

UGANDA / JUDGMENT

Agnes Kamagaju V The BOD URSB (MISC. CAUSE NO. 02 OF 2015) [2018] UGHCCD 34 (10 September 2018)

[2018] UGHCCD 34

COURT

HC: Civil Division (Uganda)

BEFORE

Mugambe, J

CASE / FILE NUMBER

MISC. CAUSE NO. 02 OF 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 02 OF 2015

AGNES KAMAGAJU (SUING THROUGH HER LAWFUL ATTORNEY KALIKUMUTIMA DEO) ::::::::::: APPLICANT

VERSUS

THE BOARD OF DIRECTORS UGANDA REGISTRATION SERVICES BUREAU ::::::::::: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

- 1. The Applicant brought this judicial review application under section 36 of the Judicature Act and Rules 3, 4, 5 and 6 of the Judicature (Judicial Review) Rules, 2009 seeking:

- i. An order of certiorari quashing the Respondent's decision to cancel the Applicant's entitlement of renewal of her contract of employment and the directive for her to hand over and vacate office.
- ii. A declaration that the non renewal of her contract of employment was premature, invalid and uneffective.
- iii. General damages.
- iv. Costs of this application.
- 2. Mr. Portase Byaruhanga of M/s. Byaruhanga & Co. Advocates represented the Applicant and the Respondent was represented by Mr. Max Mutabingwa of M/s. Mutabingwa & Co. Advocates.
- 3. The application was supported by the affidavit of Mr. Kalikumutima Deo, an Attorney of the Applicant. The grounds for the application were briefly that on 6th February 2012, the Applicant was employed as a procurement officer on contract basis by Uganda Registration Services Bureau (herein after referred to as URSB) for a period of 3 years renewable upon satisfactory performance. By a letter dated 10th October, 2014, the Applicant was informed that the URSB Board of Directors at its 33rd meeting of 8th October 2014 had considered her contract and had not renewed it. The Applicant was asked to properly hand over the office and all URSB property in her possession by 28th February 2015. The Applicant challenges this decision on the ground that upon her appointment to the job, a renewal of the contract became a term of the contract and a right there under subject to performance. That due to her unquestionable performance, the Applicant had at all material times had a legitimate expectation of the renewal of her contract upon its expiry which right and /or legal legitimate expectation was taken away without reasons being communicated to her and without her being given a hearing.
- 4. The application was opposed by the Respondent through the affidavit in reply of Mr. Bemanya Twebaze the Registrar General of URSB. He deponed that the Applicant's contract was renewable only at the option of the Respondent after and upon satisfactory performance of the Applicant. Further that the Respondent was not obliged to renew the contract upon its expiry which was its discretion and that there was no need of hearing the Applicant before exercising this discretion. Mr. Bemanya also deponed that during the contract period, the Respondent carried out period appraisals and the performance of the Applicant was found unsatisfactory and that the Applicant lacked transparency and had questionable levels of integrity and warning letters were issued to the Applicant.
- 5. Mr. Kalikumutima in rejoinder deponed that the Applicant had informed him that the Respondent did not put in place standards upon which appraisals and monitoring would be based but that the Respondent's Registrar General on his own and for all or most of the Respondent's employees chose to purport to haphazardly appraise them as he chose and /or liked. Further that the Applicant had informed him that the Registrar General in an arbitrary

and haphazard manner would purport to appraise the Applicant and put on any comments as he desired even if they had no factual or legal basis. He also deponed that the communications/comments made against the Applicant in regard to her integrity were ill founded as the allegations would amount to disciplinary offences under the Respondent's Human Resource Manual yet she has never been arraigned before the Respondent's disciplinary body with accusations of dishonesty/lack of transparency to disentitle her renewal of contract.

b) Law

- 6. Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions/duties/acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law. It is different from the ordinary review of the Court of its own decisions, revision or appeal in the sense that in the case of ordinary review, revision or appeal, the Court's concerns are whether the decisions are right or wrong based on the laws and facts whereas for the remedy of judicial review, as provided in the orders of mandamus, certiorari and prohibition, the Court is not hearing an appeal from the decision itself but a review of the manner in which the decision was made. See **Kuluo Joseph Andrew & Ors v. Attorney General & Ors Misc Cause No. 106 of 2010**.
- 7. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite 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. In **Stream Aviation Ltd v. The Civil Aviation Authority Misc. Application No. 377 of 2008 (Arising from Misc. Cause No. 175 of 2008)** Justice V. F. Musoke Kibuuka held that the prerogative order of **certiorari** is designed to prevent the excess of or the outright abuse of power by public authorities. The primary object of this prerogative order is to make the machinery of Government operate properly, according to law and in the public interest.
- 9. In **Civil Suit No. 07 of 2011 Alex Agandru v. Etoma Francis & Ors**, Justice Stephen Musota held that "a legitimate expectation is said to arise as a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. Therefore it extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive. When such a legitimate expectation of an individual is defeated, it gives that person the **locus standi** to challenge the administrative decision as illegal. Thus even in the absence of a substantive right, a legitimate expectation can enable an individual to seek a judicial remedy." He further held that "where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority

now establishes that the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. It may be possible though for a decision-maker to justify frustrating an established legitimate expectation where there is an overriding public interest. Hence, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy *(see* Regina v. North and East Devon Health Authority ex parte Coughlan and Secretary of State for Health Intervenor and Royal College of Nursing Intervenor, [2001] 1 QB 213, [2000] 2 WLR 622, [1999] Lloyd's LR 305*).*"

- 10. Lord Denning in **Schmidt v. Secretary of State for Home Affairs**, [1969] 1 All ER 904; [1969] 2 Ch 160 held that even in cases where there is no legal right, a person may still have "legitimate expectation" of receiving the benefit or privilege. In such cases, the court may protect his "expectation" by invoking the principle of "fair play in action." The court may not insist that a public authority act judicially, but may still insist that it too acts fairly.

c) Analysis

- 11. I have read all the pleadings and submissions of both parties. It is not disputed that the Applicant was employed by the Respondent until her contract expired. Clause 10 of the Applicant's employment contract at the Respondent provided that "subject to clauses 15 and 16, this agreement is for a period of 3 years and may be renewed for such a time and period as determined by the employer, upon satisfactory performance by the employee."
- 12. In his affidavit in reply, Mr. Bemanya clarified that the Applicant's employment at the Respondent was marred with lack of transparency and questionable levels of integrity resulting in warning letters being issued to the Applicant. Also that from the periodic appraisals of the Applicant during her employment, the Applicant demonstrated unsatisfactory performance. Copies of the warning letters were annexed as C and D and the periodic appraisals were annexed as A and B.
- 13. The Applicant claims that there was no proper evaluation system at the Respondent and that Mr. Bemanya made these evaluations in a haphazard manner filling in what he chose. The appraisal forms were in April 2014 and September 2014 and the warning letters were June 2012 and April 2014. The notice expiring the Applicant's contract is dated 10th October 2014. There is no demonstration that the Applicant ever tried to challenge the warning letters or appraisals at the time they were issued or made. For her to come up after she was given her contract expiry notification to claim that the warnings and appraisals were not properly done and use them as a basis for the judicial review application, in the circumstances of this case, comes off as disingenuous of the Applicant and is unbelievable to me. I am more inclined to consider the appraisals and evaluations as valid and that the Applicant's contract was not renewed because of unsatisfactory performance based on them.

- 14. Moreover from the construction of clause 10 of her contract, the Respondent was under no obligation to renew the Applicant's contract once it expired. With the unsatisfactory appraisal and the fact that the Applicant's contract had ended, it is difficult for me to consider that the Applicant had a legitimate expectation to have her contract renewed. Once a contract expires, the employer has two options from which to choose; he may renew the employee's

contract or he may not renew the contract. In all events an employer cannot be forced to renew a contract or retain an employee he does not desire to retain. In the circumstances of this case even if the Applicant had a legitimate expectation of renewal, the Respondent did not unfairly frustrate it because of the Applicant's non or poor performance. Above all, as a public entity, the Respondent had an overriding public interest to protect itself from a non performing employee. Accordingly I find that this is not a proper case for consideration of legitimate expectation. It is not a proper case for judicial review. Accordingly the application is dismissed with costs for the Respondent.

I so order.

Lydia Mugambe Judge 10th September 2018

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