

**Makerere University v Makerere
University Staff Appeals Tribunal and
Another (Miscellaneous Cause 285 of
2023) [2024] UGHCCD 124 (12 August 2024)**
[2024] UGHCCD 124

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- 1. An Order of Certiorari doth issue quashing the ruling and orders of the 1st respondent dated 1st March 2023 in which the 1st respondent ordered the reinstatement of the 2nd respondent into the service of the applicant.
- 2. A declaration doth issue that the decision the 1st respondent to set aside to set aside the termination of the probationary contract of the 2nd respondent was irrational, illegal, unjustified and unreasonable.
- 3. A declaration doth issue that the decision of the 1st respondent to order the reinstatement of the 2nd respondent into the service of the applicant was irrational, illegal, unjustified and unreasonable.
- 4. A declaration doth issue that the decision of the 1st respondent dated 1st March 2023 was irrational illegal, unjustified and unreasonable.
- 5. An Order of Prohibition doth issue restraining the 2nd respondent from enforcing the orders of the 1st respondent passed on 1st March 2023.
- 6. A Declaration doth issue that the Staff Tribunal of Makerere University as a Tribunal set up to adjudicate on disputes between the University and its employees or former employees as an administrative/quasi-judicial body, has no powers to appoint or confirm employees in the service of the Applicant University.
- 7. An Order of Certiorari doth issue calling into court the Staff Tribunal's impugned proceedings and orders for quashing from public records.
- 8. An Order of Mandamus doth issue directing the 1st respondent to comply with the its statutory duty to conduct its affairs in accordance with the rules of procedure, within the institutional framework.
- 9. An Order of Prohibition doth issue prohibiting the Staff Tribunal from illegally interfering into the statutory duties of the applicant and its organs.
- 10. Costs of the application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the Yusuf Kiranda-the University Secretary of the applicant University but generally and briefly state that;

- 1) The 2nd respondent was appointed in 2021 by the applicant on a probationary Contract as a Director Human Resources for six months before he could be confirmed into the University service for a 5 year contract of employment.
- 2) That after the six-month period, the 2nd respondent failed to satisfy the Appointments Board with his performance, instead of the being let off at the stage, the 2nd respondent opted to consent to an extension of his probationary contract for another six-months, to enable him rectify his performance inadequacy.

- 3) That on the 4th day of May 2022, the Appointments Board decided to terminate the 2nd respondent's probationary contract without confirmation in the University Service or attaining the five-year employment contract.
- 4) That the respondent was paid all his terminal and other benefits and immediately vacated office.
- 5) That the 2nd respondent appealed the decision of the Appointments Board to the 1st respondent.
- 6) That during the hearing of the said appeal, during the hearing of the said appeal the 1st respondent issued several ex parte interim orders against the applicant among which included an order not to advertise

the post of Director of Human Resources and the same was issued without a hearing or proceedings.

- 7) That on the 1st day of June 2022, the 1st respondent issued another temporary injunctive order directing that the 2nd respondent be maintained on the applicant's payroll until the determination of the appeal and the same order was issued without any proceedings of the 1st respondent.
 - 8) That the applicant complained and made several efforts to overturn the ex parte orders to no avail.
 - 9) That the 1st respondent delivered its ruling on the Appeal on 1st March 2023 which was contrary to procedure, illegal, irrational and unreasonable against the applicant. The said ruling was delivered more than 9 months after filing the appeal and outside the period allowed under the Universities and Other Tertiary Institutions Act, 2001.
 - 10) The decision of the 1st respondent quashed the termination of the appellant's contract and further directed that the 1st respondent be reinstated in the position of Director Human Resources with salary arrears from the time he was deleted from the payroll.
 - 11) That the 1st respondent does not have the mandate to confirm staff in the University service and by issuing such an order the Tribunal acted outside the law and institutional framework governing the applicant.
- 12) That the applicant has unfettered right to terminate an employee on probation with or without reason as long as due procedure is followed. In confirming the 2nd respondent in the service of the University, the 1st respondent acted ultra vires its powers and usurped the role of the Appointments Board and thus ring-fenced the vacant position for the 2nd respondent

The 2nd respondent opposed this application and filed an affidavit in reply contending that;

- 1. He was employed as Director Human Resource for a 5 year period with a probationary period of six months and was appraised by the Ag. Deputy Vice Chancellor, Finance and Administration Associate Professor Josephine Nabukenya on 12th November 2021 in which he scored 92% and was strongly recommended for confirmation.
- 2. That the applicant on 16th February 2022, through the University Secretary Yusuf Kiranda gave the respondent a letter dated 19th January 2022 in which the Appointments Board of the applicant allegedly deferred the confirmation of his service and purported to extend the probation which had ended on 24th November 2021 for a further six months.
- 3. That the respondent was coerced by the applicant to sign the said letter on 16th February 2022 accepting to serve an extension of the illegal probation period and proceeded to also serve it.
- 4. That the applicant held a second appraisal meeting and his overall rating was 77% where after the appraisal report was submitted to the Appointments Board for consideration to confirm his appointment.
- 5. That the appointments board without any justifiable reason decided to terminate the contract.
- 6. That the 2nd respondent decided to lodge an appeal on 11th May 2022 since he was not satisfied with the decision of the appointments Board.
- 7. That the 2nd respondent wrote a letter to the 1st respondent requesting for interim orders inter alia to stop advertising the position before the appeal is heard. The applicant was served on the same day 12th May 2022 and they never made a response.
- 8. That the 1st respondent made a ruling on 20th May 2022 and gave an order ex parte prohibiting the advertising of the position until temporary injunction was heard.
- 9. That in management and administration of the Universities, the applicant has no right of judicial review and that the instant application is a disguised appeal.

The applicant filed a supplementary affidavit and notified court that a new matter had been drawn to its attention which is important and vital.

- 1. That the 2nd respondent was and or is currently employed at the Mulago National Referral Hospital as the Assistant Commissioner, Human Resources which is an employment in the Public service.
- 2. That it is a fact that in Uganda, that it is illegal for one to hold two jobs in the Public Service and thereby draw two salaries.
- 3. That what the 2nd respondent is demanding would amount to committing an illegality.

The applicant was represented by *Mr. Hudson Musoke*. whereas the 1 st respondent was represented by *Mr. Jonan Rwambuka*

Two issues were framed by the applicant for court's determination;

- *1. Whether the decision of the Makerere University Staff Tribunal was marred with illegalities, procedural impropriety and irrationality?*
- *2. Whether the Applicant is entitled to the remedies sought?*

At the hearing of this application the parties were directed to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Preliminary Considerations.

Whether the application is not fit for judicial review?

The 2nd respondent contended that this is not an application for judicial review because the applicant does not have a right to apply for judicial review but rather a disguised appeal which is not allowed in law.

The respondent further submitted that the application has nothing to do with process of making a decision but rather the fact that the applicant has management issues with its organs and there is leadership crisis hence this appeal that is not allowed in law.

The respondent further contended that jurisdiction is a creature of a statute. This matter arises from the Universities and Other Tertiary Institutions Act 2001 for decisions taken by the Applicant's Appointments Board and later reversed by its Staff Tribunal as provided under Section 57(3);

A member of staff aggrieved by the decision of the tribunal under subsection (2) may within thirty days from the date he or she is notified of the Tribunal's decision apply to the High Court for Judicial review.

It was counsel's submission that the intention of the legislature to ensure finality of decisions of the tribunal, just like the current applicant cannot appeal to the tribunal and cannot challenge the decision of the tribunal by way of judicial review to this court.

The applicant counsel submitted that the applicant was a party before the Staff Tribunal and subjected itself to the jurisdiction of the Staff Tribunal. The applicant was an aggrieved party by the actions and decisions of the Staff tribunal. The Staff Tribunal is a quasi-judicial board clothed with public powers and decision-making independence. This is the very essence of judicial review, where the High Court Exercises supervisory powers over quasi-judicial bodies. The applicant has a right of course to seek the authority of Court where such powers are not exercised properly. The present case is a case in point of gross abuse in the decision-making process.

Analysis

Judicial review is an integral part of the Constitution as its basic feature and the courts have thus ensured that judicial review is an inseparable part of the constitution and it cannot be excluded even by a constitutional amendment. If the courts are deprived of their review power, the Constitution will be reduced to a collection of platitudes without any binding force. *See *Minerva Mills Ltd v Union of India* [1980] 3 SCC 625*

The purpose of judicial review/administrative law is to identify the excesses of power and endeavours to combat them. Power may be exercised for purposes other than those for which it has been conferred by the Constitution or the law.

The will of the power-holder becomes the sole justification for the exercise of power. This is the essence of arbitrariness. It is clear that if powers are used outside the ambit of statutory purposes, it is not only ultra vires but also one of arbitrariness.

Where a public authority or decision maker has directed itself correctly in law, the court on judicial review will not interfere, unless it considers the decision was irrational. The court will however only quash a decision if the error of law was relevant to the decision making process. This could be ascertained where there is ulterior purpose or motive.

Powers given to a public body for one purpose cannot be used for ulterior purposes which are not contemplated at the time the powers are conferred. If a court finds that powers have been used for unauthorised purposes, or purposes 'not contemplated at the time when the powers were conferred', it will hold that the decision or action is unlawful.

Power or discretion conferred upon a public authority must be exercised reasonably and in accordance with law. An abuse of discretion is wrongful exercise of discretion conferred because it is the exercise of discretion for a power not intended. Accordingly, the courts may control it by use of the *ultra vires doctrine.* The courts task is merely to determine whether the decision made is one which achieves a reasonable equilibrium in the circumstances. See *Minister of Environment Affairs and Tourism v Bato Star Fishing (Pty) Limited 2004 (7) BCLR 687 (CC); 2004 (4) SA 490 (CC) para 49.*

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely- that is to say, it can validly be used only in the right and proper way which Parliament conferring it is presumed to have intended.

It is a requirement of the rule of law that exercise of public power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are in effect, arbitrary and inconsistent with this requirement. See

Pharmaceutical Manufacturers Association of SA In Re: Ex Parte Application of President of the RSA 2000 (3) BCLR 241(CC)

The High Court is empowered to make any prerogative orders as the case may be of mandamus, prohibition or certiorari removing proceedings or matter to High Court as provided under section 36 of the Judicature Act. Unless the Parliament speaks clearly to the contrary in a statute, a decisionmaker should act in compliance with the rule of law, including access to justice and the principle of equality.

The applicant in this case was a party to the proceedings in the Staff Tribunal and after the decision is made either party would be aggrieved by the decision. Section 57(3) of the Universities and Other Tertiary Institutions Act seems to give only a member of staff a right to apply for Judicial review. This is not only an affront to the right of equality before the law but also against the established principles of rule of law.

In a mature democracy, the courts and Parliament have distinct and complimentary constitutional roles in securing good government according the Constitution. The courts exercise of power should not be unnecessarily curtailed in respect of some parties like in the present case. The courts will no longer avoid adjudicating on the legality of certain actions or decisions simply because Parliament has not expressly included the constitutional right to judicial review. The court should be at liberty to bring into question any decision of a public body/tribunal to avoid abuse of power.

In a Constitutional democracy, the role of judicial review is to guard the rights of parties against abuse power by any public body including quasijudicial bodies like the Staff Tribunal. The exclusion of judicial review against the Staff Tribunal by the University would make it operate without being checked in its operations and result in abuse of power. Judicial review supervises not only decision-making power conferred by statute, but also

other regulatory bodies performing public functions and decisions taken by such bodies including the University Staff Tribunal.

The constitutional principle of equality of treatment cannot be taken away by Parliament in enacting laws. The legislature should always ensure equal treatment before the law otherwise, such legislation which is in violation would be ignored by the court in order to uphold the rule of law. Where the principle is violated it is enforced by the courts which define and articulate its precise content. The courts should not respect or ought not to recognise as valid a statutory provision that violates a fundamental right or principle like equality before the law or equal treatment. The rule of law enforced by the courts is the ultimate controlling factor on which our Constitution is based. *See Jackson v Attorney General [2006] 1 AC 262*

Judicial review has developed to the point where it is possible to say that no power-whether statutory or otherwise is any longer inherently unreviewable. Courts are charged with the responsibility of adjudicating upon the manner of exercise of a public power, its scope and substance. No party aggrieved should be excluded from challenging such exercise of power.

Any such exclusion will be an affront to the principle of equal treatment before the law which is a cardinal principle of rule of law. Like courts tribunals are public authorities operating under the rule of law and it is important that parties aggrieved by their determinations are able to challenge them.

In any event, the failure by Parliament to provide for Judicial Review by the University against the decision of the University Staff Tribunal in section 57(3) of the University and Other Tertiary Institutions Act Cap 262 does not take away the constitutional right of the applicant in Article 42 of the Constitution to challenge the decision taken by the Staff Tribunal, or the power of the High Court in Section 40 of the Judicature Act and the rules made thereunder to grant judicial review remedies to any aggrieved party.

This application is therefore fit for judicial review.

Whether the decision of the Makerere University Staff Tribunal was marred with illegalities, procedural impropriety and irrationality?

The applicant's counsel challenged the decision for illegality since the application was heard and determined after 45 days. It was his contention that the jurisdiction of the tribunal should be exercisable within 45 days from the filing of the appeal.

According to counsel's submission any act or action or ruling delivered or carried out after 10th August 2022 was ultra vires the enabling law which is section 57(2) of the Universities and Other Tertiary Institutions Act. It was further contended that the tribunal must adhere to 45 days limitation. The law does not provide or allow for extension for whatever reason.

The applicant's counsel further submitted that the responsibility of appointing staff into the University Service is solely vested with the Appointments board. The 1st respondent in nits ruling dated 1st March made the following Order:

"The Appellant is reinstated to his position as a Director, Human Resource with Salary Arrears from the time when he was deleted from the Respondent's payroll to date."

It was counsel's contention that the said Order has the effect of appointing the 2nd respondent into the service of the University which is ultra vires the provisions of the principles of the Universities and Other Tertiary Institutions Act.

The applicant's counsel submitted that under section 57(1) of the Universities and Other Tertiary Institutions Act it is provided that;

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

It was the contention of the applicant that the 2nd respondent services were terminated on 4th May 2022 and he lodged or filed a Notice of Appeal on 11th May 2022 and later filed a Memorandum of Appeal on 23rd June 2022. According to counsel's submission this was already out of time and in violation of section 57(1) of the Universities and Other Tertiary Institutions Act and it was thus a nullity and an illegality.

The applicant's counsel further submitted that the 1st respondent in arriving at the decision dated 23rd May 2022 against the applicant did not follow any rules of procedure and did not adhere to any since it have an ex-parte decision. The said order was given as a result of a letter dated 12th May 2022 without any known procedure of how to respond. There were no proceedings of the 1st respondent that culminated in the issuance of the Order. This according counsel was a sign of procedural impropriety.

The applicant further challenges the Order granted in June 22 which was granted until the determination of the Appeal which in counsel's view had not yet been filed in the tribunal.

The applicant's counsel further argued that the decision of the 1st respondent was irrational since it stopped the University from advertising the position of Director Human Resource and yet there was no appeal. This in counsel's view left a gap in the administration of the applicant and there was no threat to have the position advertised. The second Order was issued when there was no Appeal filed in court on 1st June and yet the Memorandum of Appeal was filed on 23rd June 2022.

The applicant finally submitted that the final orders given by the 1st respondent was the most absurd since it reinstated the 2nd respondent who was serving a probationary period or had not successfully completed his probation and had not been confirmed into service. The logical order would be to send the 2nd respondent to go back and serve his probationary period and then be re-appraised. The order had the effect of forcing the applicant to employ someone it had rejected and thus lacked logic and was thus irrational and unreasonable and no reasonable tribunal would have acted in such a manner.

The 2nd respondent counsel submitted that from the entire submissions there is no single complaint about this decision and the process leading to the same. Counsel contended that there were no proceedings availed by the appointment's board and that is why they failed to file the appeal. According to counsel there is no illegality, procedural impropriety or irrationality.

The 2nd respondent counsel further submitted that the tribunal has the power under section 57(2) of the Universities and Other Tertiary Institutions Act has power to confirm, vary, amend or set aside the decision appealed against or give such decisions as it thinks appropriate. In his view the evidence on record was and still supports the decision of the tribunal 100%.

He contends that the 2nd respondent continued working without extension of the probation until after 84 days and the applicant purported to extend probation that had long ended and in his view the 2nd respondent was deemed confirmed.

The 2nd respondent's counsel submitted that the Universities and Other Tertiary Institutions Act does not provide the procedure for commencement of Appeal. The 2nd respondent made recourse and reference to section 79 of the Civil Procedure Act which is to the effect that the time taken by court or registrar in making a copy of the decree or order appealed against shall be excluded.

The 2nd respondent further contended that the applicant contributed to the delay in delivery of the ruling when they requested for long periods of time to file submissions and sometimes refused to abide by the timelines.

The applicant should not accuse the Tribunal of not following rules since it their duty to develop those rules for the tribunal. The applicant should not accuse the Tribunal of failing to follow the rules which do not exist. Therefore, the tribunal; acted with fairness in the process of reaching the decision that the applicant seeks to review.

The 2nd respondent contends that the decision of the tribunal was quite rational.

Analysis

Tribunals should properly be regarded as machinery provided by Parliament for the adjudication rather than as part of the machinery of administration. The qualities of a good tribunal are rooted in openness, fairness and impartiality.

In a design of an administrative system, a tribunal is preferred to a court because its members are supposed to have specialized knowledge of the subject matter and it is more informal in its trappings and procedure. It applies flexible standards and exercises discretionary powers. A tribunal decides matters brought before it judicially or quasi-judicially.

The tribunals are not free from corrective or supervisory mechanism over them by the High court through judicial review. They have a duty to ensure the rights and the interests of the parties are preserved in order not to hurt the democratic and accountable fabric of the polity as well as the concept of the rule of law.

The decisions of the tribunal must be based on evidence and not on expediency and such decision must stand the objective tests and must not be merely founded on the subjective satisfaction of the authority/tribunal deciding the question. The tribunal must function within the four walls of the relevant statute as the jurisdiction is vested by law.

When a Tribunal is set up like the University Staff Tribunal without any procedures which such body may follow, in such a case the tribunal should follow the constitution and principles of natural justice which guarantees the minimal basic features of a judicial procedure. It is not necessary to insist that a tribunal should follow more elaborate procedure than natural justice would require.

The applicant contended that the 1st respondent granted an ex-parte interim order which was granted by way of a letter from the 2nd respondent's counsel. The procedure may not have been the only problem but the manner of procedure which denied the applicant an opportunity to be heard on the matter was unfair and denied them a right to be heard. The hearing ex-parte by way of letter left the applicant unclear on how to proceed and the 1st respondent ought to have ensured that the opposite party is present before granting such an Order. The procedure adopted by the 1st respondent was procedurally improper.

The Respondents have not furnished to this Court any lawful or reasonable justification for such failure and prolonged delay to have the matter determined between the applicant and the 2nd respondent within the prescribed timeline of 45 days. The East African Court of Justice in the case of **Sitenda Sebalu v. Secretary General East African Community & 3 ORS EACJ Reference No. 1 of 2010 (First Instance Division)** where it was held that delay to act within the prescribed timelines contravenes the basic principles of good governance, democracy, rule of law, social justice and human rights.

This court in its decision in **Dr. Arinaitwe Raphael & 37 others versus the Attorney General; HCCS No. 21/2012* quoting *Hilton versus Sultan Steam Laundry (1964) 161, 81 per Lord Greene** noted that;

"The statute of limitation is not concerned with merits, once the axe falls, it falls and a Defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled of course to insist on his strict rights".

Once the time period limited by the Limitation Act expires, the party's right of action will be extinguished and becomes unenforceable against the opposite party. It will be referred to as having become statute barred.

The 1st respondent should always ensure that they act within the four walls of the Universities and Other Tertiary Institutions Act in order to keep in tandem with the spirit of Parliament of expeditious disposal of disputes at the tribunal. As noted earlier, the Tribunal is characterized with simplistic procedure and expediency in effecting decisions, therefore any prolonged delay would hurt the parties who are likely to be affected by the decision.

It is the duty of the 1st respondent to ensure that the timeline of 45 days is effected and any reason advanced like delay to file submissions would not suffice to justify any delay. The delayed decision in the tribunal has serious effects and unintended consequences to the University Administration like in this present case where it has not had a substantive Director of Human Resource which is such a vital office in the management of the University for an inordinately long time.

The University Staff Tribunal was in breach of the Universities and Other Tertiary Institutions Act when it failed to render a decision within 45 days as provided under the law.

The applicant also challenged the 2nd respondent's appeal on grounds that the same was filed outside the stipulated timeline of 14 days. Section 57(1) of the Universities and Other Tertiary Institutions Act it is provided that;

"A member of Staff may appeal to the University Staff Tribunal against the decision of the Appointments Board within fourteen days after being notified of the decision"* The 2nd respondent indeed concedes that the appeal was filed out of time, however he sought to invoke the Civil Procedure Act section 79 which provides that the time taken to prepare the record of proceedings should not be taken into account when determining the time to file an appeal.

This court is not satisfied with the 2nd respondent's argument on the failure to lodge the appeal within the prescribed timeline. Indeed, there are no procedures set for the appeal process from the Appointment's Board to the Staff Tribunal, the 2nd respondent was obliged to comply with the law notwithstanding the absence of the record of proceedings which he sought. The 2nd respondent has not confirmed to-date whether he was ever given the record of proceedings before filing or during the hearing of his appeal.

The 2nd respondent did not need the record of proceedings to formulate his grounds of appeal and the risk he took to borrow the Civil Procedure Act provisions was unjustified and had no basis. The respondent's tried to dupe the tribunal to entertain the appeal out of time thereafter by formulating a ground of appeal premised on failure to be given the record of proceedings of the Appointments Board.

An Appeal from a lower court or tribunal ought to be initiated by filing of a Memorandum of Appeal and the guidance should be derived from the Magistrates' Courts Act and not the High Court to the Court of Appeal or Supreme Court. The 2nd respondent was bound to file the appeal within the 14days prescribed under the Universities and Other Tertiary Institutions Act.

This court has on several occasions noted that the time limits set by legislations are matters of substance which ought to be considered in the circumstances of the case. In the case of *Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000;* the Court of Appeal noted that; *time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with*. In the case of *Re Application by Mustapha Ramathan for Orders of certiorari, Prohibition and Injunction Court of Appeal Civil Appeal No. 25 of 1996*, Berko, JA as he then was stated; statutes of limitation are in their nature strict and inflexible enactments. Their overriding purpose is interest *republicae ut sit finis litum*, meaning that litigation shall automatically be stifled after a fixed length of time irrespective of the merits of a particular case.

The 2nd respondent's appeal was filed out of the stipulated time of 14 days and this made the appeal incompetent before 1st respondent.

The applicant challenged the decision reached by the 1st respondent when they ordered that the 2nd respondent is reinstated to his position as Director, Human Resources with Salary Arrears from time when he was deleted from the respondent's pay roll.

This court is mindful of the provisions of Section 57(2) of the Universities and Other Tertiary Institutions Act which allows the University Staff Tribunal in any appeal to confirm, vary, amend or set aside the decision appealed against or give decision as it thinks appropriate. This exercise of discretion to make such orders must be exercisable in accordance with the law and within the context of an appellate tribunal and not whimsically.

The High Court may, however, under certain special circumstances, interfere with the tribunal's decision or exercise of discretion if the decision reached was in breach of rules of natural justice or failed to give reasons for the decision or if the decision involves a grave error of law. The main purpose of conferring supervisory jurisdiction by way of judicial review is to ensure that tribunals function within the limits of their authority and to see that they obey the law.

The power to appoint staff like the 2nd respondent is vested in the Appointments Board as an Organ of the University administration. The tribunal cannot in exercising its appellate authority usurp the statutory powers of the Appointments Board for the appointment, promotion, removal of staff from the University service. The 1st respondent should make sound decisions which are guided by law. Usurping the powers of an established

organ of the University would cause unnecessary confusion or chaos in management and administration of the University. The 1st respondent should have referred the matter back to the concerned body to make a corrective decision rather than to order reinstatement of 2nd respondent who was serving a probationary period.

In order to promote uniform standards and views on questions basic for a sound administration of justice, and in order to prevent obvious failure of justice, the court may interfere even in such a matter where there is a glaring absurdity in the decision. Where, for example, it appears prima facie that the order in question cannot be justified by any judicial standard, the ends of justice and the need to maintain judicial discipline require the High court to intervene and set it aside.

The decision of the 1st respondent may have ramifications on the future engagement of employees who are yet to be confirmed in the University Service. The Appointments Board should retain the autonomy to confirm staff of the University through a fair scrutiny instead of the same power being taken over by the University Staff Tribunal in exercise of its discretion. There was manifest misreading of the evidence on record and thereby led to indulging in improper exercise of jurisdiction and thus reaching perverse conclusions.

It is apparent to this court that on the face of the record that the University tribunal has failed to keep itself within its bound and has exceeded its jurisdiction and indulged in proceedings in an unprecedented manner bringing in judicial anarchy, procedural disaster in blatant disregard of the accepted principle of law, assuming jurisdiction though it ought not to have assumed, exceeding its jurisdiction, in this matter. It is the duty of this court to see that the purity of justice, dignity of the judicial system is restored and preserved.

The decision of the 1st respondent ordering the reinstatement of the 2nd respondent was erroneous and wrongful exercise of discretion to grant such remedies as it thinks appropriate.

The 2nd respondent was serving a second probationary period which he had agreed upon with the applicant. This was agreed between the parties and any attempt to infer that he was coerced into it is untenable and the termination could be effected within or during the probationary period. The decision of the 1st respondent was indeed lacking in factual basis and perverse. The findings of fact of the 1st respondent is not supported by evidence to justify such a conclusion that the 2nd respondent should be reinstated to the position of Director of Human Resource. No reasonable tribunal would come to such a conclusion and it is a finding which is perverse in law and thus irrational.

The University Staff Tribunal (1st respondent) further directed payment of salary arrears from the time the 2nd respondent was deleted from the payroll. As stated earlier in this ruling, decisions must be rationally related to purpose for which the power being exercised was given, otherwise they in are in effect arbitrary and unlawful. Payment of salary to a probationary employee who has not been confirmed by the appointing authority, for a period not worked is not only irrational but also borders on abuse of authority and wrongful exercise of authority.

It can be deduced from the mere perusal of the ruling and documents in support that the University Staff Tribunal committed manifest error by misconstruing the 2nd respondent status as an employee on probation who had not been confirmed in the University service. It failed to take into account and consideration of certain relevant materials before it. The ruling and finding was wholly unsupportable by the evidence and it was not justified in the circumstances. A decision is irrational in the strict sense of that term if it is unreasoned; if it is lacking ostensible logic or comprehensible justification like in this case.

Whether the Applicant is entitled to the remedies sought?

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

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 would weigh various factors to determine whether they should lie in any particular case. See *R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652*

The 2nd respondent would not have had the full benefits of the tribunal ruling or orders since he is now in another employment at Mulago National Referral Hospital as the Assistant Commissioner, Human Resources. The 2nd respondent could not draw two salaries from two government institutions.

An Order of Certiorari doth issue quashing the ruling and orders of the 1st respondent dated 1st March 2023 in which the 1st respondent ordered the reinstatement of the 2nd respondent into the service of the applicant and payment of salary arrears.

Each party shall bear its costs.

I so Order.

This court further notes that the 2nd respondent had earlier filed Miscellaneous Cause No. 0117 of 2023 for contempt of the Staff Appeals Tribunal for failure to implement the decision of the tribunal. The said application cannot be independently determined in light of the order granted under this application. In my view the same is overtaken by events since the ruling and orders sought to be implemented have been set aside and quashed under the current proceedings.

I so order

Ssekaana Musa Judge 12th August 2024

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