

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.268 OF 2017
(Arising from Miscellaneous Application No. 120 of 2017)
(Arising from Miscellaneous Cause No. 148 of 2016)
(Arising from Kyambogo University Tribunal Appeal Case No 2 of 2014)**

DR CHARLES TWESIGYE----- APPLICANT

VERSUS

KYAMBOGO UNIVERSITY----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 28(1), 42, 44(c), 126 (2)(c) of the Constitution and Sections 33 and 36 of the Judicature Act Rules 3,4, 5, 6, & 8 of the Judicature (Judicial Review) Rules, 2009; Section 57 (3) & (4) of the Universities and Other Tertiary Institutions Act for the following reliefs by way of judicial review;

- a. A declaration that the refusal of the Respondent University's Staff Tribunal to award damages to the applicant in Kyambogo University Tribunal Appeal Case No. 2 of 2014 was unjust, arbitrary, unfair, irrational, illegal and unconstitutional.
- b. A declaration that the refusal of the respondent University Staff Tribunal to award costs to the applicant in Kyambogo University tribunal Appeal Case No. 2 of 2014 and Kyambogo University

Appointments Board Disciplinary Case No. 2 of 2012 was unjust, arbitrary, unfair, irrational, illegal and unconstitutional.

- c. An Order directing the respondent to pay damages to the applicant.
- d. An Order directing the Respondent to pay costs to the Applicant in Kyambogo University Tribunal Appeal Case No. 2 of 2014 and Kyambogo University Appointments Board Disciplinary Case No. 2 of 2012.
- e. 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 but generally and briefly state that;

- 1) The applicant was charged with offence of unethical/unprofessional conduct and summoned to appear before the Disciplinary Sub-Committee of the Appointments Board of the respondent to answer charges and defend himself.
- 2) That the applicant appeared before the Disciplinary Sub- Committee of the Appointments Board of the respondent to answer charges and defend himself but no disciplinary hearing was conducted.
- 3) Although the Disciplinary Committee had sent the Applicant away because they said there was no case, the Applicant was surprised to find a letter slid under the door of his office communicating that he was found guilty of unethical/unprofessional conduct and was sentenced to a warning to refrain from any kind of misconduct and

was barred from holding any administrative position in the University for 5 years.

- 4) That the decision meant that the applicant could not compete for positions of Head of Department, Dean or Director of a Faculty, Deputy Vice Chancellor and Vice Chancellor for which he was qualified.
- 5) The applicant appealed against the decision of the Staff tribunal of the Respondent, which heard the appeal and delivered its decision in favour of the applicant holding that the Appointments Board had violated the applicant's Constitutional right to fair hearing and set aside the decision of the Appointments board.
- 6) In spite of the finding by the Staff tribunal that the Applicant's constitutional rights had been violated and setting aside the decision of the Appointments Board of the respondent, the Staff tribunal without any justifiable reasons did not grant the applicant damages and costs.
- 7) The applicant contends that the denial by the respondents Staff Tribunal to award damages and costs is unjust, arbitrary, unfair, irrational, illegal and unconstitutional.
- 8) It is proper, fair and in the interest of justice that the remedies sought are granted.

9) That it is the applicant's constitutional right to be awarded damages in compensation for the civil wrongs committed against him by the respondent.

The respondents opposed this application but they failed to file their affidavit in reply and the court allowed them to file submissions on points of law.

The only issue for court's determination;

Whether the refusal of the Respondent's University Staff Tribunal to award the applicant damages and costs was unjust, arbitrary, unfair, irrational, illegal and unconstitutional?

The applicant was represented by *Mr Henry Rwaganika* whereas the respondent was represented by *Mr Sylas Baguma*.

The applicant sought damages to be award in his appeal to the Staff tribunal and contended that;

The Tribunal got it wrong when it came to remedies and held;

"That considering that the appellant had been promoted to the position of Associate Professor and was not suspended and therefore continued to work normally and earn a salary, it was evident that there was no loss incurred to attract general and aggravated damages to the Appellant"

The applicant contended he was denied an opportunity to become a Dean of Faculty because of Disciplinary proceedings pending against him that made him ineligible. He was thus denied a promotion or applying for positions of Vice Chancellor, Deputy Vice Chancellor and other high administrative positions in the University such as University Secretary.

Secondly, the appellant faced humiliation together with his lawyers when they were kept out of the trial room for over 3 hours when the subcommittee was already constituted and free, but chose to ignore and let them stay outside for such a long time.

Charging the applicant with trumped up charges was another reason that justified the appellant to be awarded damages by the tribunal.

The fact that the appellant was called and presented before an illegal tribunal is also another reason why the tribunal should have awarded damages.

The punishments meted out to the applicant/appellant whereby he was condemned to suffer a warning for nothing he had done; barring him applying for a higher office within 8 years was another justification for the tribunal to award the appellant damages.

The respondent in their submissions contended that the applicant is not entitled to the damages since damages are given at the discretion of court for loss that has naturally resulted due to the defendant/respondent's act or omission.

That although the applicant had been condemned unheard and warned by the Appointments board, the applicant did not suffer any loss due to the decision of the Board because he was promoted from Senior lecturer to the position of Associate Professor, continued working normally and earned a salary.

The respondent contended that, this court should disregard the claim for damages for waiting for 4 hours before being admitted in the council room to hear his defence on allegations that had been raised by the applicant because the applicant and his counsel had not adduced any evidence to

prove that the Disciplinary Committee did not have any other business to handle on 2nd day of February 2012 when they appeared before it.

The respondent further submitted that the applicant has not adduced any evidence to show that the positions he was eligible to contest of dean of Students, Vice chancellor, Deputy vice chancellor and other Administrative positions were vacant and or advertised at the time the applicant had been barred from holding any Administrative position.

That the applicant has not proved any damage suffered as a result of the alleged lost opportunities. According to counsel a plaintiff must understand that if they bring an action for damages, it is for them to prove damages that they want to compensate them due to the actions of the defendant.

Determination

It would appear that the applicant had sought general and aggravated. 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 or enrichment by way of 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. Such abuse of power may arise where the act is done maliciously, that is with the intention of injuring the claimant, or knowing that the act is ultra vires the powers of the public body and knowing that the claimant will probably suffer loss. See *Three District Council v Governors of the Bank of England (1998) 11 Admin L. Rep 281*

A breach of a statutory duty may give rise to a civil action for damages by a person who has suffered harm as a result of that breach. However not all statutory duties give rise to a right to damages.

In principle, the question is whether, as a matter of statutory construction, Parliament intended to confer a right to sue for damages in the event of a breach of the duty imposed by the statute. See *R v Deputy Governor of Parkhurst Prison, ex p. Hague [1992] 1 AC 58* and *Olotu v Home Office [1997] 1 WLR 328 at 336*.

The applicant appeared before the University Staff Tribunal seeking to quash the decision of the Appointments Board Disciplinary Sub-Committee that condemned him unheard.

The applicant set out six(6) grounds in the appeal challenging the said decision and the staff Tribunal out of the said six grounds only found in his favour ground 2.

The Staff Tribunal did not find merit in the 5 grounds of Appeal and it was on this basis that they denied the applicant damages for the alleged loss. I have perused the application and have not found any attached evidence to assist court reevaluate the evidence presented and the applicant just repeated the allegations made in the tribunal without any supporting evidence for the said loss.

This court cannot award damages based on speculative assertions without any supporting cogent evidence. The damage must be proved and cannot be left to speculation and conjecture. For example the applicant alleged during the tribunal hearing that he lost out on the job for Deputy Vice Chancellor Kabale University but the same was not substantiated on in the affidavit in reply and no supporting documents were attached to the affidavit.

The applicant is not entitled to any damages since he has not produced any evidence to support the alleged damages. The Staff Tribunal had denied damages due to lack of evidence and this court has not been availed any evidence to fault the respondent Staff Tribunal.

The University Staff tribunal should not be used for enforcement of rights but rather for resolution of internal disputes between the university and its staff. A party aggrieved or whose rights have been violated should be able to petition a court of law competent to assess the nature of rights and violations. See

The application is dismissed with no order as to costs since this is long time dispute between the applicant and respondent since 2012. This is intended to bring litigation to an end.

I so Order.

SSEKAANA MUSA
JUDGE
16/08/2019