

UGANDA / JUDGMENT

Okello v Alanyo & 2 Others (Miscellaneous Cause 6 of 2024) [2024] UGHC 1115 (27 December 2024) [2024] UGHC 1115

COURT

High Court of Uganda

BEFORE

Philip W Mwaka

CASE / FILE NUMBER

Miscellaneous Cause 6 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

MISCELLANEOUS CAUSE No. 06/2024

(JUDICIAL REVIEW)

5 OKELLO GEORGE WILLY APPLICANT

Versus

1. ALANYO MARGRET**2. PADER DISTRICT LOCAL GOVERNMENT****3. PADER DISTRICT SERVICE COMMISSION RESPONDENTS****10 BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.****RULING.****Introduction and Background.**

[1]. The Applicant, a Headteacher, seeks Judicial Review of decisions of the Respondents arising from his employment with the 2nd Respondent. The 15 grounds of the Application are that whilst executing his duties as Headteacher of Oweka Primary School in Bongtiko Sub County in Pader District the 1st Respondent, the District Education Officer of Pader District, instituted criminal charges against him on allegedly false allegations and further allegedly illegally dismissed and, or demoted him from the position of Headteacher to 20 Classroom Teacher on false allegations. The Applicant claims that he has not been posted (deployed) to any School and has been denied the practice of his profession as a Teacher. He contends that the 3rd Respondent did not follow the requisite Procedures and Rules for recruitment and appointment of a new Headteacher of Oweka Primary School, his earlier posting. It is contended 25 that the Applicant exhausted all available remedies prior to filing this Application and it is just and equitable that it is granted.

[2]. The Orders sought are – A declaration that the decision of the 1st Respondent to dismiss and, or demote him from the position of Headteacher of Oweka Primary School was illegal, null and void in as far as it was based on irregular procedure; A declaration that the action of the 2nd and 3rd 30 Respondents appointing and, or posting a new Headteacher to Oweka Primary School before transferring and, or posting him to another School was irrational, illegal and unlawful and in breach of Laws governing public appointments; An Order of Certiorari quashing the decision of the 1st Respondent dismissing 35 him as the Headteacher of Oweka Primary School; An order of Mandamus compelling the Respondents to reinstate him as the Headteacher of Oweka Primary School; A declaration that allegations placed on him by the 1st Respondent were false and unlawful; A declaration of the act of the 1st Respondent commencing criminal proceedings against him illegal, irrational 40 and unfounded; An Order for general damages; and, Costs of the Application.

The Applicant's Case and Submissions.

- [3]. The Application is by Motion filed on the 17th April, 2024 under **Sections 33, 36 and 38 of the Judicature, Cap. 13 (now cited as Ss. 37, 40 and 42 of 45 Cap. 16) and Rules 3 and 7 of the Judicature (Judicial Review) Rules, SI No. 11/2009 (As Amended: No. 32/2019)** recently revised by the **Law Revision Act, Cap. 3 and Statutory Instrument No. 049/2024: The Law Revision (Commencement of the 7th Revised Edition) (Principal Laws) Instrument, 2024.**
- 50 [4]. In the supporting Affidavit the Applicant, Mr. Okello George Willy, reiterates the grounds and expounds in as far as – he states his background wherein he was registered by the Ministry of Education and Sports as a Grade III Teacher on the 1st May, 1995 and subsequently as a Graduate Teacher on the 1st August, 2019 following which on the 17th May, 2022 he was appointed Headteacher by the 3rd 55 Respondent.
- [5]. His first deployment as Headteacher was to Ociga Primary School followed by his transfer to Oweka Primary School.
- [6]. The Applicant states that Oweka Primary School does not have a Uganda National Examinations Board (UNEB) sitting Center Number as a result of 60 which Primary Seven (P.7) pupils sit their Primary Leaving Examinations (PLE) at Pajule Primary School. Thus, on the 7th November, 2023 pupils from Oweka Primary School sat their exams at Pajule Primary School which he describes as successful following which some pupils returned to the School by themselves whilst other pupils went to their respective homes with all 65 reaching their destinations safely and without incident.
- [7]. Later, he was surprised and shocked when the 1st Respondent being the District Education Officer (DEO) employed by the 2nd Respondent reported him at Pader Police Station instituting criminal charges for neglect of duty in regard to not escorting the pupils from Oweka Primary School and leaving 70 them to move from the Examinations Centre on their own. As a result, he was arrested and detained for three (3) days at the Police Station before being released on Bond with his arrest widely published by the 1st Respondent on Radio and Television media in Pader District, Kitgum District, Gulu District as well as surrounding areas thereby tarnishing his name.
- [8]. The Applicant contends that whilst he was in Police custody, the 1 st 75 Respondent **"... without any color of right verbally dismissed and, or demoted me from the Office of the Headteacher and replaced me with my Deputy Headteacher ..."**.
- [9]. This he claims was inspite of him being a Law abiding citizen diligently carrying out his duties. The act of the 1st 80 Respondent causing his arrest, he contends, affected his Public Standing in the eyes of the general public, pupils, parents, fellow Teachers and Family and has affected his career growth, reputation and future prospects and claims following the incident he has been denied access to the Office of the Headteacher of Oweka Primary School.

- 85 [10]. Moreover, he contends that the Respondents have not charged him with any Professional offences or subjected him to any disciplinary proceedings in respect of his position as Headteacher of Oweka Primary School and he has not been issued with any official communication regarding his status as a Teacher and, or Headteacher of Oweka Primary School.
- 90 [11]. As a result, he has been rendered redundant and he has exhausted all available (administrative) remedies which has yielded nothing and he has not been convicted of any criminal offence by any Court nor had any such proceedings against him. Thus, concluded the Applicant's evidence.

95 The Respondents' Case and Submissions.

- [12]. The Respondents opposed the Application and filed an Affidavit of the 1st Respondent, Ms. Alanyo Margret - District Education Officer (DEO) of the 2nd Respondent and an Affidavit of the 2nd and 3rd Respondents deposed by Ms. Amony Catherine described as Senior Assistant Chief Administrative Officer of the 2nd Respondent both filed on the 11th 100 June, 2024.
- [13]. In regard to the 1st Respondent, she contends that the Application is incurably defective with no cause of action against her (in her individual capacity) stating that on the 10th November, 2023 she was informed by telephone call from the Local Council 5 Councillor for Lapul Sub County and the District Council 105 Representative in the School Management Committee of Oweka Primary School that the parents of the pupils studying in the School had locked the Office of the Headteacher because of the disappearance of two (2) pupils whom had not returned to their homes after sitting the PLE examinations and the parents were demonstrating in the School premises against the actions 110 of the Applicant, as the Headteacher.
- [14]. In response, she reported the matter to the then Chief Administrative Officer, Mr. Adeason Robert who directed her to go to the School and verify the information which she promptly did.
- [15]. Upon arrival at the School, she claims to have found it very bushy and 115 untended with parents demonstrating in the premises and posters stating and accusing that - "The Headteacher had stolen their money and was not managing the School" and demanding "The return of their daughters who had disappeared". She spoke with the parents requesting them to calm down so as to amicably resolve the issues which they agreed to. A meeting was held 120 with the parents in the School premises but with the Applicant being absent at the time the 1st Respondent contacted him on phone to attend the meeting which he responded to.
- [16]. At the meeting the parents raised ten (10) issues against the Applicant as Headteacher including – the School budget for 1st, 2nd and 3rd Term was not 125 utilized for development purposes, welfare funds were not used appropriately for the welfare of pupils and Teachers,

the budget for PLE candidates was not used for the purpose, the relationship between the Teachers, Parents and Headteacher was strained and affecting learning in the School, the Headteacher was unresponsive to their concerns whenever raised and instead 130 insulted parents stating that he is a qualified Headteacher with a Degree and they could not advise him, there were no Teachers or pupils at the School on the 10th November, 2023 yet it was a School day, not all the PLE candidates who went to the sitting Centre returned home - specifically two (2) female pupils, it was observed that the School premises were unkempt and the 135 sanitation facilities were unhygienic and that the Applicant always informs the School Management Committee that the budget has not been approved by the DEO yet he withdraws money. The list of grievances is attached.

- [17]. The Applicant was requested to respond to the grievances but parents were not satisfied with his responses and became aggressive towards him 140 demanding to know the whereabouts of the two (2) pupils who had disappeared. The parents also demanded that the Applicant is taken into custody until he reveals their whereabouts.
- [18]. At the meeting were the GISO Bongtiko Sub County and the Officer in Charge (O/C) Crime of Pajule Police Station who requested the Applicant to 145 go with them to the Police Station and make a statement on the disappearance of the two (2) pupils. At the Police Station he was taken into custody on a charge of neglect of duty where he spent a night and was released the next day.
- [19]. The 1st Respondent denies instituting criminal proceedings against the 150 Applicant or causing his arrest.
- [20]. At another meeting held on the 13th November, 2023 with parents and the Applicant in attendance, the parents resolved that they did not want the Applicant as Headteacher of the School and **"handed him back"** to the District Education Officer. The minutes are attached.
- [21]. Amidst a tense and hostile atmosphere at the School, the 1st 155 Respondent requested the Applicant to go home and see her in her Office for a transfer since his safety was not guaranteed in the School. The 1st Respondent claims she waited in vain for him to discuss his transfer and the issues raised by the parents. Instead, the Applicant served her with a notice of intention to sue 160 and later the instant Application.
- [22]. The 1st Respondent denies that the Applicant was demoted or dismissed. She contends that she does not have the mandate to demote or dismiss the Applicant.
- [23]. In December, 2023, a list of transferred Headteachers was displayed at the 165 Education Notice Board at the Pader District Headquarters and when the parents of the School found out that the Applicant was still the Headteacher they complained and he could not access the Office.

- [24]. Subsequently, by letter dated 11th March, 2024 the Applicant was transferred to Lamincwida Primary School with immediate effect. The letter of transfer 170 signed by the Chief Administrative Officer is attached.
- [25]. The 1st Respondent claims that her Office tried to access the Applicant by phone to collect his transfer letter to which he initially did not respond until the 29th May, 2024 when he collected his transfer letter and reported to Lamincwida Primary School. However, the transfer letter was erroneously 175 copied to the Sub County Chief of Tenam Sub County but the error was rectified by the Chief Administrative Officer.
- [26]. In conclusion, the 1st Respondent contends that, contrary to his averments, he is not redundant and he is the Headteacher of Lamincwida Primary School and on Government payroll receiving his salary as a Headteacher.
- [27]. In regard to the 2nd and 3rd 180 Respondents, they contend that the Application is incompetent, misconceived, frivolous and incurably defective and the Applicant has no cause of action against them. They aver that the Applicant was formerly Headteacher of Oweka Primary School and is currently Headteacher of Lamincwida Primary School. In December, 2023 when a list 185 of Headteachers on transfer was printed and displayed at the Education Notice Board at District Headquarters upon parents of Oweka Primary School and Local Area Leaders finding out that the Applicant was still the Headteacher of Oweka Primary School they complained to the Chief Administrative Officer in regard to issues raised concerning his administration at the School. By letter dated the 11 190 th March, 2024 the Applicant was transferred from Oweka Primary School to Lamincwida Primary School with immediate effect. The Applicant was contacted severally and eventually picked his transfer letter on the 29th May, 2024 and reported to Lamincwida Primary School. The letter was erroneously addressed which 195 was rectified by the CAO, Pader.
- [28]. The 2nd and 3rd Respondents contend that the Applicant has not shown which decisions were tainted with illegality, irrationality or procedural impropriety and he has never been dismissed or demoted since no decision was taken in respect of his position as a Headteacher.

200 [29]. The Applicant is not redundant being the Headteacher of Lamincwida Primary School and on Government payroll earning salary as Headteacher.

Rejoinder.

- [30]. In rejoinder to the 1st Respondent filed on the 21st June, 2024, the Applicant 205 contests the Attorney General's representation and insists that he has a cause of action as the 1st Respondent irrationally and illegally stopped him from teaching at Oweka Primary School without subjecting him to disciplinary action and without following the Standing Orders governing his employment. He has never received a formal complaint from the 1st Respondent as his 210 supervisor or any parents regarding alleged actions and omissions as Headteacher of Oweka Primary School or been subjected to disciplinary proceedings. He

contends that the meeting (which he does not specify) was illegal and illegally convened and attended by people unknown to him and not authorized to attend such meetings which amounted to mob justice and could not pass legally enforceable resolutions. He claims that by the time of filing the Application he had not been deployed and was redundant. He admits that on the 29th May, 2024, after the Application was filed, he was transferred to Lamincwida Primary School where he is presently Headteacher. He claims the transfer letter was backdated to 11th March, 2024.

- [31]. In rejoinder to the 2nd and 3rd Respondents filed on the 21st 220 June, 2024, the Applicant insists that he has a cause of action against them because they employed him and then removed him or condoned his removal as Headteacher without following laid down procedures. He contends that their Affidavit is incompetent, full of hearsay and incurably defective claiming that 225 at the time of the Application he was not deployed to any School and was redundant and not practicing his profession.

Representation.

230 [32]. Counsel, Mr. Ngobi Ronald, represented the Applicant. The Applicant was present in Court. The 1st Respondent was present in Court. The 2nd and 3rd Respondents were represented in Court by Ms. Amony Catherine, Senior Assistant Chief Administrative Officer. The Respondents' Counsel was not in Court.

235 Proceedings of the Court.

- [33]. The proceedings before the Court on 28th May, 2024, 6 th June, 2024 and 30th July, 2024.
- [34]. The filing of Written Submissions by both Parties was scheduled by the Court with the Applicant's Submissions required by the 28th June, 2024 and the Respondent's by 5th July, 2024 with any Rejoinder by 12th 240 July, 2024. The Applicant filed Written Submissions on the 13th November, 2024 and the Respondents on the 26th September, 2024 – both belatedly. The Court has duly considered the Written Submissions in coming to this determination.

245 Considerations and Determination of the Court.

[35]. The core issues for consideration in regard to the Application shall be addressed by the Court jointly and are –

Whether the Application is amenable to Judicial Review and Whether the Applicant has established grounds for the Court to judiciously 250 exercise its discretion to grant the Prerogative Orders sought.

[36]. The considerations and standard in regard to discretionary remedies and prerogative orders available in Judicial Review that may be issued by a Court under its supervisory Jurisdiction in respect of control of the exercise of public power in public administration and prevention of the abuse of power 255 by persons, entities and Quasi-Judicial Tribunals exercising authority under their respective mandates and in the public interest are well known.

- [37]. The leading Authorities include **Civil Application No. 353/2005: John Jet Tumwebaze Vs. Makerere University Council and 3 Others**, HCMA No. 18/2007: **Owor Arthur Vs. Gulu University**, CACA No. 9/2009: **His 260 Worship Aggrey Bwire Vs. The Attorney General; Pastoli Vs. Kabale District Local Government & Others** (2008) 2 EA 300; Misc. Cause No. 31/1969 [1970] EA 543: **J. S. Shah Vs. The Attorney General and Ridge Vs. Baldwin** [1964] AC 40 from which it is well established that Judicial Review is not necessarily concerned with the decision in question itself but 265 the decision making process requiring an assessment of the procedures and protocols involved in making the decision. Appropriate considerations in determining Judicial Review in respect of actions and, or decisions of public officials and entities impugned include the legality, rationality, procedural propriety, *ultra vires* and the all-encompassing requirement to observe natural 270 justice. The net effect of Judicial Review is to uphold the supremacy of the Constitution and eliminate arbitrariness from public dealings reminding public officials and entities to act within the scope of their authority and mandates thus providing an expedient mechanism for redress.
- [38]. Other considerations are provided in the **Judicature (Judicial Review) 275 (Amendment) Rules SI No. 32/2019** under **Rule 7A** requiring a Court to satisfy itself in regard to three (3) tests specified as that - the Application is amenable for Judicial Review, the aggrieved person has exhausted the existing remedies available within the public body or under the Law and that the matter involves an administrative public body or official. This would best be 280 concluded at a preliminary stage, to the extent possible, prior to delving into the merits of the Application itself and the findings of the Court may be dispositive as such. The rationale is simply to sieve and ensure that competent and meritorious matters come before the Courts thus eliminating *inter alia* frivolous, misconceived and incompetent claims amounting to abuse of 285 process and needlessly occupying the Court's time and resources.
- [39]. Herein, the core complaints of the Applicant are twofold firstly, allegedly being dismissed from the position of Headteacher without due process and secondly, being reported to the Police for neglect of duty in failing to provide for pupils who sat the Primary Leaving Examinations to be escorted from the 290 examination centre said to have resulted in two (2) female pupils going missing.
- [40]. The Court has carefully considered the pleadings, annextures and (belated) submissions of the respective parties as well as their representations. The Applicant's first uncorroborated and unsubstantiated complaint that he was "verbally" "dismissed" and, or "demoted" by the 1st 295 Respondent from the position of Headteacher - in which he is unclear and seemingly uncertain - is undermined by the letter dated 11th March, 2024

addressed to him and deploying him on transfer to Lamincwida Primary School at the same position of Headteacher. The letter is attached to both Affidavits in Reply of the 1st and 2nd 300 Respondent and thus corroborated. It is also the corroborated evidence of the Respondents that the Applicant did in fact collect his deployment letter on the 29th May, 2024 following which he promptly reported to Lamincwida Primary School thereby accepting his deployment there as the Headteacher. This is not disputed by the Applicant.

- 305 [41]. The Respondents in their corroborated evidence further maintain that the Applicant has at all times been on the Government payroll constantly receiving his salary as Headteacher which he also does not dispute.
- [42]. At the proceedings of the Court on the 28th May, 2024 and later 6th June, 2024 the foregoing was reinforced when the parties indicated that they had 310 amicably discussed the matter of Applicant's deployment as Headteacher and it was apparent that the Applicant had been transferred which he acknowledged. The Court observes that had the Applicant simply sought clarification from his employers or explored these administrative remedies it would not have necessitated this litigation in the first place.

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- 315 [43]. It is therefore the finding of the Court in respect of the first complaint that the Applicant has at all times been in the employment of the 2nd Respondent as Headteacher and has all the while been on the Government payroll constantly receiving the salary of a Headteacher. As such, his complaint of having been dismissed or demoted is unfounded and is in fact a fiction 320 amounting to an abuse of process in falsely maintaining the complaint as a claim under the suit.
- [44]. The Court has further considered the Applicant's second claim under the suit regarding being reported to the Police and making a statement at the Police in respect of complaints of neglect of duty for failing to organize for the PLE 325 candidates to be escorted from the examination centre said to have resulted in two (2) female pupils going missing. He seeks Orders to the effect that the allegations placed against him were false and unlawful as well as that the commencement of criminal proceedings against him was illegal, irrational and unfounded. This is untenable in the circumstances.
- 330 [45]. It is not disputed by either the Applicant nor the Respondents that the PLE pupils left the examination centre unescorted. The matter in contention is whether two (2) pupils went missing in the process and in consequence whom would take responsibility for the perceived neglect of duty in failing to provide for them to be escorted. It is well known and established custom in 335 educational institutions that especially female pupils such as the two (2) female pupils said to have gone missing and not returned home are chaperoned by a Senior Woman Teacher moreso on assignment in a different environment. Needless to say, it would be remiss for this not to be investigated.

- [46]. The Court declines to intervene in the matter which is subject of its own 340 protocols and procedures generally considered to be outside of realm of Judicial Review. Moreover, it is absurd to complain that the actions of a public official performing a public duty in reporting a matter to the Police to investigate amounts to an illegitimate exercise of public authority.
- [47]. The Court observes that an investigation of the kind may or may not 345 culminate in the Office of Director of Public Prosecution (ODPP) making a determination in the matter within its Constitutional mandate under **Article 120 of the Constitution**. The Courts have been reluctant to intervene and for good reasoning considering that the Constitution accords the Office independence in the performance of its functions. This protects the integrity 350 of the criminal process. Moreso, the Office is best equipped to discern the merits in complaints submitted and needn't be second guessed or pre-empted.
- [48]. The Courts have in only exceptional and limited circumstances intervened from the generally recognized notion that criminal proceedings are generally not amenable to Judicial Review, where it is established that abuse of the 355 criminal process has occurred actuated by dishonesty, *malafides*, bad faith, illegality or other similar cause. This includes the spectrum from initial complaint to sanctioning prosecution. The rationale here is to protect the criminal process from manipulation. This is not established in this case.

See: [2021] KESC 32 (KLR) **Cyrus S. K. Jirongo Vs. Soy Developers Ltd 360 & 9 Others; R Vs. DPP Ex Parte Kebiline [2000] 2 AC 326 and Others.**

[49]. It is therefore the finding of the Court that the second complaint is without merit and in the circumstances frivolous.

[50]. Having carefully given due consideration to the Application, supporting and responsive Affidavits as well as Annexures thereto, relevant matters and the 365 circumstances of the case – the Application is dismissed with costs.

Orders of the Court.

- [51]. Accordingly, the Court makes the following Orders:
- 1. **Miscellaneous Application No. 06/2024** is dismissed and the Court declines to grant the Prerogative and other Orders sought.
- 370 2. The Applicant shall bear the costs of the Application.

It is so Ordered.

Signed and Dated on the 27 th day of December, 2024 at High Court Kitgum Circuit.

375 Philip W. Mwaka

Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Ruling on the directions of the Presiding Judge shall be delivered to the Parties electronically on **Friday, the 27 th 380 day of December, 2024** by the Deputy Registrar, High Court Kitgum Circuit.

|| 1.
Deputy Registrar, ||
|-----|-----|
|| High Court Kitgum
Circuit | -
Her Worship
Suzanne Aisia Musooli. |
|| 2.
Counsel for the Applicant | -
Mr. Ngobi Ronald. |
| 385 | 3.
The
Applicant | -
Mr. Okello George Willy. |
|| st Respondent
4.
The
1 | -
Ms.
Alanyo Margret. |
|| nd and 3rd Respondents
5.
2 | -
Ms. Amony Catherine, Senior Assistant |
|| | Chief Administrative Officer
(sic). |
|| 6.
Court Clerk
and Interpreter | -
Mr. Atube Michael. |

390 7. Interested and Affected Persons and Entities.

Philip W. Mwaka
Acting Judge of the High Court.
High Court Kitgum Circuit.
27 th 395 day of December, 2024.

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