

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
MISCELLANEOUS CAUSE NO. 274 OF 2019

1. OCHENGEL ISMAEL

2. PAUL SAMUEL MBIWA

=====

APPLICANTS

VERSUS

ATTORNEY GENERAL

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RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 38 of the Judicature Act Cap. 13 as amended, the Judicature (Judicial Review) Rules, 2009 and the Civil Procedure Rules SI. 171-1 and all enabling laws seeking for;

- a) The Applicants be reinstated into their respective offices.
- b) The Applicants be paid all their remuneration withheld since interdiction.
- c) The applicants be paid general damages and interest thereon at 25% p.a from the date of judgment till payment in full.
- d) The Respondent pays costs of this application.

The Applicants' major ground was that the continued interdiction of the Applicants pending an investigation into the suspected theft of **Ugshs. 509,000,000/=** by one Paul Ebodo meant for payment of group beneficiary suppliers of agricultural products and bee hives in Arua District under NUSAF 3 beyond the statutory six(6) months is unreasonable, irrational and illegal.

At the hearing of the application, Ms. Solome Mwanja a Senior Inspectorate Officer of the office of the Inspector General of Government (IGG) informed Court that the IGG had taken a decision to advise the Permanent Secretary, Ministry of Local Government to lift the interdiction of the Applicants and to reinstate them into office and the copy of the letter to that effect was tendered in court. On the faith of the said letter, Court held that part of the prayers in the application have been compromised.

The remaining issue for resolution of Court is whether the Applicants are entitled to general damages, interest and costs of the suit.

The applicant was represented by *Mr. Peter Walubiri* while the respondent was represented by *Mr. Mugisa Moses* (State Attorney)

All parties were ordered to file submissions in regard to general damages which were considered by this Court.

Submissions

The Applicants' counsel submitted that the courts award damages whether is tort or contract to compensate the injured party for the wrongful act and for all the natural and direct consequences of the wrongful act ***See Mfalila JA (of the Court of Appeal of Tanzania) in Kibwana & Another vs Jumbe [1990-1994] EA 223 at 231-2*** and the same object applies to both general and special damages as explained by Oder JSC in ***Coussens vs Attorney General [1999] EA 40 at 46.***

Applicants' counsel further submitted that the general rule regarding measure of damages applicable both to contract and tort has its origin in what Lord Blackburn said in ***Livingstone vs Rowyard's Coal Co. [1880] 5 AC 259.*** He there defined measure of damages as:

“that sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation”

Earl Jowitt in *British Transport Commissioner vs Courley [1956] AC 185 at 197* stated that **“the broad general principle which should govern the assessment of damages in cases such as this is that the tribunal should award the injured party such a sum of money as will put him in the same position as he would have been if he had not sustained the injuries”**

Counsel for the Applicant further submitted that the Respondent was in breach where he treated the Applicants unfairly and unreasonable contrary to Article 28(1), 42 and 173(b) of the Constitution which occasioned loss and damage to the Applicants in terms of violation of the Constitutional right to a fair hearing and to be treated justly and fairly, damage to reputation and integrity, loss of remuneration, injury to their respective careers and stress and inconvenience.

The Applicants sought for 150,000,000/= as general damages at an interest rate of 25% p.a from the date of judgment till payment in full, costs of the application citing the case of ***Roko Construction Company vs Uganda Cooperative Transport Union Civil Application No. 32 of 1997.***

The Respondent submitted that the legal basis for the interdiction of the Applicants is Regulation 8 Part (F-S) of the Public Service Standing Orders (2010) which re-echoed in ***Miscellaneous Cause No. 322 of 2018 Rebecca Nassuna versus Attorney General*** which defined interdiction as;

“...a temporary removal of a public officer from exercising the duties of his/her office while investigation over a particular misconduct is being carried out.”

The Respondent submitted that the Inspectorate of Government exercised its special powers in accordance with the provisions of Article 230(2) of the Constitution of the Republic of Uganda and Section 14(6) of the Inspectorate of Government Act, 2002 and directed the Permanent Secretary, Ministry of Local Government that the Applicants be interdicted. Further that the Applicants did not exhaust all the administrative process when the interdiction took longer than the stipulated time and cited ***Regulation 38 (9) of the Public Service Commission Regulations, 2009, Kawuki v Commissioner General Uganda Revenue Authority Miscellaneous Cause No 14 of 2014, R v Chief Constable of the Merseyside***

Police, ex parte Calveley and others [1986] 1 ALL ER 257, Preston v IRC [1985] 2 All ER 327 at 330, [1985] AC 835 AT 852.

In regards to general damages, the Respondent cited the case ***Ewadra vs Spencon Services Limited Civil Suit No. 22 of 2015*** and submitted that the Applicants are not entitled to any damages because they should have appealed their interdiction to the commission since it had taken longer but they did not. And relied on the case of ***Candiru v Amandua & 2 Ors C.S No. 19 of 2014*** to further submit that it's the discretion of the Judge in awarding costs.

Determination

The point for determination is about the issue of general damages, interest and cost. According to ***Hon Justice Stephen Mubiru in Oyaro John Owiny vs Kitgum Municipal Council Misc. Civil Cause No. 7 of 2018*** held that “interdiction is not a disciplinary sanction but invariably taken as a step pending a disciplinary enquiry and adjudication, as a neutral act implies no assumption of guilt...”

There is no doubt that the limitation period is set out for a purpose in all laws and regulations and that is to avoid violation of rights. Therefore the Inspectorate of Government had to carry on the interdiction for the specified statutory period and where it was to take longer than the stipulated, the Applicants ought to have been informed about the delay to enable them exhaust all the administrative process before proceeding to Court.

But the applicants also as affected parties had a duty to move the concerned offices to lift the interdiction. It would be imprudent for the interdicted person to wait endlessly in the village until when the person who interdicted notifies them. There is corresponding responsibility to establish how far the investigations have progressed in order to protect your rights as a responsible citizen.

Not every delay to lift the interdiction would be construed to be a violation of rights for one to seek damages. The nature of delay must be such as the court would construe to have been deliberate and intended to violate the rights.

The nature of damages sought by the applicant is general damages. Under judicial review proceedings, damages are awarded in the rarest of the rare cases upon court being satisfied of a possible tort of misfeasance. Otherwise judicial review proceedings will turn into ordinary proceedings for damages and yet it is not intended for that purpose. It is confined to correcting public wrongs through prerogative orders under the Judicature Act.

In ***X v Bedfordshire County Council [1995] AC 633*** it was held that ordinarily an individual may seek compensation against a public body over harm caused by wrongful act of such public body. The decisions or measures which are ultra vires their power may be set aside by means of judicial review. The fact that the act was ultra vires does not and could not of itself entitle the individual to damages for any loss suffered. The aggrieved individual must have established the unlawful action also constitutes a recognized tort.

Damages are only awardable in judicial review when the tort of misfeasance in public office (tort of abuse of office) is proved;

When an official acts maliciously in the performance of his duty and with the intent of inflicting or injury on a person; or where an official knowingly acts without lawful authority and causes damage to some person.

This tort comes into being when there is conscious abuse of power on the part of a public authority, either by malice or knowledge of invalidity on the part of the concerned official. It includes malicious abuse of power, deliberate maladministration and other unlawful acts committed by a person holding a public office.

In the case of ***Dunlop v Wollahara Municipal Council [1981] 2 WLR 693*** Lord Diplock stated that; “the tort of misfeasance in a public office was well established. If the action of the authority is actuated by malice, it would amount to “tort of misfeasance by a public officer”. The tort of misfeasance in public office is of limited coverage as under it damages are payable for ultra vires action done malafide or maliciously or knowingly i.e when there is conscious abuse of power. See also ***Calveley v Chief constable [1989] 1 All ER 1025; Racz v Home***

Office [1994] 2 AC 47; Jones v Swansea City Council [1990] 1 WLR 1453; Three Rivers District Council v Bank of England [2000] 2 WLR 1220

According to the submissions of the Applicants, the Inspectorate of Government failed to inform the Applicants about the status of the investigations given the fact that the Applicants wrote letters pleading for reinstatement or even an explanation on the progress of the investigation.

There was a delay and failure to communicate or reply to the applicants' letters requesting to be reinstated. Public officers or bodies have a duty to reply to communications even if the communication is not in favour of the person who has written. It promotes good administration to inform the persons affected. The Permanent Secretary- Ministry of Local Government as the officer who interdicted had a duty to continue communicating to the applicants and especially when the six months had lapsed.

This court grants the Applicants damages UGX 15,000,000/=(each) for the inconvenience due to the failure or refusal to respond to their four letters requesting to have the interdiction lifted in April 2019, July 2019, September 2019 and October 2019. This became an abuse of authority to refuse to lift the interdiction and also to communicate to the applicants.

The Applicants are awarded costs of the suit.

I so Order.

Dated, signed and delivered be email at Kampala this 30th day of April 2020

SSEKAANA MUSA
JUDGE