

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO. 0029 OF 2023

MBABALI JUDE:.....APPLICANT

VERSUS

- 1. MAKERERE UNIVERSITY COUNCIL**
- 2. KIRANDA YUSUF (UNIVERSITY SECRETARY-MAKERERE):.....RESPONDENTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under Article 28, 42 and 44 of the Constitution, Section 33,36 of the Judicature Act Cap 13, Section 50 of the Universities and Other Tertiary Institutions Act 2001 and Rules 6 & 8 of the Judicature (Judicial Review) Rules and Clause 38(5)(1) of the Makerere University Council Charter 2019 as amended for the following judicial review orders that:

1. A declaration that the decision by the University Secretary of the Respondent to issue a letter dated 18th January, requesting the President of the Uganda Law Society to recommend a lawyer to sit on Makerere University Appointments Board whereas he was aware that Uganda Law Society had already recommended the applicant for the same position was arrived at illegally, highhandedly, irrationally, in bad faith, unreasonably and in breach of rules of natural justice and is procedurally improper.
2. An of Certiorari doth issue quashing the decision of the 1st respondent's University Secretary contained in the letter dated the 18th day of January 2023 requesting the President of the Uganda Law Society to recommend another lawyer to sit on Makerere University Appointments Board.

3. An Order of Prohibition and Permanent Injunction restraining the respondents and Uganda Law Society from implementing the illegal, irregular and irrational decision contained in the said letter dated the 18th day of January, 2023.
4. The costs of the application be provided for.

The application was supported by the affidavit of the applicant whose grounds were briefly that:

1. The applicant was in 2018 was recommended by the Uganda Law Society through its then President Mr. Kinobe Simon Peter to sit on Makerere University Council Appointments Board Committee for a term of 4 years.
2. The applicant, towards the end of the said four year term requested the new leadership of the Uganda Law Society to renew the term before it expired as has always been the practice after the scrutiny of his performance.
3. That the new leadership of the Uganda Law Society recommended the applicant for another term and a letter to that effect was issued and duly served on the said University Secretary by the Uganda Law Society of which was duly acknowledged by signing and stamping.
4. That on the 25th day of January 2023, a link of the news article on the website of Mulengera News with the title “Lawyers Gang on Innocent Kihika Over New Makerere Job” was forwarded to the applicant via WhatsApp by one of the leaders of Uganda Law Society.
5. That the Uganda Law Society in its Extra Ordinary Meeting held on the 15th December 2022 to discuss the representation of Uganda Law Society on various bodies and chaired by the President, it was resolved that all representatives of Uganda Law Society who were already recommended or

appointed to represent the society like the applicant should be left to serve until the term ends.

6. That the said letter issued by the University Secretary has the effect of creating a vacancy to be occupied by a member of the Uganda Law Society yet there is no vacancy and this is illegal, ultra vires, biased, highhanded and irrational and amounts to unfair treatment.
7. That during the Council meeting held at Lake Victoria Serena Hotel at Kigo, the Chairperson of Council presented names of those to sit on the Makerere University Appointments Board and directed them to start work immediately. But when it came to the slot for Uganda Law Society Representative she indicated that she awaits for a name to be recommended from Uganda Law Society.

The respondent opposed the application through an affidavit sworn by Yusuf Kiranda- The University Secretary grounds were briefly that:

1. The University Council operates through committees and each member of the University Council serves on the Council and or its committees for a period of four years renewable.
2. The University Council Charter grants the University Council discretion to co-opt any person, subject to its approval to sit on any of its committees.
3. That the Appointment's board is one such committee of the University Council with a membership of nine.
4. That the Applicant was co-opted by the University Council as a member of the Appointment's Board for the period December 2018 to December 2022.
5. That a new Council with a new membership was established in December 2022.

6. That when the new Council was inaugurated in January 2023, upon instructions from Council, we wrote to various other professional bodies including the Uganda Law Society for recommendation of an Advocate from Uganda Law Society to sit on the Makerere University Appointments Board.
7. That the letter to the Uganda Law Society does not request for a recommendation for any particular Advocate from the President of Uganda Law Society.
8. That the respondent's council has never solicited for a recommendation of an Advocate from Uganda Law Society to sit on the Appointments Board prior to the end of the 1st respondent's term in July 2022 or at all in 2022.

The applicant was represented himself through the firm of *Mbabali Jude & Co Advocates* while the respondents were represented by *Hudson Musoke & Esther Kabinga*

At the hearing, the following issues were framed for determination;

- 1. *Whether the applicant raises any grounds for judicial review.***
- 2. *What remedies are available?***

The parties were directed to file written submissions that were considered by this court.

Determination

Whether the applicant raises any grounds for judicial review.

The applicant contended that the decision to write a letter dated 18th January, 2023 to the President of the Uganda Law Society requesting for another lawyer to sit on the Makerere university Appointments Board whereas the applicant was already recommended and entitled to another term as illegal.

The effect of the decision in the letter amounted to rejection of the applicant as the duly recommended lawyer to sit on the Makerere University Appointments Board.

Clause 38(5)(1) of the Makerere University Council Charter 2019 is to the effect that once the Uganda Law Society recommends one of its members to sit on appointments Board, he/she is automatically adopted to sit on the Appointments board as a member and the 1st respondent has no powers to reject such a duly recommended person.

The applicant contended that the new leadership of the Uganda Law Society wrote a letter recommending the applicant for another term that began in December 2022. The letter by the 2nd respondent created a vacancy and yet there was no vacancy because the applicant was already recommended. Therefore, this was contrary to the law as required under Clause 38(5)(1) of the Makerere University Charter 2019.

The applicant further argued that the decision was irrational since the letter was made without any orders of the council and there was a letter was issued by Uganda Law Society.

The applicant further contended that the 2nd respondent did not accord the applicant a fair hearing and his decision was biased. The applicant is not aware of what he is being accused of to be denied another term and his view this was a gross violation of his right to fair hearing and treatment.

Counsel for the respondents opposed the application by contending that the letter written by the 2nd respondent to President Uganda Law Society was not a decision of the respondent and therefore, in his view the matter is not amenable to judicial review.

The respondents submitted that the University Council has never solicited for a recommendation of a lawyer from Uganda Law Society to sit on the Appointments Board prior to the end of the 1st respondent's term in December 2022. It was therefore after the 1st respondent's council was fully constituted that the 1st respondent could lawfully instruct the 2nd respondent to request Uganda Law Society for a representative to sit on its Appointments Board.

Therefore, the letter dated 19th July 2022 from the University Secretary, was written on request of the applicant to the President Uganda Law Society to clarify

on how the applicant came to be a member of the Appointments Board then. It is clear that the said letter provides a clarification of the then President of Uganda Law Society as she was not the same President who that had presided over the recommendation of the applicant when he came to serve on the appointments board on the University Council's term for the period December 2018 to December 2022.

The respondents' communication to professional bodies including Uganda Law Society was issued lawfully and it was a routine communication in the 2nd respondent's normal course of duty as the Secretary of the University Council.

The respondents counsel submitted that the professional bodies could not be contacted to recommend a person to sit on the Appointments Board before the University Council was duly constituted since it is a sub-committee. The decision to contact them thereafter was therefore rational and reasonable.

The respondents' counsel contended that the applicant's allegation that he was not accorded a fair hearing is not true. The applicant's term expired in December 2022 and there would be no basis to accord him any hearing over an expired term. The respondents' duty was communicate to the professional bodies to make recommendations for new representatives for the new council.

Analysis

The respondent contended that the letter did not constitute a decision in order for the court to exercise its powers of judicial review. It bears emphasis that the said letter was written as a result of an exercise of power vested under the University Charter and this was made as way of a response to overturn the applicant's purported letter of recommendation to serve another term on the appointments board of Makerere University Council.

Therefore, such exercise of power can be reviewed and the respondents' argument that the letter contains no decision for review is devoid of merit.

The applicant seems to premise his application on all the 3 major grounds of judicial review of illegality, irrationality and procedural impropriety. But the facts do not support the irrationality or procedural impropriety.

Judicial review 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 is inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive and legislature or other public bodies like Universities under their Charter.

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.

The applicant contends that the decision to write the letter by the 2nd respondent was both illegal and irrational. It is very true that a decision can be both illegal and irrational depending on the facts. ***See Tan Seet Eng Attorney General [2016] 1 SLR 779***

Illegality serves the purpose of examining whether the decision-maker has exercised the discretion within the scope of his authority and the inquiry is into whether he has exercised his discretion in good faith according to statutory purpose for which the power was granted, whether he has taken into account irrelevant considerations or failed to take account of relevant considerations.

Irrationality is a more substantive enquiry which seeks to ascertain the range of legally possible answers and asks if the decision made is one which, though falling within the range is so absurd that no reasonable decision-maker could have come to it.

The applicant contends that he was duly recommended for another term of office on the Appointment's Board of Makerere University Council. The law governing the constitution of the council and appointments board is as follows:

Section 43 of The Universities and other Tertiary Institutions Act provides:

The University Council may-

- (a) Appoint Committees and Boards consisting of such number of its members and other persons as it may deem necessary;*
- (b)*

(c) Co-opt any other person on any committee of the University Council.

Section 38 of the Makerere University Charter provides for the membership of the committees as follows;

- (5) The following Council Committees shall co-opt specific members as herein below indicated;*
- i) The Appointments Board shall adopt one member from the Ministry Responsible for Public Service and one member from Uganda Law Society.*
 - ii) The Estates and Works Committee shall adopt one member from Uganda Association of Professional Engineers and one member from the Ministry responsible for Works.*
 - iii) The Audit Committee shall adopt one member from the Institute of Certified Public Accountants of Uganda (ICPA-U) and one member from the Institute of Internal Auditors (IIA)*
 - iv) The Staff Development Welfare and Retirement Benefits Committee shall adopt a member from the Makerere University Retirement Benefits Scheme.*

38(4) of the University Charter provides;

Council may co-opt any individual who is not a member of a Council, provided that such person shall not become Chairperson of the Committee.

Section 38(3) of the University and Other Tertiary Institutions Act provides;

All elected and appointed members other than the representative of students shall hold office for four years and shall be eligible for re-election.

The applicant's term of office on the appointments board was for a period of 4 years from 2018 to 2022 which he duly served upto the end in December. Prior to the expiry of the said term in July 2022 the applicant attempted to have the term of office as representative of Uganda Law Society extended for another term. Indeed the applicant secured a letter of recommendation from the President of Uganda Law Society dated 10th August 2022.

The letter of recommendation of the applicant for another term 5 months before the expiry of the term of office of the University Council which was ending in December 2022.

The new Council was indeed inaugurated in January 2023 and it would only be after the inaugural that the members could be co-opted to the respective professional bodies as provided by the Charter. Professional bodies as listed in the University Charter could not be recommended to sit on the committees which had not been filled by the new Council.

It was wrong and unlawful for the President Uganda law Society to recommend the applicant to sit on the appointments board whose term was five months to expire. Secondly, the University council had not yet formally written to Uganda Law Society to recommend an advocate to sit on the Appointments Board of Makerere University. The President of Uganda Law Society could not recommend a person before the University Council had formally written to request a nomination/recommendation of an advocate to sit on the Appointments Board.

The applicant cannot insist to bind the respondents on letter of nomination or recommendation secured before the term of office had expired or procured well in advance in quite unclear circumstances. The respondents after inauguration of council rightly in my view wrote to the respective professional bodies (*Institute of Internal Auditors, Institute of Certified Public Accountants of Uganda and Uganda Law Society*) requesting them to recommend persons to sit on the different committees as provided for under the University Charter.

The mandate of the University Council was to follow the law as laid down in the Universities and Other Tertiary Institutions Act and University Charter which required the University Council to request the professional bodies like Uganda Law Society to recommend a person to sit on the Appointments Board. If the appointments were or had not been done in a particular manner, the same would have been challenged as being illegal or such action would have had no existence in the eye of law.

This court also notes that the applicant was nominated by an outgoing President of Uganda Law Society whose term was due to end shortly. It is unlawful and illegal for an outgoing President of Uganda Law Society and outgoing Uganda Law Society Executive to fill positions which are to fall vacant in another term of office. Any such appointment would be an abuse of exercise of discretionary power by taking over the mandate of the new President of Uganda Law Society as well as

the new Executive of Uganda Law Society which in my view would amount to an '*administrative coup or hijack*'.

The President of Uganda Law Society lacked substantive power under the Uganda Law Society Act to make the decision of appointing the applicant before his term had expired or before the University Council had formally written requesting Uganda Law Society to recommend an advocate. An exercise of administrative power to be valid must be exercised within the terms of the law conferring the power. See ***Ram Singh Vijay Pal Singh v State of Utta Pradesh (2007) 6 SCC 44***

The decision of the respondents to write to the President of Uganda Law Society on 18th January 2023 was done in accordance with the law. The duty is on the President of Uganda Law Society to formally write in reply to the said letter recommending an advocate to sit on the Appointments Board of Makerere University. The applicant may be recommended to sit on the same committee.

The applicant also challenged the decision for unreasonableness or irrationality. I have not found anything unreasonable or irrational in the decision of the respondent when they wrote to Uganda Law Society to recommend an advocate.

This application fails in totality and I make no order as to costs.

I so order.

SSEKAANA MUSA

JUDGE

30th June 2023.