

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 270 OF 2019**

ANDREW KILAMA LAJUL:.....APPLICANT

VERSUS

- 1. UGANDA COFFEE DEVELOPMENT AUTHORITY**
- 2. DR. EMMANUEL IYAMULEMYE NIYIBIGIRA :..... RESPONDENTS**

BEFORE HON. JUSTICE MUSA SSEKAANA

RULING

BACKGROUND

This application was brought for judicial review against the respondents jointly and/ or severally seeking declaratory orders, certiorari, prohibition, compensatory damages and costs of this action borne out of the actions and omissions of the respondents in exercise of the statutory powers.

By a contract of employment dated 27th June 2014, the applicant was employed by the 1st respondent as Board Secretary/ Head of Finance & Administration for 3 years ending 30th September 2017. The job title was later on changed to Board Secretary/ Director Corporate Services in August 2015. In January 2017, the contract was amended vide a deed of amendment which enhanced the contract period to 5 years ending 30th September 2019. The deed provided that “ *the appointment shall be subject to renewal of a further term based on mutual agreement between the two parties subject to satisfactory performance basing on the established Performance Measurement System*”.

In respect of the portfolio of secretary to the board, the applicant reported to and was supervised by the 1st respondent’s board, and in regard to the Director of Corporate Services, was supervised by the 2nd respondent.

On the 1st July 2019, the applicant wrote to the Chairman of the Board of Directors of the 1st respondent through the 2nd respondent expressing his desire to have his contract renewed after its expiry on the 30th September 2019. The process for assessment in the circumstances/ evaluation of the applicant’s performance by the 1st respondent anchored on the established “Performance Measurement System” in the Human resource manual. The applicant handed in his performance assessment forms for the

years in question but the 2nd respondent did not comply with the manual, timelines and /or filled in marks without the involvement of the applicant. The respondents also included other extraneous issues, presentations and persons in the evaluation and the applicant contends he was not offered a fair hearing by the board.

The applicant alleges that as the decision of the board was pending, the applicant on the 1st of October 2019 received a letter dated 30th September 2019 under the hand of the 2nd respondent purportedly communicating a decision of 1st respondent's board to the effect that the 1st respondent, Uganda Coffee Development Authority had made a decision not to renew the contract of the applicant. The applicant was subsequently driven out of office on 3rd October 2019 and acting persons appointed in his stead in the two positions.

The applicant contends that no lawful and valid decision of the board was ever made in respect to his contract renewal by the 1st October 2019 or 2nd of September 2019 that was communicated.

The respondents on the other hand contend that the communication was a decision of the 1st respondent's board on 2nd September 2019 not to renew the contract and further, that in any case; the contract of the applicant ended on the 30th September 2019 and prayed the application be dismissed.

The applicant was represented by *Mr. Mulema Mukasa Richard* and *Mr. David Ssempala* whereas the respondents were represented by *Mr. Richard Aduango* and *Mr. Swabul Marzuk*.

The parties proposed the following issues for determination by this court.

- 1. *Whether or not this is a proper case for judicial review.***
- 2. *Whether the decision contained in the letter dated 30th September 2019 by the respondents was illegal, procedurally improper and irrational.***
- 3. *What remedies are available to the parties?***

The parties were ordered to file written submissions; all parties accordingly filed the same. All parties' submissions were considered by this court.

RESOLUTION OF ISSUES

Issue 1

Whether this matter is a proper case for judicial review.

Counsel for the applicant submitted that the supreme law in this country provides for the foundation for the judicial review remedies and entitles any person to apply to court for judicial review remedies. He noted that the constitutional right to petition for judicial review is accompanied hand in hand with inviolable and non derogable right to be heard under Article 28 and 44 (c) of the Constitution.

Counsel submitted that the applicant seeks a number of remedies by way of prerogative writs. He relied on the case of *John Jet Tumwebaze v Makerere Civil Application No. 353 of 2005* where court stated that prerogative orders are remedies for the control of the exercise of power by those in public offices and are now an essential remedy in the judicial system under the collective process of judicial review.

He stated that judicial review is not concerned with the decision but with the decision making process. It essential involves an assessment of the manner in which the decision is made.

Counsel stated that the 1st respondent is a statutory body established under the Uganda Coffee Development Authority, Cap 325 charged with exercise and performance of statutory functions, responsibilities and duties in the public realm and it is within the purview and scrutiny of the High court under judicial review.

Counsel stated that the applicant also has locus to bring these proceedings because he is empowered under Article 42 and the Judicial Review Rules as amended. He stated that the applicant's position is statutory and any decision in breach or ultra vires the law or improperly reached can be challenged under judicial review. He stated that the applicant brings this suit to questioning the powers of the 2nd respondent to unilaterally make a decision as it was in the impugned letter of 30th September 2019.

Counsel submitted that any person can bring an action of judicial review for as long as there is public interest notwithstanding the fact that the issue involves employment or private law rights. Counsel therefore prayed that this issue be resolved in the affirmative.

Counsel for the respondents submitted that this is not a proper case for judicial review since judicial review is only available where the issue is of breach of public law and not breach of a private law obligation. He stated that to bring an action for judicial review, it

is imperative that the right sought to be protected is not of a personal and individual nature but a public one enjoyed by the public at large.

Counsel submitted that while the 1st respondent is a public body formed by the Uganda Coffee Development Authority Act, the subject matter of the complaint is private arising from a private contract of employment and has nothing to do with the 1st respondent's public functions under the law. He stated that the applicant is pursuing enforcement of his private law rights emanating from his employment contract relationship with the 1st respondent as an individual.

Counsel stated that it was wrong for the applicant to sue the 2nd respondent under judicial review since he is not a public body and an agent of the disclosed principal who has already been sued.

Counsel stated that before the applicant's contract could be renewed; there must have been consensus ad idem by both parties on renewal of the contract and the applicant's satisfactory performance. He stated that where one of the parties exercises the discretion not to renew the agreement, the issue of satisfactory performance cannot be called into play and any attempt to do so would be superfluous. He stated that since the 1st respondent was not willing to renew it, the contract lapsed by effluxion of time on the 30th September 2019.

In exercising its discretion not to renew, it was not necessary to give the applicant a hearing. Counsel therefore stated that the applicant's complaint is frivolous and baseless and that the applicant should have taken advantage of the Employment Act under section 93 (1) with the Labour officer and not by filing an application for judicial review.

Counsel further submitted that the existence for other alternative legal remedies to the applicant demonstrate that the circumstances of this case are not amenable for judicial review since prerogative orders will only issue where there is no alternative remedy or that remedy is ineffective.

Counsel therefore submitted that this application was not a proper case for judicial review since the applicant's remedy lies under the Employment Act and should be dismissed with costs to the respondents.

In rejoinder, counsel for the applicant reiterated his submission and further stated that the 1st respondent is a public body as conceded and not private that has to follow the

law. He stated that it is not a question of exercise of discretion not to renew but whether there was followed due process by the public body/ public official.

Determination

Judicial review is a fundamental mechanism for keeping public authorities within the due bounds and for upholding the rule of law. See *Wade & Forsyth Administrative Law 10th Edition*.

The learned authors *Ssekaana Musa and Salima Namusobya Ssekaana* in the book **Civil Procedure and Practice in Uganda at page 471, 2ND Edition**, define judicial review as the:

“nature of proceedings by which the High Court exercises its jurisdiction of supervising inferior courts, tribunals and other public bodies, commanding them to do what their duty requires in every case where there is no specific remedy and protecting the liberty of the subject by speedy and summary interposition.”

The principal is that judicial review involves the exercise of the Court’s inherent supervisory jurisdiction in respect of activities of public authorities in the field of public law. As such judicial review is only available against a body exercising public functions in a public law matter.

In essence, a person seeking a remedy under judicial review must satisfy 2 requirements. First, that the body under challenge must be a public body or a body performing public functions. Secondly, the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private rights. See **Judicial Remedies in Public Law 5th Edition, Sweet & Maxwell, 2015** (page 9).

Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts’ supervisory jurisdiction to check and control the exercise of power by those in public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall.

It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. See; *John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005*,

DOTT 5 Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.

In the instant case, the applicant brought an application for judicial review against the 1st respondent as a public body and the 2nd respondent as the official who was acting in capacity for the 1st respondent and thus made the said decision on behalf of the same.

The applicant is aggrieved by the said decision and thus sought for court's indulgence against the 2nd respondent in his acting capacity for the 1st respondent. As submitted by the applicant, judicial review is concerned with the court's supervisory jurisdiction to check and control the exercise of power by those in public offices or person/ bodies exercising quasi-judicial functions by granting prerogative orders as the case may fall (*see: Grace Namulondo & 3 Ors v Jone Johns Serwanga Salongo & 2 Ors (supra)*).

In the circumstances therefore, I find that the application is rightly before this court as against the 2nd respondent in his capacity as the Managing Director of the 1st respondent as well as the person who communicated the decision. Sometimes a public official is added in order to account for his/her actions if challenged for acting in bad faith or malafide. Whenever such allegations are made against a public official it is only fair that such a person is added in order not to be condemned without a hearing.

Modern conventional legal practice dictates that where any court action is likely to affect any other person's rights or title, such other person ought to be joined in the action and afforded the right to be heard before a decision in the matter is arrived at. To do otherwise would certainly qualify as condemning a party unheard and therefore unconstitutional.

The applicant makes serious allegations that no lawful and valid decision of the board was ever made in respect of his contract renewal by the 1st October 2019 or on 2nd September 2019 and that the decision communicated by the 2nd respondent was not a board decision of the 1st respondent. It is only right to add the 2nd respondent to accord him a chance to defend himself against such allegations.

Counsel for the respondent stated that the applicant's complaint is under the ambit of the Employment Act and not a matter of judicial review. However, this argument is not tenable since the applicant's complaint is one that seeks court's discretion on the review of the procedure taken by the respondents as a public body and official on reaching the said decision made.

Public officials should never act whimsically or arbitrarily in execution of their powers derived from the parent Act. The applicant seeks to challenge the legality of the respondent's decision not to renew the applicant's contract of employment or challenge the procedural decisions taken by the Board. This is a proper case for judicial review. This issue is resolved in the affirmative.

Whether the decision contained in the letter dated 30th September 2019 by the respondents was illegal, procedurally improper and irrational.

Counsel for the applicant stated that for one to succeed in an application of judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality or procedural impropriety.

In the respect of illegality, counsel submitted that the board of the 1st respondent has the authority to disappoint or dismiss based on such terms and conditions as the board may determine under a written contract of service between the 1st respondent and the applicant. It is contended that the 2nd respondent unilaterally wrote the letter of the 30th September 2019 and made an impugned decision not to renew his contract personally. It was stated that the Managing director has no such powers under section 10 of the Act and thus acted illegally, without powers and usurped the authority of the board.

Counsel submitted that the Board Secretary is in a vantage and unassailable position as regards the minutes of the proceedings of the board since it is his statutory duty, even when some aspects of the minutes may involve him like renewal of his contract, he is aware of the scheduled meetings, agenda, decision taken, the minutes, special decision and unresolved decisions.

The applicant contends that the decision not to renew the contract of the applicant was made by the 2nd respondent since no board decision had been taken until the time of the impugned communication by the 2nd respondent and the events of the 7th October 2019 when the 1st respondent's board purportedly met to approve and validate the decision of 2nd respondent and coming up with minutes alleging that the same was made on 2nd September 2019.

Counsel stated that the evidence of Annexure J¹, J², Q¹ and Q² speak to the fact that the board did not make a decision on the 2nd September 2019 as alleged and that these documents were never denied or controverted by the respondents. Counsel further submitted that for a valid decision to have been made there ought to have been minutes of the proceedings to that effect. He stated that the impugned letter did not

quote the minutes of 2nd September 2019 in which the decision was made as per section 5 (7) of the Uganda Coffee Development Authority Act and Rule 5 of the Schedule thereof. It was stated that in the scheduled board meeting of 9th September 2019, no confirmation of the decision of non-renewal of the applicant's contract was done in accordance with section 5 (7) of the Act and Rule 5 of the schedule thereto.

Counsel therefore stated that the decision of the 2nd respondent cannot stand for lack of jurisdiction and being ultra vires and that the approbation and validation of the decision of the 2nd respondent in a purported board meeting is equally illegal.

Counsel stated that the signing and back dating of the documents by the board on the 7th September 2019 and putting a date of 2nd September 2019 was also illegal as seen from the documents that was sent out to the applicant under annexures J¹, J², Q¹ and Q² that show that no decision was made on the applicant's contract not to be renewed.

Counsel further submitted that it was illegal for the board not to do its cardinal function of evaluating/ appraising the applicant the latter having requested to do renew his contract. He stated that the evaluation process was supposed to be done by the board as per the terms of his contract and failure to do so was a breach of duty and an omission.

In regards to irrationality, counsel submitted that it defeats logic that the respondent failed to follow and adhere to their own set rules in the Human Resource Manual to appraise the applicant based on duly completed performance forms as was requested by the 2nd respondent through Annexure J¹.

It is also contended that the correct procedures and practice of meetings and minutes was not followed when the respondents had a board meeting on the 7th October 2019 where they backdated several documents to 2nd September 2019 thus being irrational.

In regards to procedural impropriety, counsel submitted that a new unknown methodology was adopted by the 2nd respondent contrary to the Human Resource manual for appraisal and that there was no fair hearing afforded to the applicant as new allegations akin to disciplinary proceedings were done and extraneous persons were called to the board to give evidence against the applicant. The applicant complained about the new appraisal system and that the 2nd respondent as the applicant's supervisor maliciously did not fill in or complete the performance forms with the applicant.

Counsel further submitted that the applicant was never accorded a fair hearing before the board in order to interface with the evaluation process which was unfair, irregular and improper.

The respondents adverted in their affidavits that the applicant's contract of service had expired and he ceased to be their employee by effluxion of time. The applicant submitted that to argue effluxion of time as in this case for the sake of it without doing what is expected in law, is encouraging impunity by public bodies/ officials as the respondents. Counsel relied on the principle of legitimate expectation where he stated that the applicant expected the respondents to follow the provisions of Article 1 of the amended contract and Human resource manual and renew his contract for a further five years.

It was submitted therefore that the respondents did not follow their own rules and regulations regarding the renewal of the contract especially the established Performance Measurement System hence breach of legitimate expectation.

It was submitted for the respondents in regards to effluxion of time and legitimate expectation that the prerogative writs sought are academic and moot. Counsel stated that that the applicant does not dispute that his contract ended on the 30th of September 2019 as stated in the Human Resource Manual and creates no exceptions as to the applicant's alleged practice of the respondent retaining employees even after the expiry of the employment contract is not tenable and should be rejected. It was stated that the issue of legitimate expectation cannot be sustained in a contract of a specified period with a provision of renewal being subject to mutual consent by both parties.

Upon communication by letter dated 30th September 2019 on the decision not to renew the contract of employment, there was no representation made to the applicant to expect that his contract was going to be renewed and thus the claim of legitimate expectation cannot arise.

It was submitted that the decision of the respondents not to renew the applicant's contract as communicated was legal and based on the terms of the contract between the applicant and the 1st respondent and that the said decision cannot be alleged to be unilateral or the personal decision of the 2nd respondent as it was the agreed position of the board of directors. This is an enforcement of contractual rights and obligations conditioned on mutual agreement thereafter the satisfactory performance of the applicant.

The respondents argued that Annextures Q¹ and Q² referred to by the applicant did not have any evidential value as they did not show that they were ever received by the solicitor general or written by an official from the latter's office.

Counsel further submitted that the said letter dated 30th September 2019 was written by the 2nd respondent pursuant to the meeting and cannot be said to be his personal decision in order for it to be ultra vires. It was therefore submitted that the 1st respondent did not commit any illegality at all as alleged by the applicant.

In respect of irrationality, counsel submitted that the parties reserved the right to renew the contract provided that there was mutual agreement and that the 1st respondent did not agree to renew the same. It was therefore submitted that the 1st respondent did not act in irrationally in deciding not to renew the applicant's contract.

Counsel further submitted that the respondents did not breach any procedure in deciding not to renew the applicant's contract. Counsel maintained that before the performance of the applicant would be upraised, it was a condition precedent that there was mutuality to renew the contract which in the circumstances was lacking thus the decision not to renew. It therefore follows that the 1st respondent was not under any obligation to analyze and upraise the performance of the applicant as argued in the written submissions.

In rejoinder, counsel for the applicant submitted that court should consider the harmony rule of construction of the 1st respondent's Human Resource Manual. He stated that the 1st respondent was never able to make a decision to renew or not to because the process was not followed, not completed and not adhered to the law and dictates of nature justice. Counsel stated that Annextures Q¹ and Q² evidential value as they were never controverted to by the respondents. He further stated that Annexture "U" dated 9th September show that no decision was taken on the 2nd of September 2019.

Determination

For one to succeed under Judicial Review it trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety. The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

Article 1 of the amended contract of service of the applicant stated that:

“The appointment shall extend for a period of 5 (five) years starting 1st October 2014 ending 30th September 2019. The appointment shall be subject to renewal for a further term based on mutual agreement between the two parties subject to satisfactory performance basing on the established Performance Measurement System”

In light of the above clause, this court rejects the respondents proposition that renewal of the applicant’s contract was only conditioned on mutual agreement and at the communication of the letter dated 30th September 2019, the 1st respondent could not go ahead to consider the satisfactory performance of the applicant.

The said clause is to the effect that the said contract would be extended subject to the satisfactory performance of the applicant basing on the established Performance Measurement System for a further term based on the mutual agreement of the parties. The 1st respondent therefore had to consider the performance of the applicant while making the decision to either renew or not to renew the contract.

At the time the decision was made terminating the applicant’s contract, the 2nd respondent had adopted a new unknown methodology contrary to the Human Resource Manual of the 1st respondent. Being the supervisor of the applicant, the 2nd respondent was supposed to fill in the performance forms with the applicant in respect of the post of Director Corporate Services with the 2nd respondent single handedly did without conferring with the applicant and submitted them to the board.

This exposed the applicant to unfairness and arbitrariness in determining whether to renew the contract or not as it was irregular and contrary to the Human Resource Manual. This was a clear abuse of power that this court would not allow to stand.

Further, the applicant was also never given an opportunity by the board of the 1st respondent to clarify and defend himself in respect of the allegations that were made against him. This was a violation against principles of nature justice.

If a court finds that powers have been used for unauthorized purposes, or purposes ‘not contemplated at the time when the powers were conferred’, it will hold that the decision or action is unlawful.

Power or discretion conferred upon a public authority must be exercised reasonably and in accordance with law. An abuse of discretion is wrongful exercise of discretion conferred because it is the exercise of discretion for a power not intended. Accordingly, the courts may control it by use of the ultra vires doctrine. The court’s task is merely to determine whether the decision made is one which achieves a reasonable equilibrium in

the circumstances. See ***Minister of Environment Affairs and Tourism v Bato Star Fishing (Pty) Limited 2004 (7) BCLR 687 (CC); 2004 (4) SA 490 (CC) para 49.***

The 1st respondent was vested with power or discretionary power to renew the applicant's contract and the said power had to be exercised subject to satisfactory performance basing on the Established Measurement System but did not follow the required procedure. This was therefore illegal and irrational.

Another aspect of the matter is that the decision makers must not allow their personal interest and beliefs to influence them in the exercise of their statutory powers, but must exercise those powers impartially and should not pre-judge the case. The powers conferred by statute must be exercised reasonably and in good faith and for proper and authorized purpose only and that, too in accordance with the spirit as well as letter of the empowering Act. The primary rule is that discretion should be used to promote the policies and objects of the governing Act. A discretionary power should not be used to achieve a purpose not contemplated by the Act that confers the power. All decision makers are expected to act in good faith.

Powers must not be abused and should not be exercised arbitrarily or dishonestly. The actions of the 2nd respondent were malafide since it involved improper exercise of power or abuse of discretion.

Further, for a valid decision to have been made; there ought to have been minutes of the proceedings to that effect. The impugned letter did not quote the minutes of 2nd September 2019 in which the decision was made as per section 5 (7) of the Uganda Coffee Development Authority Act and Rule 5 of the Schedule thereof. The respondents did not deny the fact that no confirmation of the decision of non-renewal of the applicant's contract was done in accordance with section 5 (7) of the Act and Rule 5 of the schedule in the scheduled board meeting of 9th September 2019. This was never adhered to by the respondents. I disagree with counsel for the respondent on his submission that this is unnecessary since it was a requirement set out in the law.

The law expects that public functionaries would approach the decision making process with an open mind. Reason and justice and not arbitrariness must inform every exercise of discretion and power conferred by statute. See ***Johannesburg Stock Exchange v Witwatersrand Nigel Ltd 1988 (3) SA 132.***

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely-that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

This was a violation of the principles of natural justice in respect of a fair hearing that is a right while taking administrative decisions. Essentially, procedural fairness involves elementary principles that ensure that, before a right or privilege is taken away from a person, or any sanction is otherwise applied to him or her, the process takes place in an open and transparent manner. It is also called fair play in action and embraces the means by which a public authority, in dealing with members of the public, should ensure that procedural rules are put in place so that the persons affected will not be disadvantaged.

The 1st respondent merely endorsed its decision taken without making any regard to the performance appraisals of the applicant.

Government agencies are obliged to observe principles of natural justice or rules of fairness before taking decisions that may affect the livelihood of citizenry like contracts of employment.

The employees are legitimately expected to be treated fairly before any decision is taken not to renew their contracts of employment. Legitimate expectation envisages that if the administration by a representation has created an expectation in some person, then it will be unfair on the part of the administration to whittle down or take away such legitimate expectation. It is mainly confined mostly to right to a fair hearing before a decision which results in negative promise or withdrawing an undertaking is taken.

Legitimate expectation extends to an expectation of a benefit. This may arise from what a person has been permitted to enjoy and which he can legitimately expect to be permitted to continue to enjoy. But the same can be changed on rational grounds after giving an opportunity to comment to the affected person. It may also extend to a benefit in future which has not yet been enjoyed but has been promised. See ***Emily Mbabazi vs Rural Electrification Agency & 2 Others Misc.Cause No. 165 of 2018***

The applicant expected to have the contract extended or renewed since it was clearly promised in the contract. Any intended frustration of the legitimate expectation had to be explained through a hearing.

This court is therefore satisfied and convinced that the decision of the respondents not to renew the applicant's contract was marred by procedural irregularities since the performance appraisals which were the basis of the non-renewal were improperly done by the 2nd respondent and also never considered by the 1st respondent before the

decision was reached. The applicant was not accorded a fair hearing or rules of natural justice were not followed when they made a decision.

This issue is therefore answered in affirmative.

What remedies are available to the parties?

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

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

The primary purpose of *certiorari* is to quash an ultra-vires decision. By quashing the decision *certiorari* confirms that the decision is a nullity and is to be deprived of all effect. *See Cocks vs Thanet District council [1983] 2 AC 286.* In simple terms, *certiorari* is the means of controlling unlawful exercises of power by setting aside decisions reached in excess or abuse of power. *See John Jet Tumwebaze vs Makerere University Council and Another HCCM No. 353 of 2005.*

The effect of *certiorari* is to make it clear that the statutory or other public law powers have been exercised unlawfully, and consequently, to deprive the public body's act of any legal basis.

The further effect of granting an order of *certiorari* is to establish that a decision is ultra vires, and set the decision aside. The decision is retrospectively invalidated and deprived of legal effect since its inception. The applicant has prayed for the quashing to the decision of the respondents since it was made in breach of rules of fairness.

Counsel for the applicant stated that the applicant is the Board secretary/ Director Corporate Services and 2nd in hierarchy of management of the 1st respondent. He stated that the applicant was initially on a five year contract and that is due process is

followed, could be extended up to two other five year contracts making a total of fifteen years in employment of the first respondent. He stated that his salary emoluments were of UGX. 16, 292, 261/= per month besides other monthly benefits of medical, retirement scheme, gratuity, leave pay, transport among others.

This court grants the applicant the following remedies and orders;

- 1. This court issues a declaratory order that the decision of the respondents in dismissing the applicant's contract without a fair hearing was unjustified, unreasonable, against the principles of natural justice and characterized by procedural irregularity.**
- 2. This court issues an order of Certiorari quashing the decision of the respondents not to renew the applicant's contract and makes an order of mandamus compelling the respondents to appraise the applicant and consider the reinstatement of the applicant or renewal of the applicant's contract of employment basing on the alternative appraisals.**
3. As far as damages are concerned, it is trite law that damages are awarded in the discretion of court to compensate the aggrieved, fairly for the inconveniences or damage suffered as a result of the actions of the defendant.
- 4. The applicant is awarded UGX 10,000,000 as damages due to the circumstances of this case that has occasioned him suffering due to wrongful exercise of power.**
- 5. This application is allowed with costs.**

I so order.

SSEKAANA MUSA
JUDGE
14th April 2020