THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

MISCELLANEOUS CAUSE NUMBER 27 OF 2019

KATWESIGYE RICHARD

ANGUYO MOSES

ALIONYANYA DAVID ............................................ APPLICANTS

VERSUS

KIGUMBA SUB COUNTY LOCAL GOVERNMENT

MATUNDA ROSEMARY

ONEGA ALBERT ....................................................... RESPONDENTS

**RULING BY JUSTICE GADENYA PAUL WOLIMBWA**

This application was brought under Article 28 (1), 42, 44 and 50 of the Constitution , section 3 of the Judicature (amendment ) Act, Rules 3,4,5, 6, 7 and 8 of the Judicature (Judicial Review) Rules and the Land Act .

The Application seeks orders that:

1. A declaration that the decision arising out of the meeting held by the 1st Respondent and chaired by the 2nd Respondent on the 30th July 2019 purportedly appointing the 3rd respondent as the head teacher of Mboira Secondary School was illegal , irregular and void ab initio and was made in circumstances amounting to victimization;
2. An order of certiorari to quash the decision of the 1st Respondent dismissing the Applicants without being an afforded an opportunity to be heard and or without a reasonable cause;
3. A permanent order restraining the respondents from implementing the illegal and irregular decision to dismiss the applicants;
4. An order of mandamus compelling the 1st and 2nd respondents to cancel the decision of appointing the 3rd Respondent as the Head teacher ,dismissing the 1st Applicant as Head Teacher , who is the Head teacher, the 2nd Applicant who is the deputy Head Teacher and the 3rd Applicant who is the Chairman Board of Governors of Mboira Secondary School;



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5. An order of prohibition to stop the respondents from enforcing the resolution passed on 30th July 2019 as illegal;
6. An order declaring the decision of the respondents to dismiss the Applicants as illegal, irregular and void ab initio;
7. General damages; and
8. Costs of the Suit.

The Application was brought by Mr. Katwesige Richard , hereinafter called the 1st Applicant, Mr. Anguyo Moses, hereinafter called the 2nd Applicant and Alionyanya David, hereinafter called the 3rd Applicant against Kigumba Sub County Local Government, hereinafter called the 1st Respondent; Matunda Rosemary, hereinafter called the 2nd Respondent and Mr. Onega Albert, hereinafter called the 3rd Respondent.

The grounds of the application are that:

1. The 1st Applicant is the Head teacher at Mboira Secondary School, the 2nd Applicant is a deputy Head teacher at Mboira Secondary School and that the 3rd Applicant is the Chairperson of the Board of Governors at Mboira Secondary School;
2. That Mboira Secondary School is a community school governed by the Board of Governors and the 3rd Applicant is the Chairperson;
3. That on 30th July 2019 the 1st Respondent held a meeting chaired by the 2nd Respondent purportedly appointing the 3rd Respondent as the Headmaster of Mboira Secondary School without prior engagement or notice of the Board of Governors and the Applicants.
4. That the Respondents arbitrarily appointed the 3rd Respondent by the 2nd and 3rd Respondent as the new Head teacher and the Board of Governors chaired by the 3rd Applicant was dissolved without engaging the Applicants;
5. The impugned actions of the 2nd and 3rd Respondent against the Applicants for which, the 1st Respondent is vicariously liable are illegal, irregular, void ab initio and were made in the circumstances amounting to victimization.
6. The impugned decision of the 1st Respondent for which the 2nd Respondent is vicariously liable for dismissing the Applicants, appointing he 3rd Respondent as the new Head Teacher and Mutwe Felix as the new chairperson of the Board of Governors of Mboira Secondary



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school was high handed, illegal and done in total disregard of the principles of natural justice and provisions of the Constitution of the Republic of Uganda.

The Application was supported by the Affidavit of the 1st Applicant, who swore a single affidavit on his own behalf and that of the other applicants Anguyo Moses, the Deputy Head teacher of Mboira Secondary School and Alionyanya David, the Chairperson, Board of Governors, Mboira Secondary School. The Applicant deponed that he is Head teacher of Mboira Secondary School and that he was unlawfully removed from his post by the 1st and 2nd Respondent. He also deponed that Mboira Secondary School is community school that was founded in 2016 and is not the property of Kigumba Sub County Local Government, the 1st Respondent. The 1st Applicant further deponed that sometime in 2019, Mboira Secondary School made an application to the Ministry of Education to be granted the status of a Grant Funded School, which was successful and that the Commissioner in charge of Government Secondary Schools wrote a letter requesting for the names, qualifications of teachers and supporting staff, who were to be employed by the Government in line with the Guidelines for recruitment of staff.

That following this, the Respondents held an illegal meeting of stakeholders on 30th July 2019, in which they removed him and the 3rd Applicant and recommended the appointment of the 3rd Respondent as Head teacher and forged the school stamp under the guise that the school was a seed school whereas not. That the same Respondents replaced the 3rd Applicant as the Chair Board of Governors of Mboira Secondary School with a relative of the 2nd Respondent. The Respondents also on the 22nd of August 2019, in the absence of the 1st and 3rd Applicants forced the 2nd Applicant out of office as Deputy Head teacher of Mboira Secondary School and forced him to hand over the head teacher's office to the 3rd Respondent. It is the case for the Applicants that the appointment of the 3rd Respondent who is a sitting teacher at Masindi Port Secondary School, as head teacher of Mboira Secondary School, is illegal as he cannot be employed twice by the Government without first resigning his post.

On the other hand the case for the Respondents is that the Mboira Secondary School was co-founded by the Community and Kigumba Sub County Local Government in 2014 and that Mr. Madiri Gabriel, was its first head teacher. That a Board of Governors and Parents Teachers



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Association was put in place and it run the school up to July 2019, when changes were made. According to the 2nd Respondent, the 2nd Applicant who had taken over the school from Madiri, acted until 22nd August 2019, when he handed over office of head teacher to the 3rd Respondent. That the 1st Respondent as a stakeholder and founder member of the school requested the Government of Uganda to take over Mboira Secondary School as a Government Aided School to promote service delivery in the area. That as a result of this, Mboira Secondary School was accepted by the Government as a grant aided school. That they then appointed the 3rd Respondent, who is a serving teacher at Masindi Port Secondary School, as a care taker Head teacher and that his appointment is not illegal as he is not earning a double salary. The Respondents denied that the 1st Applicant and the 3rd Applicant have ever served as Head teacher and Chair Board of Governors, Mboira Secondary School respectively. The 3rd Respondent in a supporting affidavit deponed that he peacefully took over the running of Mboira Secondary School on 22nd August 2019 and that his appointment as Head teacher was communicated to Kiryandongo a district Local Government and the Ministry of Education. He also deponed that he is a serving teacher at Masindi Port School and that his appointment as care taker Head teacher at Mboira Secondary School does not attract a government salary save for allowances.

**Representation**

Mr. Simon Kasangaki, represented the Applicants while Ms. Susan Zemei, represented the Respondents.

**Submissions of the Applicants**

Mr. Kasangaki, counsel for the applicants in his opening submissions to the court, defined and gave the purpose of Judicial Review. He submitted that according to the case of **<u>Clear Channel Independent (U) Limited v. Public Procurement and Disposal of Public Assets Authority High Court Miscellaneous Cause number 156 of 2008</u>**, Justice Y. Bamwine, as he then was, defined Judicial Review to mean;

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



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He also relied on the case of **Chief Constable of North Wales Police v. Evans (1982) 3 All E.R 141 at page 143h-144a**, where Lord Hailsham observed that;

> *"The purpose of the remedies is to ensure that the individual is given affair 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".*

Similar views were expressed by Justice Eldad Mwangusya, as he then was, in **Erias Lukwago Lord Mayor KCCA v. Jenifer Musisi Executive Director KCCA HCMC No.16 of 2011**, where he observed that;

> *"Judicial review is not concerned with the decision but with the decision making process".*

He went on to say that judicial review;

> *"involves an assessment of the manner in which a decision is made, it is not an appeal and the jurisdiction is exercised in a supervisory manner...Not to vindicate rights as such, but to ensure that public power s are exercised in accordance with the basic standard of legality, fairness and rationality...".*

Counsel for the Applicants also relied on Article 42 of the Constitution which provides for the right to just and fair treatment in administrative decisions and took the court through the various remedies under judicial review that I need not recite suffice to note that counsel submitted that in order for one to challenge a quasi-judicial body's exercise of discretion, one has to prove on a balance of probabilities that bad faith was exhibited ; absurdity was present; legality issues were ignored; legally relevant issues were ignored; improper motives were demonstrated and the statute was frustrated. See: **Secretary of State for Environment, Ex parte Hammersmith and Another (1991) 1 A.C 521**.

Based on the exposition of the law and the facts in this case, counsel submitted that the decision of the Respondents to appoint the 3rd Respondent as Head teacher was tainted with illegalities



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because he was and is serving as a civil servant as a teacher at Masindi Port Secondary School. The 3rd Respondent could only have been appointed legally appointed if he had resigned his civil service job as a teacher. Secondly, that the Respondents held an illegal meeting on 3rd July 2019, as stakeholder and illegally proposed the 3rd Respondent as Head teacher of Mboira Secondary School and forged stamps of the school. Thirdly, that appointing the 3rd Respondent as Head teacher of a community school while a public servant on the pay roll. Fourthly, that the Respondents, on 22nd August 2019, in the absence of the 1st and 2nd Applicant held a meeting in which they forced the 2nd Applicant to handover office as Deputy Head teacher. Fifthly, that the 1st Respondent is directing and controlling Mboira Secondary School, as if it is a Government school and is therefore acting ultra vires its powers. Lastly, that the Respondents deposed the school administration and seek to replace the same with new personnel. He submitted that the actions of the Respondents are amenable to judicial review because he took the above decisions without according the applicants a fair hearing and rules of natural justice as mandated by the Constitution, the law and procedure.

He also submitted that the decision of the Respondents in holding a meeting in July as stakeholders where they proposed the 3rd Respondent as Head teacher, who is still on the government pay roll and forged the school stamps amounts to irrationality. Counsel also criticized the 1st Respondent for taking over the control of Mboira Secondary School as if it is a government school and yet it is a community school. Furthermore, counsel blamed the Respondents for forcing the 2nd Applicant out of office of Deputy Head teacher without according him due process. Counsel submitted that the Respondents were guilty of procedural impropriety, when they failed to observe the rules of natural justice and acted without regard to procedural fairness when they acted against the Applicants. He relied on the case **of Al- Mehdawi v. Secretary of State for the Home Department (1990) AC 876 and the case of General Medical Council v. Spackman (1943) AC 627 at 644** where Lord Wright held that:

> "*If the principles of natural justice are violated in respect of any decision, it is indeed, immaterial whether the same decision would have been arrived at in the absence of departure from essential principles of natural justice. The decision must be declared to be no decision*".



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Counsel, for the Applicants also relied on the case of **Isodo Abdul v. Arua District Local Government HCMA No. 02 –CV- MA 0058-2004** where Justice Kania, held that:

> *"The prerogative orders of certiorari and prohibition are the means 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 charged with the performance of public acts and duties. They serve as a control of administrative action and decision of public bodies which affect the rights of the ordinary citizens. The scope of the order of certiorari is twofold: To quash the decisions which are ultra vires and void and therefore nullities in law. To quash decisions which are intra vires but have an apparent error on the face of the record and have been irregularly arrived at and are therefore voidable….. ".*

While summing up, counsel for the Applicants submitted that it was undisputable that the Respondents in the absence of the 1st and 2nd Applicants held a meeting on 22nd August 2019, where they forced the 2nd Applicant from office as Deputy Head teacher; that on 30th July 2029, the 1st Respondent before the issuance of guidelines through the 2nd Respondent held a meeting appointing the 3rd Respondent as the Head teacher , before he resigned as a public servant and that to make matters worse the 1st Respondent appointed the 2nd Respondent as Chair Board of Governors of Mboira Secondary School, who is a relative to the 2nd Respondent without following the law. He also submitted that the Respondents arbitrarily dismissed the Applicant's singlehandedly, illegally and in total disregard of the Constitution and principles of natural justice and that therefore their actions deserve to be quashed.

**Arguments of the Respondents**

Counsel for the Respondents opposed the application on the following grounds.

Firstly, that the Applicants' supplementary affidavit was filed without leave of court and should therefore be struck of the record.

Secondly, that the 1st Applicant has never been a Head teacher at Mboira Secondary School. Mr. Gabriel Madiri was the pioneer Head teacher of Mboira Secondary School and was succeeded by the 2nd Applicant as Acting Head teacher on 22nd August 2019 and that the 2nd Applicant is duly



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employed as a teacher at the school. She submitted that the 1st Applicant, only visited the school on 21st June 2019, when he signed in the visitors book – that he had come to see the Head teacher. Counsel, wondered why the 1st Applicant, who claimed to be a teacher at the school, could have signed in the visitors book that he had come to meet the head teacher and chairperson of Board of Governors of the School, when he was the head teacher.

Thirdly, that the 1st Respondent is a founding member of the school and that under section 5(3) (a) of the Education (Primary and Post Primary) Act, 2008, the founding body shall among other things have the responsibility of ensuring proper management of the school in their foundation. Fourthly, that the affidavit of the Applicants contains falsehoods that the 1st Applicant is a head teacher whereas not and that the 3rd Respondent, who signed the appointment letter of the 1st Applicant was the Chairperson of the Board of Governors, whereas not. Counsel submitted that the affidavit of the Applicant should be rejected for peddling falsehoods. She cited the case of **Bitaitaana vs. Kananura (1977) HCB 37** where it was held that a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then naturally it becomes suspect.

Turning to the merits of the case, counsel for the Respondent submitted that the Respondents never acted illegally in making changes in the school. She submitted that the 1st Respondent co-founded the school with the community and that the school is sitting on its land and that therefore, the school is owned by the sub county. She submitted that the sub county participated in establishing the school and is therefore part of its day to day running.

Furthermore, counsel submitted that annextures A and B, which are signed by the 3rd Applicant are void since the 3rd Applicant has never been the Chairperson of the Board of Governors. She told court that the school Board of Governors was appointed on 8th May 2014 as par annexture A 2 to the 2nd Respondents' affidavit.

She further submitted that the Applicant has never been head teacher of the school. It is only the 2nd applicant, who acted as head teacher, when Madira retired from the school.



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She submitted that the Mboira Secondary School was taken over by the Ministry of Education on 2nd September 2019 and that before that date, the school was being run by the Board of Governors and the Parents Teachers Association under the supervision of Kigumba Sub County and that therefore the decision to appoint Mr. Albert Onega as Head teacher was made legally.

Counsel for the Respondents denied that her clients had acted with procedural impropriety in dealing with the affairs of the school. She relied on the case of Nazarali Punjwani, where Justice Kasule held that procedural impropriety occurs when the rules and principles of natural justice and or failure to act with procedural fairness are not observed by the decision maker to the prejudice of the one affected by the decision.

She submitted that Mr. Albert Onega, was properly appointed on 30th July 2019 in the presence of the 2nd Applicant, who was present in the meeting. She submitted that the 1st Applicant could not have been affected by this decision since he has never been Head teacher of the School. She submitted that the 2nd Applicant, who was acting as Head teacher, was replaced by a substantive head teacher and that this replacement did not amount to a dismissal or a disciplinary procedure necessitating a hearing.

On the issue of irrationality, counsel submitted that according to the case of **Nazarali Punjwani versus Kampala District Land Board, HCCS No. 07 of 2005**, irrationality is when the decision made is so outrageous in defiance of logic or acceptable moral standards that no person could have arrived at the decision. She submitted that Mboira Secondary School, having been established for its benefit , it would not make logic or sense for the same founders to make a decision that would defeat the purpose for which the school was established. She submitted that the appointment of Mr. Albert Onega was done with a positive motive to ensure the smooth running of the school and that the minutes of the 30th July 2019 was made with the indulgence of the Board of Governors and the Parents Teachers Association and cannot be said to be irrational.

**Consideration of the application**

I will start with considering the affidavit in rejoinder, which was challenged by the Respondents. Counsel for the Respondent asked me to strike out the affidavit of the applicant in rejoinder because it had been filed without leave of court. Counsel did not, however, cite the law under



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which she wished me to strike out the affidavit. According to the record, the Applicants filed an application for judicial review with an accompanying affidavit as required by the law. The Application was served on the Respondents, who filed two affidavits; one by the 2nd Respondent and the other by the 3rd Respondent. Both affidavit raised fundamental issues that went to the root of the applicants' affidavit questioning the authenticity of some of the factual issues supporting the application for judicial review. The issues raised by the Respondents needed to be clarified by way of an affidavit in rebuttal or rejoinder or else, they would be taken to be correct. The Rules are silent on whether, the applicant has a right to file an affidavit in rejoinder. That notwithstanding, it should be appreciated that the right to be heard under article 28(1) of the Constitution invariably, presupposes that a party who has filed a case is given a right to be heard on the defense of the respondent in the same way the respondent is given an opportunity to be heard on the applicant's case by filing an affidavit in reply (in rejoinder). Consequently, I do not find merit in the Respondents' arguments objecting to the Applicants' affidavit in rejoinder.

I will now consider the merits of the case. The case for the Applicant is founded on the following arguments, namely that:

Firstly, that the case is amenable to judicial review, which is not in dispute since the matter at hand is public matter that involved decision making by the 2nd Respondent which affected the rights of the Applicants. Secondly, that the 1st Respondent has without any claim of right taken over the management of Mboira Secondary School, by falsely claiming that the school belongs to it and that they as a foundational body are entitled to participate and direct its management. Thirdly, that the Respondents under the Chair of the 2nd Respondent convened a meeting on 31st July 2019 of stakeholders of the School, in which they appointed the 3rd Respondent as Head teacher, without authority and hearing the 1st Applicant, who was the Headmaster of the School. Fourthly , that the 1st and 2nd Respondent, illegally appointed the 3rd Respondent as Head teacher of Mboira Secondary School, when he was and is still a teacher at Masindi Port School and that being a civil servant, he cannot be appointed to head a community school without resigning. Fifthly that the 1st and 2nd Respondents forcefully and without according the 2nd Applicant a hearing, removed him from the position of Deputy Head Teacher of Mboira Secondary School. Lastly, that the Respondents removed the 3rd Applicant as Chair Board of Governors, without according him a hearing.



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On the other hand, the case for the Respondents is as follows: Firstly that Mboira Secondary School is a community school that was founded by among other the 1st Respondent .Secondly that, the 1st Applicant has never been a Head teacher at Mboira Secondary School. Thirdly, that the 2nd Applicant, was merely acting as Head teacher, who was replaced after the school engaged the new Head teacher. That there was no need for the Respondent to give the 2nd Applicant a hearing as he was in an acting position. Fourthly, that the 1st Respondent as the owner of the school, acted in good faith, when it made decisions affecting the management of the school. Lastly that the 3rd Respondent was properly appointed Head Teacher of Mboira Secondary School and that he is not getting double pay from Government.

I have reviewed the affidavits in this case and it is important that I set out the findings I have made after evaluating the evidence of the parties to provide context before I deal with the merits of the case.

It is undisputed that there exists a school called Mboira Secondary School in Masindi, which was established by the community to provide education in the area as it appears that there was no school providing quality education to the students. Like any nascent private school, it had challenges of paying its workers and meeting its educational requirements. Along the way , the owners of the school and I am sure with the support of the local authorities applied to the Ministry of Education to take on the school as a grant aided school. Under this arrangement, Government of Uganda would provide and pay teaching staff and none teaching staff to the school to boost its capacity in addition to providing other assistance to the school. Fortunately, the Government of Uganda, accepted the request and Mboira Secondary School was taken on as a grant aided school. Indeed, the school is listed as the last school on the Ministry of Education's list of grant aided schools for 2019. There was some confusion as to whether Mboira Secondary School was the same as Mboira Seed Secondary School. The Applicants however explained that these schools were different and that the latter school, which was headed by Mr. Madira folded hands some years ago.

Although, the 1st Respondent claimed to be the co-founder of Mboira Secondary School, there was no evidence to show how the 1st Respondent had contributed to the establishment of the School



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other than being the local governing authority in the area. The claim by the 1st Respondent that the School was sitting on its land, does not seem to be correct because receipts were tendered in court to show that the school was paying rent to Thiwe Nestore for using his premises. In this regard, both parties, were in agreement that Anguyo, the 2nd Applicant who paid the rent, was doing so on behalf of the school thus removing any doubt that the school was sitting on the land of the sub county.

Relatedly, the 1st Respondent claimed that it was a foundational body for the school. The claims of the 1st Respondent was founded on the claim that it had given the school land and that parishes within the sub county contributed money towards its establishment. Of course as I have found, the school is not sitting on the land of the sub county as it is occupying rented premises belonging to Thiwe Nestore. Section 2 of the Education (Pre Primary, Primary and Post Primary) Act 2008, defines a foundational body as:

> "*an individual or group or organization which founds and manages an education institution*".

A body is considered a foundation body for a school, if it was directly and actively involved in the establishment and running of a school. Common examples are schools founded by religious institutions, where the different religious institutions are deemed as foundational bodies by the Ministry of Education and their role is protected by the Education (Pre Primary, Primary and Post Primary) Act 2000. However, in this case, the 1st Respondent, which has never participated in the establishment of Mboira Secondary School and was not actively involved in its day to day running cannot be a foundational body in accordance with Section 2 of the Education (Pre Primary, Primary and Post Primary) Act 2008. The 1st Respondent as such cannot exercise powers exercised by foundational bodies in accordance with the law.

Contrary to the 1st Respondent, not being the founding body and owner of Mboira Secondary School, I have found as a fact that the 1st Respondent through the 2nd Respondent actively participated in the management and running of the affairs of Mboira Secondary School in the period under consideration -2019. The 2nd Respondent chaired or actively participated in the meetings of 30th July 2019, were a decision was made to appoint Mr. Albert Onega as Head



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Teacher for the School and to replace the school's Board of Governors. The $2^{nd}$ Respondent also actively participated in the meeting of $22^{nd}$ August 2019, were the $2^{nd}$ Applicant handed over the office of Head teacher of this School to Mr. Albert Onega. Furthermore, on $30^{th}$ July 2019, Kigumba Sub County LCIII, under MINUTE 6/CM/30/JULY/2019 and MINUTE 7 /CM/30/JULY/2019, in annexture B, passed a resolution approving the appointment of Mr. Albert Onega as Head teacher and the appointment of the Board of Governors for Mboira Secondary School, all with the active support and participation of the $2^{nd}$ Applicant. The $1^{st}$ and $2^{nd}$ Respondent in making major changes in Mboira Secondary School, never Consulted the school's management structures such as the school administration, the Parents Teachers Association and most importantly, the Board of Governors.

Regarding the status of the $1^{st}$ Applicant as Head teacher of Mboira Secondary School, the Respondents strenuously denied that the $1^{st}$ Applicant has ever been the Head teacher of the School. The Respondents tendered minutes and school records to show that the $1^{st}$ Applicant has never been a Head teacher at this school. The minutes tendered by the Respondents, marked as Annexture D , are however, doctored and do not reflect the true status of facts on the ground. The tendered minutes do not show who attended the meeting and were written by the Parish Chief and approved by the $2^{nd}$ Respondent. On the other hand, the minutes tendered in by the Applicants of $3^{rd}$ or $30^{th}$ July 2019, marked as annexture G are fairly well written with an attendance list of persons who attended the meeting. The handover report / minutes presented by the Applicants August 2019- especially the handover minutes clearly showed that when it came to the $2^{nd}$ Applicant handing over office to the $3^{rd}$ Respondent , he refused to hand over to the incoming headmaster and insisted on waiting for the actual head teacher i.e. Katwesige . Furthermore, the minutes show that the $2^{nd}$ Respondent threatened the $2^{nd}$ Applicant with dire consequences if he did not hand over the office peacefully. In the various documents tendered in evidence by the Respondents including the affidavit of the $2^{nd}$ Respondent and the minutes of $22^{nd}$ August 2019, the $2^{nd}$ Respondent makes reference to confusion in the school and some people who had wanted or had high jacked the school. The people, the $2^{nd}$ Respondent is referring to include the $1^{st}$ Applicant, whom she deliberately edited out of the minutes that were annexed to her affidavit.



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This now leads me to the issue of how the Applicants were removed from the office. Of course the case for the Respondents was that the 1st Applicant and 3rd Applicant have never occupied the office of Head teacher and Chair Board of Governors for Mboira Secondary School, respectively. However, the evidence on the record is to the contrary. The 1st Applicant was the Head teacher of Mboira Secondary School while the 3rd Applicant was the Chairperson Board of Governors of the School. The circumstances under which the applicant were replaced by the Respondents are not clear because the Respondents never followed any documented procedures in replacing the Applicants.

The case for the 2nd Applicant, is however, a little different. The 2nd Applicant, who was the Deputy Headmaster of Mboira Secondary School, remained in the school as care taker head teacher until the 3rd Respondent was appointed and took over the school in August 2019. The 2nd Applicant was removed from his acting position of Head teacher and the substantive post of deputy head teacher that he held in the school. He was reverted to the status of a teacher without any hearing. The nearest I saw from the evidence is in the minutes of 22nd August 2019 is when the 2nd Respondent advised the 2nd Applicant to read more books or acquire better qualifications.

The actions of the Respondents in replacing the Applicants was not done in accordance with the law. For example the Guidelines from Ministry of Education on recruitment of teachers in Government aided schools required the Education Service Commissions or those acting under its authority to give priority to serving teachers in recruiting personnel for grant aided schools, like Mboira, which became one around September 2019. The guidelines required that the concerned Board of Governors , would have subjected the 1st and 2nd Applicant, who were holding these positions to interviews by the Education Service Commission to determine whether they qualified or not. Unfortunately, the Respondents were in such a great hurry that they gave caution to the wind and took matters in their own hands, a matter which forced the Chief Administrative Officer, to caution the Sub County Chief not to take on matters or author official communication concerning the school without consulting her.

I will now address the recruitment of Albert Onega as Head Teacher of Mboira Secondary School. The record shows that Mr. Albert Onega, a civil servant and a teacher at Masindi Port Secondary



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School, was hired by the Stakeholders meeting, held on 31st July 2019, chaired by the 1st Respondent to take over the administration of Mboira Secondary School. His appointment was also considered and approved by Kigumba Sub County Council, which sat on 30th July 2019. In the Sub county Council Meeting, it was reported that the district preferred Mr. Albert Onega, to take over as Head teacher of Mboira Secondary School and following submissions by the 2nd Respondent, the Council unanimously approved the appointment of Mr. Albert Onega as Head teacher. In court, the Applicants challenged the appointment of Mr. Albert Onega on multiple fronts but the key one was that he could not have been appointed as Head teacher for Mboira Secondary School without resigning his position as a teacher at Masindi Port Secondary School. I am however, aware, that the 2nd Respondent, however, counteracted this by arguing that Mr. Albert Onega, was not earning a double salary but was receiving allowances on top of the salary he was drawing from Masindi Port Secondary School. The arguments of the 2nd Respondent are not tenable because Mr. Albert Onega, is by appointment and in law a teacher at Masindi Port Secondary School, where he draws a salary and is expected to render services to Government throughout the year by performing teaching services. Mr. Albert Onega can only offer his services to Mboira, if he transfers his services, with the consent of Government of Uganda, to the school or in case, he does not wish to do this, he is at liberty to resign his civil service job and take on a job with Mboira Secondary School.

Having laid out the factual basis and context of the case, I will now consider the grounds raised for the judicial review.

The Constitutional basis for judicial review is provided in 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 a right to apply to a court of law in respect of any administrative decision taken against him or her*".

At the heart of judicial review is the need to preserve the value of fairness in the exercise of public powers by persons or bodies that are given powers that if wrongly exercised may negatively and or disproportionately affect the rights of other people appearing before them. **<u>In Chief Constable</u>**



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**of North wales Police v. Evans (1982) 3 All E.R 141 at page 143h-144a**, Lord Hailsham observed that the purpose of the remedies (judicial review) is to ensure that the individual is given affair 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. Similar views were expressed by Justice Eldad Mwangusya, as he then was in **Erias Lukwago Lord Mayor KCCA v. Jenifer Musisi Executive Director KCCA HCMC No.16 of 2011**, where he observed that judicial review is not concerned with the decision but with the decision making process. He went on to say that judicial review involves an assessment of the manner in which a decision is made, it is not an appeal and the jurisdiction is exercised in a supervisory manner…Not to vindicate rights as such, but to ensure that public powers are exercised in accordance with the basic standard of legality, fairness and rationality.

I will now address the merits of the case:
First, whether or not the Respondents acted legally, rationally and properly in refusing or arriving at the decision to appoint the 3rd Respondent as Head teacher of Mboira Secondary School?

From the facts that I have laid out, a number of uncontroverted facts have come out. Firstly, that the 1st Respondent with the active participation and at the direction of the 2nd Respondent, under the false belief that Mboira Secondary School, was owned by the Sub County or in the alternative that the Sub County was its foundational body, without any claim of right did organize a stakeholders meeting on July 31st 2019 in which they made far reaching decisions key among them in appointing Mr. Albert Onega as Head teacher of the School. The same Respondents followed through their recommendations by forcing the 2nd Applicant to handover over the office of Head teacher to Mr. Albert Onega on 22nd August 2019. The actions of the 1st and 2nd Respondent, were not anchored in law, arbitrary and illegal. According to the case of Nazarali Punjwani vs. Kampala District Land Board (supra), Justice Kasule held that illegality is when a decision subject to review is made contrary to the law empowering the decision maker and that the test for determining illegality is whether the decision maker has acted or not acted within the law. As I have observed above, the 1st and 2nd Respondent, who were not owners of Mboira Secondary School, did not have



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authority to take over or cause changes in the management of Mboira Secondary School. The Respondents, did not also have the authority to call a stakeholders meeting for the school without involving the administrative structures of the school.

The illegalities of the Respondents did not stop at convening the illegal meeting. The Respondents, in the illegally called stakeholders meeting, appointed Mr. Albert Onega, a civil servant, specifically a teacher at Masindi Port Secondary School to head Mboira Secondary School. Mr. Albert Onega, was at the time of appointment and as of now still employed by the Government of Uganda as a teacher at Masindi Port Secondary School, earning salary, charged on the Consolidated Fund. As a civil servant, there is no way, the 3rd Respondent could have been appointed as the head teacher of Mboira Secondary School, without first resigning his job or asking for secondment from the Ministry of Education. I wish to add, that the School's Board of Governors was sidelined in the entire process of finding suitable leadership for Mboira Secondary School. The illegalities of the Respondents, did not stop here, Kigumba Sub County Council , endorsed the illegalities of the 1st and 2nd Respondent by approving the appointment of Mr. Albert Onega, as the preferred Head teacher of Mboira by the district. I am aware that the Sub County must have participated in supporting the application of Mboira Secondary School to be listed or given the status pf a Government Aided School. However this support rendered by the sub county to Mboira Secondary School, did not give the 1st Respondent a lee way to stampede the structures of the school and enforce its way. In fact, if the Sub County, had been patient it would have benefited from the Guidelines issued by the Education Service Commission on the recruitment of staff including the Head and Deputy Head Teacher, in grant aided schools. For example, the Guidelines provide that the Education Service Commission will only interview the candidates who applied and their names were submitted by the Ministry of Education. Only sitting teachers are eligible for interviews. Staff on Government pay roll are not eligible for interviews except those who were formally assigned higher responsibilities as Head teacher or Deputy Head teacher by the Ministry of Education before end of Term I, 2019. Despite these clear Guidelines, the Respondent, recklessly and without regard to the law, made changes at Mboira including appointing Mr. Albert Onega as Head teacher. It can therefore be safely concluded that the 1st and 2nd Respondents, acted illegally in holding a stakeholders meeting on 31st July 2019, in which it appointed the 3rd Respondent as Head teacher of Mboira Secondary School.



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Did the Respondents act with procedural propriety in the matter?

According to Nazari Punjwani case procedural impropriety occurs when rules and principles of natural justice and or failure to act with procedural fairness are not observed by the decision maker to the prejudice of the ones affected by the decision. Procedural impropriety is categorized under two broad categories, namely procedural ultra vires and breach of rules of natural justice. In the case before the court we are concerned with breach of natural justice in the removal of the applicants from their respective offices. It is submitted by Alex Carroll, that:

> "*The rules of natural justice or procedural fairness, also sometimes referred to as the duty to act fairly, represent the English common law's minimum procedural standards for the legitimate exercise of decision making powers of government. The rules should be observed by any public body or official making a decision which could have significant and adverse consequences for the rights, interests, or other material concerns of the person or persons to be affected (Ridge vs. Baldwin (No.1) [1964]AC 46; Re Pergamon Press [1971] Ch. 388. Such procedural standards find practical expression in two main principles:*
>
> *(a) The right to a fair hearing (audi alteram partem)*
>
> *(b) The against bias (nemo judex in causa sua)*
>
> *See: Caroll Alex (2017), Constitutional and Administrative Law (supra) at page 369*".

The reasons why the rules of natural justice must be observed by those taking decisions are varied suffice to mention that observance of the rules of natural justice *ensures that the decision maker receives all the information relevant to the issue in hand and that it is properly tested.* It is also meant to *minimize suspicion associated with the decisions made 'behind closed doors' and, particularly, the taint of self-serving partiality.* **See Caroll Alex (2017), Constitutional and Administrative Law** (supra) at page 369

The facts, of this case as I have found in this matter is that the 1st and 2nd Respondents removed the 1st Applicant as Head teacher, the 2nd Applicant as Deputy Head teacher and the 3rd Applicant as Chair Board of Governors, Mboira Secondary School on 31st July 2019, without hearing them out despite protestations. In doing all these actions, the 1st and 2nd Respondent, never at any one time, accorded to the Applicants the right to be heard as guaranteed in Article 42 of the Constitution. Failure to adhere to the right to be heard or principles of natural justice has dire



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consequences for the dire consequences for the decision. It was held by Lord Wright in **Al-Mehdawi v. Secretary of State for the Home Department (1990) AC 876 and the case of General Medical Council v. Spackman (1943) AC 627 at 644** that:

> "*If the principles of natural justice are violated in respect of any decision , it is indeed , immaterial whether the same decision would have been arrived at in the absence of departure from essential principles of natural justice . The decision must be declared to be no decision*".

The above decision underscores the need for decision makers to accord those who appear before them the right to be heard because a decision arrived at without a proper hearing is no decision at all as the law gives a lot of importance to the procedures and processes leading to the decision. In this matter, the Respondents acted with procedural impropriety, when they caused the removal of the Applicants from their positions without according them the right to be heard. It therefore follows that the decisions reached in the meeting of 30th July 2019, were no decisions at all.

Did the Respondents act rationally in dealing with the Applicants?

In the Nazarali case, Justice Kasule held that irrationality is when the decision made is so outrageous in its defiance of logic or acceptable moral standards that no person could have arrived at the decision. The applicants case is that the decision of the Respondents in appointing the 3rd Respondent , who was and is still a serving teacher at Masindi Port Secondary School, as a head teacher of Mboira Secondary School, was so irrational that no person dressed with logic could have arrived and made such a decision . The Applicants also argued that the decision of the Respondents in forcing the 2nd Applicant to handover office on 22nd August 2019 without a hearing was uncouth, irrational and in defiance of logic.

On the hand, the Respondents contended that they acted in good faith in appointing Albert Onega, a career teacher and civil servant as the Head teacher of Mboira, whom they believed would be good for uplifting the standards of education in the area. The Respondents also argued that as founders of the school, they could not make any decision that was not in the interest of the school and the area.



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The question to determine is whether the decision made by the Respondents was irrational? A decision is deemed irrational if it is so outrageous that no reasonable would make it. According to Alex Caroll (2017), Constitutional and Administrative Law at pages 362 to 363:

> "... *The test of irrationality is generally regarded as a reformulation of the Wednesbury principle. It is usually attributed to Lord Diplock in the GCHQ case, where he said: by irrationality I mean what can now succinctly be referred to as ' Wednesbury unreasonableness '... it applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*".

The learned author continues to assert that:

> "*It is clear from the statements of both Lord Greene and Lord Diplock that this ground of review may only be used to attack that which is completely perverse or extra ordinary. Hence it would unconstitutional for a judge to intervene for unreasonableness or irrationality merely because they might not agree with, or approve of, a particular decision. The test is therefore pitched at a particularly high level to avoid any danger or accusation of judges using the unreasonableness / irrationality test as a means of substituting their own opinions for those vested with the power of government*".

This learned author says that one has to look for irrelevance or improper purpose, before a decision can be said to be irrational.

In this case, the Respondents had good reasons in causing changes at Mboira Secondary School because they thought that by appointing the 3rd Respondent as head teacher, they would raise the standards of education in the school. This decision, as I have observed, was made without according the Applicants the right to be heard and as such the decision amounted to no decision at all. However, absence of natural justice does not mean that the decision is irrational. A decision is only irrational if it is so outrageous and even when a decision is so outrageous, the decision must be extremely pervasive or extra ordinary as to defeat human logic as was explained by Lord Greene and Diplock in the GCHQ case cited above. According to Caroll, the standard of establishing irrationality is pitched so high to avoid judicial officers replacing their decision with that of the



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decision maker. I have reviewed the decision made by the 1st and 2nd Respondents regarding the Applicants and I do not agree that the decision made by the Respondents was not so_perverse that no reasonable person could have made such a decision. I am not therefore satisfied that the decision made by the 1st and 2nd Respondent was irrational. Be that as it may, since the impugned decisions have failed the natural justice standard, it is immaterial that I have not found the decisions irrational.

What Remedies are available to the parties?

The Applicants asked for the following remedies:-

1. That the decision to appoint the 3rd Respondent as Head teacher was illegal ;
2. The decision to remove the applicant from their posts was illegal;
3. That the writ of certiorari, mandamus and prohibition issue.
4. A declaration that the decision arising out of the meeting of held by the 1st Respondent chaired by the 2nd Respondent on 30th July 2019 purportedly appointing the 3rd Respondent as Headmaster was illegal, irregular and void ab initio
5. An order of certiorari to quash the decision of the 1st Respondent dismissing the Applicants without being heard or just cause;
6. A permanent injunction restraining the respondents from implementing the illegal and irregular decisions dismissing the applicants and appointing a new head teacher and Board of Governors;
7. An order of mandamus compelling the 1st and 2nd Respondent to cancel their decision appointing the 3rd Respondent as head teacher and dismissing the Applicants in their various positions;
8. An order of prohibition to stop the Respondents from implementing the decisions of the 30th July 2019 meeting;
9. An order that the decision of the respondents in dismissing the applicants was illegal;
10. General damages of 50 million; and,
11. Costs of the suit.

In **Isodo Abdul v. Arua District Local Government HCMA No. 02 –CV- MA 0058-2004**, Justice Kania, held that:



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*"The prerogative orders of certiorari and prohibition are the means 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 charged with the performance of public acts and duties. They serve as a control of administrative action and decision of public bodies which affect the rights of the ordinary citizens. The scope of the order of certiorari is twofold: To quash the decisions which are ultra vires and void and therefore nullities in law. To quash decisions which are intra vires but have an apparent error on the face of the record and have been irregularly arrived at and are therefore voidable....."*

I have established that the 1st and 2nd Respondent illegally convened a meeting of the 30th July 2020 and the meeting of 22nd August 2019, which took decisions that were tainted with illegalities and were made contrary to the rules of natural justice. In law, decisions that the Respondents made are no decisions at all. I am accordingly issuing the writ certiorari quashing the decisions made in the meeting of 30th July 2019 and the meeting of 22nd August 2019. Accordingly, the decision and the appointment of the 3rd Respondent, as Head teacher of Mboira Secondary School is quashed and set aside. Equally the decision to remove the applicants from their respective offices was illegal and of no legal consequences. The Respondents are also stopped from implementing the decision of the 30th July 2019 meeting.

The Applicants asked for general damages of fifty million shillings for the injuries they suffered as a result of the Respondents actions. Counsel for the Applicant did not guide court nor lay the legal basis for the claimed damages of fifty million shillings. General damages by their nature are meant to compensate and put the plaintiff in the position he would have been in had the defendant not interfered with their legal rights. In law general damages follow the principle restitution *in integrum*. In this case, all the applicants lost their offices in an arbitrary and high handed manner at the hands of the 1st Respondent under the leadership of the 2nd Respondent. The Applicants also suffered mental anguish and embarrassment and for all this they are entitled to general damages. Looking at the facts of this case, I consider an award of ten million shillings as adequate damages for each of the applicants. The damages will be paid by the 1st Respondent, whose officials were responsible for the harm suffered by the Applicants.



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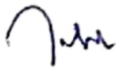
The Applicants will have the costs of the Application.

**Decision**

I have allowed the Application with the following orders:

1. The decisions of the Respondents reached in the meeting of 30th July 2019 are hereby quashed;
2. The appointment of the 3rd Respondent as Head teacher of Mboira Secondary School is quashed
3. The decision removing the Applicants from their respective offices is quashed;
4. A permanent injunction will issue stopping the respondents from implementing the decisions of the meeting of 30th July 2019;
5. Each of the Applicant will be entitled to general damages of ten million shillings to be paid by the 1st Respondent;
6. The general damages will attract interest at court rate from the date of judgment until payment in full;
7. The applicants will have the costs of the suit.

It is so ordered.



Gadenya Paul Wolimbwa

**JUDGE**

31st August 2020

The ruling will be emailed by the Registrar to the Parties. The Registrar may avail copies of this ruling to the parties since both counsel practicing have chambers in Masindi Town.

Gadenya Paul Wolimbwa

**JUDGE**

31st August 2020



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