THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS CAUSE NO. 175 OF 2019

1. **FATUMAH NAKATUDDE**
2. **APUNYO PAUL OKIRIA** } **.....APPLICANTS**

VERSUS

MAKERERE UNIVERSITY.....RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This application is for judicial review seeking mandamus, injunction/prohibition and declaration that the respondent is in contempt of the orders of its own Staff Appeals Tribunal made on the 16th of April 2019 in as far as the respondent has refused to reinstate the applicants, prosecuted and/or subject to disciplinary hearing after the expiry of the time granted by the said tribunal.

The application also seeks that this court declares that the refusal to comply with the orders of the Staff Appeals Tribunal and attempts to prosecute the applicants beyond the time granted by the tribunal is illegal, irrational, unjust and discriminatory.

The application thus seeks an order of mandamus to issue against the respondent directing it to:

a) Reinstate the applicants to their respective positions as deputy academic registrar, college of health sciences and senior Administrative assistant respectively;
b) Reinstate the names of the applicants onto the respondent's payroll;
c) Pay unto the applicants their outstanding salary and other emoluments

The applicants seek intervention of this court to ensure that the decision of tribunal is respected and the timeliness set by the tribunal are adhered to as they are binding on the respondent.

Applicants' counsel submitted that the respondent filed an affidavit in reply sworn by Andrew Abunyang dated 19/08/2019 in support of its case. The affidavit was drawn and filed by the Makerere University Directorate of Legal Affairs. The same affidavit was commissioned by Henry Mwebe. By way of **preliminary objection,** it's our submission that the affidavit is incompetent and ought to be struck out on grounds of illegality for being contrary to ***section 4 of the Commissioner for Oaths (Advocates) Act, cap 5.***

It is common knowledge that Henry Mwebe is the Director Legal Affairs of the respondent (see annexture H to 1st applicant's affidavit in support of the application. The directorate headed by Henry Mwebe drew and filed the affidavit in question.

Being an employee of the Directorate of Legal Affairs of the respondent, which filed the affidavit, the said Mwebe acted as a commissioner in a matter wherein he not only has interest but also filed by a department/institution in which he works as an advocate.

For clarity, ***S.4 of the commissioner (advocates) Act, cap 5*** provides inter alia ***"……. Except that a commissioner for oaths shall not exercise any powers given by this section in any proceeding or matter in which he or she is the advocate for any of the parties to the proceedings or concerned in the matter or clerk to any such advocate or in which he or she is interested."***

The provisions of section 4 of the commissioner for Oaths (Advocates) Act are mandatory and an affidavit commissioned in contravention of those provisions is not merely an irregularity but a matter that goes to the root of the legality of the affidavit in issue. Once an issue of illegality arises court cannot close its eyes to it.

It must be investigated and determined. While considering the equivalent of our own section 4 of the Advocates Act, which is couched in exactly the same terms

as ours, the High court of Kenya before striking out the offending affidavits in ***Stephen M. Mogoka VS Independent Electoral and Boundaries Commission (IEBC) & 2 Ors: Election petition No.2 of 2017 (2017) eKLR page 22; www.kenyalaw.org*** held inter alia that;

"what the court was dealing with in the election petition was not an issue of technicalities. It was an issue of non-compliance with the law regarding commissioning of affidavits under oaths and statutory Declarations Act. Article 10, 12, 19,-22, 159 (2) d of the constitution of Kenya (similar to our article 126 (2) (e)….. did not exempt a party from complying with the law. The court was obligated to interpret and apply the law. It could not shut its eyes to non-compliance…." (Underlining mine for emphasis)

The court further held that

"the swearing of the 7 affidavits offended the statutory provisions and it was not a mere irregularity, it was neither a defect in form nor a technical irregularity as it went to the root of the substantive issue before court. It was an irregularity that was incurably defective. All affidavits commissioned by an unauthorized person were defective and ought to be struck out and expunged from the record of the court." (Underlining mine for emphasis)

This case is highly instructive on the interpretation of the section 4 of the commissioner for oaths (advocates) Act. It was the submission of the applicant's counsel that the affidavit in reply is incurably defective and prayed that the same be struck out with costs. Once struck out the position of the law is that the application and evidence in support thereof remains unchallenged and by implication admitted.

Counsel for the respondent submitted that the Applicants in their submission raised a preliminary objection to be effect that the commissioner for Oaths who commissioned the affidavit in support, Mr. Henry Mwebe, was incompetent to do so for interest. The section relied on in the commissioner for an oath (Advocates) Act is not relevant to this case. The section bars one from

commissioning an affidavit in a matter he/she has interest. In the instant case, Mr. Henry Mwebe is not the advocate handling the same or a participant in any of the proceedings before court. He is also not a witness. His name or role in the conduct of this application does not feature anywhere on the record of court. Counsel for the Applicants has raised evidence from the bar, which should be discouraged. The respondent therefore prays that this preliminary objection be dismissed with costs.

Counsel for the Applicants in regards to the application submitted that the term judicial review has been defined by the **Judicature (Judicial Review) (Amendment) Rules SI 32/2019** to mean a process through which the High Court exercises its supervisory jurisdiction over the proceedings of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with performance of public acts and duties.

Before granting an application for Judicial Review, ***Rule 7A*** of the ***Judicature (Judicial Review) (Amendment) Rules SI 32 of 2019***, requires that court is satisfied that:-

a) That the application is amenable for judicial Review;
b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law;
c) That the matter involves an administrative public body or official.

The principles governing judicial review are well settled. Judicial Review is only concerned with the decision making process through which the decision is made. Judicial Review seeks to invoke court's supervisory jurisdiction to check and control the exercise of power by public bodies or persons exercising a quasi-judicial function. Judicial review seeks to ensure fair treatment by authority to which the particular individual (applicants in this case) has been subject to. So for an application for judicial Review to succeed, the applicant must demonstrate that the decision was arrived was tainted with illegality, irrationality or procedural impropriety (***see Dr.Julianne Sansa Otim vs Makerere University Misc. Cause No. 258 of 2016 (unreported).*** Illegality, irrationality and procedural

impropriety have been subject of judicial interpretation by Justice Remmy Kasule (as he then was) in ***Twinomuhangi Pastoli vs Kabale District Local Government Council & Ors Miscellaneous cause 156/2006 [2008] 2 EA 300*** quoted with approval in Namuddu Hanifa vs the Returning Officer Kampala District and 2 Ors Misc. Cause No. 69 of 2006

In respect of Rule 7A(a) and (b) of the J***udicature (Judicial review) (Amendment) Rules,*** I submit that the matter before court involves a public body within the meaning of ***Rule 3*** of J***udicature (Judicial Review) (Amendment) Rules.*** The respondent's Appointments Board which is established under ***section 50 of the Universities and other tertiary institution Act, 2001*** is such public body. Since the respondent is a public body whose decisions are subject to supervisory powers of the High Court.

In that regard, even though the Universities and Other Tertiary Institutions Act grants the Tribunal power to make orders ensuring protection of the rights of staff of the respondent, it does not provide for an enforcement mechanism through which staff can force compliance with the tribunal's orders. The applicants' have demonstrated in their affidavits that they demanded for reinstatement but it was ignored and the only remedy available to them is that of judicial review to stop the illegalities being committed by the respondent.

The respondent declined and/or refused to implement the decision and orders of its Tribunal in favor of the applicants yet at the same time reinstated their colleague, Dr. Okullo who was the subject of the order of the tribunal. (see paragraph 5 and annexture M to the affidavit of the 2nd applicant in rejoinder).

The appointments board in discriminating against the applicants acted illegally and without due regard to the constitutional and human rights guaranteed articles **20, 21, 28, 42**, and in violation of section **57** of the **Universities and other Tertiary Institution Act, 2001 (UOTIA)** as amended.

In refusing and/or denying the applicants fruit of judgment by way of reinstatement, the applicant is acting illegally, irrationally and in abuse of its

power and duty vested in the Appointments Board and therefore being in contempt of the orders of its staff tribunal thereby perpetuating an illegality.

The Tribunal also ordered the respondent to subject the applicants and all parties to the consolidated appeal to a fresh hearing on the existing allegations, if any, but only **within a period of 60 days** from **16th April, 2019**. The decision of the Tribunal has never been reviewed nor has any enlargement of time ever been sought or granted neither been an appeal ever preferred against the tribunal decision. The orders of the Tribunal in exercise of its statutory mandate under **S.57 Universities and Other Tertiary Institutions Act** remain binding on the parties.

A decision to start a disciplinary hearing after the time allowed by the tribunal is not only contemptuous also an attempt by the Appointments Board to usurp the powers of the tribunal bestowed on it by law. It is not illegal but irrational and cannot be condoned by this court. The attempt to subject the applicants to a fresh disciplinary hearing is an abuse of authority and an infringement on the applicants' constitutional rights to a fair and speedy trial which is non derogable under constitution. **S.2 of the Judicature (Judicial Review) (Amendment)** ***Rules SI No. 32/2019*** sets out as an objective of the judicial Review Rules, among others, to ensure adherence to the constitutional right to a fair trial and expeditious hearing.

It is this constitutional right that the tribunal exercising its power under ***SII (2) of the Universities and Other Tertiary Institutions (Amendment) Act, 2006*** sought to protect by giving a time line within which the disciplinary hearing should be conducted. It sought to provide for a fair and expeditious hearing so that the applicants' constitutional rights protected under Article 28 of the constitution are protected.

The Appointments Board having known of the decision of the tribunal regardless of whether, in its view the decision was null or void, regular, could not be permitted to disobey it, by reason of what the appointments board regarded the decision to be. We submit that it was not for the appointments board to choose

whether or not to comply with such decision. The decision from the Tribunal to reinstate the applicants and have them tried within the 60days ordered ought to have been complied with in totality in all circumstances by the appointment Board subject to its right to challenge the said decision in issue in such lawful way as the law permits.

It was the applicant's counsel submission that since the respondent has refused to affect the order as directed by the Tribunal and also left them to lapse at the prejudice of the applicants without any reason, the respondent cannot now usurp the powers of the tribunal in exercise of its (tribunal's) legal mandate granted by statute under **S.57** (as amended) by **S.11** of the Universities and Other Tertiary Institutions Act. This therefore is a proper case for Judicial Review.

The respondent's counsel submitted that, the Applicants were dissatisfied with the decision of the Appointment Board to dismiss them. The applicants, in accordance with section 57(1) of the Universities and other Tertiary Institutions Act, 2001, appealed the decision to the staff Appeals Tribunal. The Tribunal set aside the decision, ordered reinstatement and a retrial. The Appointments board to warrant a review of the process of making, thus court cannot review a decision that is non-existent. The remedies sought are at variance with the procedure adopted.

On the reading of the Applicants' application, the Applicants seek to enforce a right. This is a matter that ought to have been brought as a contempt of Tribunal order application; and not one in which court will exercise the prerogative supervisory powers over a decision making process.

The Applicants wish this court to substitute its own decision with the action that the Appointment Board would have carried out. Clearly this matter is manifestly improper for judicial Review. On that ground alone the respondent prays that this application be dismissed with costs.

The respondent submitted that the purpose of judicial review is to ensure that public powers are exercised with the basic standards of legality, fairness and

rationality. In Counsel's view this is aimed at forestalling issues of abuse of authority, acting ultra vires an authority's mandate and enforcing adherence to the rule of law.

In enforcing adherence to the rule of law, the court must ensure that all persons comply with the law and authority exercised by those entities that have been granted quasi-judicial authority. This means that the decisions made by such quasi-judicial authorities are binding over those public bodies that such decisions are directed at without question. The public body to which such order/decision is directed at has no freedom to do anything that may in effect vary or alter the decision of the quasi-judicial body.

Like courts of law, varying, altering, setting aside, review or even appeal of a decision made by such a quasi-judicial body can only be done as a matter of law and not of right. This means that the power to alter, vary, set aside a decision of a quasi-judicial tribunal must be granted by statute.

By law (Universities and Other Tertiary institutions Act), the respondent has the duty to reinstate the applicants following the order of Tribunal. The respondent has refused to comply.

This is not only a blatant display of unfairness but irrationality on the part of the respondent aimed at only the applicants that justifies intervention of this court through judicial review.

There is a decision made by the Staff Appeals Tribunal that the respondent has refused to comply with. Instead of complying with the decision which is binding on the respondent the respondent is in abuse of mandate and illegally has failed to reinstate the Applicants or even pay their salaries. The procedure adopted by the respondent in denying the applicants the fruits of their judgment is not only tainted with illegality, its rational and unfair in as far as the respondent has reinstated Okullo and denied the applicants reinstatement and payment of salary yet both were beneficiaries of the same tribunal decision.

The respondent's counsel submitted that the ruling and orders of the Staff Appeals Tribunal have been partly performed and the implementation process has commenced, but is only incomplete. All the actions/steps taken were in accordance to the laid down procedure. The Appointments Board cannot be faulted for adhering to the laid down procedures. The actions of the Appointments board do not warrant the intervention of Court in the due implementation process.

In the end result it is submitted and prayed that the delay, as envisaged by the Applicants to complete implementation of the Tribunal orders, does not warrant the intervention of Court.

By refusing to reinstate the applicants as directed by the Tribunal, the applicants remained "dismissed" as per the dismissal letters of 8th October, 2018. As dismissed the applicants by law ceased to be employees of the respondent. By striking their names off the payroll, stripping them of their salary and emoluments and all the benefits attendant to an employee of the respondent, the respondent did not consider the employees.

It is argued by the respondent that its initiating disciplinary proceedings, the process of compliance with the orders of the tribunal which we hasten to add, are binding on the respondent. The question then would be –how would the respondent legally subject persons at dismissed and struck off the payroll, to a disciplinary hearing, yet it did not consider them employees of the respondent for all intents and purposes.

It was the submission of the applicants' counsel that the respondent cannot be allowed to take with one hand and take away with the other. Court cannot aid a party to perpetuate an illegality and abuse of the rule of law.

The main complaint of the Applicants in this application is that the Appointments board has not reinstated them to their respective positions and the Respondent has not paid their salaries. In the same vein the Applicants seek to

bar the Respondent from conducting fresh disciplinary actions against them. The effect of this is that the Applicants seek for the one of disciplinary action.

It is submitted on behalf of the Respondent that this is not tenable. If the Court is to compel the Respondent to implement the orders of the tribunal, then all the orders that affect the Applicants should be implemented in full.

The applicants in fact, seek to take benefit of the principal of equity, "equity aids the vigilant". The Tribunal in setting a time line for the conclusion of the disciplinary hearing as 60 days from 16th April, 2019 was alive to the constitutional provision that safeguard the right to fair hearing. It was indeed alive to the requirement of a speedy trial as a safeguard of the right to fair trial, which right is non-derogate that is can under no circumstances be compromised. The tribunal my lord was alive to the Legal principle that there was to be an end to litigation hence the legal provisions regarding limitation of actions.

This application only seeks that the court orders strict compliance with the orders of the tribunal. This is again the background that the decision of the tribunal is burdening on the respondent. By allowing the respondent to conduct a disciplinary hearing outside the 60 days granted by the tribunal, this court would be sitting in review/appeal against the tribunal decision which is not what this application intends.

Allowing the respondent to conduct a trial by way of disciplinary hearing beyond the time limit set by the tribunal would be to aid the respondent to perpetuate an abuse of the authority of the tribunal and to lend a hand to committing an illegality that would give rise to unlimited litigation as the applicants would again file a suit before court challenging proceedings of the respondent beyond the time line set by a competent tribunal.

The Applicants' counsel submitted that the claim for compensation arises from court statutory power under r.8(1) of the Judicature (Judicial Review) Rules. The justification for it as much bearing on the time lapse has a greater bearing on the fact that the respondent has subjected the applicants to suffering in terms of

unjustifiably withholding their salaries in contempt and subjecting them to legal and other expenses in addition to depicting them to the public as fraudsters.

Contempt; S.57 (as amended) by S.11(2) of the Universities and Other Tertiary Institution Act grants University Staff Appeals Tribunal the power to confirm, vary, amend and even set aside the decision appealed against or give such decision as it thinks appropriate. In exercise of its statutory power, the tribunal made orders for the reinstatement of the applicants. Further, in exercise of its power to give such decision as it thinks fit made an order directing the Appointments Board to conduct a fresh hearing of the disciplinary allegations it had against the applicants within 60days from 16th April, 2019.

Having refused to comply with the orders and/ or abide by the orders of the tribunal, it is only appropriate that court declares the respondent's conduct to be in contempt of the orders of the tribunal

Mandamus is defined by Rule 3 of the Judicature (Judicial Review) (amendment) Rules 2019 to mean a court order issued to compel performance by public officers of statutory duties imposed on them. The duty to appoint, remove and even reinstate staff of the respondent lies with the respondent's Appointment board as correctly admitted in paragraph 5 of the affidavit in reply. This power is statutory and under **S. 50(3) of the universities and other tertiary institutions act.**

What an applicant must establish for mandamus to issue has been set out in ***Dr. Elizabeth Kaase Bwanga v. Makerere University: Misc. cause No.205 of 2018*** this Court ought to compel the respondent into compliance by way of an order of mandamus.

Prohibition; The applicants showed that while the application was pending, the respondent issued summons and fresh charge sheets in an attempt to subject them to a disciplinary hearing after lapse of time limited by the tribunal.

In short, the applicants seek a declaration that the attempt by the respondent to subject them to a fresh disciplinary hearing after lapse of the 60days granted by

the tribunal is both contemptuous and illegality thereby justifying the grant of an order of prohibition and injunction.

The applicants' counsel prayed that this court invokes its power to grant an order restraining the respondent from subjecting the applicants to a disciplinary hearing in total violation of the orders of the tribunal

Compensation, the applicants seek an order for compensation against the respondent for injury/damage suffered as a result of withholding of their emoluments in addition to depicting them as rogues and fraudsters thereby tarnishing their reputation as highlighted in the affidavit of the 1st applicant.

This court has power to grant damages under ***S.8(1) of the judicature (judicial review) Rules S1 11/2009.***

The applicants' counsel prayed for damages/compensation in the proposed sum of UGX 300,000,000/= for each of the applicants and costs of the suit.

DETERMINATION

Preliminary point of law.

The applicants' counsel submitted that the affidavit of the respondent is defective since it was commissioned by a person who works in the legal department of Makerere University as Director. He cited the Oaths Act which provides that;

S.4 of the Commissioner (Advocates) Act, cap 5 provides inter alia ***"……. Except that a commissioner for oaths shall not exercise any powers given by this section in any proceeding or matter in which he or she is the advocate for any of the parties to the proceedings or concerned in the matter or clerk to any such advocate or in which he or she is interested."***

It is not disputed that Henry Mwebe is or was a Director Legal Affairs at Makerere University and by implication he is interested in the matter as a legal adviser to the Institution.

It was illegal for him to commission an affidavit sworn on behalf of the respondent and would be contrary to the Commissioner (Advocates) Act. This affidavit in reply is struck out as such for being in breach of the law (Commissioner (Advocates) Act.

However, the striking out of the affidavit does not necessarily mean that the application is not opposed per se as submitted by the applicants' counsel but rather the application is not opposed on the facts as presented but it stands opposed on the principles of law. The court would consider the submissions on the law as presented by the respondent's counsel.

Whether the application raises any issues for judicial review?

According to the ***Black's Law Dictionary*** at page 1013 **11th Edition Thomson Reuters, 2019** 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.

The power of Judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the high Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which in inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of Administrative Law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

When a person feels aggrieved at the hands of the Administration because of the infringement of any of his rights, or deprivation of any of his interests, he wants a remedy against the Administration for vindication of his rights and redressal of his grievances. The most significant, fascinating, but complex segment in judicial review is that pertaining to judicial control of administrative action and the remedies and reliefs which a person can get from the courts to redress the injury caused to him or her by an undue or unwarranted administrative action in exercise of its powers.

The effectiveness of a system of Judicial review under Administrative Law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the administration but generally for the maintenance of regime of Rule of Law in the country.

The weakness of the "remedial and redressal" aspect of administrative law will directly contribute to administrative lawlessness and arbitrariness. According to ***WADE & FORSYTH Administrative Law, 34, 8th Edition*** 2000, "Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law.

In the East African region, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration with the confines of the law. It has been felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

In the present case, the applicants challenged the decision of the respondent's appointments board to dismiss them from employment. The Staff Appeals Tribunal entered judgment in favour of the appellants as follows:-

Appeal succeeds in part.

1. The Appointments Board did not conduct disciplinary hearings in accordance with the principles of natural justice.

2. The decision of the appointments Board to relieve Dr. Isaac Okullo of his academic leadership as Deputy Principal effective 8th October, 2018 is hereby set aside.

3. The decision of the Appointments Board to relieve Dr. Rose Nabirye of her academic leadership as Dean, School of Pharmacy, College of Health Sciences effective Monday 8th October, 2018 is hereby set aside.

4. The respondent is hereby directed to reinstate Dr. Isaac Okullo and Dr. Rose Nabirye Chalo to their respective positions as Deputy Principal and dean respectively.

5. The decision of the Appointments Board to dismiss Mr. Apunyo Paul Okiria as Senior Administrative Assistant of the College of Health Sciences effective Monday 8th October, 2018 is hereby set aside.

6. The decision of the Appointments Board to dismiss Ms Fatuma Nakatudde as Deputy Registrar School of Health Sciences effective Monday 8th October, 2018 is hereby set aside.

7. The respondent is hereby directed to reinstate Mr. Apunyo Paul Okiria and Ms Fatuma Nakatudde to their respective positions as Senior Administrative Assistant and as Deputy Registrar respectively and to reinstate their names on the pay roll and pay them all their respective salaries.

8. Mr. Apunyo Paul Okiria and Ms Fatuma Nakatudde who were dismissed from their said respective positions by the Appointments Board were

deemed by virtue of Section 57(5) of the Universities and Other tertiary Institutions Act, to be on suspension, from the dates they lodged their respective appeals before the Tribunal. They should, therefore, be paid all the arrears of their salaries, if any from the dates they lodged their respective appeals before the Tribunal.

9. The appointments Board is directed to conduct fresh disciplinary hearings against the appellants on allegations against them, if any, within 60(sixty) days from the date hereof.

10. There will be no order as to costs.

The respondent refused or delayed or decided to implement the orders of the staff tribunal discriminatively by reinstating the other two beneficiaries of the ruling of the Staff Appeals Tribunal and leaving out the applicants. Such an act is prima facie illegal exercise of power or abuse of authority.

The power of the Staff Appeals Tribunal is derived from an Act of Parliament; therefore the decisions made by the tribunal are binding and have a force of law.

The implementation is such a decision if not appealed against is not a question of an exercise of discretion by the appointments board but rather mandatory and must be wholly effected without any delay. Any act of refusing or delaying becomes a violation of the law for which the body concerned can be held for breach with attendant sanctions.

In the present case, the respondent's appointments body was supposed to re-instate the applicants in accordance with decision of the Staff Appeals Tribunal. The respondent's counsel submitted and prayed that the delay, as envisaged by the Applicants to complete implementation of the Tribunal orders, does not warrant the intervention of Court.

There is no such thing as unlimited jurisdiction vested in any judicial or quasi judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination and unlimited jurisdiction leads to

unreasonableness. No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless is based on justifiable grounds supported by acceptable materials and reasons thereof.

The selective or discriminatory nature of implementation of the decision of the Staff Appeals Tribunal by the Appointments Board is arbitrary and wrongful exercise of discretionary powers vested in it. Similarly the exercise of power is also questionable and irrational to the extent that the Appointments Board is attempting to prosecute the applicants selectively and outside the period given by the decision of the University Staff Appeals Tribunal of 60 days.

The University/respondent never appealed against the decision on any grounds and the same took immediate effect and part of the decision was given a timeframe within which it was to be effected. The respondent had to comply within 60 days from the date of the decision to have the applicants prosecuted for disciplinary offences (if any). The respondent never did that and immediately after the 60 days they purported to implement the same decision after the applicants had already filed this application in court.

This is further wrongful or illegal exercise of power by the appointments Board since they were reacting to the present suit filed by the applicants having failed to conduct the disciplinary proceedings within 60 days and also have them reinstated to their former positions Deputy Registrar and Senior Administrative Assistant respectively. If the respondent felt that the time given by the Staff Appeals Tribunal was not adequate, they should have applied for review of the time rather than trying to be vindictive of the applicants when they applied to enforce their rights derived from the decision of the Tribunal.

The exercise of discretionary power by the Appointments Board should not be arbitrary. The absence of arbitrary power is the first postulate of rule of law upon which our constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits….if the discretion is exercised without any principles or rules, it is situation amounting to antithesis of Rule of Law. Discretion means

sound discretion guided by law or governed by known principles or rules, not by whims or fancy or caprice of authority.

The discretion to conduct disciplinary proceedings against the applicants, had to be exercised within the time limit of 60 days and the failure to have the same conducted implied that the Appointments Board could not exercise anymore discretion outside the set limits by the Staff Appeals Tribunal.

Administrative delay is a common malady in modern administrative process. A significant value which administrators must imbibe is that decisions must be taken by them immediately or within a reasonable time. Delay can cause a good deal of practical difficulties to the person concerned, and may even be regarded as amounting to a hidden form of arbitrariness. Whenever delay is put forward as aground for quashing the charges, the court has to weigh all the factors, both for and against and come to a conclusion which is just and proper in the circumstances.

Disciplinary proceedings must be conducted soon after irregularities are discovered. It would be unfair to initiate such proceedings after a lapse of considerable time. If a delay is too long depending on the circumstances of the case and is unexplained, the court may interfere and quash the charges.

The failure or refusal by the respondent to have the applicants reinstated to their positions of Deputy Registrar and Senior Administrative Assistant was illegal and contrary to the law.

The attempt to conduct disciplinary proceedings against the applicants outside the mandatory time limit of 60 days given the circumstances of this case is an arbitrary exercise power and totally illegal and abuse of authority.

What remedies are available?

1. An Order of prohibition issues against the respondent to restrain the respondent from conducting disciplinary proceedings against the applicants outside the 60 days directed by the Staff Appeals tribunal.

2. An Order of Mandamus issues directing the respondent to reinstate the applicants to the positions of Deputy Registrar and Senior Administrative Assistant and be paid all their salary arrears and emoluments.

3. An award of 12,500,000/= for each of the applicant as damages arising out of the delayed payments and anguish for the suffering they have continued to suffer.

4. The applicants are awarded costs of the suit.

I so order

SSEKAANA MUSA
JUDGE
14th April 2020