

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS CAUSE NO. 14 OF 2020

HIS WORSHIP KAWEESA GODFREY.....APPLICANT

VERSUS

THE ATTORNEY GENERAL OF UGANDA.....RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This application is for Judicial review under Articles 28(1), 42, 44(c) of the Constitution, Section 33, 36(1) & 38(1) of the Judicature Act, Sections 12 and 25(2)(b) of Judicial Service Act, and Rules 3 & 6 Judicial Review Rules seeking the following reliefs;

1. A declaration that the decision of the Judicial Service Commission Disciplinary Committee dated 11th December 2019 requiring the applicant to take plea is illegal, ultra vires the Committee's powers, null and void.
2. A declaration that the decision of the Judicial Service Commission Disciplinary Committee dated 11th December overruling the applicant's 9 preliminary objections to Disciplinary Proceedings against him is illegal, ultra vires the committee's powers, null and void.
3. A declaration that the proceedings and/ or the charges against the applicant by the Judicial Service Commission are illegal, null and void.

4. An Order of Certiorari quashing the proceedings and/ or the charges against the applicant by the judicial Service Commission.
5. An Order of Prohibition, prohibiting the Judicial service Commission from further undertaking of any proceedings and or/or the charges against the applicant.
6. An Order of injunction restraining the Judicial Service Commission from undertaking any further Disciplinary proceedings against the applicant.
7. The applicant be awarded general damages.
8. The costs of this application be provided to the applicant.

The grounds upon which this application is based are contained in the affidavit of HIS WORSHIP KAWEESA GODFREY but are briefly are that;

1. There is no complaint upon which the proceedings before the Judicial Service Commission are hinged.
2. The applicant was not charged by the Responsible Officer as required by law.
3. The letter forwarding the applicant's matters to the Secretary to the Judiciary is not backed by the report as required by law.
4. The applicant was not served with any complaint.
5. The Judicial Service Commission did not carry out its duty of investigations before requiring the applicant to take plea.
6. The applicant has suffered mental anguish, humiliation and professional retardation.

The applicant in his affidavit in support stated as hereunder;

1. The applicant is Deputy Registrar and by a letter of the Permanent Secretary/Secretary to the Judiciary, dated 27th June 2018, was forwarded to the Judicial Service Commission for Disciplinary action on charges of corruption and partiality based on a complaint filed in respect of Mukono Chief Magistrate's Court Civil Suit No. 57 of 2018 and Criminal Case No. 364 of 2018.
2. That by a letter dated 23rd July 2018, the complainants withdrew the complaint which was the basis of the referral by the Secretary to the Judiciary to the Judicial Service Commission.
3. That by a letter dated 19th December 2018, the judicial Service Commission wrote directing that the applicant responds to the complaint.
4. That on 18th January, the applicant filed a reply to the letter of Judicial Service Commission.
5. That on 30th October 2019, the applicant was served with a Hearing Notice for 14th November 2019 but no charge sheet was attached thereto.
6. That on 14th November 2019, the judicial Service Commission Disciplinary Committee required the applicant to take plea on charges of Producing Poor Standard Work and acting in contravention of the Code of Judicial Conduct.
7. That before the applicant was required to take plea, the Judicial Service Commission did not carry out its duty of conducting thorough investigations by way of examining the complainants, himself and any other relevant person.

8. That the applicant raised 9 preliminary objections all of which were overruled by the Judicial Service Commission Disciplinary Committee on 11th December 2019.
9. That the applicant was required to take plea on the new charges which the applicant rejected. The applicant is aggrieved by the two decisions of the Judicial Service Commission Disciplinary Committee; the one overruling his 9 preliminary objections and another one requiring him to take plea.

The respondent responded to the application through Ronald Sekaggya.

1. That the Judicial Service Commission received a complaint against the applicant, which had been forwarded by the Permanent Secretary/Secretary to the Judiciary on the 27th of June 2018.
2. That the complaint had forwarded to the Commission for purposes of instituting disciplinary action against the Applicant following recommendation to the same effect by the Inspector of Courts.
3. That the recommendation stemmed from the petition that was lodged with the Inspector of courts regarding the conduct of the applicant.
4. That the applicant had been accused of engaging in corrupt practices while handling *Civil Suit No. 57 of 2018 Global Wire Industries versus Trident Infratech Ltd & 2 others* and *Criminal Case No. 364 of 2018 Uganda versus Ramesh Halai & others* in which the petitioners were the defendants and accused persons respectively.
5. That it was alleged the applicant has solicited for and received 50,000,000/= in order to grant bail to the accused in the criminal case.

6. That the allegations in the petition formed basis of the draft charge sheet that was prepared by the Inspector of Courts and forwarded to the Commission through the Permanent Secretary/secretary to the Judiciary to the Secretary.
7. That the Chief Registrar or the Responsible Officer is mandated to instituted disciplinary proceedings and lay charges against any judicial officer other than judge, if it is deemed necessary regardless of whether they have been directed by other party or not.
8. That the 2 petitioners *Ramesh Halai* and *Dinesh Halai* who were also defendants in the Civil Case and a one *Ghanshayam Kara* on behalf of Trident Intratech Ltd sought to withdraw their complaint against the Applicant in a letter dated 23rd July 2018 and addressed to the Inspector of Courts.
9. That although the complainants/petitioners withdrew their complaint against the Applicant, the Commission did not close the complaint since its complainant was Judiciary and not the Petitioners.
10. That the applicant was served with a copy of the charge sheet through a one Daniel Bwambale B to whom the clerk was instructed by the applicant to hand it.
11. That Commission's investigations had revealed a prima facie case against the applicant, on which basis the Commission went ahead to formally charge and prosecute the Applicant.
12. That the actions of the Commission charging the applicant, asking him to take plea, proceeding against him and ruling on preliminary objections raised by him were and are still within the commission's mandate and not

ultra vires the Commission's Disciplinary Committee's powers as alleged and neither are they null and void.

The parties agreed on the following issues for court's determination.

- 1. Whether the conduct of the Judicial Service Commission Disciplinary Committee raises grounds for judicial review?**
- 2. What are the remedies available?**

The applicant was represented by *Mr. Isabirye John* while the respondent was represented by *Ms. Kukunda Claire*.

The lawyers were directed to file written submissions which they filed and the same have been considered in this ruling. The applicant has included every aspect of judicial review from illegality, to irrationality and finally procedural impropriety. The applicant attached documents to his submissions which I find to be very irregular since they were not attached to his affidavit evidence.

Whether the conduct of the Judicial Service Commission Disciplinary Committee raises grounds for judicial review?

The applicant contended that by letter of Secretary to Judiciary, the complaint was forwarded to judicial Service commission on directives of Principal Judge with no charge sheet being prepared and provided to the applicant. According to counsel for the applicant it was procedurally irrational for judicial Service commission to act on flawed referral.

He contended that they side stepped the Ag Chief Registrar in the disciplinary process with the resultant effect that the complaint was processed by an incompetent (non-legal) officer.

He further stated that, much as regulation 29 of the Judicial Service Commission regulations, 2005 enjoins the Permanent Secretary to Judiciary as Responsible Officer to make referrals of judicial Officers to the Judicial Service Commission, it was his contention that a person with no legal background making legal decision

as to whether a prima facie case of misconduct has been established against a judicial officer to warrant referral to the Judicial Service Commission is procedurally unfair and irrational.

The applicant contended that he was formally charged and heard as required by law. He stated that the Chief Registrar nor Responsible officer did forward to the applicant a statement of the allegations as required under Regulation 29(1)(a). He was not given a chance to exculpate himself contrary to the principles of Natural justice.

The responsible officer split the charges and preferred a charge of receiving a bribe of 50 million and also preferred a charge of producing poor standard of work contrary to regulation 23(f) of the Judicial Service Commission Regulations and acting in contravention of the Code of Judicial Conduct contrary to regulation 23(j) of the judicial Service Commission Regulations, 2005.

The applicant contends that the JSC did not carry out its duty of conducting investigations before requiring the applicant to take plea. The preliminary investigations and complied report were conducted and signed off by different officers other than Chief Registrar or responsible officer. The responsible officer failed to exercise his power.

Fettering discretion by the responsible officer by mechanically acting on recommendations/directions of others without exercising his own mind.

Failure by the responsible officer to give reasons in his report and was also unreasonableness of the responsible officer.

The respondent's counsel contended that the allegation of a non-legal officer without a legal background making a decision as to whether a prima facie case of misconduct is made out was baseless. This is premised on the fact that the responsible officer only forwarded a complaint which was based on preliminary investigations conducted by the Inspector of Courts, Hon. Justice Rubby Aweri-Opio. The conclusion of whether there is a prima facie case was made by a legal officer.

The applicant was informed of the nature of complaint that had been filed against him in accordance with regulation 29(1)(a) and the last paragraph implored him to respond: This is to request you to give your explanations on the above allegations as our investigations continue.....

The applicant was duly served with a charge sheet even after the charges had been amended to inform of the same. Therefore the Judicial Service Commission acted within its legal mandate and none of their actions was illegal, irrational or ultra vires.

The respondent contended that the applicant argues that proceedings before the Disciplinary Committee were tainted with procedural impropriety. These are outlined as below;

- a) Splitting of charges
- b) Lack of investigations by the Chief Registrar or Responsible Officer as required under Reg. 29 of S.I 87/2005
- c) Unauthorized delegation of power by the Responsible Officer
- d) Quality and nature of Report by the Responsible Officer being ultra vires and therefore null and void
- e) The Right to equality before the law and equal treatment by the law was breached by the Responsible Officer
- f) Fettering Discretion by the responsible officer
- g) Unreasonableness by the Responsible officer
- h) Breach of the ultra vires rule by the Responsible Officer
- i) Prosecution of a complaint despite withdrawal by the Complainants
- j) Failure by the JSC to conduct thorough investigations which is procedurally ultra vires
- k) Failure by JSC to disclose full particulars of the new complaint and to accord the Applicant adequate time to prepare his defence which was unreasonable, irrational and contrary to natural justice.
- l) Trial by ambush

- m) Failure by the Judicial Service Commission to Disciplinary Committee to give prior notice to the Applicant before hearing contrary to natural justice.
- n) Breach of the equality of arms principle in disciplinary proceedings before the judicial service Commission which is procedurally unfair
- o) Breach of confidentiality and apprehended bias by the JSC and the judiciary
- p) Conflict of Interest contrary to natural justice
- q) Lack of Voice
- r) Unreasonable delay to conclude disciplinary proceedings by the JSC thereby occasioning a miscarriage of justice

It was the respondent's submission that the Applicant was actually availed with the statement of both the original and amended charges in accordance with the law and it was on this basis that he appeared before the Committee. In addition to that, none of the actions of the Commission were ultra vires as already submitted in Issue 1.

As regards sharing the report, Reg. 13 (1) of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.I 88/2005* only requires that the report, upon conclusion of investigations, shall be forwarded to the Commission.

The respondent submitted that although Reg. 29 (5) of the *Judicial Service Commission Regulations S.I 87/2005* requires documentary evidence to be availed to the judicial officer, a deeper reading of this provision reveals that this is at the stage of hearing and not at plea taking, the stage at which the Applicant raised preliminary objections. To borrow from the words of the JSC Disciplinary Committee ruling at page 7, it is the practice of the Committee that all documentary evidence is shared once the accused judicial officer has taken plea.

The Applicant argues that the splitting and amendment of charges occasioned him a miscarriage of justice because he had less than the legally required 14 days to respond to the same. It was the submission of the Respondent that first of all, Reg. 29 (7) of the *Judicial Service Commission Regulations S.I 87/2005* and Reg. 17 (1) of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.1 88/2005* permit the Commission to amend charges.

Secondly, Reg. 13 (8) of S.I 88 of 2005 allows either party to seek an adjournment, should they require more time to adhere to the requirements of procedure. In fact, as the JSC Disciplinary Committee found, in their ruling, at page 7, in resolution of preliminary objection 4, the prosecution prayed for enlargement of time within which to serve the Applicant with the amended charges. The applicant on the other hand waived his right when he chose not to ask for more time to defend himself.

In response to the applicant's contention that investigations ought to have been conducted by the Chief Registrar or Responsible Officer, the respondent submitted that, Reg. 12 (3) of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.1 88/2005* clearly states that;

"Investigations shall be carried out by the Commission or by any other person or institution authorized by the Commission."

Reg. 29(3) of the *Judicial Service Commission Regulations S.I 87/2005* also allows the Commission to *"inquire into the matter in such manner as it thinks fit"*, if it is of the opinion that proceedings against a judicial officer should continue.

Based on these provisions, it was the Respondent's evidence that the Responsible officer is mandated to delegate his powers accordingly and the investigations were legally and appropriately conducted by officers within

the Commission as well as other institutions like the Uganda Police Force that had been duly authorized by the Responsible Officer.

In response to the Applicant's argument that the report of the Commission failed to meet the standard of a report in disciplinary proceedings and he also faults the fact that the Principal Judge advised the Responsible Officer to take action, the respondent contended that the Responsible Officer instituted proceedings pursuant to the law and after careful consideration of the complaint at hand. The advice of the Principal Judge was only a request to investigate the allegations and take action if the investigations verified the allegations.

All these prerequisites were adhered to in accordance with the law and they formed basis for the Applicant to be invited to take plea. Therefore, it is a fallacy to submit that the advice of the Principal Judge to the Responsible Officer was contrary to the law.

The applicant contended that he was not submitted to the Internal Disciplinary Committee of the Judiciary and this occasioned a miscarriage of justice. He also alleges that a number of accused judicial officers have been subjected to this committee. However, he does not provide any evidence to this effect.

Secondly, in response to the Applicant's argument, it was the Respondent's submission that there is no legal requirement which as a mandatory condition, directs that every judicial officer should be subjected to the Internal Disciplinary Committee of the Judiciary before being forwarded to the Commission. The law is clear on how to proceed once a complaint is made against a judicial officer.

Reg. 10 of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.1 88/2005* and Reg. 29 of the *Judicial Service Commission*

Regulations S.I 87/2005 outline the steps to be taken under such circumstances and these were all adhered to while dealing with the complaint against the Applicant.

The applicant contended that Prosecution of a complaint despite withdrawal by the Complainants was procedurally improper. The respondent in paragraphs 13 and 14 of his affidavit in reply rebutted this allegation sufficiently by stating that even though the complaint was withdrawn, it was the judiciary that was the complainant and not the former 2 individuals Mr. Ramesh Halai and Mr. Dinesh Halai.

In addition, Reg. 35 of the *Judicial Service Commission Regulations S.I 87 of 2005* allows the Commission to commence disciplinary proceedings against a judicial officer, on its own accord. The Commission having received a complaint against the Applicant and investigated the same found it necessary to proceed against the Applicant.

The applicant contended that he was ambushed by the trial and he was not given prior notice before hearing. The respondent submitted that, the Applicant was duly served and notified of the proceedings against him. In accordance with Articles 28 (3)(b), (c) and (d) of the Constitution of Uganda, the Applicant was informed of the charges against him, he was given adequate time to prepare his defence and invited to appear before the Commission to defend himself. Therefore, it is a falsehood to state that his trial was by ambush or that he was not given notice before hearing.

The Applicant argues that the fact that he was not availed with documents before hearing is breach of equality before the law. The respondent contended, if he had not preempted the Commission and the legal procedure, he would have indeed been served with all the documentary proof of the charges against him. The applicant's actions only show that he

is trying to gag the Commission and prevent it from performing its legally mandated duties.

The respondent's counsel submitted that the applicant flouted rule 7A (1)(b) of the Judicature (Judicial Review)(Amendment) Rules S.I 32 of 2019 which requires that the aggrieved party should have exhausted the existing remedies within the public body or under the law before bringing a Judicial Review Application to court. This position has been fortified by case law. A case in point is *HCMA 268 of 2017, Mrs. Anny Katabazi Bwengye vs Uganda Christian University* where this Honourable Court held at page 12, while quoting *HCMA No. 218 of 2009 Microcare Insurance Ltd vs Uganda Insurance Commission* that; prerogative orders are available to an Applicant who demonstrates *inter alia* that they lack an alternative remedy or where the remedy exists, it is inconvenient, less beneficial or less effective.

The Applicant ought to have appealed against the Commission's decision in accordance with Reg. 18 of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.1 88/2005*, an option which he hastily skipped.

DETERMINATION

Whether the application raises any issues for judicial review?

According to the *Black's Law Dictionary* at page 1013 **11th Edition Thomson Reuters, 2019**: Judicial review is defined as a court's power to review the actions of other branches or levels of government; especially the court's power to invalidate legislative and executive actions as being unconstitutional. Secondly, a court's review of a lower court's or administrative body's factual or legal findings.

The power of Judicial review may be defined as the jurisdiction of superior courts to review laws, decisions and omissions of public authorities in order to ensure that they act within their given powers.

Judicial review per the Judicature (Judicial Review) (Amendment) Rules, 2019 means the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of subordinate courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties;

Broadly speaking, it is the power of courts to keep public authorities within proper bounds and legality. The Court has power in a judicial review application, to declare as unconstitutional, law or governmental action which is inconsistent with the Constitution. This involves reviewing governmental action in form of laws or acts of executive for consistency with constitution.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

It may be appreciated that to promote rule of law in the country, it is of utmost importance that there should function an effective control and redressal mechanism over the Administration. This is the only way to instil responsibility and accountability in the administration and make it law abiding. Judicial review as an arm of Administrative Law ensures that there is a control mechanism over, and the remedies and reliefs which a person can secure against, the administration when a person's legal right or interest is infringed by any of its actions.

When a person feels aggrieved at the hands of the Administration because of the infringement of any of his rights, or deprivation of any of his interests, he wants a remedy against the Administration for vindication of his rights and redressal of his grievances. The most significant, fascinating, but complex segment in judicial review is that pertaining to judicial control of administrative action and the remedies and reliefs which a person can get from the courts to redress the injury caused to him or her by an undue or unwarranted administrative action in exercise of its powers.

The effectiveness of a system of Judicial review under Administrative Law depends on the effectiveness with which it provides remedy and redress to the aggrieved individual. This aspect is of crucial significance not only to the person who has suffered at the hands of the administration but generally for the maintenance of regime of Rule of Law in the country.

The weakness of the “remedial and redressal” aspect of administrative law will directly contribute to administrative lawlessness and arbitrariness. According to *WADE & FORSYTH Administrative Law, 34, 8th Edition* 2000, “Judicial review thus is a fundamental mechanism of keeping public authorities within due bounds and for upholding the rule of law.

In the East African region, great faith has been placed in the courts as a medium to control the administration and keep it on the right path of rectitude. It is for the courts to keep the administration within the confines of the law. It has been felt that the courts and administrative bodies being instruments of the state, and the primary function of the courts being to protect persons against injustice, there is no reason for the courts not to play a dynamic role in overseeing the administration and granting such appropriate remedies.

The courts have moved in the direction of bringing as many bodies under their control as possible and they have realized that if the bodies participating in the administrative process are kept out of their control and the discipline of the law, then there may be arbitrariness in administration. Judicial control of public power is essential to ensure that that it does not go berserk.

Without some kind of control of administrative authorities by courts, there is a danger that they may be tempted to commit excesses and degenerate into arbitrary bodies. Such a development would be inimical to a democratic constitution and the concept of rule of law.

It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary powers by the administration. In a democratic society governed by rule of law, judicial control of administration plays a very crucial role. It is regarded as the function of the rule of law, and within the bounds of law and due procedure.

It is thus the function of the courts to instil into the public decision makers the fundamental values inherent in the country's legal order. These bodies may tend to ignore these values. Also between the individual and the State, the courts offer a good guarantee of neutrality in protecting the individual.

The courts develop the norms for administrative behaviour, adjudicate upon individuals grievances against the administration, give relief to the aggrieved person in suitable case and in the process control the administration.

The principles governing judicial review are well settled. Judicial Review is only concerned with the decision making process through which the decision is made. Judicial Review seeks to invoke court's supervisory jurisdiction to check and control the exercise of power by public bodies or persons exercising a quasi-judicial function.

Judicial review seeks to ensure fair treatment by authority to which the particular individual (applicants in this case) has been subject to. So for an application for judicial Review to succeed, the applicant must demonstrate that the decision was arrived was tainted with illegality, irrationality or procedural impropriety (*see Dr. Julianne Sansa Otim vs Makerere University Misc. Cause No. 258 of 2016 (unreported)*). Illegality, irrationality and procedural impropriety have been subject of judicial interpretation by Justice Remmy Kasule (as he then was) in *Twinomuhangi Pastoli vs Kabale District Local Government Council & Ors Miscellaneous cause 156/2006 [2008] 2 EA 300*

In the present case, the applicant challenged the decision/ruling of the Judicial Service Commission Disciplinary Committee in respect of the 9 preliminary objections he raised before the Disciplinary Committee.

The 9 preliminary objections were all intended to forestall the proceedings or refusal to take plea and or submit to the jurisdiction of the Disciplinary Committee. When the objections were overruled the applicant decided to file this application for judicial review.

Exhaustion of Alternative procedures and remedies

The respondent has raised an issue of alternative remedies before applying for judicial review. It is a well-established proposition that where a right or liability is created by statute which gives a special remedy for enforcing the same, the remedy provided by statute must be availed of in the first instance.

The applicant has contended that section 24(2)(b) of the Judicial service Act provides;

Subject to subsection (2), no proceedings shall be brought in any court on the ground that any provision of this Act has not been complied with. Subsection 1 does not apply to (a) criminal proceedings for any offence against the Act, (b) proceedings for Judicial review by the High Court on the ground of nullity of any proceedings or decision by the commission or any person or authority under this Act.

Therefore, it was the applicant's submission that he wishes to quash the decision of the Disciplinary Committee delivered on 11th December 2019.

Whereas this court agrees with the applicant that this court has original jurisdiction to entertain any challenge under the Judicial Service Commission Act by way of Judicial review, it is not in agreement that any preliminary decision like in this case would be challengeable under similar circumstances by way of judicial review.

The applicant had wait for the final determination or ruling of the Disciplinary Committee and either choose between making an appeal or making an application for judicial review.

The law has given an alternative which may indeed be a better alternative than an application for judicial review. As noted earlier, judicial review is about the decision making process that is under challenge and even if successfully challenge would not deprive of the disciplinary committee of

the powers of correcting the alleged wrong processes and re-charging the applicant.

Regulation 18 allows the applicant right to lodge an appeal to be heard by a panel of three judges of the High Court. The appeal does not only look at the decision making process but also the merits of the decision taken. This in the courts view would be a better remedy than judicial review which would not question the merits of the decision. This would bring about the conclusive determination of the matter, which the judicial review application would not.

Rule 5 of the **Judicature Judicial Review (Amendment) Rules 2019** which introduces **Rule 7A (1) (b)** is couched in the following terms;

“The court shall in handling applications for judicial review, satisfy itself of the following;

a) That the Application is amenable for judicial review;

b) That the aggrieved person has exhausted the existing remedies available within the public body or under the law;”

This court has pronounced itself in matters where applications were filed without exhausting available remedies. In **Swanyana Jimmy v Kampala International University HCMC No. 207 Of 2016**. The court dismissing a similar application for failure to exhaust existing remedies within the body held that;

Where there exists an alternative remedy through statutory law then it is desirable that such statutory remedy should be pursued first. A court’s inherent jurisdiction should not be invoked where there is a specific statutory provision which would meet the necessities of the case. This is the only way institutions and their structures will be strengthened and respected.

See also the case of **Okello v Kyambogo University & Anor (Miscellaneous Cause No.23 Of 2017)**.

The present application seems to be avoiding the existing remedy or procedures set out under the Judicial Service Commission Act and The Judicial Service (Complaints and Disciplinary Proceedings) Regulations, 2005.

Every litigant who approaches the court, must come forward not only with clean hands but with clean mind, clean heart and with clean objective.

It is a settled principle that where there is an effective alternative remedy under the statute, the High Court does not exercise its jurisdiction, as a self-imposed restriction. But, then, there may be circumstances when the High court may interfere. This court in *HCMA 268 of 2017, Mrs. Anny Katabazi Bwengye vs Uganda Christian University* court held at page 12, while quoting *HCMA No. 218 of 2009 Microcare Insurance Ltd vs Uganda Insurance Commission* that; prerogative orders are available to an Applicant who demonstrates *inter alia* that they lack an alternative remedy or where the remedy exists, it is inconvenient, less beneficial or less effective. However, to refrain from exercising jurisdiction is different from saying the court has no jurisdiction.

The applicant has not demonstrated to this court why he is avoiding the available procedure under the regulatory regime. This application would have been entertained before the applicant was summoned to appear and take a plea before the Disciplinary Committee. The applicant should not be allowed to abuse the processes available and to short circuit or circumvent the procedure provided by the Statute of challenging Disciplinary Committee decision by way of an Appeal under Regulation 18 of the *Judicial Service (Complaints and Disciplinary Proceedings) Regulations S.1 88/2005*

But once the Disciplinary proceedings were set in motion, it would be wrong for the court to entertain any application for judicial review arising

out of Disciplinary proceedings before the conclusion or final determination. This would imply any person facing disciplinary proceedings could appear in the disciplinary Committee and later in the middle of the proceedings run to the High Court for judicial review in order to restrain the committee.

The court has set some limits on itself to which it exercises its judicial review jurisdiction in order to avoid a heavy rush of cases flowing to it. This would render the statutory provisions almost meaningless and non-existent. The special jurisdiction of judicial review should not be used to short circuit or circumvent statutory proceedings.

This application was incompetently filed before exhausting alternative procedural remedy of Appeal which is equally efficacious and the applicant has not shown that the existing procedural remedy of an appeal to the High Court (before a panel of three (3) Judges) is inconvenient, less beneficial or less effective. Similarly, before the Disciplinary Committee has made a final determination on the matter, an application for Judicial review should not be entertained.

This application fails on this preliminary consideration. I will not delve into the merits of the application since it may prejudice the parties in the final determination or an appeal at a later stage.

This application is dismissed with no order as to costs.

I so order

Dated, signed and delivered be email and WhatsApp at Kampala this 8th day of June 2020

SSEKAANA MUSA
JUDGE