

UGANDA / JUDGMENT

Enen Okello Richard v Lira University Council (Miscellaneous Cause No. 23 of 2022) [2025] UGHC 328 (8 May 2025)

[2025] UGHC 328

COURT

High Court of Uganda

BEFORE

Okello, J

CASE / FILE NUMBER

Miscellaneous Cause No. 23 of 2022

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5 THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA****MISCELLANEOUS CAUSE NO. 23 OF 2022****ENEN OKELLO RICHARD.....APPLICANT****VERSUS****LIRA UNIVERSITY COUNCIL.....RESPONDENT****20 BEFORE: HON. MR. JUSTICE GEORGE OKELLO****RULING**

- 25 This matter fell for my adjudication during my stint at the circuit on a care-taker basis. Mr. Abwang Mike Otim with Mr. Ambrose Enen appeared for the applicant while Mr. John Kamarabe represented the respondent. Learned counsel addressed court in their written arguments. The suit is anchored in judicial review. Top Management of Lira University 30 investigated the applicant on allegations of gross neglect of duty and dishonesty. He appeared before that body. The body made recommendations to the University Appointments Board. The Board heard the applicant and dismissed him as Estates Officer. The applicant appealed to the University Staff Tribunal which upheld the Board decision,
- 35 hence the present suit.

5 The affidavits lodged by both sides are quite lengthy. The applicant's is 77 paragraphs while the respondent's affidavit is 29 paragraphs. I shall not reproduce them but they are summarized.

The applicant had retired from Local Government service as a Civil 10 Engineer but after sometime walked out of retirement and secured the job of Estates Officer at the respondent University. He was appointed on 20 November, 2017 with the effective date being 01 December, 2017. Four years later, following an accident involving a new double cabin motor vehicle Registration Number UG 7199 M, the applicant was on 24 15 November, 2021 required to give an account of the accident. Rumour had it that a one Opito Thomas who was a driver caused the accident. He was allegedly repairing the vehicle secretly without the knowledge of the University. As required, the applicant furnished a report to the respondent. He was immediately handed a suspension letter. He was asked to stay out 20 of the job for 90 days on half pay. The suspension letter is dated 24 November, 2021. The applicant's report is not annexed to the affidavit although he claims it is. On January 24, 2022, the applicant appeared before the Top Management. The driver testified against him. Subsequently, he was invited to appear before the Appointments Board on 25 February 04, 2022. He could not attend due to sickness. Later, he was

furnished with the findings of the Top Management and was asked to file a written response to the Appointments Board before the rescheduled

- 5 Board sitting of February, 11, 2022. That sitting was again re-scheduled to February, 18, 2022. The applicant filed his response dated February, 17, 2022. He attended the Board on 18 February, 2022. Apparently it was during the sitting that the applicant supplied a copy of the written response to the Board. On February 22, 2022, the applicant received
- 10 dismissal letter dated 21 February, 2022. The grounds of the dismissal were gross neglect of duty, and dishonesty, contrary to provisions of the respondent's Human Resources Management Manual. Being aggrieved, the applicant appealed to the University Staff Tribunal. At the Tribunal, both parties filed written submissions. The Tribunal dismissed the appeal.
- 15 It upheld the decision of the Appointments Board. The ruling of the Tribunal is dated 23 May, 2022.

Before considering the grounds of the Motion and to give a sequential flow of the events, I find it convenient to set out the grounds of the appeal 20 canvassed before the Tribunal. I will also set out the Tribunal decision.

The appeal is dated 01 March, 2022. It was lodged on March, 03, 2022. The applicant (as appellant) faulted the respondent's Appointments Board, in summary, on many grounds, namely; bias; reliance on incomplete, 25 malicious and unjust investigation report; the charge of gross neglect of duty was vague and a frame-up. The applicant asked the Tribunal to set aside the decision of the Appointments Board and reinstate him to the job.

- 5 In his written submission lodged on 12 May, 2022, the applicant framed three grounds of appeal, namely, the Appointments Board erred in law and fact when it failed to properly consider and evaluate the evidence on record thus arriving at a wrong decision which occasioned a miscarriage of justice; the Appointments Board erred in law and fact in basing its findings
- 10 on the outcome of Top Management investigations which were incomplete and unjust hence occasioning a miscarriage of justice; and, the Appointments Board erred in law when it conducted itself in a biased manner during the proceedings leading to a biased decision hence occasioning a miscarriage of justice.

In arguing the grounds of appeal, the applicant expanded the grounds beyond those framed.

On ground one, the applicant contended that no proper formal charges 20 were framed in consultation with the Solicitor General before he was investigated and tried. And similarly, the suspension and the invitation letters to appear before the Top Management did not state the charges. He argued that the closest the respondent tabled the charges was by a letter of 04 February, 2022. The applicant submitted that the duty he was 25 alleged to have grossly neglected neither featured in his appointment letter nor were they assigned to him in writing by his supervisor (Estate Manager). He contended that the duties fell squarely within the docket of

- 5 Transport Officer and Estate Manager. On this ground, the applicant asked the Tribunal to find the evidence in support of the allegations of gross neglect of duty baseless and a nullity. He also argued that in any case there was no evidence.
- 10 Regarding the allegation of dishonesty, the applicant contended that the claim that he lied about the accident thus dishonest, was improperly made because the person who ought to have reported the accident was the driver who failed in his duties. He argued that the Appointments Board did not consider some crucial matters of evidence which might have exonerated 15 him especially given a key witness fabricated a story. The applicant asked
- the Tribunal to hold that the decision of the Appointments Board was not only irrational but was unsupported by evidence.

On the claim of bias, the applicant submitted that bias was evidenced by 20 the fact that his entire reply to the findings of Top Management was ignored by the Appointments Board. He argued that he was harassed and intimidated by the Board Chairman who asked irrelevant questions. He further submitted that three members of the Appointments Board participated in the investigations (as part of Top Management). The 25 applicant asserted that the three members also sat on the Appointments Board hence bias. He asked the Tribunal to set aside the decision of the Appointments Board, lift the suspension, reinstate him to the job, and

5 order for payment of costs by the respondent with a certificate for two counsel.

In its response to the appeal, the respondent submitted that the applicant was accorded a fair hearing as investigations were conducted by the

- 10 University Top Management. On the alleged non framing of the charges, the respondent contended that the appellant knew of the nature of the inquiries. It was a motor vehicle accident of which the applicant failed to notify his employer. According to the respondent, the applicant was notified of the charges by letter dated 11 February, 2022. Both the Top
- 15 Management and the Appointments Board were alive to the constitutional rights of the applicant to be heard and fully accorded him his full rights. The respondent relied on the record of the proceedings of the Top Management and the proceedings of the Appointments Board and argued that the applicant was aware of the case against him. That is, he had
- 20 concealed the fact of the accident which occurred on 17 November, 2021. The respondent submitted that the applicant initially lied that the accident took place on 10 November, 2021 yet he had secretly advised the driver to repair the vehicle. As the supervisor of motor vehicles and estates, the respondent argued, the applicant ought to have notified the respondent 25 accordingly. It was submitted that the failure by the applicant to disclose the matter constituted dishonesty and gross neglect of duty. Concluding her response on the matter, the respondent argued that the applicant's

- 5 knowledge of the accident was corroborated by a one Regina Terutesa who was an office attendant in the officer of the Vice Chancellor. Ms. Regina was said to have spoken with the applicant about the accident on learning about it from her own sources.
- 10 Responding to the claim of bias, the respondent argued that bias was not proved by the applicant. She added that the applicant's reply to the investigation findings were duly considered. She refuted the applicant's contention that asking him questions regarding his academic qualifications showed bias. In the respondent's view, the questions put
- 15 were relevant and in any case it was up to the Appointments Board to decide which questions to ask. It was further contended that questions about the applicant's academic qualifications were relevant because it was an undisputed fact that the applicant obtained his Master's Degree prior to obtaining his Bachelors.

As regards the three members who allegedly formed part of Top Management during investigations but later attended the Appointments Board proceedings, the respondent conceded but clarified that the three members attended the Board hearing as prosecutors and to explain and 25 defend their findings. Accordingly their presence did not create bias in the Board because the Board acts by majority decision. The respondent added that the three members did not, therefore, participate in the Board

5 deliberations and decision making. Concluding their arguments, the respondent asked the Tribunal to confirm the decision of the Appointments Board.

In rejoinder submission, the applicant submitted that the respondent

- 10 failed to respond to critical submissions. Regarding the submission on the alleged dishonesty, the applicant argued that the respondent's submission departed from the evidence contained in the record of the proceedings of the Appointments Board. He further denied that he was notified of the accident by the driver. On bias, the applicant contended that the Top
- 15 Management members were biased because (allegedly) they were complainants, investigators and sat on the Appointments Board to explain and defend their recommendations which the Board accepted. The applicant reiterated the prayers he had made in chief but added a fresh prayer for general damages of Ugx 300,000,000 for atonement for 20 humiliation, embarrassment, tarnished reputation and ridicule suffered

following his suspension and dismissal.

In its decision, the University Staff Tribunal appraised itself of the key facts noting that the applicant was investigated by the respondent's Top 25 Management for alleged concealment of an accident caused by a driver. The Tribunal noted that the applicant and witnesses appeared before the Top Management and a report was compiled and submitted to the

5 Appointments Board. It further noted that the record of the proceedings of the Top Management was submitted to the Board. It further noted that the applicant appeared before the Appointments Board and made a written and oral response. According to the Tribunal, the Minutes of the Appointments Board show that its proceedings was attended by 11 10 persons with a quorum of four members. It noted that all the four Board members found the applicant guilty of misconduct. On what punishment to mete, three members voted for dismissal while a member suggested severe reprimand. The Tribunal noted that the applicant filed the appeal on 03 March 2022 following the dismissal of 21 February, 2022.

The Tribunal appraised the grounds canvassed in the appeal and in written submissions. It resolved the grounds of appeal in their chronological order as expanded in the applicant's submission. The Tribunal reminded itself of its role as stipulated in section 56 (2) of the 20 Universities and Other Tertiary Institutions Act 2001 (now section 57 (2) of Cap 262). It cited the principle in *Begumisa Vs. Tibebaga Civil Appeal No. 17 of 2001* in which *Coghlan Vs. Cumberland* (1898) 1 Ch. 704 was cited with approval, noting that, in sitting on appeal, it had a duty to reappraise the evidence on record and reach its own conclusion. The 25 Tribunal set out issues encompassing the grounds of appeal. The issues were;

- 5 1. Whether the conduct of the Appointments Board during the hearing and their alleged refusal to consider the written reply of the appellant was prejudicial to the appellant?
- 2. Whether the members of the Top Management participated in the 10 determination of the case against the appellant?
- 3. Whether the Appointments Board should consult the Solicitor General in disciplinary proceedings?
- 15 4. Whether there is sufficient evidence to justify the decision of the Appointments Board?

On issue one, the Tribunal noted that part of the complaint related to the applicant's alleged harassment by the Appointments Board and that the 20 Board did not have time to read through the applicant's response. The Tribunal stated that it had looked at the Minutes of the Board and noted that the applicant appeared before the Board in person during the hearing of 18 February, 2022 where he was afforded an opportunity to present his case. The applicant was also allowed to cross-examine a witness. The 25 Tribunal, however, expressed a concern that the applicant's written response was handed to the Board by him during the hearing. It doubted whether a reasonable person, in the circumstances, could have read the

- 5 response immediately. Nevertheless, the Tribunal noted a lack of evidence that the written response was or was not considered by the Board. It considered a letter dated 04 February, 2022 in which the applicant was asked to make a written response as an alternative to physical appearance before the Board. This was on an earlier occasion of ill-health and inability
- 10 to physically attend the Board sitting. The Tribunal concluded that since the applicant physically appeared and ably made his defence and having cross-examined a witness, there was no prejudice suffered (in submitting his written response during the Board proceedings). The Tribunal stated that it had examined all the arguments by the applicant and the written
- 15 explanation dated 21 February, 2022 which it found consistent with the oral arguments. The Tribunal concluded that no prejudice was suffered by the applicant before the Appointments Board. The Tribunal thus found no evidence of harassment of the applicant.
- 20 On issue two, the Tribunal stated that it had considered the submissions by the parties and perused the Minutes Extract of the Appointments Board. It quoted pages 17-19 of the extract where the Appointments Board had noted that the matter was put to vote and three out of four members voted for dismissal while one member voted for severe reprimand of the 25 applicant. The Tribunal reasoned that there appears to be a confusion (in the applicant's submission) with regard to a distinction between an attendance of proceedings and real adjudication. It opined that whereas

- 5 any person can attend a hearing but only members can adjudicate. The Tribunal observed that there was no evidence that the applicant applied to the Board to exclude non-members if he was uncomfortable with their presence. It concluded that, from the Minutes Extract, there was nothing to show that non members participated in the Board decision. The
- 10 Tribunal singled out the members of Top Management against whom complaints were raised, noting that, they did not sit on the impugned Board. The Tribunal also listed the Board Members who rendered the decision of the Appointments Board. It noted that although the legal officer of the respondent was present during the Board sitting, he was neither a
- 15 board member nor a member of Top Management. The Tribunal observed that several persons were in attendance during the Board proceedings including Senior Human Resource Officer, University Bursar and Senior Communication Officer. It stated that these officers had specific roles that were unrelated to the Board decision making. It thus concluded that the 20 applicant's complaint and submission lacked merit. The Tribunal observed that there was no material to prove the alleged perception of bias as the
- minutes of the proceedings did not show that anything had been predetermined against the applicant.
- 25 On the complaint that no charge sheet was drawn in consultation with the Solicitor General, the Tribunal opined that since the applicant's employment was governed by the provisions of the Universities and Other
- 5 Tertiary Institutions Act 2001, and given that his terms and condition of service was non pensionable and was not governed by the Government Standing Orders under the Public Service Act 2008, the applicant's claim lacked merit. The Tribunal reasoned that in any case the point was not a ground of appeal. It stated that the applicant did not raise before the Board
- 10 the fact that he did not understand the nature of the allegations. It noted that a letter dated 04 February, 2022 sent to the applicant contained a copy of the investigations report and bore the details of the alleged misconduct. The Tribunal concluded that the disciplinary offence was thus sufficiently disclosed to the applicant.

On the issue of whether there was sufficient evidence to justify the decision of the Appointments Board, the Tribunal reviewed the material before it and concluded that there was. It noted that the applicant denied knowledge of the accident both to Top Management and in his subsequent 20 appearance before the Appointments Board. It observed that apart from the driver (Opito Thomas), the Office Attendant- Regina Terutesa, according to the Minutes (p.5-9) appeared before the Board and testified against the applicant. It noted that the applicant acknowledged speaking to Ms. Regina about the said accident on 19 November, 2021 (well before 25 he was asked by the Vice Chancellor on 23 November, 2021 upon which he denied having knowledge of the accident).

The Tribunal discussed at length the elements of the charges and noted that the charges were

- 5 supported by evidence and the provisions of the respondent's Human Resources Management Manual. The Tribunal agreed with the findings of the Appointments Board. It reached a unanimous opinion. It dismissed the appeal and upheld the applicant's dismissal. The Tribunal advised the applicant of his right to apply to the High Court by way of judicial review
- 10 if dissatisfied with the process.

The grounds of the present Motion

Having set out the gist of the proceedings before the Tribunal, I turn to the Motion. The applicant takes issue with the alleged decision of the

- 15 respondent's Top Management to recommend for his dismissal to the Appointments Board. He claims the Top Management did not exist and was an illegal structure so it acted arbitrarily, illegally, irrationally, and unreasonably. He adds that the Top Management proceedings were procedurally irregular and biased. The Applicant takes issue with the
- 20 punishment meted for neglect of duties claiming the alleged duties were neither his nor assigned to him, and no due process was followed. He also contends that the proceedings of the Appointments Board were tainted with several illegalities, arbitrariness, irrationalities, unreasonableness, and bias. The Applicant contends that the Respondent University failed to
- 25 follow a progressive approach in disciplining him. He seeks for orders of a declaration that the entire process leading to suspension and dismissal was irrational, tainted with illegality and bias; a declaration that the
- 5 charging and finding him guilty of gross neglect of duties which was neither stipulated in his appointment letter nor assigned to him was irrational, illegal, unreasonable and ultravires the security of tenure of a civil servant. He prayed that a certiorari issues quashing the decisions of the Appointments Board **and the Staff Tribunal which confirmed it**; a
- 10 prohibition issues restraining the respondent from enforcing the suspension and dismissal from office; Mandamus issues compelling the respondent to reinstate the applicant as Estate Officer; the respondent pays general damages, exemplary/punitive, and aggravated damages, plus costs to the applicant.

The grounds are supported by an affidavit the substance of which I have already captured, which I note, substantially informed the Tribunal appraisal. However, I have noted that although the affidavit was signed by the applicant and commissioned, the court copy bears no 20 swearing/ commissioning date as the space is blank. There is an opposing affidavit deposed by the respondent's legal officer- Olwoch Evans. Mr. Olwoch basically denies the allegations of the

applicant. He indicated that preliminary objections would be raised at the hearing. The main objection indicated in paragraph 3 is that the application is misconceived because 25 Lira University Council (the respondent) was not a party to the proceedings

that ensued before the Lira University Staff Tribunal that confirmed the applicant's dismissal. Mr. Olwoch goes on to make factual depositions

- 5 regarding the applicant's employment, suspension, dismissal, and appeal to the Tribunal. Most of the depositions are those reiterated in the factual aspects of the submissions before the Tribunal. To capture the main responses, the respondent deposes that the applicant attended the investigation hearing before the Top Management and later before the
- 10 Appointments Board. While there, he was afforded opportunity to cross examine a witness. The respondent denies that members of Top Management participated in the decision making process of the Appointments Board. She clarified that those who attended the meeting of the Appointments Board were there for the purpose of submitting the
- 15 findings and recommendations of Top Management. The allegation of bias was denied. It was deposed that the Appointments Board decision was taken by four members who were not part of Top Management. The deponent delved into other evidential matters that were adduced before the Appointments Board. I shall not reproduce them. Regarding the
- 20 substance of the allegations that had been made against the applicant, Mr. Olwoch deposed that the allegations were gross and warranted dismissal. He referred to the Human Resources Management Manual of the respondent. Both parties also refer to several annexures which this court has perused.

In her written arguments before me, the respondent did not raise a standalone preliminary point of law but chose to introduce the objection in the

- 5 merits-arguments. I think that approach saves time and expenses. The applicant likewise filed his submissions in which he raised objections on the competence of the respondent's affidavit. The respondent replied to the same but as noted, also raised objections. The applicant filed a rejoinder submission. He responded to the respondent's objection and rejoined to
- 10 the reply. It is to the preliminary matters that I next confine my attention.

Mr. Olwoch's affidavit has been attacked on the ground that he lacked the capacity to swear in the absence of a written authority from the respondent. It is argued that the deponent is not a member of the

- 15 University Council under section 38 (1) of the Universities and Other Tertiary Institutions Act Cap 262 and thus lacked the power or authority to depose to the affidavit. It was suggested that the affidavit offends the provision of O.3 r. 1, 2, and 3, and O.29 r.1 of the Civil Procedure Rules S. I 71-1 (CPR). Many decisions were cited but of specific relevance is **MHK**

- 20 **Engineering Services (U) Ltd Vs. MacDowell Limited, HCMA No. 825 of 2018.** Learned counsel asked this court to strike out the affidavit of Mr. Olwoch and prayed that court proceeds ex parte and treats the application as unchallenged.
- 25 For the respondent, it was argued that under O.19 r.3 of the CPR, a person is competent to swear an affidavit so long as the facts he deposes to are within his knowledge. Learned counsel cited **Mbarara Municipal Council**

- 5 **Vs. Jetha Brothers Limited, SC Civil Application No. 10/2021 [2021] UGSC 34** where Ezekiel Muhanguzi, JSC, sitting as a single Justice of the Supreme Court, considered an objection to an affidavit sworn by an advocate in support of the application. The objection was that Mr. Timothy Arinaitwe (an Advocate) was not a party to the application and acted
- 10 without instructions to file the motion and swear the affidavit on behalf of the applicant. There, the learned Justice held

"In my view, affidavits can be sworn by anyone to prove a set of facts and an advocate is not an exception. An advocate is therefore not 15 prohibited to swear affidavit where necessary especially on matters that are well within his or her knowledge."

Learned counsel for the respondent, therefore, contended that since Mr. Olwoch is a Senior Legal Officer of the respondent University and thus an 20 Advocate familiar with the facts to which he deposes and which capacity the applicant confirms in paras 33 (g) and 48 of his affidavit, the objection ought to be over-ruled.

In rejoinder, counsel for the applicant submitted that the authority cited 25 is distinguishable because the single Justice of the Supreme Court did not deal with the kind of objection at hand especially since the provisions of O.3 and O.29 of the CPR were not at issue. Learned counsel added that it

5 is only members of the University Council who are abreast with the facts of the dispute who ought to swear affidavits. Counsel makes other related arguments which I shall not go into but are borne in mind.

My simple answer to the objection is that it lacks merit. First, learned 10 counsel wrongly relies on the provision of O.3 and 29 of the CPR which are not relevant to capacity to swear affidavits. O.3 provides for application to or appearance in or acting in courts which may be done by a party in person, his/her recognized agent or advocate. Recognized agents are further explained in rule 2 (a) and (b) of O.3. On the other hand, O.29 r.1

- 15 provides for who may sign pleadings in a suit by or against a corporation. Pleadings are, unlike affidavits, not evidence. Pleadings in a suit by a corporation may be signed by the secretary or director or other principal officer who is able to depose to the facts of the case. I think, with respect, learned counsel is basing on the words *"who is able to depose to the facts"*
- 20 *"of the case"* appearing in rule O.29 r. 1 to surmise that only principal officers of a corporation are competent by law to depose to affidavit. With respect, that is an incorrect construction of the rule. I find the decision by Muhanguzi, JSC to be well on point as regards the power to swear affidavits. The decision clearly mirrors O.19 r.3 (1) of the CPR which 25 requires that affidavits must be confined to facts as the deponent is of his/her knowledge able to prove save in interlocutory matters in which

statements of belief may be admitted provided grounds thereof are stated.

Not long ago, the Court of Appeal stamped its authority on the subject of capacity to swear affidavits in **Mutembuli Yusuf Vs. Nagwomu Moses Musamba and Electoral Commission, Election Petition Appeal No. 43 of 2016** where it remarked at pp. 13-14:

"The principles governing the filing of affidavits are well stated by the learned trial Judge. We would, however, wish to clarify that, 'a stranger' to a petition may validly file an affidavit in reply, if the facts or issues that call for the rejoinder are within that person's 15 knowledge." (Underlining is mine.)

In closing on this objection, I should perhaps remark that the views expressed by court in **MHK Engineering Services (U) Ltd Vs. MacDowell Limited, HCMA No. 825 of 2018** has not been followed by the court in 20 its subsequent decisions. For instance, in **Rutaro Robert Vs. Makerere University, Misc. Cause No.023 of 2023** the court remarked that the role of giving evidence does not necessarily amount to appearing, pleading or acting on behalf of the other, and that, one does not need to be an agent of the other in order to give evidence on the other's behalf as the person 25 giving testimony is only required to have knowledge of the peculiar facts of the case. The court found persuasion in other decisions. Among others, it

5 followed the views expressed in **Bankone Limited Vs. Simbamanyo Estates Limited, Misc. Application No. 645 of 2020** thus:

"What is required in affidavits is the knowledge or belief of the deponent (see for example Order 5 rule 24, Order 10 rule 19 (3) of The

- 10 Civil Procedure Rules). Similarly for suits under summary procedure, the affidavit verifying the claim may be sworn "by the applicant, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defence to the suit" (see Order 36 rule

- 15 2 of The Civil Procedure Rules). Affidavits should state the facts only, without stopping to add the deponent's descriptive opinion of those facts. Just as with regular testimony in Court, evidence tendered by affidavit will be inadmissible if irrelevant, particularly if scandalous, oppressive, is embarrassing or judgmental, or where privileged facts
- 20 or documents are submitted. Affidavits are a means of adducing sworn, written evidence and must be used in applications where sworn evidence is required by the court... from the above discourse it then becomes clear that throughout the web of legal provisions relating to affidavits, one golden thread is always to be seen; that 25 what is required in affidavits is the knowledge or belief of the deponent, rather than authorization by a party to the

litigation...competency to swear an affidavit is pegged to ability "to

- 5 depose to the facts of the case," which in turn is circumscribed by the deponent's ability to "swear positively to the facts," on account of personal knowledge or disclosure of the source, where that is permitted." (Underlining is for emphasis.)
- 10 In the Bankone Ltd, the court cited, in respectful disagreement, a catena of authorities which held the view that a person is not to swear an affidavit in a representative capacity unless he/ she is an advocate or holder of power of attorney or duly authorized and that where there is no written authority to swear affidavit on behalf of the others, the affidavit is defective.
- 15 The Court opined that the principle in those authorities are neither based on the rules of evidence nor rules of procedure but appears to have developed from the analogy of representative suits which is misplaced.

Having closely followed the analysis in the ruling in Bankone Ltd, I do not 20 feel that I can usefully say much more than is stated therein. I should perhaps add that the opinion in Bankone Ltd aligns with the position taken by the court of appeal and the single justice of our apex court in the decisions I have mentioned. And just recently, in **Shadat Ssemakula Mutyaba Mohmedded Vs. Gulu University, Misc. Cause No. 50 of 2024**, 25 I over-ruled a similar objection, noting that, the affidavit there met the threshold of O. 19 rule 3 of the CPR. This court also bemoaned an apparent lack of understanding by some legal practitioners of the clear distinction

5 between legal representations of a public University in judicial proceedings within the purview of section 41 of Cap 262 and swearing an affidavit on behalf of a University.

For the reasons I have endeavored to give, I find the objection to be 10 misconceived and I dismiss it.

The second objection relates to an alleged late filing of the replying affidavit in judicial review. I note that the objection was abandoned in the applicant's rejoinder submission following the respondent's response. I will

15 accordingly not consider the merits or otherwise of that objection.

Turning to the respondent's objection, I note that the ultimate arguments presented substantially differ from the objection deposed in paragraph 3 of Mr. Olwoch's affidavit. His disposition is that the application is 20 misconceived as Lira University Council was not a party to the University Staff Tribunal Proceedings that confirmed the applicant's dismissal. However, in a parallel argument, it has been submitted that the respondent does not exist at law and the suit against it is bad. Learned counsel for the respondent asserted that whereas the University Council 25 is a creation of section 38 of Cap 262, the Council is not clothed with corporate personality to sue or to be sued. Learned counsel also cited section 23 (1) of the enactment and submitted that it is Lira University

- 5 that ought to have been sued. Adding a fresh strand of objection, learned counsel contended that, in any case, the application was filed outside three months required by rule 5 of the Judicature (Judicial Review) Rules, 2009 (as amended by S. I No. 32 of 2019).
- 10 In response, the applicant's counsel cited section 41 (a) of Cap 262 and submitted that the University Council is mandated to represent the University in all legal suits. Learned counsel contended that his learned friend must have confused section 41(a) with section 23 which provides for the corporate status of a public University. He argued that both 15 provisions, when construed, mean, whereas the University is a body corporate in all legal proceedings by or against it, it must be represented by University Council. Learned counsel added that the objection relates to a matter that could pass for a misnomer, and, therefore, suing Lira
- University Council instead of Lira University is not fatal as no person 20 would be misled into knowing that the suit is indeed against the University.

Regarding the alleged late filing, the response was that the judicial review matter was filed timeously within the province of rule 5 of the Judicial 25 Review Rules, and section 57 (3) of the Universities and Other Tertiary Institutions Act Cap 262. It was submitted that the Tribunal decision was made on 23 May 2022 but was communicated to the applicant on 25 May

5 2022 by e-mail, thus if 25 May, 2022 is excluded in reckoning time in accordance with section 34 (1) (a) of the Interpretation Act Cap 1, it would mean the filing of the judicial review suit on 23 June 2022, was in time.

In my opinion, whereas the objections argued by the respondent were not

10 expressly pleaded, the law allows a party to raise an unpleaded point of law. In **Saggu v Roadmaster Cycles (U) Ltd** [2002] 1 EA 258 (CAU) (Okello, Mpagi–Bahigeine and Twinomujuni, JJA) held:

"The position at law is that if a party desires to have any point of law

- 15 disposed of before the trial, he should raise it in his pleading by an objection in point of law, especially where it will substantially dispose of the whole action. However at the trial he may argue it whether raised on the pleadings or not. An objection in point of law must always be taken clearly and explicitly if it requires serious argument
- 20 but not just an allegation wearing a doubtful aspect – see **Roberts v Charing Cross etcetera Ry** 7 LT 732. It is noteworthy that Mr (Assa) Mugenyi never filed in any affidavit in reply to the Respondent's application. He was however entitled to raise the objection at the hearing."

In **Metropolitan Properties Ltd Vs. Muyimuna**, Civil Appeal No. 4 of 2022 [2024] UGSC 22, Elizabeth Musoke, JSC, with whom her brethren

5 concurred, summarized the considerations a trial court should take when determining preliminary objections especially in the exercise of discretion under O.6 rules 28 and 29 CPR, namely,

- (a) A point of law should be taken if it is a pure point of law, the positive 10 determination of which may dispose of the suit;

> (b) A point of fact or mixed law and fact, which may require evidence for its determination should never be taken as a preliminary objection;

15 (c) a pure point of law is one which is fundamental in nature in that it raises questions against sustainability of the suit, for example, a point on jurisdiction, limitation, cause of action, or an agreement to refer the dispute to arbitration;

20 (d) a point of law which is interlaced with the other points arising in the suit, whether of fact or mixed law and fact, should not be determined as preliminary objection due to the risk of reversal of the decision on the points on appeal and the resultant remittal of the file back for hearing of the case, resulting in delays in the trial.

In the present matter, I note that the objection relating to the naming of the respondent as Lira University Council and not Lira University which is a body corporate, with respect, is misconceived. This is so because suits

- 5 in judicial review are not dependent on the corporate status of a respondent. In **John Jet Tumwebaze Vs. Makerere University Council, Vice Chancellor Makerere University and another**, Civil Application No. 78 of 2005 a similar objection was raised by counsel for the 1st and 2nd respondents to the effect that since those respondents lacked 10 corporate

personality to sue or be sued, they could not be made parties to the judicial review application. Remmy Kasule Ag. J (as he then was) cited sections 33, 36, 37 and 38 of the Judicature Act Cap 13 and opined that there is no requirement in those provisions that prerogative orders shall only issue to public bodies and offices that have corporate personality. I

- 15 agree. This is also made clearer in the present rule 7A of the Judicature (Judicial Review) Rules as amended by S. I No. 32 of 2019 which lists what a court must satisfy itself with in considering an application for judicial review. I note that none of the requirements in the rule involve corporate status of a respondent. What is relevant in the rule is that the matter 20 should involve an administrative public body or official. Under rule 7A (2) the court must also be satisfied that the decision making body or officer did not follow due process in reaching a decision and as a result there was unfair and unjust treatment.
- 25 For the foregoing reasons, I am of the opinion that suing Makerere University Council and not Makerere University in judicial review is not fatal because no corporate status is required to sue a respondent in

5 judicial review. I would instead find that the naming of Lira University Council instead of Lira University as a respondent in judicial review is a misnomer that could be corrected. It is a matter of form not affecting the substance of identity of the real respondent. See: **Oyam District Local Government Vs. Aluku Grace**, Revision Application No. 43 of 2021 10 [UGHC] 2024/14, pp. 23-25.

The test in cases of misnomer was recently stated in **East Africa Foam Limited Vs. Attorney General and 2 Others**, Civil Appeal No. 2 of 2022 [2025] UGSC 5 by the Supreme Court. Elizabeth Musoke JSC, and

- 15 Madrama JSC dealt with the point with which the other Justices were in agreement. Musoke JSC deferred, inter alia, to the speech of Lord Denning in **Nittan (UK) Limited Vs. Solent Steel Fabrications Limited** [1981] 1 Lloyds Law Rep 633 thus:
- 20 "In this court, we are very used to dealing with misnomers. We do not allow people to take advantage of a misnomer when everyone knows what was intended. I will only refer to one authority, **Whittam Vs. WJ Daniel & Co. Ltd** (1962) 1 QB 271 at p. 277 where Lord Justice Donovan cited the words of Lord Justice Devlin: ' I think that the test 25 must be: how would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say to himself: "of course it must

5 mean me, but they have got my name wrong, then there is a case of a mere misnomer."

Agreeing with the lead Judgment, Madrama JSC cited **A. N Phakey Vs. World Wide Agencies Limited** [1948] 15 EACA 1 where a clerical mistake 10 regarding the name of a plaintiff did not mislead the defendant who adequately responded to the allegations in the plaint. Madrama JSC, adverted to Black's Law Dictionary meaning of misnomer. He further cited **Rodriguez Vs. Parker** [1966] 2 All ER 349 where Nield J laid out three criteria for amending a misnomer: the mistake must be genuine, not 15 misleading, and it must be just to amend. Justice Madrama also referred to **Mitchell Vs. Harris Engineering Co. Ltd** [1967] 2 All E. R 682 where Lord Denning observed:

"The court can permit the defect to be cured by amendment: and 20 whether it should do so depends on the practice of the court."

In light of the foregoing, I find the issue of the naming of the respondent in a judicial review proceedings to be inconsequential with no need to amend. Consequently the objection ought to fail.

Turning to the objection regarding the time limit for filing judicial review, I note that the objection required this court to peruse the documents on

- 5 record and assess whether the evidence on record supports the alleged late filing of the Motion. In resolving the matter, I have noted that whereas the ruling of the University Staff Tribunal was signed by the Chairman and members on 23 May, 2022, the ruling does not show on the face of it that it was delivered in the presence of the parties or their counsel. I, therefore,
- 10 agree with the applicant when he states in paragraph 67 of his affidavit that he was notified of the Tribunal ruling by e-mail two days after the delivery. And I find no contrary evidence.

On the law, the applicant correctly cites the specific provision of section 15 57 (3) of Cap 262 which stipulates 30 days for filing judicial review once a staff of University is notified of the Tribunal decision. The general law on time limits for lodging judicial review application as encapsulated in Rule 5 of the Judicature (Judicial Review) Rules, 2009, and section 36 (7) of the Judicature Act Cap 16 which provide for three months from the date when

20 the ground of the application arose, is not applicable to judicial review contemplated in section 57 (3) of the Universities and Other Tertiary Institutions Act Cap 262. I find guidance in this interpretation from the dictum of Chibita JSC in **Bank of Uganda Vs. Sudhir Ruparalia, Taxation Reference No. 0001 of 2023**, [2023] UGSC 12 (at p. 25) wherein, sitting 25 as a single Justice, the learned Justice cited the persuasive cases of **Ibori Vs. Ogburu** (2004) 15 NWLR (PT.895), and **Chief S. O Adedayo & Ors Vs. People Democratic Party & Ors.** (2013) LPELR-20342 (SC) for the

5 proposition that if a specific provision conflicts with more general one in the same or an earlier statute, the specific provision prevails.

In the present matter, I note that the Universities and Other Tertiary Institutions Act is a latter enactment of 2001 unlike the Judicature Act

10 from which Rule 5 of the Judicial Review Rules was birthed which is an earlier enactment. I thus hold that the time limit of 30 days for filing judicial review by staff of the University applies and not the three months provided in the general law on judicial review. In light of the evidence adduced by the applicant, I hold that he lodged the judicial review

15 application in time. The objection is accordingly over-ruled.

In conclusion, all the objections raised by both sides have failed.

At this stage, I ought to consider the merits-arguments. However, I have 20 noted that the point half-heartedly deposed by Mr. Olwoch in para 3 of his affidavit regarding the propriety of the judicial review action when the respondent was not party to the University Staff Tribunal decision, is a fundamental one going to the root of the matter. Ordinarily, court ought to invite the parties to address the point but since the point is so 25 interwoven with the merits of the case which have been argued, court sees no prejudice to either party by proceeding to resolve it. See: **Oola Eugene Vs. Okello Winyo alias Celestino, HCCS No. 008 of 2017**. It is also trite

5 law that a court may take up a point even if parties may not themselves take it. In **Phillips Vs. Copping [1935] 1 KB 15**, at p. 21 Scrutton L. J noted:

"But it is the duty of the court when asked to give a judgment which 10 is contrary to a statute to take the point although the litigants may not take it."

The above statement, in my view, holds true and was cited with approval by the then apex court in **Makula International Ltd Vs. His Eminence 15 Cardinal Nsubuga and Dr. Kyeyune, Civil Appeal No. 4 of 1981 [1982] UGSC 2**.

I commence my interrogation of the propriety of the action by looking at the law. Following his dismissal from employment, the applicant was 20 aggrieved by the Appointment's Board decision. Under section 50 of Cap 262, the Appointments Board is a committee of the University Council. It must consist of nine members appointed under section 43. The Board is responsible to the Council for appointment, promotion, removal from service, and discipline of all officers and staff, both academic and 25 administrative, of the University. In the present case, having been dismissed by the Appointments Board, the applicant lodged an appeal in the exercise of his right under section 57 (1) of Cap 262. The section states:

"A member of staff may appeal to the University Staff Tribunal against a decision of the Appointments Board within fourteen days after being notified of the decision."

- 10 Having appealed to the Tribunal which was and is in existence unlike the situation that obtained in **Dr. Lam Lagoro James Vs. Muni University, Misc. Cause No. 007 of 2016 (pp. 24-5)**, under section 57 (2), the Tribunal has powers to confirm, vary, amend, or set aside the decision of the Appointments Board or give such decision as it may think appropriate.
- 15 In this case, the Tribunal confirmed the Board decision dismissing the applicant. I note that, quite incorrectly, the Tribunal (at page 3 of the ruling) referred to itself as an appellate court. It was not but an administrative Tribunal exercising an appellate power. See: **Dr. Lam**

Lagoro James Vs. Muni University, Misc. Cause No. 007 of 2016 (pp.

20 24-5). I am further bolstered in my view on the nature of the Tribunal by its composition. Under section 56 of the Act, the majority of the members of the Tribunal are from within the University. That is, apart from the chairperson who may (or may not) be appointed from outside the University structure, and apart from a nominee of the Public Service 25 Ministry, the rest of the membership are from within the University structure, namely, a person representing the University Council elected from among themselves, a person representing the Senate elected from

- 5 among themselves, two persons nominated by the academic staff association of the University one of whom must be a woman, and two persons from the senior members of the administrative staff elected from among themselves. The secretariat to the Tribunal must be provided by the University Secretary. And the term of office of a member of the Tribunal
- 10 is four years with eligibility for re-appointment. The Tribunal is thus an administrative tribunal clothed with powers to receive and handle appeals by staff of the University who may be aggrieved by a decision of the Appointments Board. It thus exercises quasi-judicial powers in deciding the appeals. I note that no written rules or regulations were referred to by
- 15 the Tribunal in its rendition, meaning, none regulating its business exists or existed. Neither party says a regulation of the tribunal was in place. I would think each University Staff Tribunal should be able to make its rules/regulations provided it is not repugnant to the Principal Act and other relevant laws and the Constitution of Uganda, 1995. That said, I
- 20 think there was no prejudice to either party by the Tribunal calling itself an appeal court. As an administrative appellate Tribunal, and in the absence of written rules or regulations guiding its discharge of statutory mandate, the Tribunal can be excused for approaching its task as if it were an appellate court.

I have detailed how the Tribunal dealt with several issues raised before it. It resolved both procedural and substantive issues. It considered the

- 5 material before it. I note that whereas in this action, copies of the typed minutes of the proceedings of Top Management, and the Appointments Board were not supplied to me, it is clear from the Tribunal ruling that they were supplied to it. It is not clear why the applicant who wishes his complaints regarding the alleged procedural breaches omitted these 10 essential documents from this court. Crucially, it has not been suggested that the Tribunal did not correctly discharge itself. Neither the power of nor the manner in which the Tribunal rendered itself has been impugned in the present action. I note the fleeting allusion to the Tribunal in the Motion with respect to its rendering where it confirmed the decision of the
- 15 Appointments Board. It has, however, not been suggested that the Tribunal's confirmation of the Board decision was in any manner *ultravires*. As I understand him, the applicant seeks to impugn for the second time, the respective processes of Top Management and the Appointments Board which are the very matters he raised and were 20 squarely dealt with by the Tribunal. I of course note a few instances of what strikes me as cosmetic modifications of the action to slot in one or two matters that were never raised before the Tribunal. One such is the allegation that the Top Management did not exist and, therefore, acted illegally, irrationally, and unreasonably in discharging itself. The applicant 25 does not explain why he did not raise the point in his appeal to the Tribunal. The other contention not raised before the Tribunal is that a progressive step in punishing the applicant was not followed. Again the
- 5 applicant is quiet as to why he did not raise this matter in his appeal at the time. This being a judicial review action, the question that arises is whether the fresh complaints, and the old complaints that were raised before the Tribunal as an administrative appellate body can again be agitated in a judicial review action especially where the applicant does not
- 10 anywhere challenge the Tribunal process. The answer, to my mind, turns on the proper construction of section 57 (3) of the Universities and Other Tertiary Institutions Act Cap 262. The section is worded:

"A member of staff aggrieved by the decision of the University Staff 15 Tribunal under subsection (2) may, within thirty days from the date the member of staff is notified of the decision of the Tribunal, apply to the High Court for judicial review." (Underlining is mine.)

The section is clear. A literal construction yields the result that the only 20 decision that can be challenged via judicial review route by a staff of University who had appealed to the Tribunal against the Appointments Board's decision under section 57 (1), is not the decision of the University Appointments Board or Top management but that of the Tribunal. In my view, the law would create duplication and defeat the purpose of the appeal 25 against the Appointments Board decision had it provided that the very decision of the Appointments Board should be the subject of judicial review by this Court. I am of the settled mind that the intention of the law makers

- 5 were to allow only the Tribunal decision given on appeal to be a matter for judicial review. And I think from a policy lens, the intention is well grounded. Given its mandate and membership, the Tribunal is presumed to be competent to deal with all complaints of procedural and substantive nature by an aggrieved staff. That explains why the principal law does not
- 10 restrict the Tribunal on the manner it should discharge itself. Therefore, the judicial review envisaged under the enactment cannot lie against the decision of the University Appointments Board or its Top Management when complaints arising especially from the Board decision have already been resolved by the Tribunal on appeal. So the judicial review intended
- 15 under section 57 (3) of Cap 262 is a review of the Tribunal decision and not of any other body. The High Court must, therefore, confine itself to an assessment of the manner in which the Tribunal is said to have conducted its proceedings in light of the judicial review benchmarks. Notably, in judicial review, the High Court does not sit in appeal against the University
- 20 Staff Tribunal decision but sits in a supervisory oversight to uphold the rule of law. The Court's primary concern should be the legality, fairness, rationality and reasonableness of the Tribunal decision, action, or any alleged failure by the Tribunal to act in relation to the exercise of its statutory mandate as an appellate body. The Court would not, in such a 25 case, be looking at the merits of the Tribunal decision, that is, whether the
- Tribunal made a wrong or right decision because such considerations fall within the realm of appeal which under Cap 262 is not available against
- 5 the University Staff Tribunal decision. Rather, a court in judicial review would be concerned with the issue of whether or not the Tribunal decision is lawful or unlawful in light of the process engaged. See: **Attorney General Vs. General David Sejusa, Civil Appeal No. 196 of 2016 [2022] UG CA 23** (per the lead judgment of Madrama, JA, (as he then was), with
- 10 whom M. Mugenyi, JA, (as she then was), and Mulyagonja J. A, concurred). See also **Attorney General Vs. Yustus Tinkasimiire & 19 others, Civil Appeal No. 208 of 2013** (Kakuru, Egonda- Ntende, and Cheborion Barishaki, JJA)
- 15 In the present matter, therefore, given that no act or order of the Tribunal and indeed the whole of its process and decision are under attack, I would hold that the University Tribunal decision ought to stand. I have also perused the Ruling of the Tribunal. I would still have found no basis for impugning it. Given my finding on the important legal matter, it is beyond 20 my remit to canvass the grounds presented in the Motion which largely

- seek to impugn the decision of the Top Management and the Appointments Board. Mentioning the Tribunal in the Motion to the effect that it confirmed the decision of the Appointments Board, with respect, was simply acting smart to perhaps bring the matter within the purview of judicial review. A
- 25 great deal of the complaints also go to the merits of the decisions of the Appointments Board and that of Top Management. I also wonder how Top Management decision could possibly fit within the particular legal
- 5 provision permitting an appeal to the Tribunal. In a nutshell, all the complaints were decisively resolved by the University Staff Tribunal. The matters that were not raised before it ought to have been raised. The applicant cannot raise them here. Of course doing so now is an attempt to give the judicial review matter a cosmetic face which is an afterthought
- 10 and thus legally unsustainable.

For the reasons given, the application fails and is dismissed. Given that both sides raised objections which failed and given the novel point I have taken and resolved without any assistance from either counsel which has

15 disposed of the matter, it is only fair that each party bears its own costs of the suit. It is accordingly ordered.

Delivered, dated and signed this 08th May, 2025 George Okello 20 JUDGE

10:42am 08/05/2025

Attendance

25 Mr. Enen Ambrose, counsel for the Applicant in court Applicant present Counsel for the respondent absent Mr. Daniel Evans Olwoch, Senior Legal Officer, representative of the Respondent present

30 Mr. Esau Opio, Court Clerk

George Okello JUDGE

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