

UGANDA / JUDGMENT

Acer Godfrey Okot V The National Planning Authority (MISC. CAUSE NO. 297 OF 2018) [2018] UGHCCD 142 (28 November 2018) [2018] UGHCCD 142

COURT

HC: Civil Division (Uganda)

BEFORE

Mugambe, J

CASE / FILE NUMBER

MISC. CAUSE NO. 297 OF 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 297 OF 2018

ACER GODFREY OKOT ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

THE NATIONAL PLANNING AUTHORITY ::::::::::::::::::::::::::: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

- 1. The Applicant brought this judicial review application under section 98 of the Civil Procedure Act, sections 14, 33, and 36(c) of the Judicature Act and Rules 3(1) (a), 6 and 7 of the Judicature (Judicial Review) Rules of 2009; order 51 rule 6 and order 52 rules 1, 3 and 6 of the Civil Procedure Rules seeking:

- i. A declaration that the alleged second instrument dated 11th April 2015 which purported to appoint the Applicant as a member of the National Planning Authority (herein after the NPA) effective 1st December 2013 is a forgery and a nullity at law.
- ii. An order prohibiting the Respondent from enforcing or acting on the alleged second instrument.
- iii. Costs of this application.
- 2. Mr. Kaganzi Lester of M/s. Kaganzi & Co. Advocates represented the Applicant and Mr. Frederick Sentomero and Ms. Anna Atugonza of M/s OSH Advocates & Legal Consultants represent the Respondent.
- 3. The application was supported by the affidavit of the Applicant. The grounds for the application were briefly that the Applicant was on 19th December 2014 appointed by the president of Uganda as a member of the Respondent effective 1st December 2014. That subsequently there exists a second instrument of appointment dated 11th April 2015 purporting to appoint the Applicant as a member of the Respondent effective 1st December 2013 which bears a signature that is forged and is a nullity at law. Further that the Respondent intends to act on the forged second instrument and terminate the Applicant's tenure on 30th November 2018. As a result, the Applicant will lose a full year of his tenure and it is in the interest of justice that this application is granted.
- 4. The Respondent opposed the application through the affidavit of Mr. Joseph Muvawala the Executive Director of the Respondent. He deponed that the Minister of State for Finance, Planning and Economic Development (herein after referred to as the Minister) notified the Applicant vide a letter annexure D2 to the Respondent's affidavit in reply dated 20th April 2015 that the second instrument overrode the first one of 28th January, 2015 which erroneously bore the effective date of appointment as 1st December 2014. The first instrument would have the effect of making the Applicant's tenure of office 11 years contrary to section 5(4) of the National Planning Authority Act (herein after the Act).
- 5. Further that the Applicant has no reason to doubt the authenticity of the second instrument. That the application is misconceived and a nullity for seeking to challenge private law rights under a contract of employment in judicial review proceedings. The Applicant should have filed an ordinary plaint to plead the particulars of fraud and forgery. The Applicant has been aware of the commencement date of his contract as 1st December 2013 from 2015 as shown

in his appeal to the Minister requesting that his appointment should take effect from 1st December, 2014 and not 1st December, 2013 which the Minister denied.

- 6. In rejoinder, the Applicant deponed that the two six month extensions of his first term at the Respondent cannot legally be considered as part of his second term at the Respondent as they happened before he was vetted and approved by Parliament for the second term. That the instrument of appointment had not been issued and he had not taken the oath of

allegiance as a member of the Respondent. He categorically denies ever accepting to serve his second term as a member of the second Respondent effective 1st December 2013 and that he has continuously challenged the same to the Minister.

b) Law

- 7. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374**.
- 8. The Respondent is a creature of the Act. Therefore this Act is the governing law between the Applicant and the Respondent. Section 5(1) of the Act establishes the NPA with five members. Under section 5(4), members of the NPA shall hold office for 5 years and their appointment may be renewed for one term only. This Act is the parent Act and can't be amended by the actions of the Minister, any member thereof or the date on an instrument.
- 9. In the facts before me, the Applicant has served two five year terms. He was issued with two appointment instruments for the first term. The first one was dated 19th December 2014 and the second one dated 11th April 2015. Before the Applicant's second term was formerly renewed, his first term was extended for two six months periods from 1st December 2013 and from 1st June 2014 by the Minister. Put simply, these two extensions made one year before the formal renewal of his second term. The first instrument disregarded these two extensions of his first contract and put the second term to run from 1 st December 2014. The second instrument on the other hand put the start date of the second term after the extensions, on 1 st December 2014 and ending 30th November 2018.
- 10. The difference between the two instruments is that the first instrument gives the Applicant a six year term in employment for the second term while the second instrument reduces the Applicant's second term in office to five years by including the one year period he was in office before he received his formal contract renewal as part of his second year term.
- 11. Annexure F to the Respondent's affidavit in reply demonstrates that after receipt of this second instrument, the Applicant sought clarification on the discrepancy regarding start and end dates of the second contract in the first and second instruments. This was way back in May 2015. The Minister, in a lengthy explanation, clarified that the second instrument in which the Applicant's second five-year contract started on 1st December 2013 was the valid instrument. The Minister also clarified that the twelve months of the two renewals were regularized by the Applicant's retrospective appointment for the statutory five-year contract during which the Applicant was being fully paid.

- 12. At the oral hearing in court, the Applicant admitted receiving this explanation from the Minister in 2015. He then did nothing until 30th October 2018 when his contract was ending on 30th November 2018. This process can easily be seen as a short gun attempt to use the court to sustain himself in office for an extra year beyond his second contract.
- 13. The Minister acted legally in so far as his clarification in annexure F validating the second instrument was in consonance with section 5(4) of the Act. Moreover since he is the Applicant's appointing authority, the Applicant ought to seek any clarifications even at this stage from the Minister. In fact the Applicant did seek this clarification and it was timely given by the Minister.
- 14. Instruments can come at any time, early or late, in a contract or be amended. However such issues in appointment instruments cannot amend the requirements in the parent statute. To the extent the Minister complied with section 5(4) of the parent statute in rectifying the start and end dates of the Applicant's second contract and considering the Applicant has actually

served and is due to complete his second five-year contract as required by section 5(4) of the Act, this application for judicial review is not proper and cannot stand. The Applicant has served his two 5-year terms as stipulated under section 5(4) of the Act and he should leave office.

15. Accordingly the application is dismissed. To avoid acrimony between the parties, I will not sanction the Applicant in costs.

I so order.

Lydia Mugambe. Judge. 30th November 2018.

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