

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)**

MISCELLANEOUS CAUSE NO. 46 OF 2018

NABUYUNGO MARY JOSEPHINE..... APPLICANT

VERSUS

UGANDA NATIONAL TEACHERS' UNION (UNATU)..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

BACKGROUND

The Applicant filed this suit seeking for a declaration of violation of constitutional rights, general damages, punitive damages and costs of the suit for the inconvenience and injuries suffered as a result of the trauma caused by the Respondent and violation of the Applicant's human rights.

The Applicant was the vice chairperson of the Respondent. She was removed by the 13th Annual Delegation Conference (ADC) which was chaired by the chairman under the accusations that had been written in his ADC remarks. The chairman made a case against the Applicant for having acted illegally in appointing a Secretary General where the members moved a motion to remove the Applicant from her position. The Applicant made an oral response to the written accusation in a hostile environment where the proceedings were interrupted by some of the union's members and without being given time to

prepare her defense. The Applicant claims that the Respondent reached a biased decision since the accuser did not step aside during the proceedings but took part in the disciplinary action and thus the violation of the Applicant's human rights. The plaintiff also claims that the Respondent did not have the mandate to carry out disciplinary action under the UNATU constitution. The Applicant thus seeks for a declaration that her human rights were violated and damages for the injustice caused.

The Respondent filed a reply to the motion and denied any violations of the Applicant's human rights or any principles of natural justice. Counsel for the Respondent also raised a preliminary objection on a point of law as to the jurisdiction of this court in this matter which will be resolved first.

The Applicant was represented by Mr. Eron Kiiza and Atwijukire Dennis whereas the Respondent was represented by Mr. Richard Rwaboogo.

The parties filed a joint scheduling memorandum wherein they proposed the following issues for determination by this court.

- 1. Whether the court has jurisdiction to entertain the matter or whether the suit is properly before the court.*
- 2. Whether the Applicant was lawfully removed from office.*
- 3. What remedies are the parties entitled to?*

The parties were ordered to file written submissions and accordingly filed the same.

Both parties' submissions were considered by this court.

DETERMINATION OF ISSUES

Issue 1

Whether the court has the jurisdiction to entertain the matter or whether the suit is properly before this court.

Submissions

Counsel for the Applicant submitted that fundamental human rights are anchored on Article 50 of 1995 Uganda which provides for enforcement of Chapter four rights by a competent court which is the High Court. The right to a fair hearing under Article 44 of the 1995 Uganda Constitution is a non derogable fundamental human right, the jurisdiction for which is reserved for by the high court by the Human Rights (Enforcement) Act, 2019.

Counsel further submitted that the Applicant was not an employee of the Respondent but rather an elected member of the Union under Article 10 of the UNATU Constitution which was further confirmed by Baguma Filbert and thus the matter did not fall under the provisions of the Labour Disputes (Settlement and Reconciliation) Act.

Respondent's submissions

Counsel for the Respondent raised a preliminary point of law that this application is a labour dispute and improperly before this court. He submitted that the Labour Dispute (Arbitration and Settlement Act) 2006 under Section 2 defines the term 'dispute' to mean a labour dispute and that the Respondent

being a labour union organisation, the term labour encompasses what is within the operationalization of the Labour Union's Act of 2006 under which the Respondent is registered.

Counsel for the Respondent further submitted that labour disputes are supposed to be referred to the Labour office under Section 3 of the Labour Dispute (Arbitration and Settlement) Act and where the dispute is not settled, the Labour office refers the matter to the Industrial court. Counsel cited the case of **Hassan Lwabayi Mudiba & Another v Electoral Commission Misc. Appln No. 275 of 2018** where court noted and I quote;

".....Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the Court to decide or adjudicate any dispute between the parties or pass judgement or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon."

Counsel also submitted that Article 50 of the 1995 Constitution under which the Applicant proceeded cannot be of general application in each and every remedy of a person and is not the Alpha and Omega of addressing all individual rights and remedies. He therefore invited court to find that the matter was improperly placed before it and should be dismissed.

Ruling

This Application was brought under Article 50 of the Constitution which provides for the enforcement of rights and freedoms by competent courts. The

Applicant seeks for the enforcement of fundamental human rights to a fair hearing, just treatment, natural justice and concomitant reliefs against the Respondent. This Article provides Parliament with the mandate to make laws for the enforcement of human rights and freedoms under Chapter Four hence the enactment of the Human Rights (Enforcement) Act of 2019. The Act under **Section 3(1)** provides that;

“In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.”

Section 4 (1) of this Act further provides for the jurisdiction of the High Court in respect of such matters where it states that;

“(1) The High Court shall hear and determine any application relating to the enforcement or violation of;

(a) Non derogable rights and freedoms guaranteed in article 44 of the Constitution....”

As cited by counsel for the Respondent from the case of **Koboko District Local Government v Okujjo Swali High Court Miscellaneous Application No. 001 of 2016,**

“Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgement or order. “

The Applicant’s case against the Respondent is of violation of her human rights in as far the right to a fair hearing is concerned which is non derogable under Article 44 of the Constitution.

It is therefore clear from Article 50 of the 1995 Constitution of Uganda and Section 4 of the Human Rights (Enforcement) Act of 2019 that this Application was properly placed before this court for adjudication.

Issue 1 is resolved in the affirmative.

Issue 2

Whether the Applicant was lawfully removed from office

Submissions

Counsel for the Applicant submitted that the Applicant’s removal from her elective position of Vice Chairperson was illegal because it was done without following the principles of natural justice and flouted requisite procedure including being executed by the wrong body. Counsel cited Articles 28, 42 & 44 of the 1995 Uganda Constitution that guarantee fair hearing and natural justice.

The Applicant in her evidence by affidavit stated that her removal was unlawful as the issue to discuss her membership was not on the agenda for the 13th AGM.

This was also confirmed by the Respondent through Baguma Filbert who also confirmed that indeed, the Applicant was not an employee of the union.

The Applicant informed court that she was not prepared to respond to the accusations made, had not been written too prior to prepare her defense and since the issue was not on the agenda, the members did not have prior notice to discuss her membership and that there was bias since her accuser presided over the meeting that voted on her removal from office.

Counsel for the Applicant further submitted that the whole process was tainted with bias and relied on the case of Ndegwa v Nairobi Liquor Licensing Court [1957] E.A 709 wherein court quashed a decision for bias on the premise that one of the decision makers who took part in the decision making had given evidence leading to the decision. He asked court to find bias in the impugned proceedings.

Counsel also submitted that the ADC acted ultra-vires when it usurped powers of the Disciplinary Committee. He stated that Baguma Filbert confirmed in his affidavit in reply under paragraph 19 that the ADC is not a tribunal to handle disciplinary cases. Baguma further confirmed that the Union had a disciplinary body under Article 13(f) of the UNATU constitution and that the Applicant was forwarded.

Respondent's submissions

Counsel for the Respondent submitted that the Constitution of the Republic of Uganda, 1995 under Article 4 provides for the right to form a trade union and this is operationalized by the Labour Union's Act of 2006 which provides for the

formation of a constitution by the Labour union. Under the Act, Schedule 2 provides for the appointment or election or removal of an Executive or a trustee. He stated that the Labour Act under Section 33(2) provides that a labour union shall hold annual general meeting (ADC).

Counsel further submitted that the Union constitution under Article 8 provides for the ADC and its functions among which is to ratify the decisions of the National Executive Council. He stated that in the circumstances, the Respondent had taken a decision without the authority to appoint a general secretary and this matter had been rescinded by the National Executive Council which decision was to be ratified by the ADC to which the Applicant was a member. He stated that it would be deceit for the Applicant to argue that the matters were discussed were an ambush and did not give an opportunity to her to defend herself.

Counsel also submitted that the national chairperson is mandated to chair all the meetings and give accountability of the performance of the previous year which is the Executive council's report and dismissed the Applicant's claim that her accuser presided over the meeting. He stated that the Applicant was a member of the council and that her issue had been discussed so she ought to have known that it will be presented to the union and cannot be interpreted as an ambush.

Counsel concluded that the Applicant had not proved that indeed her rights were abused.

Determination

The Applicant contends that there was serious impropriety in procedure and there was non-observance of the rules of natural justice.

This court in the matter of **Dr. Kasozi Charles versus The Attorney General & Health Service Commission Misc. Cause No. 206 of 2018** cited the case of *Council of Civil Service Union v. Minister for the Civil Service 1985 AC 374* where court held that;

“It’s a fundamental principle of natural justice that a decision which affects the interests of any individual should not be taken until that individual has been given an opportunity to state his or her case and to rebut any allegations made against him or her.”

This court further cited the case of *Twinomuhangi vs Kabale District and others [2006] HCB130* where court held that;

“Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in the non-observance of the rules of natural justice or to act with procedural fairness towards one affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.”

In the circumstance before this court, the Applicant in her cross examination stated that she was not accorded a right to be heard. During the proceedings, the Applicant was not given an opportunity to defend or explain herself on the

allegations that were made as the meeting was not in order. The issue was never on the agenda to be discussed during the proceedings and neither was she given notice to prepare her defence or witnesses. Counsel for the Respondent submitted that the Applicant ought to have known that the issue would be discussed since she was on the National Executive Council. I however disagree with this position as the principles of natural justice dictate that procedural fairness towards the one affected by the decision.

Procedural fairness generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed, so that they are position to defend themselves. Individuals should not be taken unfairly by surprise. In our system of law surprise is regarded as the enemy of justice. See *Anifrijeva v Southwark LBC*[2004] 1 AC 604

Counsel for the Respondent submitted that the chairperson had the mandate to chair the meetings and give an accountability of the performance from the Executive Council's report. It is therefore clear that the Applicant's removal was not on agenda for the meeting. Filbert Baguma also testified that indeed the Respondent did not have the mandate to hear disciplinary matters under the UNATU constitution. The persons concerned should never use a mob or gathering to violate established rights. Proper procedures should be followed.

This court is therefore satisfied that the applicant was not accorded a hearing and this violated his rights enshrined in the Constitution specifically Article 28, 42 and 44 and was unlawfully removed from office.

There is a presumption that procedural fairness is required whenever the exercise of a power adversely affects an individual's rights protected under any law. The duty to afford procedural fairness is not however limited to the protection of legal rights in the strict sense; it also applies to more interests, of which the interest in pursuing a livelihood and in personal reputation are also recognized. The failure to give the applicant prior notice was tantamount to a denial of an opportunity to be heard.

This issue is therefore answered in the affirmative.

Issue 3

What remedies are available to the parties?

This court issues a declaration that the acts of the Respondent were unlawful and the applicant's constitutional rights were violated.

Damages

The Applicant's counsel submitted that basing on the actions of the Respondent, court awards the Applicant general and punitive damages amounting to UGX. 200,000,000 (Uganda Shillings Two Hundred Million) and UGX.50,000,000 (Uganda Shillings Fifty Million) respectively.

For general damages, counsel submitted that the Applicant was ambushed, traumatized and seriously inconvenienced by the proceedings and resolutions that unceremoniously without following the right procedures and in violation of the law and her human rights. He further submitted that she is now looked at as

a person without integrity which has lowered her personality and reputation both in public and her friends.

As far as damages are concerned, it is trite law that general damages are awarded in the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the Respondent. It is the duty of the claimant to plead and prove that there were damages losses or injuries suffered as a result of the Respondent's actions.

I find that the Applicant has discharged his duty to prove damages and injuries as a result of the Respondent's actions.

The applicant is awarded **UGX 20,000,000** as general damages.

Punitive/ Exemplary damages

Counsel submitted that the respondent's conduct was unconstitutional, high handed and oppressive and this should be discouraged and disincentived by way of remarkable punitive damages.

It is clear from the Applicant's evidence that the acts and conduct of the Respondent were in violation of her human rights and therefore an award of punitive damages would serve not only as a punitive measure but also as a deterrent the commission of similar acts in the future.

The rationale behind the award of exemplary damages: exemplary damages should not be used to enrich the Applicant, but to punish the Respondent and deter him from repeating this conduct.

An award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal. Per Spry V.P. in *Obongo Vs Municipal Council of Kisumu* [1971] EA 91.

Bearing those principles in mind I find that an award of UGX 5,000,000 sufficient as punitive damages.

Costs to the applicant.

I so order.

SSEKAANA MUSA
JUDGE
20th/12/2019