

UGANDA / JUDGMENT

**Bwambale Ezironi v Kyamukube Town Council
Local Government and 4 Others (HCT-01-CV-
MA
16 of 2021) [2024] UGHC 744 (16 August 2024)
[2024] UGHC 744**

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-CV-MA 16 of 2021

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT FORT PORTAL****3 HCT – 01 – CV – MC – 0016 – 2021****BWAMBALE EZIRONI COLOMBUS ::::::::::::::: APPLICANT****VERSUS****6 1. KYAMUKUBE TOWN COUNCIL LOCAL GOVERNMENT**

- **2. KABAKOMA MAUREEN**
- **3. KULE CHARLES**
- **9 4. KITOKE ERIC**
- **5. TIBEMAYA JOLLY ::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE VINCENT WAGONA**12 RULING**

This ruling resolves the motion by the applicant for judicial review where he seeks orders that:

1. A declaration that the 1st, 2nd, 3rd and 5th ¹⁵ Respondents acted irregularly, ultra vires or exercised their powers for improper purpose by removing the applicant from the office of chairperson L. C.1 Butini Cell, Nsuura Ward, Kyamukube Town Council, Bunyangabu District and appointing the 4th 18 Respondent as the chairperson for Butini Cell, Nsuura Ward, Kyamukube Town Council.
2. A declaration that the 1st, 2nd, 3rd and 5th ²¹ Respondents removed the applicant from the office of the chairperson local council one in breach of the rules of natural justice.

- 3. A declaration that the 1st, 2nd, 3rd and 5th Respondents acted ultra vires by appointing the 4th Respondent as the chairperson respectively of Butini Cell, 3 Nsuura Ward Kyamukube Town Council.
- 4. An order of certiorari quashing the decision of the 1st, 2nd, 3rd and 5th Respondents removing the applicant from the office of the chairperson local 6 council one of Butini Cell, Kyamukube Town Council Bunyangabu district and appointing the 4th Respondent as the chairperson.
- 5. A declaration that the 3rd and 5th Respondents exercised their powers for 9 improper purpose, acted irregularly or ultra vires or illegally by removing the instruments of work to the wit; the stamp and books from the applicant.
- 6. An order of certiorari quashing the `1st, 2nd, 3rd and 5th Respondents decision 12 requiring the applicant to handover the instruments of power.
- 7. An order re-instating the applicant as chairperson local council one of Butini Cell, Nsuura Ward, Kyamukube Town Council, Bunyangabu District.
- 8. An order of mandamus compelling the 4th ¹⁵ Respondent to handover the office stamp and books to the applicant.
- 9. An order for recovery of general and punitive damans.
- 18 10. An order prohibiting the Respondents from harassing the applicant while exercising his duties.
- 11. A permanent injunction restraining the Respondents, their agents, 21 servants or any other person under the authority of the Respondents from further interfering with the applicant's exercise of his duties as the chairperson L. C. 1 Butini Cell, Nsuura Ward, Kyamukube Town Council, Bunyangabu 24 District.
- 12. Costs of taking out the application.

The application is supported by the affidavit of Mr. Bwambale Ezironi Colombus (applicant) and the supplementary affidavits of Mbambu Regina, Biira Alice,

- 3 Musoki Dorotiya, Nzyabake Enedy, Bwambale Sikawa Ezakiel, Sikahwa Zakalia, Mbetuma Yozofina Kahikara, Kobusingye Jolly and Birungi Rozetewho deposed as follows:
- 6 (1) That he was a resident of Butini Cell, Nsuura Ward, Kyamukube Town Council, Bunyangabu District and was duly elected as the chairperson local council one of Butini Cell in 2018. That after several years of service as the L. C.1 Chairperson, the 2nd Respondent acting as an officer of the 1st 9 Respondent wrote to him a letter dated 23/08/2021 asking him to step down and handover the stamp for his office.
- 12 (2) That through his lawyers of M/s Ahabwe James & Co. Advocates, he wrote a letter to the 2nd Respondent advising him not to act contrary to the law. That the 2nd Respondent invited him for a meeting in his office on 15 7/09/2021 where it was demanded for him to appear with the stamp for the office. That when he went to the office, he did not find the 5th Respondent in office but signed in the visitors' book.
- (3) That the following day on 8/09/2021, the 3rd 18 Respondent and other people invaded his home in the company of a one Masereka Joashat at night, tortured him and ordered him to give them the stamp for the office of L. C.1 Butini and subsequently he was taken to the 1st 21 Respondents office where he was detained for a night. That the 3 rd Respondent informed him that the reason for detaining him was because he refused to hand over the stamp.

- (4) That on 9/09/2021, he was taken to the office of the 5th Respondent who directed him to handover the stamp to the 3rd Respondent to secure his liberty. That he informed the 5th 3 Respondent that he didn't have the same.
- (5) That the 5th Respondent ordered one Masereka Joash who was putting on an army uniform to go to the applicant's home and search for the same. 6 That the applicant went with Masereka and they found the house open, Masereka and the 3rd Respondent entered the house, searched the house and got the stamp and books.
- (6) That after he was taken back to the 5th 9 Respondent who set him free on condition the 2nd Respondent on behalf of the 1st applicant convenes a meeting to decide his fate. That he later learnt from his wife, that the 2 nd and 3rd Respondents convened a meeting where they appointed the 4th 12 Respondent as the chairperson without involving the electorate.
- (7) That the 4th Respondent assumed office and is using the stamp they picked 15 from the applicant. That the decision to remove him as chairperson was ultra vires, improper and not in accordance with the law or established procedures for removing a chairperson L. C.1.

- (8) That the 1st, 2nd, 3rd and 5th 18 Respondents have no powers to impeach an elected leader. That the Respondents' acts were executed with malice. That he was tortured, humiliated and thus sought to recover exemplary damages 21 accruing from the Respondents acts.
- (9) That it was fair, just and equitable that the application was allowed with the orders it seeks.
- The application was opposed by the 1st, 2nd and 5th 24 Respondents who contended thus;

- 1. That the application was not amenable for judicial review since the applicant had not exhausted the available administrative remedies under 3 the Local Government Act.
- 2. That the 2nd Respondent (Town Clerk of the 1st applicant) and the 5th Respondent (Resident District Commissioner of Bunyangabu) were 6 executing their mandate under the constitution and the law as such they could not be sued in their personal capacities.
- 3. That it was in the interest of justice that the application was dismissed with 9 costs since the same was premature before court.

In rejoinder, the applicant averred as follows:

- 1. That the 1st and 2nd applicants participated in unlawful acts of removing the applicant from office and thus the application is tenable against the 1st 12 and 2nd Respondents.
- 2. That he was humiliated, made to sleep in police cells and his house was 15 unlawfully searched to which he sought to recover 500,000,000/= as general damages.

Hearing and Representation:

- 18 **Mr. Wahinda Enock** appeared for the applicant while **Anne Tumusiime** appeared for the Respondents. Learned counsel addressed me on the merits of the application by written submissions which I have duly considered herein.
- 21 ***Issues:***

I find the following as the issues at the heart of this application thus;

- (1) **Whether the applicant's suit is overtaken by events.**

- (2) **Whether the applicant is entitled to an award of general and punitive damages.**
- 3 (3) **What remedies are available to the parties?**

Consideration of the application:***Issue One: Whether the applicant's suit is overtaken by events?***

- 6 It is apparent from the record that the instruments of office for Butini Cell, Nsuura Ward, Kyamukube Town Council, Bunyangabu District, to wit; a stamp and books were returned to the applicant. In the letter dated 4th January 2023, the applicant's
- 9 lawyer Mr. Robert Luleti of M/s Mugabe Luleti & Co. Advocates wrote a letter to the Town Clerk of the 1st Respondent intimating that whereas the instruments pertaining to the applicant's office were returned, he sought to recover general
- 12 damages for the humiliation that he was subjected to. In the abeyance of the said letter, the question remains whether the current application raises any live triable issues and thus not overtaken by events.

15 Legal position on a suit being overtaken by events:

The general position of the law is that court's powers and mandate can only be invoked in the currency of a live dispute between parties that the court is called to 18 pronounce itself upon. In **Turyakira John Robert & Anor v URA, HMC No. 166 of 2018**, court observed thus:

"The exercise of judicial power depends upon existence of a case or* 21 *controversy. Therefore, the courts will not hear or decide a case unless it includes an issue that is not considered moot because it involves the public interest or constitutional questions. Courts should be slow to embark upon* 24 *unnecessary wide and general enquiry and should confine their decisions as*

far as may reasonably practicable within the narrow limits of the controversy arising between the parties in the particular case."

- 3 The Court of Appeal also considered the same issue *Uganda Electricity Board v Charles Kabagambe- Civil Appeal No.58/2000* which decision was cited by Court Appeal in *The Environment Action Network Ltd v Joseph Eryau, Court Appeal*
- 6 *Civil Application No. 98 of 2005* where court observed that:

In **The Environment Action Network case (supra)** court observed that;

"It is a well-known principle of law that courts adjudicate on issues which*

12 *actually exist between litigants and not academic ones.* See **Uganda Corporation Creameries Ltd & another v Reamaton Ltd. Civil Reference No.11 of 1999, Court of Appeal(unreported).*****

It further noted that; "The reliefs which the respondent is seeking on appeal cannot be granted because there is no live dispute between the parties. Courts do not decide cases for academic purposes because court orders must have practical effect and must be capable of enforcement. The determination of Miscellaneous No.39/01 by the High Court drove the respondent's case into a limbo of legal

21 mootness."

In the present application, the applicant challenged his removal from office as the 24 chairperson L. C.1 of Butini Cell, Nsuura Ward, Kyebambe Town Council on account that it was illegal and irrationally executed by the 1st Respondent. He asked court to issue orders of certiorari quashing the decision to remove him from office 27 and for him to be re-instated. In the course of the trial, the instruments of the said

"The relief sought was realized before the appeal was heard. There are no more reliefs to be granted by this court."

office were handed back to the applicant and records for the office. Therefore, the main thrust of his application was overtaken by events the office having been returned to him. This is confirmed by a letter by his lawyer to the 1st 3 Respondent's Town Clerk acknowledging that the office stamp and other instruments of the office were returned to the applicant. He however sought to recover general damages for 6 the humiliation that the applicant was subjected to.

It is thus my view that the fundamental cause of action on which this claimed is 9 hinged was overtaken by events since court cannot purport to issue orders to reinstate the applicant to his office while he is there. This would be a pure academic journey since there is no live claim between the parties. This is further supported by 12 the fact that counsel for the applicant centered his submissions only on general damages for the humiliation that the applicant was subjected to and not on the

grounds for judicial review since the said cause of action was overtaken by events.

That being the case, I have considered the submission of both counsel and the affidavit of the applicant and the supplementary affidavits attached to the 18 application. The claim by the applicant for general damages originate from the acts of the 2 nd, 3rd and 5th Respondents who caused his arrest and detention and later searched his house illegally. That this caused humiliation to him as the area 21 chairperson and thus sought to recover general damages. It is my view that these claims cannot be entertained in the application before court. Judicial review is not focused on enforcing human rights violations but the legality of the process leading

24 to the decision of an administrative body. (See*: Basaija v FortPortal City Service Commission and 4 Others (Misc Cause 13 of 2023) [2024] UGHC 147 (5 April 2024).*

The damages envisaged under Judicial Review are those that accrued from the decision made by an administrative body and not acts of individual officers of an

- 3 administrative body or government officers which violate the rights of an individual. There is a whole statute that is; The Human Rights (Enforcement) Act Cap. 12 of the laws of Uganda that addresses issues of human rights violations and spells out
- 6 remedies for such which include an award of general damages for the violation of one's rights. Section 10 of the said Act makes public officers liable for acts of human rights violation.
- In this case, the alleged violations were done by the 5th 9 Respondent, the Resident District Commissioner, Bunyangabu, and the 2nd, 3rd Respondents in their personal capacities and not in an administrative position of the 1st Respondent. These
- 12 violations if any, fall squarely under the Human Rights (Enforcement) Act and not under Judicial Review.
- 15 I therefore find that this application is overtaken by events and it is hereby struck out with no orders as to costs. I will not consider the other issues which in my view are purely academic. I so order.
- 18

Vincent Wagona 21 High Court Judge FORTPORTAL

24 DATE: 16/08/2024

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Prepared on 14 October 2026 · Esheria