

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 153 OF 2014 & MISC. APP NO. 812 OF 2017

STELLA RWAKOMA E.T ::: **APPLICANT**

VERSUS

1. MAKERERE UNIVERSITY

2. PROF. BARNABAS NAWANGE::: **RESPONDENTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

a) Introduction

1. This application was brought under articles 254, 50 & 42 of the Constitution, section 101(e) of the Pensions Act, section 3 of the Judicature (Amendment) Act, Rules 3, 4, 6,7 and 8 of the Judicature (Judicial Review) Rules, 2009 and Rules 30 & 31 of the Pensions Act Rules, 2000 seeking:

- i. A declaration that the Respondents decision to evict the Applicant from her house without officially retiring her and paying her employment dues and entitlements was arrived at without giving her a fair hearing, was discriminatory and in breach of the rules of natural justice.

- ii. A declaration that the Respondent's omission to pay the Applicant her repatriation and her transport costs to her designated home is a breach of statutory duty, ultravires and a nullity.
- iii. An order of certiorari issues calling into court the Respondents decision contained in the letter of 15th of September 2014 for quashing from public records.
- iv. A declaration that the Respondents decision to evict the Applicant from her house on an unreasonable short notice and before she is officially retired, paid her entitlements that include accrued retirement benefits, pension, statutory contributions, gratuity and allowances due to her is ultra vires, oppressive, high handed and without legal authority.
- v. A declaration that the Respondents decision to continue the Applicant in its employment beyond her mandatory retirement age and without catering for her livelihood and survival is breach of statutory duty under the Constitution, Universities & Other Tertiary Institutions Act (UTOA) and Pensions Act and a nullity.
- vi. A declaration that the Applicant having worked for twelve years is entitled to pension under the Respondent's in House Retirement Benefits Scheme (IHRBS) and outstanding deposit administration scheme (DAP).
- vii. A declaration that the Respondents intended eviction of the Applicant from her house in these circumstances is discriminatory against her, premature, an act of subterfuge and reprisal, victimization in public service, illegal, unjust and discriminatory.

- viii. A declaration that the Applicant is entitled to be retired and paid her retirement entitlements, repatriated to her home and that the Respondents are duty bound to pay her monthly salary and allowances until she is officially retired.
- ix. A declaration that Applicant is entitled to remain in her house till payment of all her salary, allowances and benefits and thereafter to reasonable notice of not less than six months.
- x. An order of mandamus doth issue ordering the Respondents to pay the Applicant all her entitlements that include accrued retirement benefits, pension, statutory and contributory benefits, gratuity and allowances due to her and the mandatory reparation and/or transport costs to her designated as follows:-
- (a) An order for payment of Shs. 105,794,640/= plus 30/% interest as total outstanding commuted pensionable gratuity under the in-house retirement benefits scheme.
 - (b) An order for payment of Shs. 587,748/= monthly pension for 15 years accumulatively in advance with effect from April 2012.
 - (c) An order for payment of Shs. 17, 632, 440/= being the accumulated monthly pension for 30 months so far.
 - (d) An order for payment of outstanding pension balance of Shs. 45,420,435/= plus 30% interest on DAP as ascertained from the Record.
 - (e) An order for payment of monthly salary of Shs. 2,384,231/= and monthly allowances for 30 months cumulatively in advance with effect from April 2012 totaling Ug. Shs. 88,162,200/= plus 30% interest.
 - (f) An order for payment of repatriation transport costs of Shs. 20,000,000/= to the Applicant's designated home of Bwera, Kyeizooba, Bushenyi district as expressly provided in the terms and conditions of service of the Respondents which were an integral part of the Applicant's appointment.

- xvi. Interest at 35% per annum from due date to full payment on all payments under (x) above, and from judgment till payment in full on payments under xiii to xv.
 - xv. General damages and.
 - xiv. Punitive and exemplary damages for the insensitive, oppressive, illegal and unconstitutional actions of the Respondents.
 - xiii. An order of mandamus requiring the Respondents to account for and pay the Applicant's monies irregularly withheld in total disregard to her non derogable constitutional and statutory right to pension and livelihood and fair treatment.
 - xii. An injunction doth issue restraining the Respondents, their agents, employees and representatives from continuing to enforce the illegal decision and/or threats to evict the Applicant before she is officially retired and paid her entitlements.
 - xi. An order of prohibition doth issue prohibiting the Respondents from continuing to enforce the illegal decision to the Applicant from her house.
2. Mr. Akampumuza James and Mr. Fox Odoi of M/s. Akampumuza & Co. Advocates represented the Applicant and Mr. John Fisher Kanyeihamba of M/s. Kateera & Kagumire Advocates represented the Respondents.
 3. The application is supported by the affidavit of the Applicant. The grounds for the application are that the Applicant was first employed in the first Respondent's permanent and pensionable employment in 1999 and is working as the first Respondent's secretary. The Applicant attained retirement age in April 2012 but has to date not been officially retired despite pleas to the Respondents to retire her. The Applicant has qualified for her entitlements, retirement benefits, pension, gratuity and other allowances having served for twelve years of uninterrupted service to the first Respondent. When the Applicant wrote to the Respondents demanding for the same, she was kept in abeyance and was only vaguely and formally told to prepare for retirement a situation that has prevailed to date. The

Respondents have refused to pay the Applicant her statutory accrued retirement and on 15th September 2014, the Respondents suddenly and out of the blue issued the Applicant with a directive to leave her official house within two weeks or face forceful eviction and falsely claimed that the Applicant had been retired and paid her retirement entitlements whereas not. The Respondents have and continue to withhold from the Applicant her salary, pension, gratuity, repatriation and other allowances due to her without any cause, lawful excuse/reason whereof the Applicant continues to suffer injustices and deprivation of income and livelihood.

4. The application was opposed by the Respondents through the affidavit in reply of the second Respondent. In his affidavit he deponed that in his position, he has access to records of all former and current staff of the first Respondent including the terms of service under which the Applicant served the first Respondent. The Applicant was employed by the first Respondent as a Deputy University Secretary (Administration) on 17th January, 2000. She retired from the first Respondent's service on 30th April 2012 when she attained the mandatory retirement age of 60 years. It was not true that the Applicant's employment with the Respondent has endured and persisted beyond the said retirement date. The Makerere University Retirement Benefits Scheme (herein after the University scheme) was established under a trust deed of 10th September, 2009 for the purpose of providing pensions and other benefits to the Respondent's staff and on establishment of the same, the Respondent ceased to have any role in the management and payment of the retirement benefits to the retiring staff. Upon her retirement the Applicant was expected to approach the University scheme to be paid her benefits.
5. Further that the first Respondent established from the board of trustees of the scheme that the Applicant was paid the benefits accruing under the University scheme which amounted to Ug. Shs. 54,396,107/= which she received on 6th November 2012. Not true that the Applicant was directed to leave the house but it was true that the Applicant was entitled to be repatriated by the first Respondent. According to item b ii at page 67 of the first Respondent's manual, its maximum liability for any particular journey on retirement shall be the provision of a 7 tone lorry or the equivalent of hiring one on the prevailing market rate to

the employee's home and the first Respondent has been ready to provide the same or in lieu thereof settle the invoice in respect of hiring a lorry to transport the Applicant to her home. The terms of the Applicant's service as per annexure "R8" of the said affidavit were replaced by the terms of service contained in the Human Resource Manual. It was not true that at the time of her retirement the Applicant qualified for benefits under the in-house retirement benefits scheme (herein after the IHRBS) which was closed by the Respondent's Council on 23rd February 2009 and replaced by the University scheme which is a contributory scheme. At the time of its closure, the Applicant had not yet served the Respondent for a period of 10 years which was pre-requisite for qualification for benefits under the said scheme. As such there were no funds to transfer to the new scheme.

6. Prof. Nawangwe also averred that upon her retirement, the Applicant only qualified for the benefits under the University scheme which consisted of the benefits under the closed Deposit Administration Scheme (DAP) and the monthly contributions by the Applicant and the Respondent. The Respondent's University Secretary issued a letter dated 19th October 2012 addressed to the Executive Director of the board of trustees of the benefit scheme clearing the Applicant to be paid her benefits under the DAP scheme which were paid to the Applicant. The privilege accruing to the Applicant to occupy the Respondent's house lapsed on 6th November, 2012 when the Applicant received her benefits under the University scheme.
7. In rejoinder the Applicant deponed that the first Respondent failed in its obligation to repatriate her to her home which qualified her for salary and allowance to fund her survival and livelihood of her family while she was irregularly kept in service. The first Respondent through the second Respondent threatened her with eviction which prompted the current suit but also wrote to assure her they had reversed their threats because of a court order. The first Respondent first appointed her in November 1999, kept her in employment and never retired her when she reached the mandatory retirement age of 60 years in April 2012. The first Respondent deliberately and arbitrarily altered her continued service to reduce her years of service to less than 12, illegally altered the retirement multiplication factor applicable to the Applicant to wrongly and arbitrarily deny the Applicant under the University scheme. The

Respondents claim that she was paid her full retirements benefits is false and without basis and the Applicant qualified for the IHRBS which is pension from government as she had served for 12 years.

8. On 16th November 2017, the Applicant filed Misc. application No. 812 of 2017 seeking orders that the Respondents were in contempt of the court order of 14th October 2014 maintaining the Applicant in the house until the final disposal of the judicial review application.

b) Law

9. Judicial review is the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior Courts, tribunals and other bodies or persons who carry out quasi-judicial functions, or who are engaged in the performance of public acts and duties. Those functions/duties/acts may affect the rights or liberties of the citizens. Judicial review is a matter within the ambit of Administrative Law. It is different from the ordinary review of the Court of its own decisions, revision or appeal in the sense that in the case of ordinary review, revision or appeal, the Court's concerns are whether the decisions are right or wrong based on the laws and facts whereas for the remedy of judicial review, as provided in the orders of mandamus, certiorari and prohibition, the Court is not hearing an appeal from the decision itself but a review of the manner in which the decision was made. See **Kuluo Joseph Andrew & Ors v. Attorney General & Ors Misc Cause No. 106 of 2010**.
10. In **Rosemary Nalwadda v. Uganda Aids Commission HCMA No. 0045 of 2010** it was held that it is trite that judicial review can be granted on three grounds namely; illegality, irrationality and procedural impropriety. See also **Council of Civil Service union v. Minister for the civil Service [1885] Ac 374**.
11. In **Semwo Construction Company v. Rukungiri District Local Government HC MC 30 of 2010** Justice Bamwine (as he then was) explained that: "... mandamus is a prerogative writ

to some person or body to compel the performance of a public duty. From the authorities, before the remedy can be given, the applicant must show a clear legal right to have the thing sought by it done, and done in the manner and by a person sought to be coerced. The duty whose performance is sought to be coerced by mandamus must be actually due and incumbent upon that person or body at the time of seeking the relief. That duty must be purely statutory in nature, plainly incumbent upon the person or body by operation of law or by virtue of that person or body's office, and concerning which he/she possesses no discretionary powers. Moreover, there must be a demand and refusal to perform the act which it is sought to coerce by judicial review.”

12. Prohibition lies to restrain authorities or bodies which are inferior to the High Court from assuming jurisdiction where there is none or from doing what they are not authorized to do. It does not correct the practice or procedure of an inferior tribunal or a wrong decision on the merits of the proceedings.¹

c) Analysis

13. The Applicant raises two preliminary objections. One, that the second Respondent's reply affidavit in paragraphs 7, 12-14, 33, 39, 37014, 46-49 and 58 is incurably defective to the extent that it contains generalist, misleading, baseless beliefs, narratives and legal arguments. Two, that the Respondents are in contempt having changed the status quo they had consented to maintain in the 14th October 2014 interim order of this court.
14. After carefully considering all the paragraphs in issue, this court considers that the information deponed by the second Respondent in his reply affidavit was information within his knowledge obtained by virtue of his position and work or on verification through his office in preparation of his reply. I therefore do not consider the affidavit to be incurably defective as claimed by the Applicant.
15. On the issue of contempt of court, the Respondents in their different affidavits in reply to the contempt application by the second Respondent, Charles Barugahare and Nalwoga Harriet

¹Peter Kaluma“Judicial Review Law Procedure and Practice” second edition, p.119.

Magala, concede that the Applicant was evicted in June 2017. The record shows that on 1st June 2017, this court dismissed the Misc cause for want of prosecution because the Applicant was absent with no explanation. On 14th June 2017, counsel for the Applicant, Fox Odoi and Dr. Akampumuza appeared in court and explained that the Applicant was absent on 1st June 2017 because she had suffered a stroke and was bedridden but still very interested in her case. The main cause was reinstated on the same date.

16. So when the second Respondent evicted the Applicant between 17th to 21st June 2017, he acted in contravention of the reinstated status quo that emanated from the reinstatement of the cause. It was therefore irregular and contemptuous for the Respondents to evict the Applicant from her residence between 17th to 21st June 2017 during the sustenance of a consent order sustaining her residence in the house. For this the second Respondent who was the officer behind this process acted in contempt of this order.

17. However to disregard the Respondents reply pleadings and submissions in the Misc. cause would be to deny them the constitutional right to a fair hearing and the right to be heard. I will therefore disregard the Applicant's request that the Respondents defence should not be considered. Moreover even if I disregarded their defence. Nothing bars me from considering the legal provisions in the different laws and regulations for the determination of this Misc. cause.

18. Having addressed the preliminary objections, I will now turn to the judicial review application. The Applicant contends that she was illegally denied her entitlement to the IHRBS which she qualified for, her repatriation costs and that the correct calculations between her Deposit Administration Plan (herein after DAP) and the University scheme benefits were not accurately captured and paid.

19. It is not in dispute that the Applicant retired on 30th April 2012 and on retirement she qualified for DAP and the University scheme. The first Respondent's Human Resource office is the best placed office to determine whether the amounts she received as her DAP and the University scheme on retirement were accurate or not. I therefore hereby direct the first Respondent's Human Resource office to verify this. If it is found that some monies under

DAP and the University scheme were not paid to the Applicant, the same should be paid within one month of this ruling.

20. Turning to the claim of the IHRBS, the Applicant claims that she qualified for the same while the Respondents contend that she did not. After looking at all the submissions in this regard, it is clear that under paragraph 18.2 at page 74 of the Human Resource Manual and the Council decision of 23rd February 2009, this scheme was a fund contributed to only by the first Respondent for the benefit of employees. For an employee to qualify, they should have worked for at least ten years. According to the circular dated 15th July 2009 (annexture MU5 to the second Respondent's affidavit in reply), as part of synchronizing the different schemes at the first Respondent, this scheme closed on 31st March 2009. This means that to qualify to benefit from this scheme one needed to have worked for at least 10 years by 31st March 2009 when the scheme was closed.
21. According to annexture R5 to the affidavit in support of this application, the Applicant accepted the offer of employment on 10th December 1999 and started work on 15th December 1999. This 15th December 1999 date seems to have been crossed and replaced by 3rd January 2000. The Applicant disputes this 3rd January 2000 date as her start date and insists she started work on 15th December 1999. I will take the Applicant's word that she started her employment on 15th December 1999.
22. After careful analysis, whether I take the 15th December 1999, 3rd January 2000 or even the acceptance of the offer date of 10th December 1999, the Applicant fell short of the ten year mark to qualify for this scheme on 31st March 2009. With this fall of the hammer which places her on the side of those not benefitting from the scheme, she cannot claim legitimate expectation. There was no such legitimate expectation in the circumstances of this case. It would only have arisen if she had made ten years at the time of the scheme closing. This ten year rule existed from inception of the IHRBS.
23. On the issue of transport back to her village, the first Respondent has not refused to pay the Applicant. The Applicant seems to want to set her own terms. This is not provided under any law. Under paragraph 13.6 (b) (ii) of the first Respondent's Human Resource Manual, " the

maximum University liability for any particular journey on retirement or termination shall be provision of a seven tone lorry or the equivalent of hiring one at the prevailing market rate to the employee's home." If the two cannot agree, it remains the prerogative of the first Respondent's Human Resource office to determine how much to give the Applicant. It would be very presumptuous and speculative for this court to determine how much transport the Applicant is entitled to. I therefore refer this determination to the first Respondent.

24. For the contempt that I found above, the second Respondent is directed to pay a fine of Ug. Shs. 5,000,000/== into court. However to avoid acrimony between the parties and given the findings above, in my discretion, I will not award damages to any of the parties. Each party shall bear its own costs.

I so order.

Lydia Mugambe
Judge
27th June 2019