

UGANDA / JUDGMENT

Namuganza Vs Iganga District Local Government (Miscellaneous Cause No. 005 of 2015) [2015] UGHCCD 154 (19 August 2015)

[2015] UGHCCD 154

COURT

HC: Civil Division (Uganda)

BEFORE

Namundi, J

CASE / FILE NUMBER

Miscellaneous Cause No. 005 of 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS CAUSE NO. 005 OF 2015

NAMUGANZA NAZIMA KARIM:.....APPLICANT

VERSUS

IGANGA DISTRICT LOCAL GOVERNMENT:.....RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This is an Application seeking Prerogative reliefs brought under Sections 36 and 38 of the Judicature Act Cap. 13 Rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules 2009.

The Applicant seeks grant of the following Orders:

1. An Order of Certiorari quashing the transfer, instructions/directive of the Chief Administrative Officer dated 15/8/2014 directing the immediate transfer of the Applicant as Human Resource Officer from the Chief Administrative Officer's office to Iganga Hospital.
2. An Order of Mandamus directing the Respondent to reinstate the Applicant in her work station of Appointment in the Chief Administrative Officer's office.
3. An Order of Prohibition and/or Injunction prohibiting the Chief Administrative Officer from interdicting or effecting further illegal transfers of the Applicant and or in any way interfering with the Applicant's work or performance of the duties of her office.

4. That the Respondent pays to the Applicant General damages for embarrassment, inconvenience and psychological stress occasioned by the actions of the Respondent's Chief Administrative Officer.
5. Costs.

The summary of this dispute is that the Applicant is an employee of the Respondent and she was appointed and transferred in 2013 as Human Resource Officer in the Chief Administrative Officer's office.

After 8 months, the Chief Administrative Officer transferred the Applicant to the District Hospital at Iganga and that she was forced to handover office in a hurry despite her request to be given more time.

The Applicant was aggrieved by the said decision and hence sought legal redress.

The above is contained in both the grounds in the Application and the affidavit in support of the Application. The Applicant argues that the said transfer was based on unsubstantiated allegations against her in an Internal Audit Report which never gave the Applicant a fair hearing.

It is also argued that the transfer contravenes the provisions of the Standing Orders for example Part 4 (1) Rules 3 (a) – (c) that provides that transfer should never be used as a punitive measure. Further that the transfer should only be after a continuous stay in the same office for at least 3 years.

The Solicitor General advised that the transfer was irregular, and so did the I. G. G. That as a result the Applicant has been rendered redundant and that the actions of the Respondent through its Chief Administrative Officer were punitive.

It is also argued that the Applicant has suffered mental and psychological stress, inconvenience and should be awarded General damages.

The above arguments are supported by various documents e.g. the Draft Audit Report, the transfer instructions, the legal opinion of the Solicitor General, the I. G. G and quotations from Standing Orders.

The Respondent filed an affidavit in reply deposed by the Chief Administrative Officer, Mr. Maira Mukasa Joseph. The import of the said affidavit is that the Application has no merits and is an abuse of process.

Further that there was no breach of the law, it was a normal transfer where the Applicant was assigned other duties as Human Resource Officer stationed at Iganga Hospital.

That this followed a Government Policy shift where Human Resource roles/functions were decentralized to Local Governments and key roles that were performed by Human Resource Officers shifted to the Head of Human Resource and the Accounting Officers of the Districts.

Further that the transfer was not based on the Draft Internal Audit Report, but was an administrative intervention to ensure efficient and effective service delivery in the District.

According to Annexure “H1” the Applicant accepted the transfer and even wrote a Handover Report – Annexure “H2” and even reported to her new station.

It is further averred that the deployment was not a disciplinary measure. The Permanent Secretary, Ministry of Local Government has clarified that the transfer was proper.

The Respondent has also appealed against the legal opinion of the Solicitor General.

Further that under Section A-1 paragraph 3 (b) of the Public Standing Orders the Respondent has powers to transfer any staff within jurisdiction before clocking 3-5 years.

The Applicant, it is averred was assigned new responsibilities to handle Health workers.

Human Resource affairs and had to shift to Iganga hospital where her office space is located.

The averments are supported by various Annexures referred to above and several others e.g. the Transfer Instructions, a Circular assigning duties and responsibilities, communications to and from the Attorney General, permanent Secretary, Ministry of Local Government and various Policy documents from Ministry of Finance and Local Government.

At the hearing of this Application, Mr. Osillo, Counsel for the Applicant raised a Preliminary point of law, challenging the locus standi of the Respondent’s Counsel on grounds that he is not properly appointed as Counsel for the Respondent through the PPDA procedures.

This preliminary objection was not part of the pleadings in accordance with Rules 5, 6 and 28 of Order 6 of the Civil Procedure Rules. It therefore took everyone by surprise and submissions in support of the objection were made from the bar, with no supporting pleadings or documents.

Ordinarily, Court would have out rightly rejected the said preliminary objection for failure to comply with Order 6 Rules 5, 6 and 28 of the Civil Procedure Rules.

The Court however was mindful that an illegality might be perpetrated and hence entertained the objections on the authority of **Cardinal Nsubuga Vrs. Makula International (1982) HCB**. That authority mandates Court to deal with an illegality once brought to its attention by whatever means.

Having adjourned to enable opposite Counsel to ably respond to the objection, Mr. Ngobi Balidawa for the Respondent turned up later in the day with documents supporting his claim that he is properly instructed by the Respondents.

These included a tender document addressed to Mr. Balidawa-Ngobi for provision of legal services and an agreement executed between the Iganga Local Government and M/S Balidawa Ngobi & Co. Advocates for legal services dated 9/4/2015.

Mr. Osillo still challenged the said documents on grounds that they were obtained without due regard to PPDA procedures. I allowed Mr. Balidawa to continue representing the Respondents and promised to give reasons later which I now do.

1. The objections were made from the bar, in contravention of the provisions of **Order 6 Rules 5, 6 and 28 of the Civil Procedure Rules**. There were no supporting documents and in effect Mr. Osillo was giving evidence like a witness.
2. Mr. Ngobi Balidawa produced prima facie evidence that he was duly instructed. If anyone wishes to challenge that authority they should take up the matter with the relevant authorities and through the proper procedure.
3. Denying the Respondent's legal representation on the basis of unsubstantiated allegations from the bar would be denying the Respondent's the rights to a fair hearing in accordance with **Article 28 (1) of the Constitution**.
4. The interests of justice and expedience dictated that the matter be heard.

That objections is accordingly overruled for the above reasons.

Likewise the Respondent's Counsel raised objection that the Application had been filed out of time (90 days) required by the Judicature (Judicial Review) Rules 2009 (As ammended) Rule 4 thereof.

Suffice to say, that the Applicant's duly obtained leave to file out of time vide Misc. Application 461/2014.

Considering the merits of the Application, I need to point out some salient facts that are clear and on record.

1. The Applicant was appointed as Human Resource Officer on transfer of service. The terms and conditions thereof are clearly laid out in the Appointment Letter which include compliance with the **Constitution, the Public Service Act and Regulations, Government Standing Orders and Administrative Instructions, and requirement that the Appointee may be required to serve in any part of Uganda**.

The relevant provisions are laid out in Part A-I of the Standing Orders, specifically Rule 3 (a)-(c).

1. The Applicant was issued transfer instructions on 15/8/2014 on the same day the Chief Administrative Officer issued a circular specifying the roles the Applicant and other officers in the Chief Administrative Officer's office were now assigned.

There was no mention of any of the affected Officers being redeployed as a punishment. I have also not come across any instrument that indicates that the Applicant was demoted or assigned duties that are outside her appointment terms as a Human Resource Officer.

1. It is on record that the Applicant handed over and made a Report of the said handover on 1/9/2014 on being assigned the new role of handling Health staff. This was after a Notice of intention to sue was served on the Chief Administrative Officer on 19/8/2014.
2. The Applicant also filed complaints with the I. G. G, the Permanent Secretary, Ministry of Public Service, and the Solicitor General. All the authorities complained to without exception condemned the transfer reacting to the said complaints – **interestingly without first either investigating or requiring the Chief Administrative Officer to respond to the complaints.** In effect denying the Chief Administrative Officer an opportunity to be heard, the same complaint the Applicant raised i.e. the opportunity to be heard.
3. The Permanent Secretary also wrote to the Applicant in February advising her that the transfer was not isolated and that she should settle down in her new assignment. He also wrote to the I. G. G explaining the circumstances that led to the transfer as a normal policy shift which the Chief Administrative Officer was mandated to make.
4. In the meantime a response by the Attorney General to the Chief Administrative Officer's office explanation was put in abeyance since the matter is now subjudice and awaiting Court decision.

The Law:

Judicial Review allows the Courts to rule on decisions made by those in authority to ensure that they do not exceed their authority.

It is a challenge to the process by which the decision was made; rather than the decision itself. The question is not whether the decision itself was correct, but whether the powers given to the decision making body were used correctly.

In **Council of Civil Service Unions Vrs. Minister for the Civil Service (1985) AC 374**, it was held that an action for Judicial Review may be brought based on only 3 grounds namely:

1. **Illegality** i.e. acting against the Law or outside the Law or authority. This is said to be **ultra vires**.
2. **Irrationality** – This is a decision that is so unreasonable that no reasonable authority would ever have come to it. **Ref: R. Vrs. Secretary of State for the Home Department (1991) 1 AC 696.**
3. **Procedural Impropriety** – This is about whether the correct procedure has been followed. This is intended to ensure that decision making bodies follow the necessary steps in reaching their decisions.

Impropriety also includes Natural Justice i.e. decisions that contravene basic principles of fairness e.g. bias, and the right to fair hearing.

In the instant case the Applicant does not plead which of the above grounds they are relying on and am only left to make conclusions as to which of the above was contravened.

The Applicant claims the decision to transfer/redeploy her was based on a Draft Audit Report and that she was not given a chance to respond to it or defend herself. This would imply that the principles of Natural Justice were breached.

I have narrated the sequence of events as they unfolded and the explanations that were made by the Chief Administrative Officer leading to the change of opinion by the Permanent Secretary deciding that the decision to redeploy the Applicant was correct and within the Chief Administrative Officer's powers. In other words her complaints have been addressed by her Superiors who are mandated to do so.

The Applicant has submitted that the legal opinion of the Solicitor General still stands and should be complied with.

I have said earlier that the said legal opinion was made without any input from the Chief Administrative Officer against whom the complaints were made. This in itself is a breach of the principles of Natural Justice.

The Attorney General to whom the Chief Administrative Officer appealed regarding the Solicitor General's opinion has found it fit to let the Court pronounce itself on the matter/dispute.

It is my finding that the said legal opinion cannot stand for the reasons given above.

It is my finding that the Applicant has fallen short of proving the grounds that would justify the grant of Prerogative reliefs.

The Applicant has applied for Orders of **Certiorari**, **Mandamus**, and **an Injunction**. These orders can only be made if/when the grounds for grant of Prerogative reliefs have been proved. In the instant case they have not.

Similarly, the prayers for General Damages cannot stand as a claim for damages has to be founded on injury suffered. No such injury has been established or proved.

This Application accordingly fails for lack of merits and is dismissed accordingly.

Costs to Respondents.

Godfrey Namundi

JUDGE

19/08/2015

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