

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.186 OF 2020

ISABIRYE CHARLES----- APPLICANT

VERSUS

- 1. ALEX KAKOOZA**
- 2. MINISTRY OF EDUCATION AND SPORTS**
- 3. ATTORNEY GENERAL----- RESPONDENT**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Section 36 and 38 of the Judicature Act as amended, Rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following Judicial review orders;

1. An order for Certiorari: To quash the decision of the respondent to interdict and later requesting the applicant to submit a defense after the interdiction before according him a hearing.
2. An order of Mandamus: To compel the respondent to re-instate the applicant.
3. A Declaration: that the actions of the respondent are illegal and unlawful.
4. Costs of this application and damages for the unlawful acts of the respondent, and embarrassment caused be granted to the applicant.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant-Isabirye Charles but generally and briefly state that;

- 1) The applicant was employed by the respondent in 1997 as a licensed teacher in Mbale District Local government and was promoted to several positions until March 2019.
- 2) The applicant was transferred from Kamuli district Local government in March 2019 to Ministry of Education and Sports as an education officer in charge of physical education.
- 3) The applicant was posted to the department of physical education and sports.
- 4) That on 15th June, 2020 the applicant was interdicted for forging the supervisor and head of department signature and irregularly requisitioning for funds.
- 5) That prior to the interdiction, the applicant had never been given any warning regarding the manner in which he requisitioned for funds.
- 6) That upon interdiction the applicant was required to file a defence in regard to the interdiction and contends that the procedure before interdiction was never followed.

The 1st respondent opposed this application and filed an affidavit in reply contending as follows;

1. The applicant as an employee while discharging his duties with intention to defraud Government and cause financial loss made an irregular requisition of funds for the activity that was never in the Department's work plan nor budgeted for and forged the signature of the Commissioner Physical Education and Sports.

2. That on the 2nd day of March 2020, the 1st respondent received a communication informing him of irregular and fraudulent requisition of money wherein the applicant was a plausible and main suspect.
3. That on 8th June 2020, as the Permanent Secretary/ Accounting officer and responsible officer for the Ministry of Education and Sports and in of his duties and after preliminary investigations, lawfully in the interim interdicted the applicant to pave way for the unimpeded investigations in the matter.
4. That the applicant was informed of the disciplinary action and was accorded the right to be heard on the matter, and was requested to avail his defence within 14 days.
5. That the applicant instead of making his defence as required to enable a fair trial, he opted on 17th day of June, 2020 to file an appeal against interdiction and haphazardly demanded the stay and lifting of the interdiction and investigations in the matter.
6. That the applicant was informed on 26th July 2020, that the interdiction was not a form of disciplinary action, but a step that entails investigations and his right to be heard and that there was need for him to defend the irregular requisition of funds and forgery.
7. That all the necessary procedure for interdiction was properly and lawfully followed as the applicant was informed of the reason for the interdiction, informed of the commencement of investigations and requested to respond to the allegations though he has since not filed any response.

8. That the lifting of interdiction of the applicant before concluding the investigations and hearing the applicant and or allowing the applicant resume his duties in office will enable the applicant interfere with investigations which are on-going considering that the applicant has adamantly refused to file a defence.

The 2nd and 3rd respondents filed an affidavit in reply through Alex Omara Apitta, Commissioner for Physical Education and Sports and head of department responsible for Physical Education and Sports at Ministry of Education and Sports.

1. That the applicant without the knowledge of the head of Department responsible for Physical Education and Sports at the Ministry of education forged his signature and requisitioned for funds amounting to 20,728,200/=.
2. That the applicant irregularly requisitioned for the funds purportedly to facilitate; monitoring, support, supervision and tracking the status of facilities and equipment in schools in selected districts in Uganda, which activity was not in the Ministry's work.
3. The preliminary investigations confirmed that the applicant had forged my signature and requisitioned funds irregularly and was interdicted by the Accounting Officer, Permanent Secretary on 8th June 2020 to pave way for detailed investigations on the subject matter.
4. That the applicant was given an opportunity to respond to the interdiction and to show cause why disciplinary action should not be instituted against him by providing a defence within 14 days from the receipt of the interdiction letter.

5. That the interdiction of the applicant was lawful and justified in view of the allegations of unethical conduct against him.

At the hearing of this application the parties were directed to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Two issues were proposed for court's resolution;

1. *Whether the respondent's interdiction of the applicant was proper or lawful?*
2. *Whether the Applicant is entitled to the remedies sought?*

I shall resolve this application in the order of the issues so raised. The applicant represented himself whereas the 1st respondent was represented by *Mr. Mugisha Akleo* and the 2nd and 3rd respondent was represented by *Allan Mukama*.

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

In Uganda, 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 within 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.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

ISSUE ONE

Whether the Respondent's interdiction of the Applicant was proper or lawful?

The applicant submitted that the Applicant's the decision making process to be interdicted by the Respondent was not proper and that the due process of law and principles of natural justice were not followed prior to interdiction. That this caused him to trigger section (F-s) paragraph 10 of Public Service Standing Orders and he appealed against the above decision because in his view *'this was because he had been sanctioned (interdicted) before being afforded an opportunity to defend himself in writing and a right to be heard.'*

The applicant premises his challenge on the contention that he could not be sanctioned first and then be asked to file a defence after the sanction is unlawful, as the process flouted the law and rules of natural justice thus this application for judicial review. He argued that interdiction is a sanction and it should not have been made without being afforded an opportunity to defend himself or being heard.

The respondent's counsel submitted that the interdiction was to allow investigations into the irregular and fraudulent requisitions of money wherein the applicant was the only and main suspect. The respondent contended that as per the public service standing orders interdiction is not a punishment or sanction but a step towards a likely sanction.

Therefore, the interdiction was not a punishment/sanction to entitle the applicant to defend himself in writing prior to the interdiction. It was a step in furtherance, and put in effect his desire to be heard. It was indeed "a stride" to accelerate a legitimate opportunity and timing for him to be heard.

The respondent submitted that all lawful procedures required before interdiction were followed. The letter of interdiction clearly set out the reason for his interdiction and the need for unhampered investigations during the period of interdiction and period set out under the standing orders had not lapsed.

Analysis

Public Service Standing Orders of Uganda (2010 Edition) under Regulation (f-s) 8 thereof; defines Interdiction as "*temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out*"

Further, it is provides as follows;

"this shall be carried out by the Responsible Officer by observing that;-

- (a) The charges against an officer are investigated expeditiously and concluded;*
- (b) Where an officer is interdicted, the responsible officer shall ensure that investigations are done expeditiously in any case within (three) 3 months for cases that do not involve the police and courts and 6 months for cases that involve the police and courts of law;*
- (c) Where a public officer is interdicted, he or she shall be informed of the reasons for such interdiction;*

- (d) *A public officer interdicted shall receive a salary not being less than half of his basic salary, subject to a refund of the other half, in case the interdiction is lifted and the charges dropped;*
- (e) *The public officer interdicted shall not leave the country without permission from the responsible officer;*
- (f) *The case of a public officer interdicted from exercising the powers and functions of her office shall be submitted to the relevant service commission to note;*
- (g) *After investigation, the responsible officer shall refer the case to the relevant service commission with recommendations of the action to be taken and the relevant documents to justify or support the recommendation should be attached."*

The standing orders envisage an investigation after an interdiction which must be done expeditiously.

Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction.

In Fredrick Saundu Amolo v Principal Namanga Mixed Day Secondary School & 2 others [2014] eKLR, the court had occasion to look into the interdiction question and the decision has been endorsed in many subsequent decisions. The following was held in that case: –

It is important to note that there can be preventive interdicts or punitive interdicts. On the one part being an interdict that is done in the context of allegations of misconduct prior to finding of guilt and the other interdict is implemented as a sanction after the finding of guilt.

A Punitive interdict can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction...

*Whether it is preventive or punitive, the interdict, suspension...to be valid must meet the requirements of substantive and procedural fairness. This is the position articulated in **Chirwa versus Transnet and Others [2008] 2 BLLR 29, at the Constitutional Court of South Africa** and reiterated by this Court in **Industrial Petition No 150 of 2012, in the Matter of Joseph Mburu Kahiga et al versus KENATCO Co. Ltd et al.** This is so because, suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfillment...*

There must be a **clear reason why the employee's interdiction is necessary**, independent of any contention relating to the seriousness of the misconduct... Thus a suspension or interdiction should only follow pending a disciplinary enquiry only in **exceptional circumstances**, where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated, or repeat the misconduct in question. The purpose of such removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way...

Once these preliminaries are addressed, **then the employee must be heard on the merits of the case as a cardinal rule**. This is not to revisit the decision to suspend or interdict, the hearing is simply aimed at determining the allegations levelled against the employee and any defences that the employee may wish to make. Only then, after the close of the hearing or investigation is a sanction issued to the employee.

In the case of ***Oyaro John Owiny vs Kitgum Municipal Council High Court Miscellaneous Application No. 8 of 2018***, Justice Stephen Mubiru stated that; the decision to interdict is not subject to the rules of natural justice. See also ***Cheborion Barishaki vs Attorney General High Court Miscellaneous Application No. 851 of 2004***

This court agrees with the applicant's submission citing the case of ***Bob Barugahare v KCCA & AG HCMC 413 of 2019*** that "*interdictions need to be used sparingly as a reserve for only serious cases that actually require the due*

process of investigations as they negatively impact on the interdicted employee". Therefore not all alleged transgressions that are subject of a disciplinary inquiry or investigation warrant a public officer's interdiction.

In the present case, the applicant contends that his case did not warrant an interdiction since there was no prima facie evidence and he had never been involved in any transgressions and therefore this was uncalled for. This court does not agree with the submission/contention of the applicant in this regard. The applicant was suspected to have fraudulently requisitioned for funds not budgeted for and it is alleged that he forged the signature of the Head of Department. This is a very grave allegation and indeed criminal to forge a supervisor's signature and if true would lead to serious sanctions. The arguments of the applicant that the interdiction was vindictive and oppressive are not valid since the applicant is culpable for his conduct without excuses.

The applicant seems to be contending that he was entitled to be heard before interdiction since it is an interdiction according to him is a sanction. The courts have repeated in several cases that an interdiction is not a punishment and to construe it as such would be to stretch the interpretation of the Public Service Standing Orders so wide and it would mean that interdictions would only issue after a hearing.

It is true the decision to interdict is an exercise of discretion of the responsible officer and as noted herein above it must be exercised sparingly due to its attendant consequences to an interdicted employee. The court would not interpret and construe the interdiction as a sanction that would warrant according the suspected employee a right to be heard. This would mean that the applicant is entitled to be heard twice over the same allegation or complaint. The 1st respondent's rhetoric question is thus valid; did the law and the prevailing interdiction norms expect/mandate the applicant to defend himself at the time when there was no substantial evidentially established case, which can only be attained after investigations, to be defended against?

I doubt that the law envisaged a hearing prior to interdiction and this interpretation would defeat the whole purpose of an interdiction envisaged in the Public Service Standing Orders. The rules of statutory interpretation properly need to be applied in order to make a proper interpretation of what the makers of the law had in mind. This court in the case of *Seforoza Nyamuchoncho & Another v AG & 2 Others Misc. Cause No. 241 of 2017* citing *Kasampa Kalifani v Uganda Revenue Authority HCCS No. 579 of 2007* by Justice Yorokamu Bamwine (as he then was), court re-emphasized that;

“the Acts of Parliament are construed according to their object and intent. Construction which commends itself to justice and reason should be adopted. It is the duty of the courts to give broad interpretation, keeping in view the purpose of the concerned legislation. The legislation should further the object”

The interpretation to be accorded to the Public Service Standing Orders should be to give effect to the standing orders and not to defeat the same in order to dilute the purpose of disciplining errant public servants through strict interpretation that would make interdictions impossible. To interpret an interdiction as a sanction that requires a hearing would in my view water down the intention and spirit of the public service standing orders.

The interdiction of the applicant was an exercise of discretion as the responsible officer deemed it necessary in the circumstances of this case and such exercise ought not to be disturbed. The purpose of the interdiction as noted herein is to prevent a repeat of the misconduct or interfering with investigations into the matter.

The applicant’s demand that he should have been accorded a hearing before interdiction is also devoid of any merit. The right to be heard is only applicable during the investigation and formal disciplinary process once sanctioned. The court seeks to ensure that the delinquent officer receives a fair treatment but does not ensure the conclusion which the disciplinary authority has reached is necessarily correct in the eyes of the court.

This application was prematurely filed before this court and the same is dismissed with costs to the respondents.

I so Order

SSEKAANA MUSA

JUDGE

15th/07/2021