

UGANDA / JUDGMENT

Ssempijja v Attorney General and Others (Miscellaneous Cause 41 of 2023) [2025] UGHC 221 (16 April 2025)

[2025] UGHC 221

COURT
High Court of Uganda

BEFORE
Tweyanze, J

CASE / FILE NUMBER
Miscellaneous Cause 41 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA
MISCELLANEOUS CAUSE NO. 41 OF 2023

IN THE MATTER OF ARTICLES, 42 AND 44 OF THE CONSTITUTION, SS. 33, 36, 38(2)
OF THE JUDICATURE ACT. AND S6 OF JUDICIAL REVIEW RULES

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI, MANDAMUS, PROHIBITION AND DECLARATIONS.

SSEMPIJJA TONY (SPEAKER MASAKA CITY):..... APPLICANT

VERSUS

ATTORNEY GENERAL & 9 OTHERS :..... RESPONDENTS

Before: HON JUSTICE LAWRENCE TWEYANZE

RULING

Introduction.

1. The Applicant brought this Application under, Articles 42, 44 and 185(2) of the 1995 Constitution, Sections 33, 36 Judicature Act, Section 175 of the Local Government Act Cap 243, Sections 15 - 20 of the Interpretation Act Cap 2 (Revised edition), Rules 6 and 8 of the Judicature (Judicial Review) Rules 2009 seeking for orders that: An Order of Certiorari quashing the decision of the Minister of Local Government to call for a meeting of Council

to remove the Applicant from the position of Speaker of Masaka City under the petition dated the 24th day of October 2023 the whole process being illegal and tainted with procedural impropriety; An Order of Prohibition, prohibiting the Minister from holding the said meeting that was slated for 29th November 2023 at the Mayor's Chambers for removal and election of the Speaker of Masaka City; A declaration that the Standard Rules of Procedure for Local Government Councils in Uganda (2019) and specifically **Rules 18(6), 27(5) and 19(b)** under which the petition was brought are illegal, irregular and ultra vires and that they don't have any force of law; A declaration that **Rule 100** of the Standard Rules of Procedure for Local Government Councils in Uganda (2019) under which the petition was brought is ultra vires **Article 185(2)** of the Constitution and therefore null and void with no force of law; A declaration that the act of the Ministry of Local Government to make the said guidelines in form of a booklet, instead of Statutory Instrument, and making them effective without first laying the same before Parliament is contrary to **Section 175** of the Local

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Government Act Cap 243 (Revised Edition) and **Sections 15,16,17,18, 19 and 20** of the Interpretation Act Cap 3; A declaration that the procedure followed in the removal of the Speaker of Masaka City is contrary to the law and is in breach of Rules of natural justice; An order that the Respondents pay general and punitive damages to the Applicant for inconvenience and mental anguish suffered and an order for any other relief as this Honourable Court may deem, plus costs of this Application.

- 2. The grounds in support of the Application are stated in the affidavit deposed by the Applicant but briefly they are: - That the petition for removal of the Speaker of Masaka City was based on allegations that he breached Standard Rules of Procedure for Local Government Councils in Uganda of 2019 and specifically **Rules 18(6), 27(5), 19(b) and 100** which Rules are illegal, irregular and ultra vires and have no legal basis because they were made contrary to **Section 175** of the Local Government Act Cap 243; That **Rule 100** of the Standard Rules of Procedure for Local Government Councils in Uganda (2019) under which the petition was brought is ultra vires **Article 185(2)** of the Constitution and therefore null and void with no force of law.
- 3. That the decision of the Minister of Local Governments to proceed with the meeting to remove and elect the Speaker of Masaka City basing the whole process on the alleged breaches of Standard Rules of Procedure for Local Government Councils in Uganda of 2019 which are illegal and unconstitutional amounts to unfair treatment; That the decision of the Minister of Local Governments to proceed with the meeting to remove the Speaker of Masaka City basing the removal on the alleged breaches of Standard Rules of Procedure for Local Government Councils in Uganda of 2019 which Rules had never been adopted by Masaka City Council is illegal; The notice for removal of the Speaker was submitted to the Minister by the Mayor of Masaka City instead of the Clerk to Council.

- 4. In reply, the Respondents filed their respective affidavits in reply, and opposed the Application as per the record. Specifically, Ekyokutangaaza Benjamin deponed on behalf of the 1st Respondent that the instant Application was filed in Court on 20th November 2023, way before the decision to remove the Applicant as Speaker was made. The 5th and 10th Respondents deponed that the Application was filed prematurely because at the time of its filing, no decision had been taken by the Minister to warrant judicial review. Further that on the 29th day of November 2023, the Minister for Local Governments convened a meeting with Councilors of Masaka City Council where a petition for removal of the Applicant as Speaker was

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handled. That the process for removal of the Applicant from the post of Speaker was legal, fair and conducted in accordance with the principles of natural justice.

- 5. In rejoinder, the Applicant deponed under paragraph 5 of his affidavit that on the 29th day of November 2023, the Applicant was illegally removed from his position of Speaker of Masaka City through an illegal petition authored by the 2nd to 9th Respondents and approved by the Minister Local Governments. As such, the Applicant challenges the process of his removal from office that was done on the 29th day of November 2023.
- 6. At the hearing, the Applicant was represented by M/s Mbabali Jude & Co. Advocates. Namara, the State Attorney from the Attorney General's Chambers represented the 1st Respondent. The rest of the Respondents were represented by M/s Bashasha & Co. Advocates. The Applicant, the 1st, 5, and 10th Respondents filed their respective submissions which are on Court record and have been considered.

The issues for determination are:

- *1. Whether the Application is competently before Court?*
- *2. Whether the Standard Rules of Procedure for Local Government Councils in Uganda of 2019 are illegal and/or ultra vires?*
- *3. Whether the process of removal of the Applicant from the office of the Speaker of Masaka City was illegal, procedurally improper and/ or ultra vires?*
- *4. What remedies are available to the parties?*

Issue 1. Whether the Application is competently before Court?

Submissions.

7. Counsel for the Applicant submitted that the Applicant herein is challenging the Rules under which he was removed from the Speakership for being substantively ultra-vires since they are made by persons not authorised by the law. That in paragraph 9 of the Applicant's affidavit in rejoinder he deponed that on the 29th day of November 2023, he was illegally

removed from his position of Speaker of Masaka City through an illegal petition authored by the 5th and 10th Respondents and approved by the Minister of Local Government who altogether had been duly warned of the illegality of the process in written defence/reply to the petition by the Applicant who duly served the same on all the Respondents and read out by

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the Applicant during the meeting for removal but the Respondents adamantly ignored the defence/reply and proceeded with the removal of the Applicant.

8. For the 1st Respondent, it was submitted that from the Applicant's pleadings, at the time of filing the Application, the controversy between parties was the Minister's decision to convene a meeting, however, since he has departed from the same as he was submitting on his removal from office, which action had not occurred at the time of filing the Application. That the Application is overtaken by events.

Determination of the issue

- 9. Judicial review is concerned with the Courts' supervisory jurisdiction to check and control the exercise of power by a public body or those in *Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders*. A public body for purposes of Judicial review is defined by *Rule 2(1A) of the Judicature (Judicial Review) (Amendment) Rules, 2019* to include the Government, any department, services or undertaking of Government and extends to persons exercising statutory mandate.
- 10. *Rule 5(1) of the Judicature (Judicial Review) Rules 2009*, is to the effect that an Application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the Application first arose, unless the Court considers that there is good reason for extending the period within which the Application shall be made. In an Application for Judicial review, *Rule 7 A (1) (a) of the Judicature (Judicial Review) Rules 2019* enjoins the Court to satisfy itself that the Application is amenable to judicial review. The Application must be competently before Court as against the Respondents thereto. See the case of *In the matter of an Application for Judicial Review by Kadope vs Uganda Revenue Authority (Consolidated Miscellaneous Cause No. 40 of 2019)*.*
- 11. In the instant case, the Applicant seeks to quash the decision of the Minister of Local Government to call for a meeting of Council to remove the Applicant from the position of Speaker of Masaka City under the petition dated the 24th day of October 2023; An Order of Prohibition, prohibiting the Minister from holding the said meeting that was slated for 29th November 2023 at the Mayor's Chambers for removal and election of the Speaker of Masaka City. A declaration that the procedure followed in the intended removal of the Speaker of Masaka City is contrary to law and in breach of Rules of natural justice. Clearly, these prayers sought were overtaken by events since the said meeting already took place and

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the Applicant was removed from office by the time of this ruling and the same cannot be issued.

- 12. As pointed out by Counsel for the 1st Respondent, from the Applicant's pleadings, at the time of filing the Application, the controversy between parties was the Minister's decision to convene a meeting, however, in submissions, the Applicant has departed from the same and he instead submitted on his removal from office, which action had not occurred at the time of filing the Application. The Application is overtaken by events and the prayers sought in submissions cannot be granted since by the time he filed this Application, the decision to remove the Applicant from office had not been made by the Respondents. This implies that the Application was filed prematurely before the decision was made.
- 13. In this case, the Application was filed in this Court on the 20th day of November 2023, and the decision to remove the Applicant from office was made on the 29th day of November 2023. This implies that the Application was filed before the decision was made. Judicial review is about the decision-making process. However, one could not seek to challenge the process of the decision-making when the decision had not yet been made by the time of filing the Application as it is in this Application. This implies that the Application was filed prematurely before the decision was made and therefore incompetent.
- 14. I therefore find that this Application is not amenable to judicial review, having been incompetently brought against the Respondents. In the final result, the Application fails the test under *Rule 7 A (1) (a) of the Judicature (Judicial Review) Rules 2019* and it is hereby dismissed with costs on account of it not being amenable to Judicial review. It is not necessary to address the other issues as this finding disposes off the entire Application.

Orders:

- a. This Application is dismissed.
- b. Costs awarded to the Respondents

I so order.

Ruling signed and delivered electronically at Masaka this 16th day of April, 2025

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LAWRENCE TWEYANZE JUDGE. 16th April, 2025.

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