

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.98 of 2022
DR. FREDRICK SSEMPALA=====APPLICANT
VERSUS
NATIONAL COUNCIL FOR HIGHER EDUCATION ==RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this suit under section 33 and 36 of the Judicature Act Cap 13, Rule 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules.2009, O.52 r 1 & 3 of the Civil Procedure Rules for the following judicial reliefs/orders;

1. An Order does issue extending and allowing this application to be heard even after the lapse of the period of filing as provided by the law.
2. A declaration doth issue that the Respondent's process of conducting interviews and subsequent appointment for the post of Higher Education Officer-Programme Accreditation was conducted irrationally in total abuse of the principles of natural justice decision.

3. A declaration doth issue that the respondent while carrying out interviews and the appointment process for the position of Higher Education Officer-Programme Accreditation acted arbitrary in relying on malicious and/or scandalous information given against the person of the applicant contrary to the recent performance appraisal reports of the applicant by his employees.
4. A declaration that the acts of the respondent of relying on unfounded scandalous and/or malicious accusations made against the applicant without according the applicant an opportunity to be heard breached the applicant's right to a fair hearing, equal opportunity for employment and was a breach to natural justice.
5. A declaration doth issue that the actions of the respondent of appointing a different candidate for the position of Higher Education Officer-Programme Accreditation whereas the applicant had emerged as the best candidate during the interview process was arbitrary, irrational, unfair and a breach of the principles of natural justice.
6. A writ of certiorari doth issue quashing the respondent's process of interviews and eventual appointment for the post of Higher Education Officer-Programme Accreditation and the decisions made thereunder.
7. An Order of certiorari doth issue against the respondent quashing its decisions of the respondent of appointing a different candidate for the position of Higher Education Officer-Programme Accreditation whereas the applicant had emerged as the best candidate during

interview with a very good appraisal performance report from employees.

8. An Order for the payment to the applicant of
 - (a) General damages.
 - (b) Exemplary and/or punitive damages.
9. An Order of mandamus doth issue compelling and directing the respondent to always rely on performance appraisal report of a given candidate for a job from his employer in accessing the candidate.
10. The respondent be ordered to pay costs of this application.
11. Any other consequential reliefs as the court may deem fit and necessary.

The grounds of this application were stated briefly in the notice of motion and supported by Dr. Fredrick Ssempala's affidavit briefly stating that;

1. The respondent around December, 2020 placed an advertisement for the jobs at their institution among others was the position/post of Higher Education Officer-Programme Accreditation and the applicant applied and did the interviews around September, 2021.
2. After the interviews and basing on his latest performance appraisals at both Busitema and Kabala Universities, the applicant emerged as the best candidate for the post of Higher Education Officer-Programme Accreditation.
3. However, due to malicious reports and propaganda against the applicant which contradicted his latest performance appraisals, the

respondent relied on the said contradicting and malicious reports and decided to appoint another, the second best candidate the Higher Education Officer-Programme Accreditation.

4. The actions of the respondent of relying on contrary and misleading, scandalous and malicious reports against the applicant without affording the latter an opportunity to be heard on the said scandalous report and/or face his accusers was irrational and ultra vires the constitution of the republic of Uganda.
5. The action of the respondent of appointing another candidate in the position of Higher Education Officer-Programme Accreditation and declining the applicant who had emerged as the best candidate with very good recent appraisal reports from his recent employees was arbitrary, illegal, irrational, improper and a breach of natural justice.
6. The applicant being aggrieved with the irrational and injustice arbitrary actions of the respondent invoke the office of the Inspector General of Government to intervene and correct the irregularities embodied in the appointment process however to date the office of the IGG has not taken any positive steps; the applicant bonafidely took the complaint to and hoping that the IGG office would handle the situation whereasnot.
7. The applicant upon establishing that he will not achieve any remedy, has decided to seek redress before this court hence this application with a prayer to allow the extension of time within which to entertain this application for judicial review.

8. This application, in the circumstances has been filed without inordinate delay and it has novel points for this court to address and guide the process of conducting job interview in public authorities and/or administrative bodies.

The respondent opposed this application and filed an affidavit in reply sworn by Arthur Babu Muguzi-Director Finance, Planning and Administration stating as follows;

1. That under section 128 of the Universities and Other Tertiary Institutions Act (UTIOA) any person aggrieved by the decision or acts done by National Council for Higher Education (NCHE) is required to lodge an appeal to the High Court within 30 days of such act or decision and no such appeal or application was preferred/filed by the applicant within the statutory time.
2. That the respondent followed a well streamlined process and procedure of conducting the recruitment and appointment of its employees set out in the Human Resource Policies and Procedures Manual that was in force at the time of the recruitment and Appointments being contested by the applicant.
3. The contents of the applicant's affidavit in regard to relying on malicious and scandalous reports are total falsehoods and misrepresentations and are denied.
4. That Interview Committee shortlisted 4 candidates for post of Higher Education Officer-Programme Accreditation.
5. That the respondent's recruitment process is a three-stage process involving shortlisting, interview and background/reference checks

and the candidate to be declared successful and therefore be appointed must pass all the three stages of recruitment process and the applicant was fully aware of this transparent and competitive recruitment.

6. That upon conclusion of the interviews, the respondent embarked on the last stage of the recruitment process by conducting the background check and integrity verification procedures on all candidates that had qualified to progress to the final stage as required by the Human Resource Policies and Procedures Manual and the applicant failed to pass at this stage.
7. That in accordance with the respondent recruitment policy, candidates who had worked for an organization for more than 3 years, the background/reference checks was done with the current employer, and those who worked for less than 3 years, the reference check was done with both the current employer and one former employer and the applicant had designated Busitema University and Kabale University as his last two employers in the job application.
8. That a background check was carried out on the applicant at his former places of employment to with Busitema University the former place of work and Kabale University the recent/current place of work and the respondent received unfavourable feedback in respect of the same from both universities.
9. That the applicant failed to pass the final stage of the recruitment process and was thus disqualified on the basis of the background checks.

10. That according to the recruitment policy the determination of a successful candidate for appointment is premised on a holistic evaluation of both the interview results and the out of the reference/background checks.
11. That consideration of previous performance appraisals during the recruitment process is restricted to job applicants who are applicants who are employed by the respondent at the time of the application and not external applicants like the applicant.
12. That after the background checks of the possible successful candidates, the most qualified candidate was appointed and the recruitment process was completed in 2021 and the successful candidate was appointed, inducted and commenced work in December, 2021.
13. That the appointment for the position of Higher Education Officer- Programme Accreditation like all other appointments by the respondent was done in accordance with Human Resource Policies and Procedures Manual and all appointed candidates passed all the stages of the recruitment process and that the respondent selected the most qualified persons for the advertised posts through a competitive, fair and transparent process.

Three issues were proposed by the applicant for courts resolution;

1. *Whether the application for leave to file and hear the application for judicial review out of time be allowed.*
2. *Whether this application raises any matter for judicial review?*
3. *What remedies are available for the parties?*

The applicant was represented by Counsel Swabur Marzuk and the respondent was represented by Counsel Kankaka Ali and Gwokyalya Jamilah)

The parties were directed to file submissions which I have considered in this ruling.

DETERMINATION

Whether the application for leave to file and hear the application for judicial review out of time be allowed?

The applicant's counsel admits to the application being filed out of time and contends that the applicant is an aggrieved person but also a diligent litigant who explored all available means to have his grievances addressed.

The applicant first petitioned the office of the Inspector General Of Government and when he did not get a favourable response or at all decided to seek redress from court and he contends that the three months were spent awaiting a decision of the IGG's office.

The respondent counsel submitted that the application was filed on 20th April 2022 challenging the decision not to employ him that was communicated to him by the respondent's Executive Director vide a letter dated 1st December 2021.

Counsel further contended that the application for judicial review out of time is not as of right to be brought in an omnibus application. The applicant did not seek and obtain extension of time before filing. The extension of time is a condition precedent and it must be sought before a person can access court for a judicial review application.

The respondent counsel further submitted that the applicant's application for extension of time must be analysed in the context of the facts of this case. The respondent recruited another person who has since taken the said

position and hence any attempt to reverse the employment will cause hardship to the respondent and the employee.

Analysis

Under Rule 5 (1) of the Judicature (Judicial Review) Rules 2009 provides that;

(1) An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application FIRST arose, unless the court considers that there is good reason for extending the period within which the application shall be made.

The applicant either inadvertently or ignorantly did not seek leave of court to extend the time within which such an application can be brought in a separate application.

The applicant did not seek leave of court to extend the time within which such an application can be brought and opted to seek leave within the same application which is irregular although sometimes it may be granted at the discretion of the court. The extension of time is a condition precedent and it must be sought before a person can access court for the judicial review application. An application for extension of time is like an application for leave which must sought before the main application for judicial review is instituted. *See Wadia Construction Co. (U) Ltd & Another v Commissioner Land Registration HCMC No. 63 of 2021*

The reasons advanced for the delayed filing should have been advanced at the time of applying for leave to extend the time of filing for judicial review. The rule of laches is not a rigid rule which can be cast in a strait-jacket. The courts do not follow a rigid, but a flexible, measure of delay. It should be emphasized that the rule that the court may not enquire into belated and stale claims is not applied in a rigid manner.

In the case of *Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000*; The Court of Appeal noted that; Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

In the case of *IP MUGUMYA vs ATTORNEY GENERAL HCMC NO. 116 of 2015*. The Applicant challenged an interdiction which occurred on 6th July 2011 by an application for judicial review filed on 11th August 2015.

It is clear from the above that an application for judicial review has to be filed within three months from the date when the grounds of the application first arose unless an application is made for extension of time...the time limits stipulated in the Rules apply and are still good law.

The court ought not to consider stale claims by persons who have slept on their rights. Any application brought under the Constitution or by way of judicial review could not be entertained if presented after lapse of a period fixed by limitation legislation.

If the applicants wanted to invoke the jurisdiction of this court they should have come at the earliest reasonably possible opportunity or sought leave of the court to file their application out of time but not to file the same as of right after expiry of the time set by law. The court could have exercised its discretion to extend the time depending on the facts to determine whether to extend the time to file for judicial review depending on the reasons on how the delay arose.

Inordinate delay in making an application for judicial review will always be a good ground for refusing to exercise such discretionary jurisdiction of this court to entertain the application. The court refuses relief to an applicant on ground of laches because of several considerations e.g it is not desirable to allow stale claims to be canvassed before the court; there should be finality to litigation.

As a general principle, the time limit of 3 months is reasonable and consistent with the principle of effective judicial protection since such time limits are an application of the principle of legal certainty protecting both individuals and administration. In this case the respondent already granted the job of Higher Education Officer-Programme Accreditation to another person who resumed duty in December 2021. It would be unfair to cause such an inquiry into the appointment after 5 months.

Public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer than is absolutely necessary in fairness to the person affected by the decision. *See O'Reilly v Mackman [1983] 2 AC 237 at 280*

The three month period within which to bring an application for judicial review must be construed in accordance with the court's jurisprudence, in other words, three months from the date upon which the claimant knew or ought to have known of the alleged infringement. See *R (Berky) v Newport City Council and Others [2012] EWCA Civ 378*

The court is not compelled by the applicant's reason for the delay, which was the exploration of other offices (IGG) for a remedy. The applicant ought to have been vigilant in ensuring that the process taken would have given him a complete remedy. The risk of taking a process which would not conclusively deal with the matter cannot persuade court to exercise discretion to extend the time.

This application is dismissed with costs for not being made promptly and in any event within the statutory period/time limit of 3 months period.

I so Order.

SSEKAANA MUSA

JUDGE

14th July 2023