

UGANDA / JUDGMENT

Ezati v Maracha District Local Government (Civil Appeal 10 of 2021)

[2024] UGHC 996 (4 October 2024)

[2024] UGHC 996

COURT
High Court of Uganda

BEFORE
Acellam, J

CASE / FILE NUMBER
Civil Appeal 10 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

MISCELLANIOUS CAUSE NO.0010 OF 2021 AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF
CERTIORARI TO QUASH THE DECISION OF THE RESPONDENT'S CHIEF
ADMINISTRATIVE OFFICER.

1. EZATI TIMOTHY =====APPLICANT

VERSUS

1. MARACHA DISTRICT LOCAL GOVERNMENT=====RESPONDENT 15

RULING

BEFORE HON. JUSTICE COLLINS ACELLAM

Brief Introduction

20 This is an Application brought by way of Notice of Motion under Article 42 of the Constitution of the Republic of Uganda, 1995 as amended, Section 33 and 36(1) (c) of the Judicature Act, Cap 13, Rules 3(1)(a), 5 & 6 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 as amended and section 98 of the Civil Procedure Act Cap 71 as amended seeking the following orders;

- a) A declaration that the interdiction of the Applicant on the 29th day of October 2021 was unreasonable, unlawful, illegal, irrational and partial exercise of discretion by the Respondents' Chief Administrative Officer.
- b) A declaration that the interdiction of the applicant on the 29th day of October 2021 was mala-fide, witch hunt, irregular, unfair and an abuse of authority by the Chief Administrative Officer of the Respondent.
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- c) An order of certiorari does issue to quash the Chief Administrative Officer's irrational decision interdicting the applicant on the 29th day of October 2021
- d) An order restoring the Applicant as the Senior Civil Engineer/Water and Caretaker District Engineer Maracha District Local Government does issue.

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- e) General damages for inconvenience suffered by the Applicant as a result of the Respondent's illegal and or irrational decision.
- Any other remedy and or decisions this court deems fit in the circumstances. $\$f$
- g) Costs of this application.

Grounds of the Application.

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- The grounds on which this Application is based is contained in the affidavit of EZATI TIMOTHY 10 MALUMAH, the Applicant herein briefly that;
- a) The Applicant is the Senior Civil Engineer/ Water and Caretaker District Engineer Maracha District Local Government.
- b) On the 29th day of October 2021, the Chief Administrative Officer, Maracha District Local Government unlawfully interdicted the applicant from the office on grounds of criminal charges not in any way connected to the Applicant's employment with the Respondent.
- The criminal Charges for which the Applicant is interdicted are fabricated by Maracha Police $\$c$ and therefore devoid of any truth.
- d) The interdiction of the applicant was an unreasonable, unlawful, irrational and partial exercise of discretion by the Respondent's Chief Administrative Officer.

- The interdiction has subjected the Applicant to loss, mental anguish and or psychological \$e)\$ torture for which he seeks to be awarded general damages of Ugx. 230,000,000 (Uganda Shillings two hundred and thirty million)

Grounds in Opposition

- In opposition, the Respondent vide their affidavit in reply deponed by Okumu Christopher, the 25 Chief Administrative Officer of Maracha District Local Government state briefly that;
- a) On the 14th October 2021, he received a letter dated 8th October 2021 from Okuja Agnes D/ASP Maracha which served to inform him about the criminal proceedings involving the Applicant. He was in doubt of the contents and wrote to court to confirm the allegations.
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- b) That he wrote to the Applicant on 18th October 2021 requesting him to provide information about the case.
- That on the 25th October 2021 he wrote to the Magistrate's Court in Koboko to verify the \$c)\$ contents of the letter dated 8th October 2021 and the Court issued a charge sheet where the Applicant was charged for giving false information vide Maracha CRB 248/2021
- d) That the charge sheet proved that on the 2nd September 2021 the Applicant was charged at Maracha Central Police Station for giving false information to a person employed in Public Service and the charge was sanctioned on 3rd September 2021
- e) That on the 29th October 2021, he received a reply from the Applicant dated 27th October 2021
- That on 29th October 2021 he interdicted the Applicant to pave way for investigations and \$f\$ informed him to hand over office to Mr. Oneti William Agele, the Senior Assistant **Engineering Officer**
- That he consulted the Public Service standing orders and interdicted the Applicant \$g\$ according to the standing orders which instructed that the applicant could be interdicted in the event of a criminal charge. That the interdiction was lawful and paragraph 36 is devoid of truth
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- h) That the application does not disclose reasonable grounds to grant the applicant an order of certiorari as the application is premature, bad in law and this honorable court should dismiss the application with costs.

Representation

The Applicant is represented by the M/S Alaka & Co. Advocates whereas the Respondent is represented by the Attorney General.

I have perused through the file and scrutinized all documents that are constitutive of Annextures. Both Counsel for the Applicant and the Respondent filed written submissions which I shall be referring to in this ruling.

<u>Issues</u>

- 1. Whether the actions of the Respondents are amenable to Judicial review?
- 2. Whether the Applicant exhausted all the internal remedies of the Maracha District Local Government?
- 3. Whether there are any grounds for Judicial review?

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- 4. Whether the Applicant is entitled to the relief sought for.

Determination

Whether the application is amenable to judicial review?

Judicial review is the process through which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior courts, tribunals and other public bodies or persons. In deciding a judicial review application, court is not concerned with the merits of the decision in respect of which the application is made.

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It is concerned with the lawfulness of the decision-making process or whether the decision constituting the subject of the application for judicial review was made through error of law, procedural impropriety, irrationality or outright abuse of jurisdiction generally. See Kiconco Patrick

v Attorney General & Committee on Public Accounts (Commissions, Statutory authorities and 15 state enterprises) of Parliament, O/C CID Parliamentary Police Division Miscellaneous Cause No. 0086 of 2023.

In the case of *Mundala & Anor v Bundibugyo District Local Government* (Misc Cause No. 090/2016) [2017] UGHCCD 24 (23 March 2017) it was stated that Judicial review is only available against a public body in a public law matter. In essence, two requirements need to be satisfied. First the body under challenge must be a public body whose actions can be controlled by judicial review.

Secondly, the subject matter of the challenge must involve claims based on public law principles not the enforcement of private law rights.

In reference to the facts, Maracha District Local Government is an administrative body. Rule 3 of

the Judicature (Judicial Review) (Amendment Rules SI 32/2019 provides that a public body 25 includes the Government, Government departments, services or undertakings of Government.

In the case of *Mundala & Anor v Bundibugyo District Local Government* (Misc Cause No. 090/2016) [2017] UGHCCD 24 (23 March 2017) it was stated that the traditional test for determining whether a body of persons is subject to judicial review is the source of its power. If the

source of power is a statute or subordinate legislation under statute like for the applicants the source 30 of power is spelt in the Constitution and Local Government Act as amended. Then it means the applicants are amenable to judicial review. These principles are well articulated by SSsekana in his

treatise on Public Law in East Africa (Law Africa Kenya as 2000) at Pp 37-47 where he discusses the $\mathbb{S}$ availability of Judicial Review.

Pursuant to the above reasons, I therefore find that the Application is amenable for judicial review.

Issue two

Whether the applicant has exhausted all the internal remedies of the Maracha District Local Government?

Rule 7A (1) of the Judicature (Judicial Review) Rules 2009 provides thus that the court shall, in considering an application for judicial review, satisfy itself of the following-

- (a) that the application is amenable for judicial review;
- (b) that the aggrieved person has exhausted the existing remedies available within the public body or under the law; and

(c) that the matter involves an administrative public body or official.

A party must exploit or resort to all available and effective remedies available under the law before recourse is made to Court. This requirement is hinged on the known administrative principle of creating effective dispute resolution mechanisms within the public bodies which have the knowledge

- and expertise to handle the disputes that arise in different public institution/bodies. The broad 20 contours of this principle were well sieved and brought out by *Musota J (as he then was) in Charles* Nsubuga vs Eng. BadruKiggundu& 3 Others, HC MC No. 148 of 2015, citing with approval the position of High Court of Kenya in the case of Bernard Mulage vs Fineserve Africa Limited & 3 Others Petition No. 503 of 2014, thus:
- "There is a chain of authorities from the High Court and the Court of Appeal that where a 25 statute has provided a remedy to a party, this court must exercise restraint and first give an opportunity to the relevant bodies or state organs to deal with the dispute as provided in the relevant statute".

From the reading of rule 7A (1), where there is an alternative remedy provided for under the law, Courts should be reluctant to interfere unless and until those alternative remedies are fully exploited. 30

This position is in tandem with the dicta of the Court of Appeal in Leads Insurance Limited vs 5 Insurance Regulatory Authority & Another, CACA No. 237 of 2015, where it was held thus:

"The remedy by way of judicial review is not available where an alternative remedy exists. This is a preposition of great importance. Judicial review is collateral challenge; it is not an appeal. Where Parliament has provided by statute appeal procedures, it will only be very rarely that the court will allow the collateral process of judicial review to be used to attack an appealable decision.

There are however permissible exceptions where Court can admit and entertain an application for judicial review even in the currency of the alternative remedies. This was put in clear context by Justice Musa Sekaana in Salim Alibhai& Others vs Uganda Revenue Authority, HC M. C No. 123 of 2020, he observed thus:

- "The rule of exhaustion of alterative remedies is not cast in stone and it applies with necessary 15 modifications and circumstances of the particular case ... When an alternative remedy is available, the court may refrain from exercising its jurisdiction, when such alternative, adequate and efficacious legal remedy is available but to refrain from exercising jurisdiction is different from saying that it has no jurisdiction. Therefore, the rule of exhaustion of alternative remedy is a rule
- of discretion and not one of compulsion. In an appropriate case, in spite of availability of 20 alternative remedy, the High Court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely,

- \$(i)\$ where the application seeks enforcement of any of the Fundamental rights;
 - \$(ii)\$ (ii) where there is failure of natural justice; or
- (iii) the orders or proceedings are wholly without jurisdiction or the vires of an Act is \$25\$ \$(iii)\$ challenged..."

The Court must have good and sufficient reason to bypass the alternative remedy provided for under the statute. To allow litigants to proceed straight to court would be to undermine the autonomy of the administrative processes.

It is therefore deducible from the above, that court may in exceptional circumstance grant remedies 30 in judicial review even where the alternative remedies exist and before their exhaustion. These exceptions however should be applied on a case-by-case basis.

- In this case, the complaint by the applicant is that the Chief Administrative Officer of the \$ \mathsf{S} \$ Respondent interdicted the Applicant in his letter dated 29th October 2021 based on the illegal and unlawful advice by the D/ASAP Okuja Agnes in a letter stating that as the accused person holds a public officer under the public office Service Act and statutory instrument 288-1, the appointing authority has a right to have the accused interdicted pending trial.
- The Applicant further states that he was unlawfully interdicted on the 29th October 2021 on charges 10 that were fabricated and not in any way connected his roles or employment. He argues that the CAO had no mandate to comply with the advice of the D/ASP rather ought to have sought advice from the Attorney General in such a circumstance.
- I note that the Applicant only received a letter of his interdiction and was never called or made to respond to any allegation, it admitted by the respondent deponent that he only called departments 15 concerned to verify the truthfulness of the Allegations and never called upon the Applicant to verify or defend himself.

According to regulation 7 paragraph c of the Public Standing Order, where a public officer is involved in a gross misconduct, and the Responsible Officer has reason to believe that gross misconduct has been committed, he or she shall interdict the public officer in question. The allegation however must be of gross misconduct.

There is a difference between Gross misconduct and Misconduct wherein gross misconduct is serious enough to fire an employee on their first offense, misconduct, though still consequential, does not result in such severe consequences. While employees may well face consequences for misconduct, they are likely to continue to be employed, especially after the first offense.

I agree that trivial matters or charges cannot warrant interdiction, interdiction must have been a last resort and the offence with which the public officer is charged with must be one of a serious nature and not a misdemeanour. I note that there was no chance given to the Applicant to exhaust its administrative remedies and only recourse was court action. This is a case court would exercise her discretion to adjudicate.

Accordingly, this issue is answered in the affirmative.

Issue three

Whether there are any grounds for judicial review?

Judicial review is not concerned with the decision in issue but with the decision-making process through which the decision was made. See *Wamala Abdu v Commissioner for Land Registration* Miscellaneous Cause No.16 of 2024.

In the case of *Pastoli v Kabale District Local Government Council and others* [2008] 2 EA 300. 10 Court noted that in order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety..."

I shall now proceed to examine the above grounds in light of the facts.

Illegality.

15 This is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality. It is for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service 20 Commission.

In light of the facts, the applicant faults the respondent's decision to interdict him, advancing the argument that such power was wrongly exercised and that he abused the authority and used his power for improper purposes. The Applicant states under paragraphs 2 to 9 of his affidavit in support that in march 2021, he learnt of a plan or threat by a one Ronald Ocatre and his brothers

- 25 to kill him, he reported the matter to the DISO and RDC who advised him to report the matter to police for investigation which he did via GEF 001/2021. The officer in charge assigned an investigating officer, his statement was recorded, however, in a most controversial, most corrupt manner, he was instead charged with giving false information to the public officer via MAR/CRB/214/2021.
- 30 The Applicant states that it's on that basis that the CAO interdicted him.

The Respondent in their arguments state that the actions of CAO was legal as he only exercised his mandate to interdict the Applicant to pave way for further investigations and that the Applicant's

averments are not backed up by any evidence. That the Applicant filed this Application when the disciplinary process had not run its course.

According to regulation 10 (d) of Part (A - a) of The Uganda Public Service Standing Orders (2010 edition), the power to appoint, confirm, discipline and remove officers from office in the public service is vested in the relevant District Service Commission in the case of Local Government staff except the Chief Administrative Officer, Deputy Chief Administrative Officer, Town Clerk and Deputy Town Clerk of City and Town Clerks of a Municipal Council. The Applicability Chapter of The Uganda Public Service Standing Orders (2010 edition) provides that all public officers are bound by the Standing Orders. These orders therefore apply to all public officers serving in Ministries, Departments or Local Government units.

- 15 The expression "Public Officer" has the meaning assigned to it by articles 175 (a), 175 (b) and 257 (1) of The Constitution of the Republic of Uganda, 1995 which are; "any person holding or acting in an office in the public service," where "public service" means service in any civil capacity of the Government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament; and that "public office" means an office in the public service;
- "public officer" means a person holding or acting in any public office; "public service" means service in a civil capacity of the Government or of a local government. Being a person employed in civil capacity a local government, whose emoluments are payable directly from the Consolidated Fund or directly out of monies provided by Parliament, the applicant is a Public Officer, bound by the Standing Orders.

The Public Service Standing Orders, 2010 in part (F-S), define interdiction as "the temporary removal of a public officer from exercising the duties of his or her office while investigations over a particular misconduct are being carried out." Accordingly, interdiction involves a temporary removal of an officer from performing his or her normal duties. An officer, who is interdicted, is prohibited from coming to work, and he or she receives no less than one half (1/2) of his or her salary with effect

from the date of interdiction until the matter is finalized. If the officer is cleared or acquitted at the conclusion of the disciplinary proceedings or trial that triggered the interdiction, he or she is granted all emoluments withheld during the period of interdiction in the event that he or she is allowed to return to duty. All emoluments are therefore restored.

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Under The Public Service Commission Regulations, S. I No.1 of 2009, Regulation 38 vests that power in the "responsible officer," which expression means; - (a) the Permanent Secretary of the Ministry in or under which, the officer is serving; (b) the Chief Administrative

Officer or Town Clerk of the Local Government, Municipality or Town Council under which the officer is serving; (c) in the case of an officer serving in or under a Ministry or department set out in the first column of the schedule, the person holding the office set out opposite; or (d) in the case of an officer to whom neither of the 10

preceding paragraphs of this definition applies, the Permanent Secretary of the Ministry of Local Government. Under Regulation 38, the responsible officer may interdict an officer from exercising his or her powers and performing the functions of his or her office, where:-

- a. a responsible officer considers that public interest requires that a public officer ceases
- to exercise the powers and perform the functions of his or her office; or
- b. disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her,

An officer may therefore be interdicted when disciplinary proceedings for his or her dismissal are being undertaken or are about to be undertaken or if it is considered not in the public interest for him or her to remain in office before, he or she is cleared of the charge against him or her. Interdiction may also take place on the grounds that criminal charges are pending.

Factors that should be taken into account at that stage include; the nature and gravity of the criminal or disciplinary offence laid against the officer; possibility of the same offence or misconduct recurring if the officer remains in office; availability of suitable posts for re-deploying the officer; and the likely public perception. Interdiction of an officer ordinarily occurs only when re-deployment to alternative duties is not possible or inappropriate and where to do otherwise is manifestly not in the public interest. It is imposed in respect of an officer charged with a criminal or disciplinary offence which may lead to his or her removal from the service.

In light of the facts, the offence with which the Applicant was charged with is giving false information which on record is a minor offence, the consequence of which is not in any way related to his duties 30 in public service. The Applicant had the right to report whatever concerns he has in respect to threat to his security. The actions undertaken by the CAO was too harsh and unlawful in comparison to the offence with which the Applicant was charged. Cautionary measures ought to be made since this

is merely considered a misconduct under the law and not a gross misconduct that requires an 5 interdiction from office by the responsible officer.

The key rationale for interdiction is the reasonable apprehension that the public officer will interfere with investigation or repeat the misconduct. It follows that it is only in exceptional circumstances that a public officer should be suspended pending a disciplinary enquiry. Interdiction may be justified where the Responsible Officer has a reasonable concern that the "business interest" of the entity would be harmed by the public officer's continued presence in the workplace, or where the public officer's presence would affect working relationships, or where the public officer has access to confidential information, or if the offence or accusation is

of a serious nature. This was not the case in the instant matter.

Accordingly, I declare that the actions of the CAO were unlawful and uncalled for. 15

Irrationality.

I am persuaded by the statement of Justice Stephen Mubiru in the case of Oyaró v Kitgum Municipal Council (MISCELLANEOUS CIVIL CAUSE No. 0007 OF 2018) [2018] UGHCCD

- 40 (13 September 2018 wherein he states that the concept of administrative irrationality is often 20 expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is most commonly called "Wednesbury unreasonableness." It is a concept premised on the fact that discretionary powers must be employed in a structured and reasonable manner and in the public interest. In making their decision, the decision-makers will
- 25 consider "objective criteria" or general facts or principles. Decision-makers must use their judgement and make this choice. The decision-makers will be required to apply the relevant principles and use their judgement to arrive at a decision which is appropriate to the circumstances. This involves making a choice and is often called a "discretion." Issues of fact are within the decision-making power of officials unless an erroneous conclusion deprives the official of jurisdiction.
- I totally agree with the above statement, the Court may intervene if in taking that decision, the 30 decision-maker failed to comply with a mandatory and material procedure or condition prescribed by an empowering provision; the decision was procedurally unfair; it was materially influenced by an error of law; it was taken with an ulterior motive or purpose calculated to prejudice the applicant's

- legal rights; the respondent failed to take into account relevant considerations; the respondent acted 5 on the direction of a person or body not authorised or empowered by any written law to give such directions; the decision was made in bad faith; the decision is not rationally connected to- (i) the purpose for which it was taken; (ii) the purpose of the empowering provision; (iii) the information before the respondent; or (iv) the reasons given for it by the respondent, or such similar grounds.
- In Nakaggwa v Kalungu District Local Government Misc Cause No. 12 of 2020, court stated that 10 to determine whether a decision made by a public body was irrational thereby to warrant the grant of judicial review, there must be such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision, such a decision is usually in defiance of logic and acceptable moral standards.

- 15 Unreasonableness and unfairness in administrative decisions subject to judicial review may be adduced from the non-observance of the rules of natural justice or acting without procedural fairness towards one to be affected by the decision.

In the instant case, it's the Applicant's concern that the CAO interdicted him on a letter dated 29th October 2021 marked G based on the illegal and unlawful advice by the D/ASP Okuja Agnes who connived with high profile politicians in the district to bring him down and put pressure on the CAO to interdict him. That the CAO immediately prepared his interdiction as he wrote to him to

offer an explanation on the criminal charges as a mere formality.

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The Applicant further argues that the D/ASP has no mandate to advise the CAO to interdict the Applicant and neither was the CAO mandated to comply with any such illegal and unlawful advice as the lawful person to advise the CAO is the Attorney General in such a circumstance.

The circumstances that led to charge against the Applicant is one that needed investigations by the CAO before carrying out the interdiction. In my view, the fabrication of criminal complaints and/or knowingly giving false evidence/information are of course serious criminal offences in their own right. For various reasons, not least the criminal burden of proof, it does not follow that an acquittal

30 or a discontinued investigation/prosecution automatically means that an allegation has been fabricated and therefore false. However, if credible evidence exists that an allegation has been fabricated then the police are duty-bound to investigate such a complaint and if there is no potential evidence to lead such a file, it's on their right to close such a file, this does not in any way render the Applicant prone to a charge of giving false information.

- Every individual has a right to report to police any threat to his security as long as he has strong $\$ \{S\}$ believe that his life is in danger. Must we deem every complain made in police with no credible evidence false? This ought to be taken with great care before such a charge is preferred. In my honest view, the action taken by the CAO meant that a public officer should not make any complains or no charge should be preferred against him outside his service. The society we live in come with its
- 10 vices and not even public officers are immune from it. It was only right that a fair recourse other than interdiction should have been taken by the CAO because the offence with which the Applicant was charge is a minor one and secondly, it was outside the scope of his employment. A just and fair measure should have been taken thus I find the actions of the CAO irrational in the circumstances.

Procedural impropriety.

This is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

Nakaggwa v Kalungu District Local Government Misc Cause No. 12 of 2020.

Clearly from the affidavit in support and the evidence on court record, the interdiction of the Applicant was unfair and unjust as the CAO acted for lack of better word "with impulse and pressure" without putting into consideration the circumstances of the case at hand, an act that grossly violated the Applicant's right as guaranteed under Article 42 of the 1995 Constitution.

In the premises, I therefore declare that the interdiction of the Applicant on the 29th day of October 2021 as illegal, irrational and tainted with procedural impropriety this grounds for Judicial review succeeds

Issue Four

Whether the Applicant is entitled to the relief sought for?

Section 36(1) of the Judicature Act Cap 16 empowers this Honorable Court in an application for judicial review to grant orders of mandamus, prohibition and certiorari.

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Rule 3(1) and (2) of the Judicature (Judicial Review) Rules SI 11 of 2009 provides that a party may apply for an order of prohibition, certiorari, declaration and injunction by way of judicial review in appropriate case.

The grant of judicial review remedies is discretionary. In *Nakaggwa v Kalungu District Local Government* Misc Cause No. 12 of 2020, court stated that:

- 10 "The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts should weigh various factors to determine whether they should lie in any particular case.
- The Applicant prayed for certiorari to quash the Chief Administrator's irrational decision interdicting the Applicant on the 29th day of October 2021.

In the case of Aine Godfrey Kaguta v NRM and another Misc Cause No.343 of 2020 court held that under Judicial review proceedings once a decision has been proved to be illegal, the resulting effect of Certiorari would therefore be to quash the said ultra vires and or illegal decision and deprive

20 the said decision of any effect whatsoever.

I therefore find that the applicant is entitled to the remedy of certiorari.

The Applicant is entitled to be restored as the Senior Civil Engineer/ Water and Caretaker District Engineer Maracha District Local Government.

General damages. It is rare for courts to award general damages in an application for judicial review.

\$25\$ Otherwise, judicial review proceedings will turn into ordinary proceedings for damages and yet it is not intended for that purpose. See Ochengel Ismael & Another v Attorney General Miscellaneous Cause No. 274 of 2019.

Damages are only awarded in judicial review when the tort of misfeasance in public office (abuse of public office) is proved;

30 When an official acts maliciously in the performance of his duty and with the intent of inflicting or injury on a person; or where an official knowingly acts without lawful authority and causes damage to some person.

$\$ \mathbf{S} \$$ This tort comes into being when there is conscious abuse of power on the part of a public authority, either by malice or knowledge of invalidity on the part of the concerned official. It includes malicious abuse of power, deliberate maladministration and other unlawful acts committed by a person holding a public office.

In light of the above, it is only fair that general damages are awarded to the Applicant. I hereby grant the following orders;

- 1) I declare that the interdiction of the Applicant on the 29th day of October 2021 was unreasonable, unlawful, illegal, irrational and partial exercise of discretion by the Respondents' Chief Administrative Officer.
- 2) An order of certiorari is hereby issued to quashing the Chief Administrative Officer's decision interdicting the applicant on the 29th day of October 2021
- 3) An order restoring the Applicant as the Senior Civil Engineer/ Water and Caretaker District Engineer Maracha District Local Government hereby issue.
- 4) General damages of 5 million (Five Million Shillings only) is awarded to the Applicant.
- 5) Costs of the Application is awarded to the Applicant
- It is trite that costs follow events, costs are therefore awarded to the Applicant. 20

I so order.

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