to jointly and severally pay the Applicant general damages of twenty million shillings;
d. General damages to attract interest of 12% p.a from the date of this judgment till payment in full;
e. And costs of this Application be provided for.

Gadenya Paul Wolimbwa.
Judge
30/06/2020

Gadenya Paul Wolimbwa
Judge

This decision is to be emailed to the parties by the Registry of the Court on 30th June 2020.

Gadenya Paul Wolimbwa
JUDGE
30/06/2020

Gadenya Paul W
Judge