

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.268 OF 2017

MRS ANNY KATABAAZI-BWESIGYE===== APPLICANT

-VERSUS-

UGANDA CHRISTIAN UNIVERSITY===== RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Section 36 of the Judicature Act as amended, Rules 3, 6, 7 & 8 of the Judicature (Judicial Review) Rules, 2009 for the following reliefs;

- a) **CERTIORARI** to call for and quash the respondent's decision not to renew the applicant's contract of employment as the Deputy Vice Chancellor (Finance and Administration) and to send the applicant on forced leave with effect from 1 March 2018;
- b) **PROHIBITION** barring the respondent from dismissing or removing the applicant from office or reducing her in rank or otherwise punishing the applicant without just cause;
- c) **INJUNCTION** restraining the respondent from searching and recruiting a substantive Deputy Vice Chancellor (Finance and

Administration) until a decision is properly made by the Chancellor and all relevant authorities concerning the termination or renewal of the applicant's contract; and

d) **GENERAL, AGGRAVATED and PUNITIVE DAMAGES.**

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

1. The respondent is a chartered university exercising statutory authority derived from its Charter (a legal notice) and the 2001 Universities and Other Tertiary Institutions Act (as amended).
2. Until 28 February 2018, when she was informed of the impugned decision through a letter signed by the Vice Chancellor dated 26 February 2018, the applicant was the respondent's substantive Deputy Vice Chancellor (Finance and Administration).
3. The process through which the respondent's authorities arrived at the impugned decision was tainted with illegality, procedural impropriety and irrationality. Hence, the impugned decision is invalid and of no legal effect.
4. As a result of numerous flaws in the respondent's decision-making process, the applicant has suffered and is likely to continue suffering irreparable harm through violation of her fundamental right to equality and non-discrimination, hurt feelings, humiliation, loss of dignity, loss of reputation, impairment of personal and vocational growth, loss of future salary and employee benefits, disruption of family welfare, stress, inconvenience, among others.
5. Unless the respondent is restrained by this Honourable Court in the terms hereby proposed, the respondent's authorities will continue to flout the procedures, principles and promises enshrined in its own

Charter, Administrative Staff Handbook and Statute on Appointment of the Vice Chancellor and Deputy Vice Chancellors/Principals among other governing documents which will, in turn, confuse, demoralize, embarrass and stress both current and prospective employees of the respondent.

6. In all the circumstances, it is just and convenient for this Honourable Court to allow the application and grant the reliefs hereby sought.

The respondents opposed this application and they filed an affidavit in reply through Florence Nakiyingi a Director Human Resource and Administration to the respondent very well conversant with all matters pertaining to this application.

The respondent contended that the applicant was appointed on 18th March 2014 on a fixed term contract of Employment in a position of Deputy Vice Chancellor (Finance and Administration). The applicant's employment was for a fixed term of 4 years commencing on 1st June 2014 and ending on 31st May 2018 both dates being expressly stated. The applicant accepted in writing all the terms in the appointment letter.

The applicant's employment in addition to the terms set out in the letter of appointment was equally governed by the Administrative Staff Handbook and the Staff Code of Conduct.

The applicant was notified in writing by the respondent on 26th February 2018 that her employment with the respondent would lapse, upon expiry of the period stated on 31st March 2018. The applicant was to be paid her terminal benefits to a tune of 90,301,024/= and out of which she had received 60,000,000/= comprising of her salary for April and May 2018, and for payment of three months' notice and gratuitous payment of 20,000,000/=.

That the applicant as person who was in charge of the portfolio of human resource and administration of the respondent was aware that like all other administrative staff, her contract of employment was not permanent and or automatically renewable but renewal was a matter of discretion.

The applicant was informed in a letter dated 26th February 2018 made in reply to the applicant's letter dated 30th January 2018, that the University Council had resolved to let her contract run in accordance with her letter of appointment

The applicant's contract was not renewed at the exercise of discretion and it was not based on any review and appraisals.

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

Three issues were framed by the applicant for court's determination;

1. *Whether the Application is properly before this Court.*
2. *Whether the Respondent's decision not to renew the Applicant's contract was unfair, ultra vires, and unlawful.*
3. *Whether the Respondent acted unlawfully, unfairly, and unreasonably when it decided to send the Applicant on leave a month before the expiry of her initial contract as Deputy Vice Chancellor (Finance & Administration).*
4. *What remedies are available?*

The applicants were represented by *Mr Isaac K Ssemakadde* whereas the respondent was represented by *Mr. Mpanga Fredrick*.

Preliminary Issue

1. Whether the Application is properly before this Court.

The respondent's counsel submitted that the Application is incompetent for relating to a matter of private law. The subject matter of the Application is a dispute arising under a Contract of Employment between the Applicant and the Respondent as Employee and Employer respectively (**the Contract**) and particularly as a result of the non – renewal thereof. The Contract is constituted in a letter dated 18th March 2014 ref: P/F/543. The Contract was specific to the Applicant and does not apply to other employees of the Respondent. The Contract constitutes the basis of the relation between the Applicant and the Respondent itself a private arrangement.

The Respondent submits that the Contract and anything arising thereunder is a matter of private law, and not public law. Further, that the rights and obligations created in/by the Contract are of a private nature. As result, it follows that the enforcement of any right of a private nature cannot be or become a matter of public law and as such cannot be dealt with by way of judicial review.

The Respondent contends that the Applicant should have filed a formal labour claim to address her concerns raised in the Application. On this ground alone, the Respondent invites the Court to dismiss the Application with costs.

The Applicant took up the position of Deputy Vice Chancellor (Finance & Administration) with the Respondent pursuant to the Contract. The Contract expressly provided that the engagement or the term of employment was for a fixed term/period of 4 (four) years from 1st April 2014 to 31st March 2018. The Contract expressly provided that the engagement of the Applicant with the Respondent, in the position of DVC F&A would end on the 31st March 2018.

Section 59(2) of the Employment Act, 2006 provides that an employer is permitted to provide written particulars of a Contract of Employment of an employee by reference to a document containing the same. The Respondent submits that the Letter of Appointment, incorporated as the Applicant's terms of service, the Administrative Staff Handbook (2011), Staff Code of Conduct (2011), and the Instruments of Identity of the Respondent into the Contract.

By letters dated 30th January 2018 and 22nd February 2018, the Applicant wrote to the Respondent's Chancellor and Vice Chairperson of its (the Respondent's) University Council seeking renewal of the Contract. Pursuant to the Applicant's request, the Respondent's University Council convened and considered the Applicant's said request. The Respondent's University Council, in a letter dated 26th February 2018, communicated to the Applicant that, among others, her Contract of Employment shall run in accordance with her Letter of Appointment, wherein it would expire on the 31st March 2018. The Applicant was also given paid leave for the month of March 2018 together with all her entitlements under the Contract. The Contract terminated by expiry of the term on 31st March 2018. The Applicant was paid **UGX 60,000,000/=** as accumulated terminal benefits during her employment with the Respondent.

The Applicant was also paid salary for the months of April and May 2018 being /payment in lieu of notice of non-renewal of contract in accordance Clause XI on page 15 of the Administrative Handbook, Further, the Respondent also agreed to a gratuitous payment of **UGX 20,000,000/=** in recognition of the time of service of the Applicant during the period specified in the Contract. The rest of the Applicant's entitlements are payable upon hand over of the Respondent's property in the Applicant's possession, including the Respondent's housing premises.

The Respondent submitted that the Applicant's request contained in her letter was proof that there was no automatic renewal of the Contract.

Further, that the Applicant was aware that the renewal of the Contract was a matter for the sole discretion of the Respondent and as such the renewal of the Contract did not come about as a matter of right. The nature of the request and the wording therein is also proof that the Applicant was seeking to be considered for renewal of her employment on a private basis.

It was respondent's counsel's view, the Applicant seeks to; have the issue of termination of the Contract by expiry of the term and/or effluxion of time or, put differently, the decision not to renew her Contract of Employment upon its expiry on 31st March 2018 subjected to judicial review and quashed; and the Contract re-instated on grounds that she was never afforded an opportunity to be heard and was not treated fairly and justly before the decision was made not to renew the Contract.

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).**

In determining whether an entity is a public body, the following ought to be borne in mind.

- The mere fulfillment of a task traditionally associated with government does not, of itself, mean that the entity is a public body such that its decisions can be judicially reviewed. This applies even though the entity is owned by the State.

- Merely because an entity performs “public” functions does not, of itself, mean that it is a “public” body amenable to judicial review.
- The fact that an entity may be declared a “public body” for the limited purposes of some legislation did not mean that all employment decisions were judicially reviewable by the Courts.
- The regulation of an industry does not, of itself, result in the regulated bodies becoming public bodies.

With regard to first and second points for consideration, the Respondent was until the 31st March 2018 providing the Applicant with employment. While the the/a government may be the largest employer, the provision of employment is not a public function. In the premises, the Respondent’s provision of employment to the Applicant does not render the Respondent a public body.

With regard to the third point to note, the Applicant seeks to rely on the decision of **YASIN SSENTUMBWE & ANOTHER VERSUS UGANDA CHRISTIAN UNIVERSITY JINJA HCMC 22 OF 2016 per Luswata J.** However, and in distinguishing the finding in the said case from the matter now before Court, it was found that the Respondent was not a public body. We find it imperative to provide the relevant part of the Ruling at page 11 – 12.

“The Respondent although a private entity offers tertiary level of education by virtue of a Presidential Charter. She is permitted to do so for as long as she complies with the general educational policy of the country and maintains national standards. In my view, she is in another way performing her duties as one delegated by the State to fulfill her mandate under Article 30 para 18(III) of the National Objectives and Directive Principles of State Policy (NODPS). Although she admits students and ensures their discipline according to her own privately designed instruments and policies, she tutors them for service in both the private and public arena. Thus, although private, her operations,

outlook services and standards serve a public or national connotation which place her in the public realm.

The above decision/quotation was in respect to the Respondent as a provider of tertiary education under/pursuant to a Charter. The Respondent was found to be a private body for the purpose of providing education services under the Charter and not as a provider of employment or as an employer of various individuals under individual contracts of employment. The decision was not in respect to the entire operations of the Respondent and therefore does not cover the private arrangements it enters into like contracts of employment. The said decision did not render the Respondent a public body.

The character and set of the Respondent is clearly stated in the section 1 and 4 of the Charter. In section 4(2) the Respondent is a private, non – profit making educational institution established by the Church of Uganda. Further, while the position of DVC F&A is envisaged in the Charter, the employment or the terms and conditions of employment of an individual or the Applicant in the position of DVC of the Respondent is/are not provided for anywhere in a Statute or the Charter. The employment of the Applicant by the Respondent is a private matter in its entirety.

It was the respondent's counsel's contention that even if the Respondent is a public body the employment relationship with the applicant would not imply any public law issues in their employment relationship. The Respondent also relied on the case of **R VERSUS EAST BERKSHIRE HEALTH AUTHORITY EX P WALSH [1985] QB 152 per Sir John Donaldson MR** for the proposition that employment by a public body does not, per se, inject any element of public law in employment matters.

With regard to the fourth point for consideration, it was the respondent's submission that the fact that Respondent engages in regulated business and is therefore a regulated entity does not render it a public body. For the purpose of analogy, if the mere regulation rendered the regulated entity a

public body then all entities incorporated and engaging in regulated business namely banks and financial institutions, law firms, pharmacies, universities, money – lending businesses, telecommunication companies, to name but a few, would on that basis only qualify to be public bodies. That interpretation of the law would cause an absurdity.

Further, with regard to employment and judicial review, the Court must consider the process of appointment and revocation of the appointment and whether the aforesaid are governed by a Statute or the Constitution. Where the appointment or revocation is not governed by Statute or the Constitution it is a matter of private law. The respondent reiterated that the reading of the Uganda Christian University Charter Notice, 2005 does not anywhere provide for the terms and conditions of employment of the Applicant.

The Applicant is erroneously using this application under judicial review to enforce a private law benefit. In the premises, the Respondent relies on the decision in **R VERSUS BRITISH BROADCASTING CORPORATION EX P LAVELLE [1983] 1 ALL ER 241** which provides that private employment is clearly outside the realms of judicial review.

It is settled law in Uganda, as was held in **HIGH COURT MISC. CAUSE NO. 0003/2016: ARUA KUBALA PARK OPERATORS AND MARKET VENDORS' COOPERATIVE SOCIETY LIMITED VS. ARUA MUNICIPAL COUNCIL**, which quoted with approval **R VS. EAST BERKSHIRE HEALTH AUTHORITY EX PARTE WALSH [1984] 3 WLR 818**, that the remedy of judicial review is only available where the issue is of breach of “public law”, and not of breach of a “private law” obligation. To bring an action for judicial review, it is a requirement 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.

According to of the text **PUBLIC LAW IN EAST AFRICA, SSEKAANA MUSA, 2009, LawAfrica Publishing**, the learned author states, at page 36,

that 2 (two) things must be established for judicial review to be available, 1) the body under challenge must be a public body whose activities can be controlled by judicial review, 2) *the subject matter of the challenge must involve claims based on public law principles, not the enforcement of private law rights.*

Public law is the system which enforces the proper performance by public bodies of the duties which they owe the public. On the other hand, private law is concerned with enforcement of personal rights of persons, human or juridical, such as those emanating under property, contract, duty of care under tort and mainly regulates relations between private persons: **HIGH COURT MISC. CAUSE NO. 0003/2016: ARUA KUBALA PARK OPERATORS AND MARKET VENDORS' COOPERATIVE SOCIETY LIMITED VS. ARUA MUNICIPAL COUNCIL.**

The learned author of **Public Law in East Africa (supra)** at page 45, states that disputes arising out of the employment relationship will be private law disputes, and thus claims to enforce a right derived from contract or from statutory requirements, which have been incorporated into a contract, are private law claims enforceable by ordinary action for damages or a declaration or injunction.

The applicant submitted that the subject matter under challenge involves enforcement of private law rights. The real matter in issue between the Applicant and Respondent arises out of an employment contract/relationship, the Contract. The Applicant is therefore seeking to enforce personal and individual rights derived from the Uganda Christian University Statute on Job Description of the Vice Chancellor and the Administrative Staff Handbook all of which constitute the Contract. The remedy of judicial review is thus not available to the Applicant.

In **HIGH COURT MISC. CAUSE NO. 0003/2016: ARUA KUBALA PARK OPERATORS AND MARKET VENDORS' COOPERATIVE SOCIETY LIMITED VS. ARUA MUNICIPAL COUNCIL**, The Honourable Mr. Justice Stephen Mubiru held that where a relationship is regulated by the

law of contract, like in the instant Application, administrative law remedies should generally not be available. The Learned Judge further held that it is important that parties are held to their contractual obligations through ordinary suits and not by invoking public law remedies. A party should not take advantage of public law simply because it contracted with a public body, and thereby obtain an advantage in the enforcement of that contract, that would otherwise not be available against a non-public body or private person.

The respondent prayed that this court finds that that judicial review is not available to the Applicant. The Applicant should have filed a labour claim to address her grievances, if any.

The applicant set out six grounds in opposition to this issue and contended that the respondent's submissions that all its decisions as an employer are immune from judicial review is definitely wrong. Since a chartered university is a quasi-public body whose quasi-judicial or administrative actions even in the context of employment, such as the Council resolutions complained of, may be amenable to judicial review.

Secondly, the respondent disagreed with the respondent's submissions that the applicant's claim is wholly about breach of contract and thus improperly before this Court. The respondent's counsel submitted that the instant application involves claims based on important public law principles, to wit **"statutory underpinning", "legitimate expectation", "procedural and substantive ultra vires", "equality and non-discrimination", "abuse of power", "rule-of-law and good administration concerns"** to mention but a few, and is therefore properly before this Court. Since procedural impropriety, illegality and irrationality were broadly pleaded in the notice of motion.

The post of Deputy Vice Chancellor (Finance & Administration) is a matter of public interest for that is why the respondent was compelled by **ss 3(a), 104(e)(f)(g)(h)(l)(m), 105, 107 & 110(1)(b) of the Universities Act** to make

adequate provision in its Charter and Statutes/regulations for the distribution of powers and functions as well as checks and balances among different bodies and principal officers in order to satisfy the NCHE, responsible Minister, President of the Republic, and other stakeholders that it will at all times be operated in accordance with national standards such as the rule of law, good governance, accountability and respect for human rights. The public is thus concerned and interested to know, through judicial review, whether such principles, values and ethos as enshrined in the respondent's Charter/Statutes/regulations are scrupulously adhered to in practice: see **NCHE Quality Assurance Framework for Universities in Uganda** (cited before).

In view of the nature and importance of the powers, functions, status, privileges, procedures and responsibilities of the DVC (F&A) as underpinned by **ss 18(4), 26(2)(i), 35(3) and 43 of the Schedule to the Charter**, the public is concerned and interested to know, through the instant judicial review, **(1) whether the respondent had any cogent reasons to account for its departure from the promised procedure/policy for renewal of the applicant's contract as enshrined in the Statute at issue (Exh 'AKB-3');** and **(2) if so, whether the applicant was given a fair opportunity to comment upon such reasons before the respondent purportedly reached the decision complained of.** As these are basic and substantial questions for judicial review, they cannot be swept under the proverbial carpet of technicalities. It follows therefore that, on this account alone, the preliminary objections are not only misconceived, but also premature.

Furthermore, we urge Court to find and hold that **denial of legitimate expectation of procedural fairness in the impugned decision-making process** is the central feature of the applicant's claim, not "breach of contract" as misleadingly argued by the respondent. Following precedent, this aspect alone gives the applicant's claim a **"sufficient public element, flavour or character"** to bring it within the purview of public law: see **CCSU v. Minister for the Civil Service [1984] 3 All ER 935 at 943h-944e,**

948j-949a, 949f-h, 952c-d, 952h, 954d-h, 957c, 957g-j and p960f where it was held that **denial of legitimate expectation**, as a species of procedural impropriety and thus a ground for judicial review, **is purely a creation of public law**. This landmark case recognized legitimate expectation as a “public law” right, interest and/or principle that is defensible through judicial review.

See also M Ssekaana, “**Public Law in East Africa**” at pp166 & 178: “*The doctrine of legitimate expectation is a recent development of public law and is now frequently used as a ground for challenge in public law on applications for judicial review...The doctrine of legitimate expectation is often described as being a facet of the public decision-maker’s general duty to fairness; the doctrine is firmly rooted in the ideal of fairness.*”

See also I.P. Massey, “**Administrative Law**” (8th ed.) at pp344-345: “*The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law, in the strict sense of the term, though they had suffered a civil consequence because their legitimate expectation had been violated ... The term ‘legitimate expectation’ was first used by Lord Denning in 1969 and from that time it has assumed the position of a significant doctrine of public in almost all jurisdictions...*”

Per I.P. Massey, “**Administrative Law**” (8th ed.) at p345 (cont’d): “*Like the bulk of the administrative law, the doctrine of legitimate expectation is also a fine example of judicial creativity. Nevertheless, it is not extra-legal and extra-constitutional. A natural habitat for this doctrine can be found in Article 14 of the Constitution, which abhors arbitrariness and insists on fairness in all administrative dealings...*” (Emphasis added). Based on the foregoing, it is clear that “*the natural habitat for this doctrine can be found in Article 42 of the 1995 Constitution of Uganda, which abhors arbitrariness and insists on fairness in all administrative dealings.*” See also Fr. Francis Muntu v.

Kyambogo University, HCMA 643/2005, pp7-8 and Lex Uganda Advocates v. AG, HCMA 322/2008 at p23 para 2 where it was held that **Art 42** had modernized and expanded the scope of judicial review in post-1995 Uganda by giving it a constitutional footing. Hence, besides the statutory underpinning canvassed above, legitimate expectation is another factor that injects a sufficient element of public law into the case at hand.

Thirdly, merely because the case arose from non-renewal of the applicant's employment contract, the respondent has made unfounded, misleading and inappropriate arguments under this issue that the applicant seeks to enforce rights of a private nature, such as **"automatic"** or **"forced"** renewal of her contract and damages. The respondent's counsel argued that the instant challenge is over the decision-making process and not the (non-renewal) decision itself, and that is the essence of judicial review. But judicial review is also available to protect private interests if an administrative body acts unlawfully, unfairly or irrationally: see **Mwesigye Enock v. Electoral Commission, HCMA 62/1998** where Court (Musoke-Kibuuka J) clarified that the protection of private interests is also reckoned by Court in reviewing the decision-making process.

Fourthly, the thinly veiled and half-hearted argument of estoppel or waiver in the respondent's submissions is definitely misconceived, and we urge Court to reject it at once. The applicant's strongly objected to respondent's misguided attempt to circumvent the obligation to fulfill the legitimate expectation it owed her in terms of **Clause VI para 2 of the Statute on Appointment of the VC & DVCs/Principals** by promising or purporting to pay her terminal benefits. In any case, unsolicited payments made paid by the respondent to the applicant **during litigation**, and without any agreement in relation thereto, cannot be the basis of an alleged estoppel or waiver barring the applicant **"from bringing this application at all,"** as urged by the respondent.

Fifthly, the English cases cited by the respondent's in their submissions are distinguishable from and/or inapplicable to the instant case. Moreover they run against a steady stream of pertinent Ugandan case law in favour of judicial view in the context of employment as shown below:

In **Mark Kamanzi v. National Drug Authority & Another HCCM 206/2017 at p19**, our High Court (Musota J, as he then was) disapproved and distinguished the UK Court of Appeal case of **R v. East Berkshire Health Authority, ex parte Walsh [1985] QB 152** as *“a case from another jurisdiction where by the time it was decided they had no Article in the Constitution equivalent to our Article 42 of the Constitution which confers a right to fair and just treatment to any person appearing before any administrative official or body. This right also carries with it a right to apply to a court of law in respect of any decision made against the person appearing before the administrative person or body. It is also clear that under the provisions of Article 44(c) of the Constitution the right to a fair hearing is non-derogable. The applicant seeks to enforce his public law rights which may result in a decision that quashes some decisions but that does not convert this application into a private law rights enforcement procedure. I therefore find that all the decisions of the respondents are amenable to judicial review.”*

The applicant's urged Court to endorse this legal position and thereby reject the sweeping proposition wrongly advanced by the respondent through its reliance on **R v. BBC, exp Lavelle [1983] 1 ALL ER 241**.

The applicant's counsel contended that instead of the **narrow and inflexible approach** urged by the respondent, the correct test for determining a public law claim is the **broad and flexible approach** articulated by the bulk of post-1998 UK cases such as *Poplar Housing* and *Hammer Trout* referred to with approval by Mubiru J in **Arua Kubala Park Operators v. Arua Municipal Council at p5 lines 1-15**.

Until 28 February 2018, the applicant was the principal officer of the respondent responsible, *inter alia*, for the management of personnel

matters: **ss 18(4)(d) of the Sch. to the Charter**. Therefore, she properly and promptly filed the instant application for Court's supervisory jurisdiction after having failed to obtain effective internal accountability why she would have no contract of employment (and by implication no remedy in private law) beyond 31 March 2018 notwithstanding the respondent's existing policy or 'Statute' on contract renewal for principal officers such as the DVC (F&A). The applicant's claim concerns not the nonrenewal decision itself, but rather the *decision-making process* through which she lost her employment status, privileges and responsibilities. It questions the justification of an abrupt reversal of policy concerning the management of human resources in quasi-public body that is statutorily required to provide resources (including human resources) for university education in the public interest.

The applicant's counsel further contended that, the ugandan society has an interest in the conditions under which university education and research take place. To do what we ask of private universities through their respective Charters and other laws, it is clear that they should have workforces that are respected and valued, with stable tenure systems. Thus, if the application is heard on the merits, Court will be able to assess whether there is need to guide the respondent's authorities on the limits set by law in the exercise of their discretionary powers while dealing with staff so as to avert future conflict over alleged non-adherence to the policy on the **"renewable fixed-term contract system"** in general or the *Statute on Appointment of the VC & DVCs/Principals* in particular. This will, in turn, benefit the public that is served by the respondent's staff and generally expects good administration of universities. But these public benefits will be lost if the PO's are upheld and judicial review foreclosed at the threshold.

The applicant prayed that the Court finds it just and convenient to overrule the PO's, accept jurisdiction, and hear the application on its merits so as (a) to clarify for all interested stakeholders the operation of the respondent's "renewable fixed-term contract system," and (b) to determine an issue

affecting “the status, privileges, procedures and responsibilities” of principal officers as defined in the respondent’s Statutes.

Determination

The applicant’s counsel submitted that this is an application for Judicial Review brought by a Notice of Motion brought under Rules 3 and 6 of the Judicature (Judicial Review Rules) S.I No. 11 of 2009, Sections 36 and 38 of the Judicature Act, Cap 13 Laws of Uganda, Article 42 of the Constitution of the Republic of Uganda.

According to the *Black’s Law Dictionary at page 852*, judicial review is defined as a court’s power to review the actions of other branches or levels of government; especially the court’s power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court’s review of a lower court’s or administrative body’s factual or legal findings.

In Uganda, the relevant laws pertaining the subject of judicial review are; the Constitution, the Judicature Act Cap 13 and the Judicature (Judicial Review) Rules 11/2009.

In *Ridge v Baldwin [1964] AC 40*, it was held that a decision reached in violation of the principles of natural justice especially one relating to the right to be heard is void and unlawful.

The applicant contend that they are seeking remedies set out under the Judicature Act are the remedies that are prayed for in this application and therefore this is a proper application for judicial review.

The respondents counsel submitted that this matter concerns private rights and they have cited the case of *Commissioner of Land v Kunste Hotel Ltd [1995-1998] 1 EA (CAK)* ,Court noted that;

“Judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision making process. Its

purpose is to ensure that an individual is given fair treatment by an authority to which he is being subjected.”

Section 93 (1) of the Employment Act provides that the only remedy available to a person who claims an infringement of any of the rights granted under this Act is by way of complaint to a Labour Officer. This position was reiterated by the Supreme Court in 2010 *Former Employees of G4S Security Services Uganda Ltd v G4S Security Services Uganda Ltd*, SCCA No. 18 of 2010.

In *Uganda Broad Casting Co-operation v Ruthura Agaba Kamukama*, Misc. Application No. 638 of 2014, Hon. Justice Stephen Musota held that;

“Much as this Court (High Court) has unlimited jurisdiction, if one looks at the intention of Parliament in conferring jurisdiction on the Labour Officer and the creation and operationalization of the Industrial Court with appellate jurisdiction it would be prudent if these two institutions are put to good use. This is our current court policy. Avoiding these institutions would be defeating the intentions of the legislature since the Industrial Court is now operational. I find it proper to refer this matter to the Labour Officer for appropriate handling.”

It appears that this application, being a disguised labour complaint, ought to have been filed before the Labour Office and not before this Honorable Court by Judicial Review. This Court has rejected such Applications for being an abuse of Court process. In *Catherine Amal v Equal Opportunities Commission*, HCMA No. 233 of 2016; Hon. Lady Justice H. Wolayo held that;

“In effect, the applicant wants this court to believe that her failure to attend the disciplinary proceedings and the decision to terminate her employment contract give rise to two distinct causes of action. I am of a contrary view because her dismissal from employment is what gives her a cause of action is remedied by ordinary suit and not by judicial review. Her failure to attend the proceedings forms part of the evidence in a suit for wrongful dismissal but does not give rise to

a possible remedy in judicial review. The non-attendance of disciplinary proceedings and the final decision are closely interlinked.

This point was considered by Hon. Justice Y. Bamwine as he then was in Miscellaneous Cause No. 93 of 2009 *Machacha Livingstone and anor v LDC* where the applicants were dismissed from employment and complained that they were not heard. The court held that the *applicants did not show lack of an alternative remedy or that the alternative remedy was ineffective whereupon the application for judicial review was dismissed.*

Prerogative orders will only issue where there is no alternative remedy and the applicant has one. In the premises the first issue is answered in the negative. This issue disposes of the application and I need not belabor the remaining two issues. This application is accordingly dismissed with costs to the Respondent."

In reliance on the above authorities, the Applicants' alternative remedy for the alleged unlawful termination/dismissal was not only available but also very effective. In the case of *Microcare Insurance Limited vs Uganda Insurance Commission; Misc. Application No. 218 of 2009*; Justice Yorokamu Bamwine held thus;

"From the authorities also prerogative orders, like mandamus sought herein, are available to an Applicant who demonstrates:

A clear legal right and a corresponding duty in the respondent;

That some specific act or thing, which the law requires a particular officer or body to do has been omitted to be done; or

Lack of an alternative remedy; or

Whether the alternative remedy exists but is inconvenient. Less beneficial, less effective or less effective"

(Oil Seeds (U) Ltd vs Chris Kassami (Secretary to the Treasury) HCMA NO. 136 of 2008)

...when all is said and done, I find that the Applicant has not demonstrated lack of an alternative remedy. They have not shown that any such remedy as exists herein is inconvenient, less beneficial or less effective...

...I should perhaps add that it is becoming increasingly fashionable these days to seek judicial review orders even in the clearest cases where alternative procedures are more convenient. This trend is undesirable and must be checked. I uphold the second objection and order as I should that as a matter of law, the Applicant first pursues the statutory remedy of appeal availed to it under Section 32 (4) of the Act against the Respondent's refusal to grant it a license. Otherwise, the Applicant must fail for this reason on account of being premature in law and it fails. It is accordingly struck out.

In light of the above authorities, the Applicant's claims of unlawful dismissal/termination, orders of payment of salary arrears, reinstatement into their jobs, terminal benefits, gratuity, general, exemplary and punitive damages, which are expressly denied by the Respondent, could be a basis for a labour complaint before a Labour Officer/Industrial Court and not an action for judicial review.

The Applicants have not shown that the alternative remedy as exists herein is inconvenient, less beneficial or less effective.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze*

vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.

This application is clearly a labour dispute arising out of a dismissal from office of the applicant and there are no issues of public law that would arise in respect of a fixed term of employment which expired and was not renewed. The principles of judicial review should not be transplanted in the realm of private law rights enforcement.

This court agrees with the respondent's counsel that this is a private institution to the extent of employment of the applicant which is exercising its powers as a private entity and it cannot be deemed that it is a public institution in respect of its contractual obligations with other parties except for the provision of education services as set out in the Charter.

The subject matter of the claim being pursued in the judicial review application must involve strictly matters of public law not private law. Public bodies (like Private bodies) may enter into contracts or commit torts. Individuals may only be seeking to enforce essentially private law rights. Judicial review is not available to enforce purely private law rights. Contractual and commercial obligations are enforceable by ordinary action and not by judicial review. *See R v Lord Chancellor ex p. Hubbit and Saunders [1993]COD 326.*

Employment by a public authority does not per se inject any element of public law. It could be different if there were statutory 'underpinning' of employment such as statutory restrictions on dismissal, which would support a claim for ultra vires, or a statutory duty to incorporate certain conditions in the terms of employment, which could be enforced by a mandatory order.

For the reasons herein above stated this application fails and there is no need to delve into the rest of the issues raised for trial.

The application is dismissed with costs.

I so Order.

SSEKAANA MUSA

JUDGE

20th/12/2018