

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]**

MISCELLANEOUS CAUSE NO. 312 of 2018

PROF. ANTHONY MUGISHA ===== APPLICANT

VERSUS

1. MAKERERE UNIVERSITY COUNCIL

2. PROF. WILLIAM BAZEYO ===== RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 42 and Section 36(1) 37 and 38 of the Judicature Act and Section 32 of the Universities and Other tertiary Institutions Act and Rules 3(1)(a), & 6 of the Judicature (Judicial Review) Rules, 2009 and the Schedule to the judicature(Judicial Review) Rules, 2009for orders for judicial following reliefs;

1. A declaration that the process and actual search for, recommendation, approval and appointment of the 2nd Respondent as Deputy Vice-Chancellor (Finance and Administration) for the 1st Respondent was/is null and void.
2. A declaration that the proceedings, report and recommendations of the Senate Search Committee upon which the University Senate, the University Council and the Chancellor of the 1st Respondent based to

appoint the 2nd Respondent as Deputy Vice Chancellor (Finance and Administration) was/is null and void.

3. A declaration that the acts of the Makerere University Senate acting upon and upholding the illegal Report of the Senate Search Committee, the University Council acting upon and upholding the report of the University Senate and the Chancellor acting upon and upholding the report and recommendations of the University Council in appointing the 2nd Respondent as Deputy Vice-Chancellor (Finance and Administration) were/are null and void.
4. An order of certiorari does issues quashing the appointment of the 2nd Respondent as the Deputy Vice-Chancellor (Finance and Administration) of the 1st Respondent and removing him from that office immediately.
5. An order declaring the office of the Deputy Vice-Chancellor (Finance and Administration) of the 1st Respondent vacant.
6. An order of mandamus does issues directing the 1st Respondent, its agents or persons acting on its behalf to lawfully commence, conduct and conclude the process of appointing a Deputy Vice-Chancellor (Finance and Administration).
7. In the alternative to (6) above, an order directing the Search Committee of Senate to include the name of the Applicant on the list of the suitable candidates recommended to the University Senate for consideration for the position of Deputy Voce-Chancellor (Finance and Administration) for the 1st Respondent.
8. An order for General, exemplary and punitive damages be awarded to the Applicant to be paid by the Respondents, jointly and severally.

9. An order that the Respondents, jointly and severally pay the Applicant the costs of this application.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant by Prof. Anthony Mugisha but generally and briefly state that;

- 1) The applicant is a Professor of Livestock Development and Socio-economics in the College of Veterinary Medicine, Animal resources, and Bio-security, Makerere University, since 2014
- 2) The 1st respondent advertised for the post of Deputy Vice chancellor responsible for Finance and Administration and its Senate appointed a Search Committee mandated to recommend 5 suitable candidates to the University Senate for further recommendation for the position of Deputy Vice-Chancellor (Finance and Administration).
- 3) The University Senate was to in turn recommend one of the 5 suitable candidates to the University Council for approval as the Deputy Vice Chancellor (Finance and Administration).
- 4) The applicant and the 2nd respondent were among the candidates that applied for the position of Deputy Vice Chancellor (Finance and Administration).
- 5) That the Search Committee carried out its mandate and made a report and recommendations in a biased, illegal and unlawful manner, thereby sidelining the Applicant and in effect producing a sole candidate by the position in the names of 2nd respondent.

- 6) That the Search Committee overstepped its mandate of only recommending 5 suitable candidates and delved into choosing who of the suitable candidates was the best and also purported to appoint the final candidate as the 2nd respondent, which was not its mandate.
- 7) The University Senate illegally and unlawfully relied upon and adopted the recommendations and or report of the search Committee thereby denying the applicant a chance to get the position.
- 8) The University Council also acted upon and upheld the report and the recommendations of the University Senate and approved the 2nd respondent as deputy Vice Chancellor Finance and Administration.
- 9) The Chancellor of the 1st respondent also acted upon and upheld the report and recommendations of the University Council and appointed the 2nd respondent as the Deputy Vice-Chancellor (Finance and Administration).
- 10) The Applicant as a candidate was unfairly denied, illegally and unlawfully denied the chance and possibility of getting the position of Deputy Vice Chancellor (Finance and Administration).
- 11) That in 2013 when the same position was advertised, the applicant was among the best 2 candidates with Prof Nawangwe Barnabas who was later appointed to the same position-Deputy Vice chancellor (Finance and Administration).
- 12) That it is further in the interest of justice that the process of appointment of the Deputy Vice Chancellor (Finance and

Administration) is carried out fairly and in a lawful manner without bias and/or in accordance with the law.

The respondents opposed this application and filed two affidavits in reply through Charles Barugahare-University Secretary and Accounting officer of the 1st respondent.

The University Secretary contends that the process through which 2nd respondent was appointed was very transparent, fair, proper and legal within the regulations laid down, natural justice and the system through which the Deputy Vice –Chancellor in Charge of Finance and Administration is interviewed and appointed.

That it is not true that the Senate Search Committee was to recommend 5 suitable candidates as asserted by the applicant.

That the correct position in the guidelines was that, the Search Committee was to recommend to the Senate not more than 5 suitable candidates. After the Interview process, the Committee found only one suitable candidate out of the two candidates who had been shortlisted. In effect by recommending only one (1), the Committee was within its mandate.

That the search process was done in phases and the applicant and 2nd respondent were the only candidates who passed the first phase of meeting the shortlisting criteria, and proceeded to the next stage of interviewing.

That the applicant only managed to score 58.19% as compared to the 2nd respondent's 86.42%. Such a mark was below the pass mark for interviews which had been set by the Search Committee at 60%. A pass mark of 60% is also the mark required for any employment or promotion

within the University as laid down in the 1st respondent's Human Resources Manual 2009.

That the applicant failed to meet the criteria and standards set for the position of such high responsibility as the Deputy Vice Chancellor in Charge of Finance and Administration of the oldest and Largest public University in Uganda.

That the mere fact that the applicant had ever competed for the same post before and performed better than this time did not entitle the applicant to automatically be appointed to the same on second attempt. Even in the first attempt where he performed better did not earn him any appointment.

That the Search Committee report clearly shows that the 2nd respondent performed better than the applicant at every stage of the interview and assessment process

The 2nd respondent in his affidavit contends that he applied for the position of Deputy Vice Chancellor-Finance and Administration a position he held in acting capacity for over a year.

That after the selection exercise, the search committee found me the only candidate suitable to hold this position and it recommended me for appointment.

That as per the search committee report, the applicant was qualified to be shortlisted and not be appointed. The applicant might have performed better in the previous search, but this was a different search with no bearing whatsoever on the previous searches.

There was no bias on the selection committees part and all the candidates including myself were treated with fairness.

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.

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

1. ***Whether the process leading to the selection of the 2nd Respondent was lawful.***
2. ***What remedies are available to the parties.***

The applicant was represented by *Mr. Wameli Anthony* whereas the respondents were jointly represented by *Mr Henry Mwebe* and *Mr Hudson Musoke*.

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.*

For one to succeed under Judicial Review it trite law that he must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public.

The respondent as a public body is subject to judicial review to test the legality of its decisions if they affect the public. In 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.”

The applicant’s counsel submitted that the process leading to the selection of the 2nd Respondent as the Deputy Vice Chancellor (Finance and Administration) at Makerere University was unlawful and therefore null and void.

Firstly, the basis of their submission is that the Search Committee of the 1st Respondent, which was constituted to commence the above process outstepped its mandate (terms of reference), acted with obvious bias and therefore its report and recommendation to Senate was unlawful.

Subsequently, Senate and the University Council’s upholding of the report and recommendation of the said Search Committee, leading to the appointment of the 2nd Respondent by the Chancellor of the 1st Respondent was also unlawful.

The terms of reference of the Search Committee upon which it was supposed to act in the process are clearly spelt out in its own report attached to the Applicant’s affidavit in support of the application.

At page ii of the report, the Search Committee was supposed to:-

- a) **Identify and propose to Makerere University Senate a maximum of five (5) candidates suitable for the position of Deputy Vice Chancellor (Finance and Administration) within the guidelines and procedures approved by the University Council.**
- b) **Elect a Chairperson to the Search Committee from among its members.**
- c) **Present a report to the Makerere University Senate within a maximum period of two (2) months from the date of the Council decision.**

The guidelines and procedures approved by the University Council, within which the Search Committee was supposed to do its work are traceable in a communication from the University Secretary, Charles Barugahare to the Academic Registrar dated 7/09/2018 and referenced Mak/US/660/2018.

According to that Appendix, at its page 2 of 2, the Council agreed:-

- 1) That the Search Committee identifies and proposes to Senate a maximum of five (5) suitable candidates for each of the two positions, including the position of Deputy Vice Chancellor (Finance and Administration).
- 2) The Senate considers the report of the Search Committee and recommends a maximum of three (3) candidates for each position to the University Council.
- 3) That the Search Committee reports to the Senate within maximum period of two (2) months.

- 4) That Senate considers the report of the committee and reports to Council within a maximum of seven (7) days from the date of receipt of the report of the Search Committee.
- 5) That Search Committee members should select the Chairperson within the nominated members.
- 6) That the age limit of the two positions shall be 40 - 60 years at the time of the application.
- 7) To approve the ToR and the job specifications of the two positions of the Deputy Vice Chancellor (AA) and) F&A).

The Search Committee was to *Identify* and *Propose* suitable candidates for the position. If the suitable applicants were to be more than 5, then the Search Committee was to identify and propose a maximum of 5 and eliminate the others.

In the instant case, at page ii of the Search Committee Report, the last paragraph, which report is Annexure "E" to the Applicant's affidavit in support of the application, the committee received only five (5) applications for the position of Deputy Vice Chancellor (F&A) and the committee found only two (2) out of the five (5) to be suitable for the position.

It was the applicant's contention that at this stage, since the number of the suitable candidates was way below the maximum of 5, the Search Committee had to propose both of them to the Senate for consideration.

It was therefore erroneous and beyond its terms of reference for the Search Committee to identify only 2 suitable candidates and then subject them to assessment amongst each other to choose the best.

The applicant's counsel also contended that the Search Committee acted with bias against the Applicant and in favor of the 2nd Respondent whereby it made the 2nd Respondent a sole candidate for the position.

Secondly, it is our submission that the Senate had a mandate of not only upholding the candidates proposed by the Search Committee but of *considering the report of the search committee*. Had the Senate carefully considered the report of the Search Committee, it would have come to a different conclusion from merely upholding the 2nd Respondent as a sole candidate for the position.

The Search Committee was created by the Senate and therefore it was not completely bound by the recommendation of a sole-candidate without looking at the report as a whole.

The above submission also goes for the University Council, which also blindly upheld the recommendations of Senate without considering the entire reports right from the Search Committee.

It is therefore the submission of the applicant that the Senate and University Council also failed in their duty whereby they upheld the illegal and biased report of the Search Committee thereby denying the Applicant the possibility of getting the job.

Thirdly, the bias of the Search committee is not only in the act of manipulating the process and the terms of reference to create a sole candidate in the 2nd Respondent but also in the actual assessment and scoring of the.

It is therefore our final submission on this issue that the process leading to the selection of the 2nd Respondent unlawful and ought to be declared null and void.

The respondent's counsel submitted that the process through which the Second Respondent was appointed, was very transparent, fair, proper and legal within the set guidelines through which the Deputy Vice Chancellor in charge of Finance and Administration is interviewed and appointed.

At the commencement of its work, the Committee adopted the most fair, transparent and legal methodology. This involved three phases, namely;

Evaluation of documents submitted by each candidate;

Face to face interviews;

Public presentations that focussed on individual motivation and competencies for the job.

The Search Committee received a total of five (5) applications. Upon scrutiny in accordance with the preliminary guidelines, three (3) candidates were eliminated, and reasons for elimination were set out in the report.

Being qualified to be shortlisted and being shortlisted for interviews did not mean that the search process was complete; as the Applicant seeks for this Court to believe. The search process had just started. The applicant had to legally go through the other stages of the process. The search process is done in phases and the Applicant and Second Respondent were simply the only two (2) candidates who went beyond the first phase of meeting the shortlisting criteria, and proceeded to the next stage of interviews. It is during the next and most crucial stage of interviewing, that the Applicant performed very dismally.

At all the stages of the selection process, the Second Respondent outperformed the Applicant. Both the Applicant and the Second Respondent were subjected to the same panel of interviewers. They were subjected to the same set of questions. The interviewers were guided by the same score

scheme for both candidates. Each member of the Search Committee scored each candidate individually and independently without collective undue influence. This has not been challenged. All those actions of the Search Committee were carried out fairly and lawfully within its mandate. The Search Committee did not overstep or act outside its terms of reference.

The Committee set a pass mark of 60%. There can never be an interview or examination without the examiners or interviewers setting a pass mark. This is also the required mark provided in Section 6.9(b)(ii) of the 1st Respondent's Human Resources Manual before promotion to any position in University service.

During the summation of the different scores for each phase, the Second Respondent scored 86.42% as opposed to the Applicant's 58.19%. This is clearly stated on page 7 of the report. This meant that the Applicant failed to attain the pass mark. The Search Committee lawfully recommended only the Second Respondent as the only suitable candidate, to the Senate. The Applicant was given equal opportunity to compete with the Second Respondent. However, he was found wanting which is not the fault of the second respondent, the Search Committee, Senate, Council or the Chancellor.

All acts carried out by the Search Committee were legal, within the Committee's mandate and were all lawful. All the rules of natural justice were observed and adhered to. The Applicant was given equal opportunity and chances to prove himself; but was found wanting. The Search Committee cannot be faulted for the Applicant's shortcomings. The search Committee lawfully recommended only the second Respondent because of his score. Equally the Applicant was eliminated by reason of his score; when he failed to attain the set pass mark.

The recommendation by the Search Committee of the appointment of the Second Respondent was lawful, impartial, devoid of any bias or ill-will against the Applicant. The Senate adopted the committee report and in accordance with the set procedure, forwarded the 2nd respondent's name to the University Council which submitted the same to the Chancellor for appointment.

It was the respondent's counsel submission that it is not correct to state that the Senate Search Committee was to recommend five (5) suitable candidates as stated by the Applicant. The correct position in the guidelines was that, the Search Committee was to recommend to the Senate, a maximum of five (5) suitable candidates as per paragraph 1 page 2 of Appendix 1 to the report. After the interview process, the Committee found only one suitable candidate, out of the two candidates who had been shortlisted. In effect by recommending only one (1) who was the only qualified candidate, the Committee was within its mandate. As indicated above, the Committee had a mandate to identify a maximum of five (5) candidates for recommendation to Senate and there was no minimum, which means that it could even identify none if it found no qualified candidate. This has happened in previous search processes where no suitable candidates were found.

The mere fact that the Applicant had ever competed for the same post before and performed better than this time, did not entitle the Applicant to automatically be appointed to the same on the second attempt. In any case, even that first attempt where he allegedly performed better did not earn him any appointment. The Search Committee that the Applicant faced earlier was different, the questions different and the standards different, from those given to the Search Committee on the second attempt. The applicant might have performed better in the previous search, but this was

a different search process with no bearing whatsoever on previous searches.

My Lord, the Committee lawfully recommended and forwarded the name of the Second Respondent to the Senate Committee as the only suitable candidate for the position of Deputy Vice Chancellor in charge of Finance and Administration.

It was there the respondents' counsel submission that the search process leading to the selection of the 2nd Defendant was lawful.

Determination

Section 32 of the Universities and other tertiary Institutions Act 2001 as amended provides that;

1. *Each Public University shall have not more than three Deputy Vice-Chancellors who shall be appointed by the Chancellor on the recommendation of the University Senate with approval of the University Council.*
2. *A Deputy Vice-Chancellor shall hold office for five years and shall be eligible for reappointment for one more term.*
3. *The Deputy Vice- Chancellor (Finance and Administration) shall-*
 - a) *Assist the Vice-Chancellor in the performance of his or her functions and in that regard shall oversee the finances and administration of the University.*
 - b) *Be responsible for the planning and development of the University.*
 - c) *Perform such other functions that may be delegated to him or her by the Vice-Chancellor or assigned by the University Council.*

The Search Committee was established by the University Senate at the Special Meeting held on 5th September 2018.

The terms of reference of the search committee were;

- 1) *Identify and propose to Makerere University Senate a maximum of five (5) candidates suitable for the position of Deputy Vice Chancellor (Finance and Administration) within the guidelines and procedures approved by the University Council.*
- 2) *Elect a Chairperson to the Search Committee from among its members.*
- 3) *Present a report to the Makerere University Senate within a maximum period of two (2) months from the date of the Council decision.*

The powers exercisable by the search committee were delegated powers by the University Senate and it the exercise of such powers that is being challenged by the applicant as being unlawful or illegal.

This court will proceed to give the terms of reference a rational or reasonable interpretation in order to give full effect to the main legislation- Universities and Other Tertiary Institutions Act which provides for the appointment of the Deputy Vice-Chancellor on the recommendation of the University Senate under Section 32.

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 a discretion for a power not intended. Accordingly, the courts may control it by use of the *ultra vires doctrine*.

It can equally be said that fettering of one's discretion is to abuse that discretion. 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.

Fettering discretion may usually occur in two broad sets of circumstances: first when one contracts away ones statutory powers; and second, when one resolves to apply general policy blindly. This may also involve 'abdication' when a public functionary gives effect to the judgement or decision of a third party. See *Public Law in East Africa* by Ssekaana Musa page 105-108

An authority abdicates its functions by leaving it to be exercised by the subordinates without acting itself, or when the authority relying on its subordinates acts mechanically on their recommendations without exercising its own mind.

An instance of fettered discretion arises when the authority does not consider the matter itself but exercises its discretion under the dictation of another authority. This in law amounts to non-exercise of lawfully conferred power by the concerned authority and will render the purported exercise invalid as even though the authority purports to act itself, in effect, it is not so because it does not take the action in question by its own judgment as is intended but is merely transmitting the decision of another authority.

In the present case, the Search Committee took a decision and forwarded only one name to the University Senate for the sole purpose of endorsement and yet the University Senate is mandated under the law to take a decision without fettering their discretion in exercise of power conferred under the Universities and Other Tertiary Institutions Act.

The sum effect of fettering discretion is that the power conferred by Parliament is properly exercised by the concerned public body. The court will not therefore hesitate to declare the resulting decision or action *ultra vires* null and void. Discretionary power has to be exercised to advance the purpose for which the power has been given.

Thus within the area of administrative discretion the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

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.

In the present case, the Act vested the University Senate with power to recommend a person with approval of the University Council for appointment by the Chancellor. The right to choose had to be made by the University Senate and the Search Committee choosing one or a 'sole' candidate and taking the power of the University Senate through transmission of the only forwarded name and not exercising any power conferred by the Universities and Other Tertiary Institutions Act was an abuse discretion and wrongful exercise of power.

The University Senate as the proper authority indeed shared its power with the Search Committee and indeed allowed it to dictate to it a candidate or submitting to its wishes or instructions of a candidate of their choice, the discretion conferred by Parliament was wrongly exercised by the wrong authority and the resulting decision is ultra vires and void.

In addition the search guidelines/terms of reference provided for submission of not more than 5 names;

Identify and propose to Makerere University Senate a maximum of five (5) candidates suitable for the position of Deputy Vice Chancellor (Finance and Administration) within the guidelines and procedures approved by the University Council.

This was purposely intended to keep within the boundaries of the Universities and Other Tertiary Institutions Act so that the university Senate could exercise their discretion and choose a suitable candidate to forward to University Council for Approval and later forward the same to the Chancellor for Appointment.

The Search Committee over stepped its mandate as set out in terms of reference when they only forwarded one name to the University Senate for transmission to the University Council. This meant that they chose a suitable candidate and recommended him for the appointment without any

chance of the University Senate to exercise their discretion to choose. The respondents' counsel's submission that the Search Committee was at liberty to forward one name or none at all is not tenable and is baseless and devoid of any merit.

The University Senate as the agency responsible must not be reduced to rubber stamping a decision which it ought to have taken itself.

In the case of *Mathipa v Vista University 2000(1)SA 396*; Court found that a University Council had simply rubber-stamped a selection Committee's decision to appoint a campus director instead of making the decision itself, as it was required to do by the applicable statute.

Guided by the above mentioned principles and authority, this court concurs with the decision and finds that the appointment of the 2nd respondent to the position of Deputy Vice-Chancellor (Finance and Administration) was illegal and unlawful.

This issue is resolved in the 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 recognising 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

Certiorari

The applicant has sought an order of certiorari to quash the appointment of the 2nd respondent as the Deputy Vice-chancellor (Finance and Administration).

Certiorari is one of the most powerful public law remedies available to an applicant. It lies to quash a decision of a public authority that is unlawful for one or more reasons. It is mainly designed to prevent abuse of power or unlawful exercise of power by a public authority. See *Public in East Africa by Ssekaana Musa* page 229

Certiorari is simply concerned with the decision-making process and only issues when the court is convinced that the decision challenged was reached without or in excess of jurisdiction, in breach of rules of natural justice or contrary to the law.

The effect of the order of certiorari is to restore *status quo ante*. Accordingly, when issued, an order of certiorari restores the situation that existed before the decision quashed was made.

This court therefore issues an Order of Certiorari quashing the appointment of the 2nd respondent-Prof Bazeyo William as the Deputy Vice-Chancellor (Finance and Administration) of the 1st respondent.

Mandamus

An applicant for an Order of Mandamus is required to establish the following:

- a) A clear legal right and corresponding duty on the Respondent
- b) That some specific act or thing, which the law requires that particular officer to do, has been omitted to be done by him;
- c) Lack of an alternative, or
- d) Whether an alternative exists but is inconvenient, less beneficial or totally ineffective.

See Hon Justice Geoffrey Kiryabwire & Others vs Attorney General High Court Miscellaneous Application No. 783 of 2016

The applicant has satisfied the requirements for issuance of an Order of Mandamus against the 1st respondent's (its agents or persons acting on its behalf) to comply with the statutory duty established under the Universities and Other Tertiary Institutions Act and cause the proper appointment of Deputy Vice-Chancellor (Finance and Administration).

The process of appointment Deputy Vice Chancellor (Finance and Administration) should be transparent, reasonable and fair to all potential and interested applicants.

General, Exemplary and Punitive damages

The applicant prayed for general, exemplary and punitive damages. In judicial review court does not award those categories of damages but rather in deserving circumstances where there is justification may award damages.

The habit of seeking damages as if it is an automatic right in every application for judicial review should be discouraged. Judicial review is more concerned with correcting public wrongs and not a way to demand or seek to recover damages.

An individual may seek compensation against public bodies for harm caused by the wrongful acts of such bodies. Such claims may arise out of the exercise of statutory or other public powers by statutory bodies.

The fact that an act is *ultra vires* does not of itself entitle the individuals for any loss suffered. An individual must establish that the unlawful action also constitutes a recognizable tort or involves a breach of contract. See *Public Law in East Africa by Ssekaana Musa pg 245-249*

The nature of damage envisaged is not necessarily categorized as special or general or punitive/exemplary damage. But such damage is awarded for misfeasance or nonfeasance for failure to perform a duty imposed by law.

The tort of misfeasance in public office includes malicious abuse of power, deliberate maladministration and perhaps also other unlawful acts causing injury.

The applicant has not made out any case for award of damages. No damages are awarded.

Costs

The applicant is granted costs of the application.

I so Order.

SSEKAANA MUSA

JUDGE

14th/06/2019