

UGANDA / JUDGMENT

Nanding & 6 Others v Attorney General (Miscellaneous Cause 22 of 2024) [2024] UGHCCD 127 (16 August 2024) [2024] UGHCCD 127

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Miscellaneous Cause 22 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 22 OF 2024

1. CHRISTINE NANDING
2. MIRONDO FRED PAUL
3. KUSEMERERWA KATRINE
4. IBANDA KAGODA STEPHEN ::::::::::::::::::::::::::::::::::: APPLICANTS
5. KIRUNDA VICTORIA ROSEMARY
6. CHEPKURUI SHUNU JIMMY
7. NINSIIMA STELLA RWAMBUKA

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicants brought this application under Article 42 of the Constitution, section 33, 36 and 38 of the Judicature Act, Cap 13, Rules 6, 7 and (8) of the Judicature (Judicial Review) Rules, 2009 and Order 52, Rule 1 & 3 of the Civil Procedure Rules for inter alia;

1. A prerogative Order of Certiorari doth issue to quash and set aside the decision of the Respondent to revise the salary structure of the Uganda Police Force Legal officers downwards below the enhanced salary scale.
2. A declaration that the impugned decision aforesaid is null and void and illegal for depriving the Applicants a right to fair hearing contrary to Articles 28, 42 and 44 of the Constitution and in contravention of the rules of natural justice.
3. A declaration that the said impugned decision to revise the salary payments of the Uganda Police Force Legal officers downwards below the enhanced salary scale amounts to violation of a Presidential directive and an attempt to undermine the powers of the Fountain of Honour.
4. A declaration that the Respondent's said impugned decision to reduce the salary of the Applicants is contrary to the provisions of the Uganda Public Standing Orders and is against the principle of legitimate expectation.
5. An order of Mandamus directing the Respondent to pay or cause payment to be made to the Applicants of all arrears resulting from the non-payment or underpayment of their enhanced salaries.
6. The Applicants be granted a permanent injunction restraining the Respondent from any further or future action/decision of revising the Applicants' enhanced salary structure.
7. An order of General damages.
8. Costs of this Application be provided for.

The grounds in support are set out in the notice of motion and expounded in the several affidavits of the applicants as follows:

1. That the Applicants are all serving officers of the Uganda Police Force (UPF) of varying ranks and profile and do bring this application on account of the principle of legitimate expectation.
2. That sometime in 2008, the Government of Uganda made a deliberate policy to enhance salary of lawyers working with government as a measure to control their exit from government to private practice and also to attract Professionals to government Ministries, Departments and Agencies.
3. That in the said enhancement, legal officers working with the Uganda Police Force were left out, as a result of which the aggrieved officers instituted a civil suit vide High Court Civil Suit No.160 of 2008 on account of the discriminatory action against Government.

4. That subsequently in 2010, when the matter was brought to the attention of His Excellence the President of the Republic of Uganda, he made a directive that the salaries of the Lawyers working with the Uganda Police Force should be enhanced in tandem with their counter-parts working with Attorney General's chambers and the Directorate of Public Prosecutions.
5. That the President's said directive/or Executive Order was in clear terms followed with a supplementary Budget requisition of Ugx 179,664,081/- to cater for arrears resulting from the discriminatory salary payments.
6. That payments were effected to all the Uganda Police Force Legal officers from the rank of AIGP to ASP and consequently the Uganda Police Force Legal officers abandoned High Court Civil Suit No. 160 of 2008.
7. That from 2010 to 2022, the enhanced wages for lawyers were incorporated into the UPF wage bill and all subsequent appointments of legal officers with the Uganda Police Force and their salary scale have been in tandem with those of their counter-parts in the office of the Directorate of Public Prosecutions (D. P. P)
8. That subsequently the Permanent Secretary Ministry of Public Service made a communication dated 17th October, 2022, to the Inspector General of Police raising allegations of overpayment of Legal officers in Uganda Police Force.
9. That following the above, in March, 2023, the Permanent Secretary Ministry of Internal Affairs severally wrote to the 2nd -7th Applicants and rescinded their earlier appointments which had been issued on 6th July, 2022 and had been accepted.
10. That the Applicants are aggrieved by the decision of the Respondent of revising their salary structure downwards contrary to the President's subsisting directive.
11. That the applicants had on the basis of the salary structure stipulated in their respective appointment letters of 6th July, 2022 secured loans from various institutions.
12. That That the mandate of the Uganda Police Force and that of the office of the DPP are interrelated and one complements the other under the Justice Law and Order Sector on which basis the salaries were enhanced in the wise counsel of H. E the President to ensure fairness, equity, nondiscrimination, attraction and retention of legal personnel in the institution.
13. That the Applicants have exhausted all available administrative remedies and have no other remedy available in the circumstances than to apply for the judicial reliefs of certiorari and mandamus.
14. That the actions/ decision of the Respondent of revising the Applicants' salary structure downwards below the current scale is tainted with illegality and irrationality and was made in a manner which constitutes breach of the provisions of the Constitution of the Republic of Uganda.

The respondent opposed the application and filed an affidavit through Victor Bua Leku-Human Resource Management, In-charge of Compensation in the Ministry of Public Service contending as follows;

1. That effective FY 2021/2022, the legal professions under the Judiciary, Ministry of Justice and Constitutional Affairs, Directorate of Public Prosecutions, Judicial Service Commission and others outside are paid different salaries based on specific nature of duties executed and directives on salary enhancement and accompanying Certificates of Financial Implication issued by the Ministry of Finance, Planning and Economic Development.
2. That the salary structure for FY 2022/2023 provided for enhanced salary only for legal professionals under the Directorate of Public Prosecutions excluding the legal professionals under the Ministry of Justice and Constitutional Affairs.
3. That as a result of the Presidential directive, the salary structure of FY 2022/2023 provides for enhanced salary only for legal professionals under the Directorate of Public Prosecution and a Certificate of Financial Implication was issued only for Legal Professional under the Directorate of Public Prosecutions excluding the other legal professionals.
4. That the applicants are employed as cadres in the Uganda Police Force in the legal department as a qualified lawyers and are distinguishable from legal professionals under the Ministry of Justice and Constitutional Affairs and the Directorate of Public Prosecutions.
5. That the different cadres of the legal professionals are recognized by virtue of their respective qualifications, roles, duties, risks associated and the mental and physical effort involved among other factors which accordingly determine their respective salary structures.
6. That the salary structure in CSI No. 1 of 2022 was configured into the payroll system and a review established that the payroll action officers in Uganda Police Force unlawfully changed the salary codes of legal professionals under the Uganda Police Force to read Principal State Attorney, Senior Assistant DPP, Senior State Attorney and State Attorney.
7. That the payroll officer in the Uganda Police Force unlawfully manually reviewed the salary scale codes against the policy and controls fitted within the payroll system.
8. That upon discovering the above illegality, the Ministry of Public Service brought the matter to the attention of Uganda Police Force. The Ministry further issued an addendum to the salary structure for FY 2022/2023 to ensure that the Legal Officers under Uganda Police Force revert back to the salary they were earning prior to the unlawful changes on the salary codes.

The applicants rejoined the affidavit in reply and contended as follows;

1. That the Respondent's decision to revise the Applicants salary structure downwards constitutes a breach of the Applicants legitimate expectation and as such this application discloses a cause of action and/ or is meritorious.
2. That in July, 2022, some of the Applicants were appointed on promotion upon new salary scales which salaries were indeed paid out and received for the months of July, August and September, 2022.
3. That between 2010 to 2022 the Respondent issued Circular Standing Instructions by which the Applicants were paid enhanced salaries from the UPF Wage Bill as provided by the Ministry of Finance Planning and Economic Development in tandem with that of the legal professionals in ODPP.
4. That the said circular instruction orders were accompanied with salary scales for legal professionals in the ODPP which were corresponding with that of legal professionals working with Uganda Police Force. The salaries of the legal professionals in the UPF have since 2010 been tagged to and been enhanced in tandem with those of legal professionals in the ODPP.
5. That the Respondent's act of disregarding the Presidential Directive that the salaries of legal professionals in the Uganda Police Force should at all times be in tandem with those of legal professionals in the ODPP, is illegal and undermines the person of the President as the Fountain of Honour and his authority.
6. That the complaint of the Applicants is not based on a comparison in appointment between the different categories of legal professionals in government but on a Presidential order that has been implemented since 2010 up to 2022 when the Respondent purported to reverse it.
7. That in a letter dated 5th May, 2008, by the Permanent Secretary of the Ministry of Internal Affairs to the Permanent Secretary of the Ministry of Public Service it was clearly indicated how in terms of levels the Uganda Police Legal Professionals are equated to their counterparts in the Office of the Director of Public Prosecutions and the Ministry of Justice and Constitutional affairs.
8. That the Presidential directive and the precedent set from 2010 to 2022, the Applicants have a legitimate expectation that their salary will always be in tandem with that of legal professionals in the Office of the Director of Public Prosecutions and the Ministry of Justice and Constitutional affairs.
9. That the actions of the Ministry of Public Service to issue an addendum was unlawful as it was contrary to the Presidential directive issued to the same ministry and the reversion of the Applicants salaries was equally unlawful.

10. That the certificate of financial implication issued to the Director of Public Prosecutions has no bearing on the salaries of legal professionals working in the Uganda Police Force. The money for the salaries for the Legal Professionals in UPF were already budgeted for and payments indeed been made before the payments were suddenly illegally stopped in 2022.
11. That the change in Applicants' salary scale was authorized and in fact implemented pursuant to the Presidential Directive of 2010.

The applicants were represented by *Counsel Isabirye John* and *Counsel John Kennedy Babumba* whereas the respondent was represented by *Suzan Apita Akello.(State Attorney)*

The following issues were raised for determination before this court**

1. *Whether the decision by the Ministry of Public Service to revise/revert the Applicants' salaries is tainted with illegality and irrationality?*
2. *Whether the decision by the Ministry of Public Service to revise/revert the Applicants salaries constitutes a breach of the Applicants' legitimate expectation?*
3. *What remedies are available to the parties?*

The parties were ordered to file written submissions and the applicants accordingly filed the same. However, the respondents did not file any submissions to court.

Whether the decision by the Ministry of Public Service to revise/revert the Applicants' salaries is tainted with illegality and irrationality?

Illegality

The Applicants' counsel submitted that the Ministry of Public Service illegally reviewed their salary scale and issued a standing instruction specifically for the applicants for which they wish to invite court to find was done illegally and to their detriment. The review was done by way of a letter dated 17th October, 2022, by the Ministry of Public Service to the Inspector General of Police in which it is indicated that the Ministry undertook a review of the salary and pension payrolls generated from (IPPS).

It was their contention that from 2010 to date, the enhanced salary scale was incorporated into the UPF wage bill and all subsequent appointments of the legal officers with the Uganda Police Force and their salary scales have been in tandem with those of the DPP in compliance with the President's Directive and that the contested salary scale has been running since 2010 and the UPF had already incorporated the payments in the current budget and that the continued payment of enhanced salaries to legal officers has no single financial implication on the UPF wage bill for the financial year 2022/2023.

The new salary scale created had the effect of revising the salaries of the Applicants downwards which was not only unfair but also contravened the provision under **Article 158(1) of the Constitution of the Republic of Uganda** which provides thus ;

“Where any salary or allowance of the holder of any office is charged on the consolidated fund, it shall not be altered to his or her disadvantage after he or she has been appointed to that office”

It was further submitted that the omission and / or failure by the Respondent's institutions to grant a hearing was an affront on the Applicants' right to a fair hearing and to just and fair treatment in administrative decisions which under **Articles 28 and 42** of the Constitution of the Republic of Uganda 1995 is non-derogable and it imposes an obligation on the public body to hear both sides before a decision can be arrived at.

Furthermore, the act of revising the salary of the Applicants amounted to a fundamental breach of contract of employment since it goes against the express contractual terms that had been issue and agreed to the Applicants by way of appointment and or promotion as deponed by the applicants. According to *annexture “C”* to the Applicant's affidavit in rejoinder, the Honorable Attorney General rendered a legal opinion setting out the position that public officers are entitled to remuneration based on the terms as communicated to them in their letters of appointment and that the unilateral reduction of their payment by the Ministry of Public Service would be illegal in terms of Article 158(1) of the Constitution and the same would amount to a breach by the employer of their terms of employment.

Relatedly, the issuance by the Permanent Secretary of Ministry of Public Service of the addendum to Circular Standing Instruction (CSI) NO. 1 OF 2022, *annexture “B”* to the Respondent's affidavit in reply that purported to revert the Applicants salary was equally illegal and/ or unlawful because it purported to reverse a Presidential/Executive order issued in 2010 and communicated to the Ministry of Finance, Planning and Economic Development, by the then Minster of Public service and 2nd Deputy Prime Minister in a letter dated 4th March, 2010 attached as *annexture “B”*to affidavit in support of the motion. Therefore, on account of the above foregoing, the decision by the Ministry of Public Service to revise the Applicants' salary structure is tainted with illegality.

The respondent's counsel submitted that, Under Article 166(1) (c) the Public Service Commission is vested with the mandate to review the terms and conditions of service, standing orders, training and qualifications of public officers and matters connected with personal management and development of the public service and make recommendations on them to the Government. Learned State Attorney further referred section 7 of the Public Service Act to buttress her argument that it is the mandate to set, determine or review salaries and conditions of service of public officers and other officers whose emoluments are paid directly from the consolidated fund.

The respondent further contended that the applicants have not adduced any evidence to show that a Circular Standing Instruction that the salary of legal professionals in Uganda Police Force was enhanced. It was their contention that the applicants seem to rely on salary payment receipts as proof of that their salaries were enhanced in tandem with those legal professionals in the ODPP.

The respondent further argued that the alleged Presidential directive alluded to by the applicants as the basis of their salary enhancement has not been adduced before the court. The applicants are not state attorneys and they are quite distinguishable from legal professionals under the ODPP and their roles and duties differ from those of ODPP and Ministry of Justice and Constitutional Affairs.

The Ministry of Public Service could not have intended that the salary scale of the legal professionals in the Uganda Police Force be inferred from the salary scale of legal professionals under the ODPP under the Circular Standing Instructions by the Ministry. In their view, they never reduced the salary scale of the legal professionals in Uganda Police of the applicants but rather rectified the error created by the illegal action of the payroll officers in Uganda Police Force.

The respondent contended that they were acting well within its legal mandate when it carried out a review of the salary and pension payrolls.

Analysis

Judicial review provides a set of legal standards, enforced through a process of litigation, to enable people challenge the lawfulness of decisions made by the public bodies and others exercising public functions. The task of the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring a duty or power on the decision maker. The courts when exercising this power of construction are enforcing the rule of law, by ensuring that such decision makers act within the four corners of their powers and duties.

The court recognizes that constitution principle and obligations which bestow constitutional rights and entitlements are used as a tool of interpretation. Therefore, any exercise power conferred by Parliament should never be interpreted to authorize the interference of the decision makers with power to vary any benefits granted or conferred under the law. Illegality as a ground of judicial review means the decision-maker must understand correctly the law that regulates his/her decision making powers and must give effect to it.

The applicants contend that their salary was enhanced to be in tandem with the other legal professionals with DPP and they have always enjoyed this enhanced salary as a result of their pleas to His Excellence the President and this has been articulated in the affidavit in support as follows;

“That subsequently in 2010, when the matter was brought to the attention of His Excellence the President of the Republic of Uganda, he made a directive that the salaries of the Lawyers working with the Uganda Police Force should be enhanced in tandem with their counter-parts working with the Attorney General’s chambers and the Directorate of Public Prosecutions.

That consequently in a letter dated 4th March, 2010, addressed to the Minister of Finance, Planning and Economic Development, the then 2nd Deputy Prime Minister the Rt. Honorable Henry Muganwa Kajura relayed H. E the President's directive that the salaries of the Lawyers working with the Uganda Police Force should be enhanced in tandem with their counter-parts working with Attorney General's chambers and the Directorate of Public Prosecutions.

That payments were effected to all the Uganda Police Force Legal officers from the rank of AIGP to ASP and consequently the Uganda Police Force Legal officers abandoned High Court Civil Suit No. 160 of 2008.

That from 2010 to date, the enhanced wages for lawyers were incorporated into the UPF wage bill and all subsequent appointments of legal officers with the Uganda Police Force and their salary scale have been in tandem with those of their counter-parts in the office of the DPP until a report from the Permanent Secretary Ministry of Public Service dated 17th October, 2022, was sent to the Inspector General of Police raising allegations of overpayment of Legal officers in Uganda Police Force. “

This assertion has not been specifically rebutted in any evidence adduced by respondent and it appears the applicants and others within their category have always benefited along with their counterparts in ODPP as the Presidential Directive. The respondent wants to resile from the position or increment of the applicants without any justification. Some of the applicants received the employment letters and or promotion letters indicating the said increased or enhanced salaries.

The Presidential Directive of 2010 became effective and has always been acted upon Ministry of Public Service and the same bestowed benefits to the applicants of the enhanced salary which has never been reversed or changed by H. E the President. It would be erroneous and illegal for the Public Service or Public Service Commission to reverse the Presidential Directive.

In carrying out the function of the office, the President in a presidential system such as Uganda may issue orders to agents and agencies of the executive branch. These orders may set out government policies, issue directives or command action relating to functions of the executive arm.

Because executive orders are generally self-enforcing, once the government official acts then the order is carried out. Executive orders start and end with the President, but as in all principal-agent relationships, executives rely on subordinates to carry out their directives. See

Namuganza Persis Princess v Attorney General HCMC No. 111 of 2022

The respondent is trying to equate a Presidential Directive to the Circular Standing Instruction by contending that the enhanced salary did not have such an instruction. It is the duty of the same officer who has issued the Circular Standing Instruction to ensure that the Presidential Directive is effected and they cannot argue that the salary enhancement of the legal professionals in the Uganda Police Force was not supported by a Circular Standing Instruction or illegal. The Public Service Ministry or Public Service Commission are bound and must comply with the Presidential

Directive without any question or else that would amount to insubordination or usurpation of presidential powers.

Secondly, applicants' salary enhancement upon the Presidential Directive automatically triggered constitution rights and entitlements and cannot casually be taken away at the whims of officers in the Ministry of Public Service or the Public Service Commission or Ministry of Finance. The purported new salary scale created by the Ministry of Public Service had the effect of revising the salaries of the Applicants downwards which was not only unfair but also contravened the Constitution under **Article 158(1) of the Constitution of the Republic of Uganda** which provides thus ;

“Where any salary or allowance of the holder of any office is charged on the consolidated fund, it shall not be altered to his or her disadvantage after he or she has been appointed to that office”

The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. It is the courts to determine whether the authority has made an error of law bearing in mind the broad degree of discretion in decision making. The court should identify the all-important dividing line between decisions that have been reached lawfully and those that have not. There are two questions: (i) was the decision taken within the powers granted? and (ii) if it was, was the manner in which it was reached lawful?

The decision to review or reduce the salary of the applicants and others within that Category-Legal professionals within the Uganda Police Force was illegal, unlawful and ultra vires. Some of the applicants had already received letters of appointment and promotion under the new salary scale and the same cannot casually be reduced under the disguise of correcting errors in the payroll system. There was never any error in the register as contended since the enhanced salary was made pursuant to the Presidential Directive to enhance the salary of the applicants and others within that category. The officers of Ministry of Public Service and or Public Service could not countermand the Presidential directive which was already effective without seeking clarity (if required) from the President.

The action by the Ministry of Public Service officials to reduce the salary of the applicants would equally amount to variation of terms of employment which would be a total breach of contract of employment of the applicants and cannot be allowed. In addition, the purported reduction of the salary of the applicants was unconstitutional and illegal since it clearly violated Article 158(1) of the Constitution.

In addition, the Ministry of Public Service act of disregarding the Presidential Directive that the salaries of legal professionals in the Uganda Police Force should at all times be in tandem with those of legal professionals in the ODPP, is illegal and undermines the person of the President as the Fountain of Honour and his authority.

Irrationality

The applicants' counsel submitted that it was an act extreme bad faith for the Ministry of Public Service to revise their salaries in July, 2022, when some of them had been appointed on promotion and their new salary scales reflected in the appointment letters and the salaries had even been paid out for the months July, August and September, 2022 and then irrationally recall/ rescind the appointments and revert the Applicants to their previous salary scales.

The Applicants contend that the impugned decision taken or act done was not only grossly unreasonable and defies logic but was also extremely absurd that no reasonable authority would have made such a decision. The decision was equally irrational and absurd because it was targeting the Applicants as legal officers working in the Police Force whose salaries had earlier been enhanced in tandem with that of their counter-parts in the office of the Director of Public Prosecutions following a directive of His Excellence the President in 2010.

The respondent's counsel submitted that the Ministry of Public Service issued an addendum to the salary structure for FY2022/2023 to ensure that legal professionals under the Uganda Police Force revert to the salary they were earning prior to the unlawful changes to the salary codes that resulted in them earning salaries that exceeded their salary scale.

According to the respondent's counsel it was the most logical thing to do to halt the irregular payments of public funds to the legal professional in the Uganda Police Force in order to maintain the integrity of the public service that was being illegally paid out to the legal professionals in Uganda Police Force.

It was further contended that the decision to issue an addendum to the salary structure for the FY 2022/2023 reverting the salaries of legal professionals to their right scale followed the discovery of the irregularities in the payroll that had resulted in the legal professionals in Uganda Police Force earning salaries that are not commensurate to their salary codes and scale.

Analysis

The courts in some situations have exhibited a willingness to intervene on substantive grounds only if the decision in question crosses an especially high threshold of unreasonableness. The court should be able and willing to evaluate the reasonableness of the decisions more rigorously than usual in order to uphold the rule of law.

However, in exercising the powers of review, judges ought not to imagine themselves as being in the position of the competent authority when the decision was taken and then test the reasonableness of the decision against the decision they would have taken. To do that would involve the courts in a review of the merits of the decision, as if they were themselves recipients of the power.

In the case of ***Council of Civil Service Union vs. Minister for Civil Service [1985] AC 374 ALL ER 935. Diplock J stated thus;***

“*By ‘irrationality’, I mean what can now be succinctly referred to as ‘Wednesbury’s unreasonableness’... It applies to a decision which is so outrageous in defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it. Whether the decision falls within this category is a question judges by their training and experience should be well equipped to answer, or else there would be something wrong with our judicial system.*”

To determine this ground, it is therefore important to assess and analyze whether in arriving at the decision, the body acted in a way so outrageous that it defeated any logic. Wednesbury unreasonableness is associated with extreme behavior.

The Ministry of Public Officials unilaterally decided to reduce the salary of the applicants and others within that category without a hearing and without thinking through their decision and the effect it would have to the persons affected. The same officials had issued letters of appointment and promotions of the applicants with the same salary scale. They failed to apply their mind to the decision being made and its implications. It was quite unreasonable to cause a reversal of the salary by simply contending that they were earning salaries which are not commensurate to their salary codes and scale.

Any decision made by a public body can be challenged if it is repugnant to reason. It is not for the court to decide what is reasonable and what is unreasonable. The test of reasonableness is not what the court thinks is reasonable, but ‘unreasonable’ is something so absurd that no reasonable or sensible person could come to that decision. It is quite possible that two reasonable persons may come to opposite conclusions on the same facts without being regarded unreasonable. See ***Beti Kamya Turwomwe v AG & Another HCMC No. 209 of 2022***

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. The applicant’s salary scale was justified by the Presidential Directive which had brought their salary in tandem with the ODPP Lawyers/state Attorneys when such increment arose. It was act of bad faith by some wrong elements within Ministry of Public Service who decided to use the Circular Standing Instructions against a Presidential Directive to deny the applicants their increased salary.

Therefore, a material mistake or disregard of a material fact in and of itself renders a decision irrational and unreasonable. A decision or finding or recommendation may be quashed for material error of fact in the reasoning process. See ***R (on the application of March) v Secretary of State for Health [2010] EWHC 765 (Admin); Med. L. R 271, R v (on application of MD (Gambia)) v Secretary of State for the Home Department [2011] EWCA Civ 121***

The decision of the Ministry of Public Service and Public Service Commission to revise the salary structure of the Uganda Police Force Legal Officers downwards below the enhanced salary scale was illegal, unconstitutional and irrational or unreasonable.

Whether the decision by the Ministry of Public Service to revise/revert the Applicants salaries constitutes a breach of the Applicants’ legitimate expectation?

The applicant's counsel submitted that the Ministry of Public Service made express representations and assurances that the applicants shall have their salaries paid in tandem with those of legal professionals in the ODPP and that in 2010 His Excellence the President made a directive that salaries of lawyers working with Uganda Police Force be enhanced. The Respondent does not dispute that the President made such a directive for enhancement of salaries of Legal Professional working in the UPF. In 2010 the salaries of legal professionals in the UPF were enhanced and equated to that of their counter-parts in the ODPP. This was then implemented in the subsequent years from 2010 to 2022 whenever the salaries of legal professionals in the ODPP were enhanced.

The above, aforementioned qualified as a promise and representation made to the Applicants, which was acted upon and became an established practice, that the salaries of the Applicants would at all material times be paid in tandem with those of their counter-parts in the ODPP upon which honest belief the police management was paying the legal professionals amongst whom included the Applicants.

Legitimate expectations may include expectations which go beyond legal rights, provided that they have some reasonable basis and may be based on some statement or undertaking by, or on behalf of, public authority which has the duty of making the decision, if the authority has through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied an inquiry. See ***Dr. Peter Okello versus Kyambogo University & Another,*** **supra.**

In the instant case, the promise, representation and established action was in essence established since 2010, and formed the basis of belief among the Applicants as not only a very important source of welfare to the Applicants and their greater extended families. The promise, representation and established action did form a basis for their continued performance of their duties and attendant financial decisions for more than 13 years without interruption. Many of Applicant's had even entered into certain financial obligations with third parties based on the belief of the expected reward from the Respondent and in to the foreseeable future. As a result of the Respondents actions, the Applicants have suffered financial embarrassment from financial institutions for the loans obtained on the new salary scale with approval from the relevant institutions but cannot now effectively service the said loans because their legitimate expectation was breached by the actions of the Respondents.

The applicant's counsel further submitted that in the circumstances of this case and on account of the evidence adduced by the Applicants, it cannot be said that the Applicants were unreasonable to rely on the promise to be paid enhanced wages by government. The Applicants had every reason to expect being paid enhanced salaries in line with what the Fountain of Honour had directed and the payment had in fact been effected until 2022 when the Permanent Secretary Ministry of Public Service raised allegations of over payment of legal officers in the Police Force which prompted the Ministry of Internal Affairs to unfairly rescind the Applicants' appointments and revise their salaries downwards.

The respondent's counsel has denied the existence of any Presidential Directive that led to the enhancement of the applicants' salary to that ODPP staff and contended that the applicants unlawfully enhanced their salaries without the knowledge or participation of the Ministry of Public Service.

It was their contention that there was no legitimate expectation to receive salary enhancement and that if there had been any salary enhancement it should have been reflected in the subsequent Circular Standing Instructions issued by Ministry of Public Service and not merely being inferred from the salary scale of legal professional in ODPP.

The respondent counsel further submitted that the salary codes of legal professionals with Uganda Police Force were irregularly and unlawfully altered which resulted in the said legal professionals receiving higher emoluments than they were entitled to.

Analysis

The doctrine of legitimate expectation belongs to the main domain of public law and intended to give relief to the people when they are not able to justify their claims on the basis of law in a strict sense of the term though they have suffered a civil consequence because their legitimate expectation has been violated.

Therefore, this doctrine provides a central space between 'no claim' and a 'legal claim' wherein a public authority can be made accountable on ground of an expectation which is legitimate. It confers upon a person a right which is enforceable in the case of its denial.

But whether an expectation is legitimate or not is a question of fact which has to be determined not according to the claimant's perception but in the larger public interest.

The principle at the root of the doctrine of legitimate expectation is Rule of Law which requires regularity, predictability and certainty from government when dealing with the public. An expectation could be based on an express promise or representation or by established action or settled conduct. See ***R v North and East Devon Health Authority, ex p Coughlan [2001] QB 213***

The doctrine of legitimate expectation is directly related to the doctrine of Promissory Estoppel against administration. It envisages that if someone acts on a promise made, or assurance given by the Administration, then the Administration cannot be allowed to go back on its promise or assurance. The doctrine is based in equity in order to protect the innocent and unsuspecting persons from being injured by acting on the promise made or assurance given, by the administration.

A person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by authority, either expressly or impliedly. Every fact situation giving rise to promissory estoppel also creates a legitimate expectation in the representee that the administration will fulfill its representations. Therefore, 'legitimate expectation' and 'promissory estoppel' are used interchangeably although legitimate expectation is broader.

It should be noted that following the Presidential Directive and the precedent set from 2010 to 2022, the Applicants have a legitimate expectation that their salary will always be in tandem with that of legal professionals in the Office of the Director of Public Prosecutions and the Ministry of Justice and Constitutional affairs.

Their salary has always been in tandem with ODPP in accordance with the Presidential Directive and this created a genuine legitimate expectation which cannot be frustrated without according the applicants or the beneficiaries of this expectation a hearing. The respondent action was taken unfairly and without giving the applicants any hearing and were thus treated unfairly contrary and in breach of Article 42 of the Constitution.

In the case of ***Council for Civil Service Unions v Minister for the Civil Service [1985] AC 629*** Lord Diplock stated that, for a legitimate expectation to arise, the decision:

“must affect [the] other person....by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he legitimately expect to be permitted to continue to do until there has been an opportunity to comment; or (ii) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”

Some of the applicants received their appointment letters and promotion letters which clearly reflected the enhanced salary scales. This created a genuine legitimate expectation to expect to continue to be paid under the same scale. Indeed, some of them, entered into financial obligations by taking out loans and thus the reduction of their salary in breach of this expectation has affected their rights. The applicants had been paid under the enhanced salary scale for a period of three to 4 months and any attempt to have it reduced ought to have considered the effect it would have had on them.

The actions or conduct of the respondent is in total violation of the right to legitimate expectation of the applicants who had received an enhanced salary in accordance with the Presidential Directive.

In the case of ***National Buildings Construction Corporation v S. Raghunathan [1998]AIR (SC) 2779:[1998] 7 SCC 66*** the Supreme Court of India observed:

“The doctrine of ‘Legitimate Expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention to treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of ‘Legitimate Expectation’ was evolved which today has become a source of substantive as well as procedural rights. But claims based on ‘Legitimate Expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

Public authority or officers (Ministry of Public Service) should normally be required to stand by their word such that the public who deal with them will reciprocate by complying with their authority. Whenever they disregard their commitments, promises and representations made to the citizenry, it would bring about unpredictability and loss of trust in the office/officer which is inimical to the Rule of Law. Public authority is not entitled to thwart legitimate expectation by putting a strained and unconventional meaning on a policy. See ***Johnson Brothers v Secretary of State for Communities and Local Government [2009] EWHC 580***

The decision of the Minister of Public Service to revise/revert the salary of the applicants was in breach of the principle of legitimate expectation and thus illegal.

What remedies are available?

Since this application has succeeded on all the issues raised, the applicants are entitled to the following declarations and orders;

1. A declaratory Order that the decision to revise the salary payments of the Uganda Police Force Legal Professionals downwards below the enhanced salary scale was a violation of the Presidential Directive and an attempt to undermine the Fountain of Honour.
2. A declaration that the decision of Ministry of Public Service to revise the salary structure of the Uganda Police Force Legal Officers downwards below the enhanced salary scale was unconstitutional, illegal and ultra vires.
3. An Order of Certiorari issues to quash the decision of the Ministry of Public Service to revise the salary structure of the Uganda Police Force legal officers downwards below the enhanced salary scale.
4. An Order of Mandamus issues directing the respondent to pay or cause payment to be made to the applicants and others within that category of legal officers all salary arrears resulting from the non-payment or underpayment of their enhanced salary.
5. Costs are awarded to the applicants.

I so order.

SSEKAANA MUSA

JUDGE

16th August 2024

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