

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO.308 OF 2017

KERCAN PROSPER----- APPLICANT

VERSUS

1. THE ATTORNEY GENERAL

2. PAUL WALIMBWA GADENYA

3. THE CHIEF REGISTRAR COURTS OF JUDICATURE

4. JUDICIAL SERVICE COMMISSION

RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Article 42 of the Constitution of the Republic of Uganda, 1995, Section 98 of the Civil Procedure Act, Section 33 & 36 of the Judicature Act as amended, Rule 3(1) (a), 2, 4, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 seeking for;

- a) An order of Certiorari to quash the purported decision of the 3rd respondent.
- b) An order of Mandamus directing the 3rd respondent to revoke and cancel the transfer and lift up the interdiction of the applicant and putting him back in office on full pay.
- c) An order of Prohibition against the 4th respondent from continuing with prosecuting the applicant for disciplinary offence.

d) General damages to the applicant and

e) Costs of the application.

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- a) That the unfair administrative decision of the 3rd respondent transferring the applicant be declared unfair, unjust, malicious, irrational and illegal and contravenes the principal of fair hearing under administrative procedures.
- b) That the 3rd respondent acted on extraneous grounds to transfer the Applicant to Kiboga court without giving the applicant the opportunity to be heard against the principles of natural justice.
- c) That in so doing, the 3rd respondent constituted himself into the complainant, the prosecutor and the judge by assuming the position of the 4th respondent.
- d) That the applicant received two letters all dated on the 9/5/2017, the first one recalling the applicant for deployment because he had several disputes in court with several neighbours at his home in Matugga and that the move was intended to clean the image of the judiciary . The second letter was transferring the applicant to Chief Magistrate's court of Kiboga.
- e) The applicant wrote to the 3rd respondent to review the decision on a number of reasons to include not being given the right to be heard and that he was studying at MUK pursuing LLM and to transfer him would make it hard to access class.

- f) That the 3rd respondent ignored all the mandatory procedures under the law and acted without jurisdiction since he is not empowered to transfer a judicial officer over a private matter.

The respondents vehemently opposed the application by way of an affidavit deponed by the 2nd respondent, His Lordship Hon. Mr. Justice Gadeya Paul Wolimba that stated that as the Chief registrar at the time, he was responsible for the day to day supervision and administration of all Magistrate's courts established under the Magistrates Courts Act, Cap. 12.

That the Applicant had filed several cases against his neighbor and that while there was nothing wrong with that, it was glaring impropriety for the applicant to continue working in a magisterial area where he was an active litigant and a serving judicial officer and that the greater overall good of administration of justice demanded that the applicant be transferred from the Chief magistrate's court of Nabweru to ensure that justice is not only done but seen to be done.

The deponent established that the applicant had not reported to his new station and addressed this to the applicant that refusal to honour the transfer constituted insubordination. The deponent also directed the applicant to show cause why disciplinary action should not be taken against him for insubordination.

The applicant had by the 25/7/2017 not reported to his new station without lawful cause or justification and was interdicted for refusing to take up the post at the Chief magistrate's court, Kiboga which the 3rd respondent is empowered to do.

The applicant raised 3 broad issues for court's resolution and the respondents also raised 3 issues

Applicants Issues

1. *Whether the filing of the reply late without leave of court by the defence does not disentitled them to defend the application.*

2. *Whether the chief registrar acted unlawfully, unfairly, maliciously, unjustifiably and violated the principles of natural justice.*
3. *Whether the applicant is entitled to the reliefs prayed for.*

Respondents' issues

1. *Whether the application before court is competent and maintainable.*
2. *Whether the application raises any matter for judicial review*
3. *Whether the applicant is entitled to the reliefs prayed for.*

Order 15, Rule 5 of the Civil Procedure Rules SI.71-1 gives this court the power to amend and strike out issues at any time before passing a decree as it thinks fit as may be necessary for determining the matters in controversy between the parties.

I shall therefore determine this application by resolving the following issues as framed as by this court;

1. *Whether the application raises any matter for judicial review*
2. *Whether the applicant is entitled to the reliefs prayed for.*

DETERMINATION OF ISSUES

Issue 1

Whether the application raises any matter for judicial review?

The applicant submitted that the code of conduct of judicial officers emphasizes the breach committed by the Chief Registrar clearly proved illegalities, irrationality, unfairness, procedural impropriety and malice committed against the applicant. It was also stated that posting of a judicial officer in public service must be done on reasonable grounds preferably the interest of service and that he was not given an opportunity to be heard at all.

The respondents contended that the said application is frivolous, without merit and does not raise any matters for judicial review. The respondent cited different authorities and also relied on the 2nd respondent's affidavit that stated that

among the duties as a chief registrar, he was responsible for the day to day supervision and administration of all magisterial courts.

The respondents contend that while it was not wrong for the applicant to continue working in the magisterial area where he was an active litigant and serving judicial officer, good administration demanded that the applicant be transferred from the court to ensure that justice is not only done but seen to be done.

The 2nd respondent contends that he wrote to the applicant drawing him to the fact that refusal to honour a transfer amounted to insubordination and to show why disciplinary action should not be taken against him. It was further contended for the respondents that the administrative decision of transferring the Applicant by the chief registrar is a normal posting instruction and not a disciplinary penalty and thus no need to conduct a hearing before a judicial officer can be posted.

The applicant in his rejoinder reiterated his submissions and stated that the chief registrar acted unreasonably, without giving a hearing to the applicant and that his decision was tainted with bias, irregularity, illegality and that the court should find the application subject to judicial review.

Determination

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.

In the case of *Twinomuhangi vs Kabale District and Others [2006] HCB 130* 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 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.”

In the present case the applicant contends that he was not heard by the Chief Registrar before he was posted to a new station. However, as submitted for the respondents, the administrative decision of transferring the Applicant is a normal posting instruction and not a disciplinary penalty where there is no need to conduct a hearing before a judicial officer can be posted to any station within the country .

A judicial officer is required to serve in that capacity in any part of the country by the normal posting instructions as per the conditions of service. Failure to

adhere to this instruction amounts to insubordination under **Regulation 23 (e) of the Judicial Service Commission Regulations of 2005 S.I No.87** and the Chief Registrar may interdict the judicial officer.

The Chief Registrar cannot therefore be deemed to have become the complainant, prosecutor and judge since he accorded the applicant with an opportunity to show cause why disciplinary action for insubordination should not issue and further directed him to assume his new post at the Chief Magistrate's court of Kiboga but the applicant disregarded this.

This court is satisfied that the applicant was accorded a hearing when he was given an opportunity to show cause why a disciplinary action for insubordination should not issue and was also made aware of the disciplinary offence he had to respond to and further directed to report to the Chief Magistrate's Court at Kiboga.

When the statute under which an authority is functioning itself lays down a procedure for the authority to follow, then this procedure has naturally to be followed. If the prescribed procedure falls deficient in any of the norms of fairness or natural justice, then the procedure may have to be supplemented with the rules of natural justice.

There was no need for hearing or following rules of natural justice when the applicant was transferred to his new station at Kiboga. If the supervisors were to accord a hearing to all persons to be transferred then it would affect the smooth operations of the judiciary.

If on admitted facts or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible, then the court may not compel the observance of natural justice "not because it approves the non-observance of natural justice but because the courts do not issue futile orders." The law allows the Chief Registrar to set in motion disciplinary proceedings for any judicial officer who refuses the transfer. This court would not infer any hearing in such circumstances.

The statute prescribes hearing in one situation but is silent as to hearing in another situation it may be argued that by implication hearing has been excluded in the latter situation.

The application clearly does not raise any issues for judicial review as can be deduced from the facts presented. The applicant was not entitled to any hearing before being transferred to Kiboga Chief Magistrates court.

This issue is resolved in the negative.

Issue 2

Whether the applicant is entitled to the remedies sought in the application.

The application failed and the applicant is not entitled to any of the remedies sought.

This application is dismissed with costs

I so Order.

SSEKAANA MUSA

JUDGE

26th March 2020