

The grounds upon which this application is based are set out in the affidavit in support of **Siiku Muzamil**, but briefly are;

1. That the Applicant was on 27TH August, 2015 employed by the 1st Respondent as an Executive Assistant of Civil Aviation Authority, the 1st Respondent at salary level 10 and his salary was UGX. 2,127,400/= per month
2. That on the 20th July, 2016 he was confirmed in employment, and later on 3rd January, 2019 he was promoted to the post of Senior Executive Assistant, his salary was thus enhanced to UGX.4,250,000/= per month
3. That on 11th October, 2019 the Applicant was promoted to Senior Administration and Estates Officer earning a salary of UGX. 7,020,000/= per month.
4. That on 2nd March, 2020 Management of the 1st Respondent made a decision to procure the Personal Protective Equipment [PPEs] against the global outbreak of Corona virus pandemic [Covid – 19]
5. That on 5th March, 2020 the Ag. Manager Administration and Transport requisitioned for UGX. 44,352,000/= to be advanced to the Applicant, Senior Administration and Estates Officer for the purchase of protective supplies, the funds were received by him on 6th March, 2020 and all the items were purchased, confirmed of good quality by the 1st Respondents' officials.
6. That on 20th March, 2020 the Director Airport and Aviation Security [DAAS] made a complaint to the Director General which was received on 23rd March, 2020, containing the following allegations against the applicant;
 - i. There was an open connivance to defraud the 1st Respondent in an attempt to safeguard the health of workers against the COVID-19
 - ii. The prices were inflated and wrong items bought and this made the 1st Respondent lose over UGX. 30,000,000/= (60% of estimated cost)
 - iii. Whereas the prescribed mask was N95 whose open market price is UGX. 150,000/= each box, the purchase made was for disposal masks at UGX. 260,000/= each box, yet its open market value is UGX. 50,000/=

- iv. Receipts used in accounting were forged, since National Drug Authority (NDA) advised that the pharmacies that issued them were either none-existent or were trading illegally.
 - v. The Ag. MAT approved the accountability without following normal procedure of checking quality of goods, stores material received note, and confirmation from the user.
 - vi. Cash release of UGX. 44,352,000/= was approved by Director Human resource and Administration in total disregard of existence of the 1st Respondent's accounting officer.
7. That the Applicant was on 26th May, 2020 placed on investigative suspension and on the 17th April, 2020 the Applicant gave his written statement of defence to the said allegations/charges and on 12th June, 2020 he attended a disciplinary hearing.
 8. That after hearing all the evidence and the Applicant's defence, the Disciplinary Committee of the 1st Respondent in its decision it found as follows;
 - a. The committee found that there were indeed material received notes indicating that all the items were received and were in the 1st Respondent's stores
 - b. The end user confirmed existence of the purchased items as supported by evidence.
 - c. The committee found that there were no specifications established for the items to be purchased. There was no standard against which the items could be measured to make any determination as to conformity to any quality standard.
 - d. The committee agreed that there was a lot of instability in the market at the time when the COVID-19 pandemic had just broken out with few suppliers and very high demand.
 - e. It was error on the Applicant's part to enlist the services of a middleman without his supervisor's approval and as a result he was responsible for any flaws in the receipts that were submitted since he had been assigned the role to carry out the said purchase.
 9. That on the 22nd day of June, 2020, the 1st Respondent's Disciplinary Committee made the following recommendations;

- i. The sanction for the flaws in the receipts were that the Applicant should make good any loss occasioned thereby, which was calculated at UGX. 20,900,000/= and that the applicant should be sanctioned with a written warning.
 - ii. Management should stop the practice of giving cash to staff for purposes of making purchases and instead management should follow the guidelines for procurement as stipulated in the PPDA Act.
10. Subsequently, the Disciplinary Committee sought from the Management Committee approval of the aforesaid recommendations.
11. The Applicant later learnt that on 26th June, 2020, through the office of Director Human Resource and Administration, the 1st Respondent invited the Applicant purportedly to attend on the 29th June, 2020 a second disciplinary hearing, according to the said invite, Management threatened that if the Applicant does not appear as per the invite, the matter will be heard and a decision will be taken in his absence and it will suffice.
12. That on the 29th day of June, 2020, in absence of the Applicant, a second disciplinary hearing in respect of the Applicant's case took place before the 1st Respondent's committee known as EXCO, it purported to conduct a disciplinary hearing and later purported to summarily dismiss the Applicant with immediate effect, the decision was communicated to the Applicant by the 1st Respondent's letter dated 1st July, 2020.
13. The Applicant was surprised and shocked to be served with a letter purporting to summarily dismiss him in total deviation from the findings and recommendation of the 1st Respondent's Disciplinary Committee, the terms of his contract of employment with the 1st Respondent and in total violation of the law and in disregard of the Collective Bargaining Agreement revised December, 2013.
14. The second disciplinary hearing and the decision to summarily dismiss the Applicant made by EXCO during its meeting held on Monday 29th June, 2020, was biased, made by biased officials of the 1st Respondent who had interest in the matter and the outcome and in breach of the principles of natural justice

15. That the 1st and 2nd Respondents violated and are in breach of the legitimate expectation which the Applicant had that will be treated fairly, without discrimination, in accordance with his contract of employment and the law.
16. That it is in the interest of justice that this court finds that the decision taken by EXCO was no decision at all
17. That the 1st and 2nd Respondent acted as accuser, prosecutor, judge and executioner at the same time.
18. The Respondents are abusing the power which they are exercising contrary to the basic standards of legality, fairness and rationality and the High Court has prerogative powers to supervise them as its inferior organs and check these excesses through judicial review
19. That it is in the interest of justice that the orders sought be granted by this Honourable Court.
20. That the cost and occasioned by motion be provided by the Respondents or as the Court may direct.

Joseph Joel Okwalinga deposed an affidavit on behalf of the Uganda Civil Aviation Authority stating that;

1. That on 2nd March, 2020, the Management of the 1st Respondent made a decision to acquire Personal Protective Equipment as a result of the outbreak of the Covid -19 pandemic for staff and passengers using the airport facilities, Head office and control tower. The items to be purchased were hand sanitizers, gloves and face masks
2. That due to the urgency of the matter, the Administration Department in consultation with the Management of the 1st Respondent agreed that cash be requisitioned and accounted for
3. That on 5th March, 2020, the Ag. Manager Administration and Transport requisitioned for UGX. 44,353,000/= to be advanced to the Applicant, the Senior Administration and Estates Officer, at the time, for purchase of the PPEs. The funds were received by the Applicant on 6th March, 2020
4. That on 13th March 2020, a verification of the purchased items was conducted, and a report of the investigations/ audit produced. The investigations revealed inter alia that:

- a. The cost of the items was higher compared to what the 1st Respondent had been paying for the recent purchases for similar supplies
 - b. The investigator failed to trace the location of the three (3) pharmacies to the locations provided in the supporting documents. All efforts to make enquiries in the area of their whereabouts were negative.
 - c. The pharmacies did not exist on the National Drug Authority (the “NDA”) register of licensed outlets shown on their website
 - d. The investigator was not able to get price quotations from other pharmacies because they were not willing to provide prices on such items apart from Friecca pharmacy.
 - e. The estimated loss to the 1st Respondent was UGX. Shs. 20,900,000/= The Applicant contended that he engaged a middleman to help secure the items.
5. That on 20th March 2020, the Director Airport and Aviation Security (DA & AS) made a complaint claiming that there had been open connivance to defraud the 1st Respondent in the attempt to safeguard the health of the staff and other stakeholders of the airport
 6. That the allegations made against the Applicant amounted to fraud, forgery and misappropriation contrary to Article 76.3 (6) of the General Terms and Conditions of Service (the “GT & CS”) of the 2st Respondent and Article 80.2 (5) of the Collective Bargaining Agreement, 2013 (the CBA) which attracts a penalty of summary dismissal, recovery of the misappropriated funds from the employee’s remuneration and forfeiture of all terminal benefits
 7. That following receipt of the complaint, the Applicant was by letter of 9th April 2020 asked to explain the alleged irregularities identified in the above procurement and to show cause why disciplinary action should not be taken against him.
 8. That the Applicant duly furnished a detailed response to the allegations of fraud, forgery and misappropriation of the 1st Respondent’s funds in his letter of 17th April 2020.
 9. That on 26th May 2020, the Applicant was suspended from service with immediate effect pave way for the further investigations which were to be concluded by 29th May 2020 and he was required to attend a disciplinary hearing on 2nd June 2020. On the

same day of 26th May 2020, the 1st respondent constituted a Disciplinary Committee to receive and review the Applicant's defense

10. That the Applicant duly attended the disciplinary hearing which was held on 12th June 2020 where at the charges of fraud, forgery and misappropriation were read over to him and his responses recorded. The Applicant had no objection about the composition of the Disciplinary Committee interviewed the Quality Assurance Officer, Mr. Innocent Asaba on verification of the PPEs and the Senior Internal Auditor, Mr. Andrew Kwesigabo on verification of the existence of the supplies.
11. That the Disciplinary Committee evaluated the accusations against the Applicant, his written and oral defenses and all the information provided by the witnesses and made its finding and recommendations that the Applicant was liable as the accountable party for the forged receipts in the purchase and that he did not seek the approval of the supervisors before engaging 3rd party (middleman) to help with the purchase and that the Applicant should be sanctioned with a written warning and recovery of UGX. Shs. 20,900,000/= per the audit investigations report.
12. That Articles 74 (k) and (l) of the GT & CS provides that the Disciplinary Committee is required to deliberate on the findings of the hearing and report its recommendation to the Authority for considerations and decision and that the DHRA will communicate to the Disciplinary Committee members the decision taken and the reasons for not upholding the recommendations in case where the recommendations have not been upheld. The recommendations of the disciplinary hearing are therefore not binding on the Management of the 1st Respondent.
13. That on 22nd June, 2020, the Director of Human Resource and Administration (DHRA) presented the Disciplinary Committee report to the Management of the 1st Respondent (the "Management"). The Management reviewed the written responses of the Applicant and disciplinary hearing report and decided to invite the Applicant for further interaction to seek clarification on the allegation against the Applicant. By a letter dated 26th June 2020, the Applicant was summoned to appear before Management on 29th June 2020

14. That as Management is not bound by the recommendations of the Disciplinary Committee, it reserves the discretion in accordance with natural justice and fairness to seek clarity from the affected employee before it departs from the Disciplinary Committee recommendation
15. That in this letter of 29th June 2020, the Applicant informed Management of his refusal to attend the meeting of 29th June 2020, contending that he had not been served with any invitation
16. That on 29th June 2020, the management sitting as EXCO (the Executive Committee of Management hereinafter referred to as "EXCO") deliberated on the Disciplinary Committee report and decided to depart from the latter's recommendations on the basis that the charges recommended by the Disciplinary Committee were cited from CBA Article 80 (2) (4) yet the right provision for the offence of forgery and fraud was Article 80 (2) (5) which provides for summary dismissal that amounts to forfeiture of terminal benefits. The DHRA was instructed to inform the Disciplinary Committee in writing the reasons as to why EXCO had diverted from the Disciplinary Committee recommendations. The dismissal was implemented effective 29th June 2020.
17. That pursuant to Article 79 of the GT & CS and Article 82 of the CBA, the Applicant had an option of appealing his summary dismissal to the 2nd Respondent. To date, the Applicant has not lodged an appeal to the appropriate authority (the Director General) as prescribed in schedule 6 to the GT & CS
18. That the contention that EXCO usurped the powers of Management and illegally constituted itself into a second Disciplinary Committee is misconceived. Pursuant to Article 4 of the GT & CS.
19. That following the outbreak of the Covid – 19 pandemic and Government directives to ensure social distancing, the Board of the 1st Respondent decided that the entire Management team should not be congregating in its big numbers to deliberate on its business as this would expose its members to the risk of contracting Covid -19. The Board which has a statutory mandate under Section 11 of the Civil Aviation Authority Act

Cap 354 to do all things as is provided by the Act or that may be necessary for the proper implementation of the Act set up the EXCO

20. That in EXCO's 1st meeting of 2nd January 2020, the Director General informed members that the Board had set up the EXCO comprising of only the Director General, Deputy General, Corporation Secretary and Directors. EXCO would hold meetings to consider sensitive issues which should not be considered by the entire Management team.
21. That on 11th March 2020, the ToRs of the EXCO were issued including notably that the EXCO was mandated to consider sensitive issues and report directly to the Board. The ToRs provided that all decisions taken at EXCO meetings were to be arrived at by consensus and would take immediate effect. That making a final decision on disciplinary action to be taken by Management against the Applicant was a sensitive issue and within the mandate of the EXCO.
22. That the contention that the Applicant's right of appeal was extinguished by the fact that the 2nd Respondent was part of the EXCO is misconceived. As demonstrated above, the 2nd Respondent forms part of the larger group of EXCO in determination of the final disciplinary action to be taken and sits as an individual to determine an appeal.
23. That since the Applicant, did not file an appeal, he forfeited his right and was not entitled to a stay of the implementation of his dismissal pursuant to Article 79.4 of the GT & CS and Article 82.3 of the CBA pending a non – existent appeal
24. That the Applicant was at all material times informed of the allegations against him, given an opportunity to respond to them orally and in writing, requested to attend before the 1st Respondent on two (2) occasions to defend himself and summarily dismissed for breaching the GT & CS and CBA
25. That the 1st Respondent followed the Disciplinary procedures laid out in its GT 7 CS, the CBA, and The laws of Uganda and accorded the Applicant a right to a fair hearing. The claims of bias and unfairness are misconceived.
26. That the 1st Respondent was pursuant to Section 66 of the Employment Act, 2006, Part X of the GT & CS and Part XI of the CBA entitled to conduct disciplinary proceedings against the Applicant in respect of the alleged fraudulent conduct and impose a penalty

if the latter's actions were deemed to be in breach of his contract of employment. The 1st Respondent's imposition of disciplinary action against the Applicant therefore be said to be illegal.

27. That as illustrated in paragraph 7 above, the documents of accountability presented by the Applicant for purchase of the PPE's were forged as the pharmacies from which they had allegedly been bought were either non-existent or non-authorized as confirmed by the National Drugs Authority. The powers and role of EXCO having been explained herein together with justification for the summary dismissal, it is clear that the claims of irrationality and procedural impropriety by the Applicant are misconceived.

28. That the 1st Respondent has not made any decision that is harsh and arbitrary to merit judicial review

29. That in the interest of justice, this application be dismissed with costs

The Applicant was represented by Counsel *Mr. Rashid Kibuuka* and the Respondents by *Mr. Mathias Ssekataawa*. The parties were directed to file written submissions which this court has considered before arriving at the decision.

The issues to be determined by Court are;

1. Whether the summary dismissal of the Applicant by the Respondents was lawful?
2. What remedies are available to the parties?

Submissions

Whether the summary dismissal of the applicant by the Respondents was lawful?

Both counsel in their submissions defined what Judicial review, as per **Black's Law Dictionary 9th Edition at page, 294** 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*"

Counsel cited the laws that govern judicial review as the ***Judicature Act Cap 13 and Judicature (Judicial Review) Rules 2009. Particularly Section 36 of the Judicature Act***. Basically the court has discretion to grant an order for judicial review where it is satisfied that the decision making

body or officer did not follow due process in reaching a decision and that as a result, there was unfair and unjust treatment.

For the streamlining of the case, counsel for the respondent cited the case **of H/W Aggrey Bwire v. Attorney General CACA No.9/2009**, where Court held that; *“Judicial review can only be granted on three grounds; **illegality, irrationality and procedural impropriety**. The first two grounds are known as substantives grounds of judicial review because they relate to the substance of the disputed decision. Procedural impropriety is the procedural ground because it aims at the decision itself”*

Counsel for the Applicant submitted that the Applicant having been aggrieved by the conduct of the 1st and 2nd Respondents acting as the executive committee (EXCO), he filed the instant application for the 1st and 2nd respondent’s violation or contravention of the procedure for conducting disciplinary hearings against an employee enshrined under the Collective Bargaining Agreement **“CBA”** attached as **annexure “M”** which forms part of the Applicant’s contract of employment. He specifically cited **Articles 75.1, 75.3, 76.2 (a-e) and 77 and Articles 75, 76 and 77** that provide;

- a) After completion of investigation, the authority will constitute a disciplinary committee, the Director Human Resource shall ensure the employee appears before a duly constituted disciplinary committee to defend himself, the employee shall be given an opportunity to prepare his response or defence to the allegations levelled against him and a formal hearing will then be scheduled and the employee will attend it.
- b) Thereafter, the disciplinary committee will deliberate on issues in absence of the employee and will report its recommendations to the competent authority for consideration and decision/award punishment.

Counsel submitted that the Management Committee is the authority charged with awarding punishment in respect of the Applicant’s case, however that did not happen. The Management Committee has never issued any decision to punish the Applicant by way of summary dismissal at all. According to the Applicant, there is no organ known as EXCO and therefore the lawfully known Management Committee prescribed to award punishment under **Schedule No.6 of the**

CBA has never made a decision against the Applicant. The EXCO committee usurped the authority of the Disciplinary Committee and the Management Committee when it acted as follows;

1. When it decided to hold a second disciplinary hearing on Monday 29th June, 2020 as confirmed by item vi of the agenda of EXCO meeting (annexure “J”) on the affidavit in support, yet this power/mandate is only reserved for a disciplinary committee set-up by the 1st respondent and the same had already been conducted and concluded
2. When it made a decision to summarily dismiss the applicant, yet this is power or mandate or authority which it did not have and/or does not have, because this is reserved for the management committee, accordingly, EXCO acted ultra vires or outside their powers and authority.

He further submitted, inviting court to find that;

- a) The second disciplinary hearing by the EXCO committee held on Monday 29th June, 2020 was ultra vires, its powers, were illegal, unlawful and void ab initio and no decision at all can be made by a body that is not prescribed or mandated by annexure “M”
- b) Purporting to subject the Applicant to two disciplinary hearings by two different Disciplinary Committees is contrary to the provisions of the collective bargaining agreement.
- c) The 1st Respondent was in violation of the terms of the Collective Bargaining Agreement to adopt and subject to the Applicant’s employment contract, accordingly, the procedure adopted was illegal
- d) Purporting to make a decision to summarily dismiss the Applicant was pre-determined and pre conceived prior to the sitting of EXCO on the 29th June, 2020, because the applicant’s accusers having failed to obtain a dismissal in the first disciplinary hearing of the applicant’s case, they quickly set up EXCO, chaired the second disciplinary meeting to ensure the outcome is in exact terms as they had prior desired.

Counsel submitted that to the Applicant this means that the 1st Respondent breached its own procedures, undermined its own organs and structures, especially when it violated the non-right to a fair and just treatment amounting to an illegality.

Counsel for the Respondents submitted that the core of the Applicant's case is the contention that the Respondents constituted themselves into a body alien to the CBA known as EXCO which allegedly held a 2nd disciplinary hearing and summarily dismissed him. That EXCO acted ultra vires, its mandate and usurped the powers of the management committee resulting into an illegal disciplinary process. The relationship between the Applicant and the UCAA was governed by the **Employment Act, 2006**, which sets out under;

Section 66(2) *“Notwithstanding any other provision of this part, an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance and the person, if any chosen by the employee under Subsection (i) may make”*

Counsel further submitted that the Applicant's contract of employment (**annexure “A”**) to the affidavit in support of this application, expressly states that the contract is governed by the **Constitution of the Republic of Uganda, the Employment Act and the GT & CS and Part XI of the CBA**. These entitle UCAA to conduct disciplinary proceedings against the Applicant in respect of the alleged fraudulent conduct and impose punishment if the applicant's actions were deemed to be in breach of his contract of employment.

He further explains that **Article 75(1) of the CBA** provides for the power of the Disciplinary Committee to hear allegations of indiscipline and to make recommendations to the authority. The authority is defined as the Civil Aviation Authority in **Article 5 of the CBA. The Civil Aviation Authority Cap 354. (The CAA Act)** establishes in **Section 8 (1)** a Board of Directors (The Board) as the governing body of the authority and sets out the Board's powers in **Section 11** to include among others the responsibility for the general control and management of the undertakings and affairs of the authority. Thus in light of the above, there was a legal basis to subject the Applicant to disciplinary proceedings.

Counsel for the Respondents submitted that in the Applicant's submission, he cited **Article 75.1, 75.3, 76(a-e) and 77 of the CBA** which bestows upon the Management Committee the mandate to punish the Applicant but he has never received any punishment from this committee. This contention was misconceived. The "Management Committee" in **Article 4 of the GT & CS and Article 5 of the CBA** comprises of the Managing Director (now referred to as Director General), Deputy Managing Director (now referred to as Deputy Director General), Corporation Secretary, Departmental Directors, General Manager, and all heads of department. UCAA has 5 departmental Directors, and twenty nine Heads of Departments as stated in paragraph 21 of the affidavit in reply. However at the end of 2019, there was unprecedented outbreak and spread of corona virus (COVID-19) worldwide Uganda inclusive. Uganda was ultimately plunged into a total lockdown effective 1st April, 2020, with a ban on private and public transport with exception of essential workers.

It is in such regard that the Board relying on **Section 11 (f) of the CAA Act**, resolved that the entire management team should not be congregating in big numbers to deliberate on its business as this would expose its members to the risk of contracting COVID-19.

Section 11 (f) of the CAA Act provides as follows:

"The Board shall be responsible for the general control of the performance and management of the undertakings and affairs of the authority; and without degrading from the generality of the foregoing provision, the Board shall

(f) "do other things as is provided by the Act or that may be necessary for the proper implementation of the Act"

Counsel submitted that the establishment of EXCO as per Section 11 of the CAA Act should not only be found legal but also should be commended by this Honourable Court as outstanding foresight that enabled performance of the functions of UCAA in a healthy and safe way. He further cited the case of **Elias Lukwago v. Electoral Commission, HCMA No. 393 of 2020**.

In the present case the respondent was trying to stop the spread of the deadly COVID-19 and this is justifiable reason not to accord a hearing since it was acting in an emergency. EXCO

would hold meetings to consider sensitive issues which should not be considered by the entire management team. It was resolved in this meeting that EXCO was to consider sensitive issues and report directly to the Board, EXCO was to be used as a tool for taking, collective decisions. The Deputy Director General and Corporation Secretary were to draft Terms of Reference for EXCO and review management's Terms of Reference by Friday 10th January 2020 and EXCO was to meet on the 8th January, 2020 to consider the disciplinary matter of fraud on the payroll. A copy of the minutes of the said EXCO meeting is attached to the affidavit in reply as **annexure "O"**.

On 11th March 2020, the ToRS of the EXCO were issued including notably that the EXCO was mandated to consider sensitive issues and report directly to the Board. The terms of reference provided that all decisions taken as EXCO meetings were to be arrived at by consensus and would take immediate effect. EXCO was set up by the Board through exercise of a statutory duty and power. The mandate of EXCO as set out in the terms of reference included disposal of sensitive matters and disciplinary issues. Counsel, having cited the case of **Ignatius Loyola Malungu v. IGG HCMA No. 59 of 2016**, noted that no error of law was committed in the process of summarily dismissing the applicant. UCAA acted in accordance with the law, the Applicant's contract of employment, GT & CS and CBA. The evidence on record does not disclose any illegality. The committee was exceptionally set up during a devastating pandemic whose effect this honourable court has taken judicial notice of.

Procedural impropriety

Counsel for the applicant submitted that **annexure "H"** (the management paper) and paragraphs 10 & 11 of the affidavit in support confirm that the Disciplinary Committee hearing of the 12th June, 2020 set up by the 1st respondent did not convict or find the applicant guilty of fraud, forgery, or misappropriation and was properly constituted. However, **annexure "J"** (minutes of EXCO disciplinary meeting) and paragraph 19 (a) & (b), 21, 24 (b) of the affidavit in support is evidence that the Applicant's accusers were on the EXCO Disciplinary Committee that conducted the second disciplinary hearing of 29th June, 2020, the said EXCO meeting was constituted in attendance of the following Applicant's accusers;

- a) Mr. Al-Hajji Eng. Ayub Sooma, the Director Airport and Aviation Security (DAAS) who initiated the complaint against the Applicant addressed to DG and copied to DDG, annexure "C" (the complaint) paragraph 7 of the affidavit in support.
- b) Mr. Fred Bamwesigye, the 2nd Respondent, Deputy Director General (DDG) as chairman
- c) Mr. Joseph Okwalinga, the 1st Respondent's Ag. Corporation Security. (CS)

Yet both officers (DDG & CS) had prior to the said hearing authored an investigative report/internal memo against the Applicant, which is annexure "N" on the affidavit in support. The presence of the said officers in the meeting was fatal to the validity of the decision because it exhibited apparent bias and as a result it was in breach of the principles of natural justice.

Analysis

The 1st Respondent through its Ag. Manager Administration and Transport requisitioned for UGX. 44,352,000/= to be advanced to the Applicant, for the purchase of protective supplies. The items to be purchased were hand sanitizers, gloves and face masks. The Applicant indeed purchased the items as requested and were confirmed of good quality by the 1st Respondent and were all taken by or distributed by the 1st Respondent. Later through 2 different disciplinary hearings, the applicant was summarily dismissed by an established committee "the EXCO"

Apparently the Board of Directors of Civil Aviation is mandated to deal with all issues relating to the management and running of the institution. The Board of Directors is the governing body that consists of the Managing Director (Director General) and not less than four and not more than eight directors of whom shall be the chairperson. Its major role is to generally control the performance and management of the undertakings and affairs of the authority;

The core of the Applicant's case is the contention that the Respondents constituted themselves into a body alien to the CBA known as EXCO.

As earlier on submitted by the respondent, the establishment of the said committee should be commended by this court as an outstanding foresight that enabled performance of functions of the UCAA in a healthy and safe way. In the case of **Jabbe Pascal Osinde Osudo v. Attorney**

General HCMC No. 161 of 2020, Justice Musa Ssekaana stated that *“it is a fundamental principle of the rule of law, recognized widely, that the exercise of public power is only legitimate where lawful. The rule of law-to the extent at least that it expresses this principle of legality-it’s generally understood to be a fundamental principle of constitutional law. Lawfulness thus stands at the core of the general constitutional law principle of legality and applies to all public actions. An analysis of lawfulness in administrative law thus always involves comparing the administrative action to the authorization for that action in the relevant empowering provision. Therefore lawfulness or lack of mandate provides administrators with the tools to identify specifically what they are entitled to do. See **Dr. Wilberforce Wandera Kifudde v. National Animal Resources Centre and Data Bank (NAGRC & DB) & 2 Others High Court Misc. Cause No. 82 of 2020”***

This means that for every action an administrator or decision –maker takes, there must be a valid authorization in an empowering provision. In absence of such authorization the administrative action will be unlawful. The establishment of the said EXCO was as a result of the prevailing circumstances of the Covid-19 pandemic which crippled the normal operations of every organization in Uganda. Indeed, the case of **Lukwago Elias v Attorney General** is quite instructive on this point.

According to the Applicant’s affidavit, on the 26th June, 2020, the 1st Respondent, bid farewell to the Director General, who had handed over office to the Deputy Director General, who had taken on the role of the Director General and thus would carry on the functions of the Director General as was. This was before the Applicant’s 2nd hearing on the 29th June 2020. Where it was held in his absence, a decision was taken to summarily dismiss him.

The challenging part of lawfulness relates to the reason, purpose or motive for which the action was taken. The “Management Committee” in **Article 4 of the GT & CS and Article 5 of the CBA** comprises of the Managing Director (now referred to as Director General), Deputy Managing Director (now referred to as Deputy Director General), Corporation Secretary, Departmental Directors, General Manager, and all heads of department. The provision appears to be clear but the prevailing circumstances has altered the normal procedure to a new-normal of EXCO to

manage the affairs of the 1st respondent. It is true the same persons would have sat on both bodies but this is not to water down the abnormal circumstances that existed at the moment when the pandemic was extremely dreaded. There was necessity for the reduction of the members of the committee which was supposed to take decision. The practical necessity is usually understood to allow a power vested in one person or body to be exercised by another or several others.

The 1st Disciplinary hearing, found both parties, liable. The non-coordinated receipts leading to loss of monies by the applicant was admitted but the challenge was on the manner in which the disciplinary decision was effectuated. The applicant appears to have received a less sanction than what was later handed down to him that resulted in a summary dismissal.

EXCO was now the final decision maker of the 1st respondent in the prevailing circumstances and was exercising the same or similar power and was not bound by the recommendations of the disciplinary committee. Indeed, EXCO decided to depart from the disciplinary committee's recommendation on the basis that the charges recommended by the disciplinary committee were cited from Article 80(2)(4) of the Collective Bargaining Agreement and yet it was supposed to be the offence of forgery and fraud under Article 80(2)(5) of Collective Bargaining Agreement which provides for summary dismissal.

The 1st Respondent was operating in abnormal times and this would cause to invite the last appellate body to consider the peculiar circumstances that were prevailing at the moment and exercise their/its discretion on this matter. It is also true that there was substantive vacancy at the time in the position of Director General and the same has since been filled. The applicant can explore the last available remedy of appeal to Director General. The decision of EXCO did not extinguish the applicant's right of appeal. The applicant has an existing alternative remedy which may or may not be exercised in exercise of discretion of the Director General.

The present application was proper in the circumstances of the case that were prevailing at the moment since there was a substantive vacancy in the position of the top most office-Director General. The 1st respondent would make final appropriate orders concerning the applicant's fate bearing in mind the peculiar circumstances prevailing then.

Therefore, the decision to summarily dismiss the applicant by the EXCO was proper and justified in the circumstances prevailing at the moment.

What remedies are available to the parties?

A declaratory order issues to confirm that the decision of the EXCO was lawfully taken and the applicant is only entitled to exhaust the only available remedy of appeal to Director General.

The application is allowed in these terms and each party shall bear their costs.

I so order

Ssekaana Musa
Judge
11/3/2022