

UGANDA / JUDGMENT

Engineer Okiror v Ngora District Local Council (Miscellaneous Cause 15 of 2022) [2023] UGHCCD 168 (3 May 2023)

[2023] UGHCCD 168

COURT

HC: Civil Division (Uganda)

CASE / FILE NUMBER

Miscellaneous Cause 15 of 2022

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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Cause No.15 of 2022

Engineer Okiror Richard :::::::::::::::::::::::::::::::

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Versus

Ngora District Local Government :::::::::::::::::::::::::::::::

Before: Hon Justice Dr Henry Peter Adonyo

Ruling

1. Introduction

This application was brought by a Notice of Motion under Articles 28, 42, and 44 of the Constitution of the Republic of Uganda, Sections 33, 36, and 38 of the 20 Judicature Act, Cap 13 and Rules 3 and 6 of the Judicature (Judicial Review) (Amendment) Rules No. 32 of 2019 for Orders that;

- a) An order of Certiorari doth issue against the respondent quashing its decision issued by the Chief Administrative Officer's letter dated 28th July, 2022 arising from Council resolution under Min: 60/NCDCM/JUNE/2021/2022 withdrawing the applicant's assignment of duty.

- b) A declaration that the decision by the respondent withdrawing the assignment of duty from the applicant was illegal, irregular, unlawful, high handed and unfair when they failed to follow the legal process and accord him a fair hearing.
- c) An order of mandamus compelling and directing the respondent to restore the applicant's assignment of duty, which she illegally withdrew.
- d) An injunction restraining the respondent from interfering with the applicant's work as the District Engineer.
- e) General damages of UGX 200,000,000 for the lost financial benefits associated with the withdrawn assignment under the appointment.
- f) Aggravated damages of UGX 50,000,000 for causing the applicant psychological torture and mental anguish after the assignment was withdrawn.
- g) Interest at 30% on general damages and aggravated damages.
- h) Costs of the application be provided for.

The grounds of the application are set out in the application and enhanced in the supporting affidavit deposed by Okiror Richard, the Applicant, that;

- a) The applicant who is serving as a Senior Civil Engineer of Ngora District Local Government -the respondent was never heard and/or given an opportunity to be heard as required by Article 28 of the Constitution and the principles of natural justice.
- b) On 7th April 2014, the respondent assigned me duties as the District Engineer, which I accepted. These duties included; providing technical advice and guidance to stakeholders, preparing technical specifications of contracts and supervising all technical works in the district, among others. A copy of the said assignment (Appointment on Transfer of Service) dated 7th April 2014; REF CR 161/1 and Posting Instructions dated 7th April 2014, REF CR 161/1 and my Acceptance Letter for Assignment of Duty as District Engineer – Ngora (dated 9th May 2014) marked; "C" and "D").
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- c) In the month of June 2022, I was asked to attend the council meeting, which I attended although I had not been formally invited. During the

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meeting, I was shocked to hear, Hon. Olupot Herbert, the Chairperson of the Works Committee, presenting a report which I was unaware of, on the mismanagement of road equipment. As a result, he purported to recommend the withdrawal of assignment of duty from me as head of department and vote controller, which was seconded by Hon. Stephen under Min 60/NCDM/ June/2021/2022. A copy of the said report marked as " \$E\$ ")

- d) I was never given any opportunity to respond or give any explanation in respect of all matters arising from the said report, yet I was in full attendance of the council meeting during the presentation of the said Works Department Report by the Chairperson of the Works Committee and the Council discussions recommending withdrawal of assignments from me. A copy of the said minutes marked "Annexure "F"
- e) On 28th July 2022, I received a letter from the office of the Chief Administrative Officer withdrawing my additional assignment of duties from me without having offered me an opportunity to be heard on the alleged report. A copy of the letter (Withdrawal of Assignment of Duty as District Engineer, dated 28th July 2022, REF CR/163/5 marked as "G"
- f) The allegations in the report are misleading because no formal complaints have been brought to my attention by any of the respective user departments. The same should also have been channeled through the Project Management Teams.
- g) There is no resolution of the council directing the Chairperson Works department and his committee to go and conduct an inspection of any of the projects.
- h) I pray that this Honourable Court finds the respondent's actions, highhanded, unfair, unjust and illegal.

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The supplementary supporting affidavits of Ochung Moses Matthew-DEO Ngora $\$S$ District Local Government, Priscilla Asio Margery-District Planner-Ngora District, and Onyait Patrick-district councillor representing persons with disabilities in Ngora District, are noted.

The application was opposed by Opolot Francis, the respondent's Chief Administrative Officer; in his affidavit in reply, briefly stated that;

- a) The applicant was posted to works and technical services as a Senior Civil Engineer but has never been appointed as District Engineer.
- b) The applicant was accorded audience to respond to gross shoddy construction work in the respective standing committee.
- c) The Applicant, by law, has no audience in Council Meetings when councilors are deliberating in Council as no individual apart from Honorable Councilors has a right to speak.
- d) The applicant is still a Senior Civil Engineer, which is his substantive position and was only relieved of additional duties of a District Engineer, which is subject to re-assignment by the accounting officer for a specific period of time until substantive personnel is appointed.

- e) The respondent's CAO rightly relieved the applicant of the additional duties of the District Engineer and assigned them in the interest of the applicant and Public Service.

2. Representation: 25

The applicant was represented by M/s Menya and Company Advocates, while the respondent was represented by Attorney General's Chamber, Soroti Regional Office.

The parties filed written submissions which have been considered accordingly.

3. Issues:

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The following issues have been framed for the resolution of this cause.

- a) Whether the instant application is amenable to judicial review, and if yes, whether the decisions of the respondent followed the correct procedure and were arrived at in accordance with the law?
- b) Whether the Applicants are entitled to the remedies sought? \$10\$

4. Resolution

The law under which the applicant filed this cause is Article 42 of the Constitution of the Republic of Uganda, 1995 (Constitution), which provides on the right to just and fair treatment in administrative decisions as it states that;

Any person appearing before any administrative official or body has a right to be 15 treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

This application is also brought under Section 33 of the Judicature Act, Cap 13 which provides that;

- The High Court shall, in the exercise of the jurisdiction vested in it by the 20 Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings 25
- concerning any of those matters avoided.

The application is anchored under Section 36 of the Judicature Act, Cap 13, which provides for judicial review and it specifies that;

- 1. The High Court may, upon application for judicial review, grant any one or more of the following reliefs in a civil or criminal matter—

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- a) an order of mandamus requiring any act to be done;
- b) an order of prohibition, prohibiting any proceedings or matter;
- c) an order of certiorari; removing any proceedings or matter into the High Court;
- d) an injunction to restrain a person from acting in any office in which he or she is not entitled to act;
- e) a declaration or injunction not being an injunction referred to in paragraph (d) of this subsection.
- 2. The Court may, upon any application for judicial review, in addition to or in lieu of any of the reliefs specified in subsection (1), award damages.
- 3. The High Court may grant an application for a declaration or an injunction

under paragraph (e) of subsection (1) if it considers that having regard to—

- a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari;
- b) the nature of the persons and bodies against whom relief may be granted by way of an order referred to in paragraph (a); and
- c) all the circumstances of the case,

it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

- 4. On an application for judicial review, as mentioned in subsection (1), any relief may be claimed as an alternative or in addition to any other relief so mentioned, if it arises out of or relates to or is connected with the same matter.
- 5. No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

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- 6. No return shall be made to any order made under this section, and no pleadings in prohibition shall be allowed and subject to any right of appeal; the order shall be final.
- 7. An application for judicial review shall be made promptly and, in any case, within three months from the date when the ground of the application arose, unless the Court has good reason for extending the period within which the application shall be made.

This is a civil matter, and like all other civil matters, the burden of proof is on the party that brings the matter, in this case the applicant to prove the existence of the facts which he alleges, on a balance of probabilities.

Having considered the position of the law above and the burden of proof of 15 parties, I will now turn to address the two issues before me, one by one as below.

- a) Whether the instant application is amenable to judicial review, and if yes, whether the decisions of the respondent followed the correct procedure and were arrived at in accordance with the law?

This is an application for judicial review which is seeking remedies as set out under the Judicature Act.

In making his case, the applicant through his counsel, cites the case of *Ridge v Baldwin* [1964] AC 40, where it was held that a decision reached in violation of the principles of natural justice, especially one relating to the right to be heard, is void and unlawful.

The applicant's counsel asserts, and rightly so that;

"judicial review is concerned not with the private rights or the merits of the decision being challenged but with the decision-making process. Its purpose

is to ensure that an individual is given fair treatment by an authority to which he is being subjected."

The basis of this application for judicial review is a resolution of the respondent contained in its Min 60/NDCM/JUNE/2021/2022 and a letter dated 28th July 2022 which is said to have relieved the applicant from his additional assignment as the

district engineer. 10

In the applicant's affidavit in support (paragraphs 8,9,10, and 11) the applicant asserts that in the month of June 2022 he was asked to attend the council meeting which he attended though he had not been formally invited to it and that during the said meeting one Hon. Olupot Herbert, the Chairperson of the Works Committee, presented a report marked " \$E\$ " under Min.

- 60/NCDM/June/2021/2022 on the mismanagement of road equipment with a recommendation that the assignment of duty be withdrawn from him as head of department and vote controller. That the said presentation of the report was seconded by a member of the district council called Hon. Erau Stephen.

- The applicant avers, under paragraph 13 of the affidavit in reply that though he 20 was in full attendance of the said council meeting he was never given any opportunity to respond or give any explanation in respect of all matters arising from the said report as evidenced by a copy of the said uncertified minutes presented to court and marked as "Annexure "F".
- According to the applicant he is aggrieved by the respondent's decision under 25 Min 60/ NDCM/JUNE/2021/2022 and a subsequent letter dated 28th July 2022, which he believed were arrived at and authored, respectively without following the process, thereby infringing his rights to be heard as well as the rules of natural justice which resulted into abuse of power.
- To the applicant the act of withdrawal of the additional assignment to him by the 30 respondent has subjected him to unnecessary psychological torture as it arose
- from an irrational decision which was reached without any investigations into an \$ \mathsf{S} \$ alleged misconduct before relieving the applicant from his assignment. The applicant is also further challenging the legality of the council proceedings conducted arguing that it was conducted by councillors who were either illinformed or ignorant of the law.
- Arising from the above, the applicant avers that the failure of the respondent to 10 follow the due process of the law in arriving at a decision without according the applicant an opportunity to defend himself falls purely within the purview of judicial review and as such the orders sought herein ought to be granted. The respondent, on the other hand, by an affidavit in reply, deposed by its Chief
- Administrative Officer, asserts that the instant application is incompetent before 15 this court as it seeks to stop the respondent from executing and/or questioning the respondent's administrative power to assign and supervise the applicant as was mandated under the law contending that for the instant application to be amenable for judicial review, the applicant must prove that the actions complained of were brought within three months, were tainted with illegality and 20

irrationality and were procedural impropriety, among others. According to the respondent Section 30 of the Local Government's Act mandates the district council to monitor the performance of persons employed by it while they provide services and to monitor the provision of services or the implementation of projects in its area.

That in the instant case, the respondent had acted within its lawful powers and when it took and implemented the decisions complained of by the applicant and as such this application for judicial review should be disregarded as being of no consequences with orders sought therein not be granted.

The respondent, through its counsel, submitted that the applicant was present 30 during its council meeting when a decision was made informing him of the

- withdrawal of assigned duties which was in line with the holding in *Kasese District \$ \mathsf{S} \$ Local Government Council vs Bagambe George Civil Appeal No. 40 of 2016* where it was held that if one's appointment is not by the district service commission but simply by the Chief Administrative Officer (CAO), then such appointment, as was in the case, the additional duties could be withdrawn at any time by the CAO.
- Accordingly, Counsel for the respondent concluded since the duties complained of by the applicant were merely assignments by the CAO of the respondent district then this application should be disregarded as it was not amenable to judicial review for the acts of the respondent were not illegal, irrational and had procedural impropriety, and so this application should fail.
- Black Laws Dictionary 8th Edition at, page 864, defines judicial review as the court's power to review the actions of other branches or levels of government, especially the court's power to invalidate legislative and executive actions as being unconstitutional. That also, judicial review was a form of appeal from an administrative body to the courts for review of either the findings of fact, or of

law, or of both. 20

In the case of *Lukwago vs Attorney General HCCM No. 281 of 2013*, judicial review was defined as the process by which the High Court exercises its supervisory jurisdiction over 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.

Article 42 of the Constitution, provides for the right to just and fair treatment in administrative decisions as it states that;

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect

of any administrative decision taken against him or her. 30 Pursuant to Section 36 (1) (a, c, d and e) of the Judicature Act, Cap 13;

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- The High Court may, upon application for judicial review, grant any one or more of \$ \mathsf{S} \$ the following reliefs in a civil or criminal matter; an order of mandamus requiring any act to be done; an order of certiorari; removing any proceedings or matter into the High Court; an injunction to restrain a person from acting in any office in which he or she is not entitled to act; and a declaration or injunction not being an injunction referred to in paragraph (d) of this subsection. 10

- As it is the case, judicial review is not concerned with the decision per se but with the decision-making process. This means that a court cannot delve into determining whether the decisions complained of were right or wrong on their merits but only determine the process that led to the decision.
- The applicant herein seeks orders of mandamus and certiorari which arise not 15 out of an appeal but from the decision of the respondent which he is seeking the review of the manner in which the decision was made.

From my reading of the pleadings, affidavits and the submissions herein, it is evident that the applicant's grievance is based on the respondent's decision as in

- garnered from its council meeting under Min 60/NDCM/JUNE/2021/2022 and a 20 follow up letter dated 28th July 2022 wherein a report by the Chairperson of its Works Committee about an alleged mismanagement of construction equipment was made with a recommendation to the CAO Ngara that the applicant's added responsibilities as District Engineer be withdrawn.
- According to the applicant, the said report, its discussion, the recommendation 25 and the subsequent withdrawal of the assigned additional responsibility by the respondent's CAO were actions arrived at without following the due process resulting in infringing his rights to be heard as well as the rules of natural justice. Further, according to the applicant that as a result of the decision arrived at and implemented by of the respondent, wherein additional responsibilities where 30
- $\$S$ withdrawn from him, he has been subjected to unnecessary psychological torture which this Honourable court should find and accord him appropriate remedies. In considering an application of this nature which is for judicial review, Rule 7A (1) and (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019 enjoins a court to consider the following factors;
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- a. That the application is amendable under judicial review.
- b. That the aggrieved person has exhausted the existing remedies available within the public body or under the law.
- c. That the matter involves an administrative public body or official.

In the instant application, the record show that the decision complained of was exercised by the Chief Administrative Officer of Ngara District on the 15 recommendation of the District Council of Ngara district, and it was exercised while the applicant was, according to the documents on record, a District Engineer of Ngara district. The decision was by a public body and its officials and thus this application would be said to be amenable for judicial review.

- Likewise, Section 36 (7) of the Judicature Act, Cap 13, provides that; 20 An application for judicial review shall be made promptly and, in any case, within three months from the date when the ground of the application arose, unless the Court has good reason for extending the period within which the application shall be made.
- According to the records, the challenged decision by the respondent's council 25 made 2022 meeting in held in June under Min was in $\overline{a}$ \$ 60/NDCM/JUNE/2021/2022 with a follow up letter from its CAO dated 28th July 2022 communicated the withdrawal of the additional responsibilities.

The court record show that this application was filed in court on 25th October 2022. 30

From the date of filing, it is evident that this application was filed within the three S months' requirement as provided for under Section 36 (7) of the Judicature Act. This element is thus fulfilled.

The next question then for answering is whether the decisions of the respondent followed the correct procedure and were arrived at in accordance with the law.

For one to succeed under judicial review, such a person must comply with the 10 grounds as categorised by Lord Diplock in the **Council of Civil Service Unions Vs Minister for the Civil Service [1985] AC 374** and these are illegality, procedural impropriety and irrationality.

Where a court finds that a decision complained of was illegal, full of procedural impropriety and irrational, then Rule 7A (2) of the Judicature (Judicial Review) 15 (Amendment) Rules, 2019, enjoins a court to grant an order for judicial review where it is satisfied that the decision-making body or officer did not follow due process in reaching a particular decision that was unfair as a result of unjust treatment.

It is also trite that this being a civil matter, the burden of proof lies with the 20 applicant as per sections 101 and 102 of the Evidence Act, Cap 6 with the standard of proof as required for all civil cases being that on a balance of probabilities (*Nsubuga vs Kawuma [1978] HCB 307*).

I will now proceed to examine this application based on the grounds stated above.

a) **Illegality:**

The applicant's counsel submitted that elements of illegality in the actions of the respondent were depicted by the CAO, who went ahead to write a letter relieving the applicant from his additional assignment dated 28th July 2022 without first verifying the report of the council and subjecting the applicant through the due

process before taking the decision to relieve him of his additional assignment S without any substantive reason.

It is the contention of the applicant's counsel that the CAO did not give guidance to the local government and their department in the application of the relevant laws and policies during the decision-making process of the impugned decision

but instead chose to effect the decision of the council without considering the \$10\$ applicant's constitutional rights.

Counsel for the respondent asserted that under paragraph 2 of Mr Opolot Francis' affidavit in reply, it is alluded that the applicant was accorded a fair hearing.

The respondent's counsel submitted that according Section 64 of the Local 15 Government's Act, the CAO is enjoined with the responsibility to consider and implement all lawful decisions/ resolutions passed by the district council for the smooth running of the district.

The facts relating to the above is that according to applicant, on the day of the council meeting which birthed the impugned decision, he was in attendance of 20 council meeting wherein he was not formally invited and was not even given any chance to defend himself and was unaware of the agenda of the meeting prior to its being held. That this was in addition to his not having been served with the council report prior to the said meeting.

The respondent, on the other hand, avers under paragraph 6 that the Applicant, 25 by law, had no audience in Council Meetings when councillors are deliberating in Council as no individual apart from Honourable Councillors has a right to speak. The respondent's counsel averred that Part 3 of the Third Schedule to the Local Government's Act, permits only councillors to deliberate on issues in council meetings and any other person speaks on the discretionary permission given by 30 the Chairperson of the meeting.

- On the other hand, the respondent asserts that the applicant was accorded an $\$$ audience to respond to gross shoddy construction work in the respective standing committee as was shown in an attachment marked as "A" which though was not filed in court and as such no assessment of its content is made. In law an illegality ordinarily means exceeding the limits of one's power conferred
- \$10\$ by statute. It also includes the fettering of discretion by a rigid rule or policy or because of an undertaking or agreement, failing to take relevant factors into account, acting for a purpose outside the scope of the governing legislation and acting in bad faith. This was the holding in **O'Reiley vs Mackman [1982] 3 ALL ER* 1124 at 1129.*
- In respect of the instant matter, it is true that Section \$64(2)(1)\$ of the Local 15 Government Act, Cap 243, enjoins the CAO with the responsibility for the implementation of all lawful decisions taken by the district council.

I do not thus agree with the contention of Counsel for the applicant that the CAO did not discharge his duties under Section 64(2)(2) of the Local Government Act

of giving guidance to the local government and their department in the 20 application of the relevant laws and policies as the decision-making process of the impugned decision was on course.

This is because, the applicant by law (Part 3 of the Third Schedule to the Local Government's Act) is not a member of the Local Government Council and, by effect, has no right of audience in the council where recommendations for the 25 implementation by CAO are made which included the decision to withdraw his additional responsibilities.

The involvement of the applicant, if any, should have been considered at the discretionary whims of the Chairperson of Council but also aptly outside of the Council.

As I have already noted above, the applicant could only be accorded a hearing in $\mathbb{S}$ the standing committee whose minutes though I have not seen but not in the council.

On the other hand, the applicant is the one asserting that he was not consulted or accorded a fair hearing before the report was debated in council whose details

the Project Management Team should have known but he does not provide any 10 evidence where the same is stated.

As such, since the applicant has the burden of proof to prove his facts on a balance of probabilities, I find that he has failed to discharge that duty in regard to the decision-making process complained of having been made illegally.

b) Procedural impropriety: \$15\$

> Procedural impropriety has two aspects and these are the violating of procedural requirements prescribed by the governing legislation and the violation of standards of fair procedure developed by the courts themselves.

- The applicant's counsel submitted that procedural impropriety includes failure to observe basic rules of natural justice or failure to act with procedural fairness 20 towards the person who will be affected by the decision and that this is because susceptibility to judicial review under this head also covers the failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where
- such failure does not involve any denial of natural justice and also covers the non-25 observance of the procedural rules in the empowering legislation and its test is whether the duty to act fairly and the right to be heard was observed. as was pointed out by Lord Diplock in **Council of Civil Service Unions** case (above).

Counsel for the applicant asserted that Articles 42 and 28 (1) of the Constitution

of the Republic of Uganda provide for natural justice in the determination of an aggrieved party's rights and that the non-observance of the principles of natural

justice herein in respect of the applicant's situation rendered the entire process a nullity.

The respondent's in reply counsel alluded to the applicant not being entitled to any hearing since he was discretionarily and temporarily appointed to act as District Engineer of the respondent and was well knowing that he would revert to his substantive appointment later which was legal.

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Counsel for the respondent supported this position with the holding in the case of Ndwaga Richard vs Attorney General HCMC NO 244 of 2017, where it was held that the right to be heard under Articles 28 and 44 of the Constitution is not applicable to all cases before administrative bodies, that one must consider the power being exercised, the nature of the power, purpose and effect of its exercise in determining if principles must be complied with or not.

From the facts of this case, it is not disputed that the applicant got to know of the report on his mismanagement of the construction equipment when the same was being discussed in council, where he evidently did not defend himself

because he was not given an opportunity and this is backed up by the fact that the respondent did not provide to the court the minutes of the standing committee which considered the shoddiness of the applicant as district engineer. Arising from such conduct, I am inclined to believe that the well protected and cardinal rules of natural justice of "audi alteram partem"; that is; the right of a party to a cause not to be condemned unheard and the rule against bias embodied in the Latin phrases "nemo iudex in re causa sua" which means "no man shall be a judge in his own cause", appears to not have been exercised in respect of the process leading to decision complained of by the applicant which resulted

into the impugned decision.

- Since these cardinal principles of the law were not evidently followed, then I am inclined to believe that the impugned decision resulted from a procedural impropriety thus this ambit of the requirement for judicial review is fulfilled.
- c) Irrationality:

Irrationality is the concept of 'unreasonableness' and is derived from Lord Greene's holding in **Associated Provincial Picture Houses Limited versus** 10 Wednesbury Corpn [1947] 2 ALL ER 680, where an unreasonable decision was defined as one that no reasonable body could have come to.

As to whether a decision is reasonable or not is not what the court considers reasonable. The court will only interfere where there is no rational basis for a particular decision.

In the instant matter, the applicant through his counsel state that the respondent acted out of insolence of the applicable rules and thus made the resulting decision in bad faith.

Accordingly, Counsel for the applicant concluded that since the respondent acted **mala fide** then its decision as such was unreasonable.

In response, the respondent points out the CAO Ngora rightly relieved the applicant of the additional duties of the District Engineer which duties had been temporarily assigned to him as a public service, which service could be withdrawn at any time.

Having already pointed as above that there was procedural impropriety given the fact that the decision-making process of relieving the applicant of additional duties was devoid of a fair hearing, I would agree that no reasonable tribunal could have forfeited, neglected, failed or ignored to evaluate evidence of one side and yet used that unscrutinised evidence to assess the truthfulness of the

evidence of the opposite side. Accordingly, this ground of irrationality is proved. 30

b) What remedies are available to the applicant in the circumstances?

From my findings above, it is true that the applicant has been able to prove two of the three grounds for judicial review. Since these two areas are in the majority, I would conclude that this instant application partly succeeds on that basis and is

thus allowed to that extent only. 10

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On the issue of remedies for parties, it was the applicant's counsel contention that in the case of *Hadley V Baxendale* (1894) 9 Exch. 341, it was held that the purpose of the damages is to put the injured party in the position he or she would have been if the injury had not occurred.

- The applicant's counsel submitted that in the instant case, the applicant was praying for general damages of UGX 200,000,000 for the lost allowances and benefits associated with the withdrawn assignment under his appointment and aggravated damages of UGX 50,000,000 for causing the applicant psychological torture and mental anguish after the assignment was withdrawn.
- This court is alive to and agrees with the decision in **Stream Aviation Limited versus** 20 The Civil Aviation Authority HCB [2008] 156 where it was held that the court cannot award damages where full justice may not appropriately be done. Claims for damages could appropriately be handled by way of a civil suit where full evidence of the damage and loss would be better proved and considered. Damages cannot be awarded in an application for prerogative orders brought by 25

- way of motion.

I am therefore constrained not to award damages whether general or aggravated as the same have not been proved by the applicant.

On the question of Mandamus, this position was considered in the case of *Patrick* Kasumba versus Attorney General and Treasury Officer of Accounts HCMA No. 121 30 of 2010, where it was held that:

... from the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done. Mandamus is a discretionary order, like all other prerogative orders, which the courts will grant only in suitable cases and withhold in others. It cannot be granted as a matter of course. A demand for performance must precede an application for mandamus and the demand must have been unequivocally refused."

In the instant case the respondent stated in his affidavit in reply that the applicant is still a Senior Civil Engineer, which is his substantive position and was only relieved of the additional duties of a District Engineer, which is subject to reassignment by the CAO for a specific period of time until substantive personnel is appointed.

The applicant has not provided any substantial evidence to support his prayer that he was the substantive District Engineer for Ngora so that an order of mandamus would issue. What is on record are an Appointment on Transfer of Service dated 7th April 2014; REF CR 161/1, the Posting Instructions dated 7th April 2014, REF CR 161/1 and the Acceptance Letter for Assignment of Duty as District Engineer – Ngora, dated 9th May 2014.

From all these documents nothing show that the applicant was appointed as the substantial District Engineer. These documents thus do not go on to confirm that that the applicant was appointed on promotion or probation to the position of district engineer of Ngora district.

The above position is made clearer by the letter captioned Withdrawal of Assignment of Duty as District Engineer, dated 28th July 2022, REF CR/163/5 which does not by itself allude to termination from duty as a Senior Civil Engineer as it is simply a withdrawal of assignment of duty as district engineer of Ngora district.

Therefore, arising from the very clear information contained in the above 30 mentioned documents, it is my considered opinion that this court cannot read

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more into the documents themselves but ascribe a direct meaning to them which $\$$ proves that the grant of the order of mandamus to compel and direct the respondent to restore the applicant's assignment of duty, which was withdrawn. as to grant or not to grant, is discretionary power and a court of law cannot be seen to interfere with a discretionary power exercised as doing so would be an

- d) It is hereby declared that an order of injunction restraining the respondent from interfering with the applicant's work as the District Engineer is disallowed since the order of mandamus has been disallowed.
- a) It is hereby declared that the prayer for the award of general damages of UGX 200,000,000 for the lost financial benefits associated with the withdrawn assignment under the appointment are disallowed as this judicial review proceeding is not the forum for such award.

- b) It is hereby declared that aggravated damages of UGX 50,000,000 for causing the applicant psychological torture and mental anguish after the assignment was withdrawn are disallowed as that cannot be proved through an application for judicial review.
- c) The applicant is entitled to the costs of this application only in recognition of his spirited effort to bring to light the impropriety of the respondent's actions to be paid by the respondent.

I so order

Hon. Justice Dr Henry Peter Adonyo

Judge

31st May 2023

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Prepared on 12 October 2026 · Esheria