

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

MISC. CAUSE NO. 254 OF 2013

**IN THE MATTER OF APPLICATION FOR PREROGATIVE ORDERS BY WAY
OF JUDICIAL REVIEW**

BETWEEN

SIMON TENDO KABENGE ::: APPLICANT

VERSUS

1. UGANDA LAW SOCIETY

2. RUTH SEBATINDIRA ::: RESPONDENT

BEFORE: HON JUSTICE STEPHEN MUSOTA

RULING

Simon Tendo Kabenge an advocate of the High Court represented by M/s Akampumuza & Co. Advocates filed this application for Judicial Review reliefs by way of Notice of Motion under Articles 42, 44, 28(1) and 50 of the 1995 Constitution, S. 3 of the Judicature (Amendment) Act No. 3 of 2002 and Rules 3,4,6,7 & 8 of the Judicature (Judicial Review) Rules 2009, the Uganda Law Society Act Cap 276 and Uganda Law Society Regulations S.I 276-1. The respondents are The Uganda Law Society and Ruth Sebatindira represented by a list of twelve law firms to wit:-

1. M/s Byenkya & Co. Advocates
2. M/s Oketcha, Baranyanga & Co. Advocates
3. M/s Ligomarc Advocates
4. M/s Kwari-Kyerere & Co. Advocates

5. M/s Kiwanuka & Karugire Advocates
6. M/s Tumusiime, Kabega & Co. Advocates
7. Legal Aid Project
8. M/s Katende, Ssempebwa & Co. Advocates
9. M/s MMAKS Advocates
10. M/s Mugisha & Co Advocates
11. M/s Musoke & Co. Advocates

The application is for orders for Judicial Reliefs as follows:-

- 1) A declaration that the Annual General Meeting of the 1st respondent held on 22nd and 23rd March 2013 was an illegality.
- 2) A declaration that the election of the 2nd Respondent as the President of the 1st Respondent done on the 23rd March 2013 at Imperial Resort Beach Hotel Entebbe was conducted in contravention of law.
- 3) A declaration that the Applicant was discriminated against by the 1st Respondent in favour of the 2nd Respondent in his nomination and participation as a candidate for the impugned election for having sued the 1st Respondent in Constitutional Petition No. 53/2013.
- 4) A declaration that the voting carried out at the impugned election was done in contravention of the law.
- 5) An injunction doth issue against the 2nd Respondent and all office bearers allegedly elected at the impugned election of the 1st Respondent from conducting the affairs or occupying any office of the 1st Respondent.
- 6) A declaration that the meeting of the 1st Respondent was not convened in accordance with the law.

- 7) A declaration that the 2nd Respondent was illegally elected as the President of the 1st Respondent at the Annual General Meeting of the 1st Respondent held on the 22nd and 23rd March 2013.
- 8) A declaration that presiding over of the elections of the 1st Respondent is a preserve of its President.
- 9) A declaration that the Annual General Meeting of the 1st Respondent was held beyond the mandatory statutory period.
- 10) An order doth issue directing the 2nd Respondent to immediately vacate the office of president of the 1st Respondent.
- 11) An order doth issue directing all office bearers of the 1st Respondent to immediately vacate their respective offices of the 1st Respondent's Annual General Meeting held on 22nd to 23rd March, 2013.
- 12) An order of Certiorari doth issue calling for the record and decision of the 1st Respondent of the Annual General Meeting of 22nd to 23rd March, 2013 at Imperial Resort Beach Hotel for quashing and expunging from the archives of public records of the Republic of Uganda.
- 13) An order of Mandamus doth issue directing the Respondent to hold a fresh Annual General Meeting of the 1st Respondent for its office bearers for the year 2013-2014 in compliance with the law.
- 14) An order of Mandamus doth issue directing the 1st Respondent to conduct election of the 1st Respondent in compliance with the law.
- 15) General, exemplary and punitive damages be awarded to the applicant together with costs of this application.

The grounds for the application are that:-

- (a) The 1st respondent has acted and continues to act illegally in abuse of its authority and powers and in breach of the Uganda Law Society Act Cap 276 and the Uganda Law Society Regulations SI 276-1
- (b) The applicant was victimized by the 1st respondent in his nomination as a candidate for the impugned election for having sued the 1st respondent in Constitutional Petition No. 53 of 2013.
- (c) The voting carried out at the impugned election was done in contravention of the law in that:-
 - (i) The meeting and the election conducted between 22nd and 23rd March 2013 breached all the statutory provisions of the law governing the 1st respondent.
 - (ii) The 1st respondent did not observe the mandatory legal requirements for convening and conducting of the Annual General Meeting and for presiding over the elections.
 - (iii) The applicant was discriminated against, denied a right to participate in the election as member of the 1st respondent and to be voted for in the manner expressly provided for.
 - (iv) The respondent violated the rules of natural justice and fair play to illegally return the 2nd Respondent as duly elected president of the 1st respondent.
 - (v) The election was a sham, contrary to reason, biased and prejudicially disenfranchised members of the 1st respondent from participating in the election on the basis of known and internationally acceptable principles of voting by ballot which are also a requirement of the law.
 - (vi) There was disenfranchisement of members of the society by officials of the 1st Respondent to favour the 2nd Respondent's candidature.
 - (vii) The annual General Meeting was convened by a stranger to the 1st respondent's membership.
 - (viii) The Annual General Meeting was held outside the law.

- (ix) The infringed election was presided over by a person other than the president or vice president of the 1st respondent.
 - (x) Four members of the 1st respondent demanded for voting by ballot and the same was arbitrarily denied by the 1st respondent.
 - (xi) The applicant was irregularly put to task to justify his candidature or to show cause why he should not withdraw it ultravires the law governing election of the 1st respondent's office bearers.
 - (xii) The voting carried out at the impugned election was neither by show of hands nor by ballot.
 - (xiii) The impugned Chair of the impugned election abdicated its duty and illegally delegated it to persons not authorized to chair.
 - (xiv) The voting at the impugned election was carried out after mass disenfranchisement of the 1st respondent's members.
- (d) The 2nd respondent is holding the office of president of the 1st respondent illegally.
 - (e) The 1st respondent's above decision was taken without basis, without giving the applicant a hearing.
 - (f) The applicant was targeted for victimization and discrimination yet other candidates were promoted prejudicially.
 - (g) The decision of the 1st respondent to hold an election in a manner in contravention of the law resulted in an imposition of an illegal ban on the applicant from contesting for the post of office bearers of the 1st respondent without any cause or giving the applicant any hearing.
 - (h) If not restrained the Respondent's actions shall be greatly injurious to the democratic process directed by law and the applicant shall lose a fair chance to execute his rights as a member of the 1st respondent.
 - (i) The applicant is entitled to enforce its membership rights both as a member of the first respondent.

- (j) There is no other means of enforcing and obtaining justice at this stage of the respondent's decision in the circumstances.
- (k) The applicant is entitled to a fair and just treatment before administrative bodies as conferred upon them by Article 42 of the Constitution of the Republic of Uganda 1995.

The Notice of Motion is supported by the affidavit of the applicant which reiterated the grounds of the application and two other supporting affidavits by Frank Kanduho Rwabosy and Mugerwa Vincent both advocates of the High Court of Uganda.

Several annexures are attached to the respective affidavits including:-

- Annexure A – the applicant's Identity Card
- Annexure B a Notice of the ULS Annual General Meeting 2013.
- Annexure B₁ Constitutional Petition 53 of 2012.
- Annexure C₁ an email urging members of ULS not to miss AGM.
- Annexure C₂ an email notifying members that only paid up members for 2013 will be admitted to the AGM.
- QQ and ID for Kanduho Frank Rwabosy.
- Annexure 22 attached to Kanduho's affidavit and similar to annexure C₁.
- Annexure ZZ similar to annexure C².
- Annexure MP₁ similar to annexure 'B' above.

Several affidavits were filed on behalf of the two respondents. They comprised the affidavits of:-

1. Grace Babihuga, the Executive Director of Uganda Law Society.
2. Ruth Sebatindira the 2nd respondent.

3. James Mukasa Sebugenyi President Uganda Law Society for the period 7th May, 2011 to 23rd March 2013.
4. Moses Adriko the returning officer of the contested Annual General Meeting.
5. Ronald Oine a member of the Uganda Law Society who attended the AGM of 1st respondent.
6. Kiryowa Kiwanuka a member of the Uganda Law Society; and
7. Bruce Kyerere Kwarisiima a member of the Uganda Law society.

In her affidavit, Grace Babihuga who denied being called Winnie Babihuga as referred to by the applicant's affidavits deposed by Frank Kanduh Rwabosy, Vincent Mugerwa and Mulalira Fisal explained how she became Secretary to the 1st respondent. She swore that she was made the Secretary by the Executive Council in its meeting of 25.09.2012. That she accordingly signed the AGM Notice "By order of council" and in accordance with Section 15, 23 and 24 of the Uganda Law Society Cap 276. The meeting was called at the earliest convenient date after 31.12 at the discretion of council as provided for under the law establishing the 1st respondent and after the Audited Accounts had been considered by the AGM. That at the AGM, the then president James Mukasa Sebugenyi called the AGM to order and presided over items 1-6 and thereafter called for the nomination of a returning officer for the conduct of elections. Mr. Moses Adriko was nominated by Mr. Elly Rugasira. He was not challenged and therefore passed unopposed. Thereafter the Executive Council stepped down from the podium to allow the conduct of the election of new office bearers. Ms Babihuga Grace further deposed that to be a member of the 1st respondent, an eligible person is required to pay an Annual subscription fee and she prepared the list of such paid up members for 2013 which was displayed outside the Conference Hall and members signed against their names before entering the Hall. That those who were not paid up could pay at the registration desk and whoever voted was eligible to vote. She denied allowing any journalists, cooks, drivers, observers and ULS Secretarial staff who were not ULS members to vote in the election. That the election was

carried out as has been done in the past years by the returning officer with a show of hands of those voting for a particular candidate. At the end of the exercise, the candidates scored as follows: Mr. Richard Lumu 17 votes, Mr. Tendo Kabenge 4 votes and Mrs Ruth Sebatindira got 447 votes. The latter won the elections and was declared president of Uganda Law Society. Attached to her affidavit were annexures “A” to “E” comprising her ID, PC, minutes of Executive council in which she was appointed, the Notice of AGM & Audit accounts.

In her affidavit, the 2nd respondent reiterated what Mr. Grace Babihuga deponed and opposed the application. She deponed that during the election process she was nominated by Prof. Fredrick Ssempebwa and seconded by Mr. John Mary Mugisha. That other than herself the other candidates were Mr. Richard Lumu and the applicant herein. The 2nd respondent accepted her nomination and nominated Mr. David Mukiibi and Mrs Sarah Lubega as her polling agents. That Mr. Lumu Richard nominated Mr. Asuman Basalirwa, Mr. Abdalla Kiwanuka and Mr. Chrysostom Katumba as his agents. That for the applicant, Mr. Frank Kanduhho and Mr. Jimmy Muyanja were his agents.

Mrs Sebatindira further deponed that he returning officer directed that the election be conducted by the Hall being divided into three Divisions to allow for the supporters of each candidate to congregate in the designated areas for ease of voting and votes tallying. That after voting, counting, tallying and signing of the necessary papers the candidates who had been asked to leave the Hall during voting were called back into the Hall and the returning officer announced the results. According to the 2nd respondent the holding of the AGM and conduct of the whole election process was done in a lawful and transparent, democratic manner and in accordance with long-standing custom as guided by the then Executive council of the ULS. That all candidates were accorded equal opportunity to address the assembly and subject themselves to the votes of the membership.

In yet another affidavit in rebuttal, Mr. James Mukasa Sebugenyi the past president of the 1st respondent denied abdicating his statutory duty as stated by Vincent Mugerwa and emphasized that the pre-Annual General Conference and AGM were conducted in compliance with the law and procedure and the approved practices of the 1st respondent for elections with full participation of members. Mr. Sebugenyi supported the averments by Ms Grace Babihuga and added that he presided over the election of Mr. Moses Adriko as returning officer of the election following which the entire council stepped down from the podium. He further justified his action because there are instances where a sitting president can be a candidate for elections. That when Mr. Kanduhro rose and requested for a secret ballot, there was no question for decision by the members on the floor because the item on the floor at the moment was election of the office bearers. Several annexures are attached to Mr. Sebugenyi's affidavit similar to those attached to Ms Grace Babihuga's affidavit save for her ID and PC.

Another affidavit in reply is one deponed by Mr. Moses J. Adriko. He reiterated that it has always been the practice and custom at the AGM for the members of the 1st respondent to elect a returning officer from among those attending the meeting to avoid any suggestion of bias or conflict of interest because any member of the outgoing council is eligible for nomination as an office holder in the incoming executive and that is how he was elected as Returning Officer. That upon assumption of duty of returning officer, Mr. Adriko called for nominations for the position of president of the 1st respondent. Immediately thereafter a point of order was raised by the applicant and Mr. Frank Kanduhro Rwabosy challenging his assumption of the role of returning officer and demanded that secret ballot be taken instead of the customary show of hands. Mr. Adriko further deponed that upon receipt of the point of order, he suspended the process of nomination and sought views from the membership assembled on the way forward. After

a prolonged discussion, it was the general consensus that the election should be conducted in the customary manner of voting by lobby after dividing the members in attendance into divisions representing each nominated candidate to ease counting of the voters of each candidate. Thereafter, the applicant and the 2nd respondent were nominated for president.

Mr. Adriko further deponed that after nomination, Mr. Bruce Kyerere, a past president of the 1st respondent raised a point of order querying the candidature of the applicant who had instituted proceedings against the 1st respondent in Constitutional Petition No. 53 of 2013 (**Simon Tendo Kabenge Vs Attorney General, Uganda Law Society & Another**). That this issue was discussed and the applicant was invited to respond to the issues raised and he defended his right to petition court for redress against the 1st respondent. Thereafter, another two candidates were nominated to wit Mr. Lumu and Mr. Nicholas Opio but the latter declined leaving only three candidates to tussle it out. Mr. Adriko then called upon the candidates to nominate at least two agents each to assist in tallying votes. The 2nd respondent nominated Mr. Kiryowa Kiwanuka, Mr. David Mukiibi and Mrs Sarah Lubega as her agents. The applicant nominated Mr. Kanduhho Frank. R and Jimmy Muyanja as his agents. Thereafter the Hall was divided into three divisions to allow for the supporters of each candidate to congregate in the area that had been designated for each candidate.

Before voting, each candidate was requested to leave the Hall but the respective agents remained and then the members divided themselves and congregated into three areas designated for each candidate according to their support. Thereafter the candidates' agents accompanied by members of staff of the 1st respondent proceeded to count the supporters of their respective candidate. After counting the 2nd respondent got 447 votes. The applicant got 4 votes. Mr. Lumu got 17 votes. After tallying, Mr. Adriko asked the

agents to sign the tally sheet as indicated in annexure 'A' to his affidavit and thereafter announced the results declaring the 2nd respondent as elected president of the 1st respondent. Thereafter nomination for the remaining positions was invited and the same were filled.

Mr. Adriko denied the allegations by both Mr. Kanduhho and Mr. Vincent Mugerwa that he appointed Kiryowa Kiwanuka assistant returning officer or that he discriminated, obstructed or was biased against the candidature of the applicant. He further denied that he was party to any attempt to block the applicant from vying for the position of president of the 1st respondent or that non-members of the 1st respondent participated in the elections. Further that none of the members present abstained or protested against the process and the elections were open, free and fair and in compliance with the law and approved practice of the 1st respondent.

In his affidavit in reply Mr. Ronald Oine deponed denying that he urged the membership of the 1st respondent to demand that the applicant stands down. That he only rose to raise a point of order when the applicant referred to the assembly as "a mob" demanding that as duly nominated candidate for president of the 1st respondent he withdraws his statement and apologise to the assembly which the applicant declined to do.

In his affidavit in reply Mr. Kiryowa Kiwanuka reiterated the deponments of the earlier deponents in opposition to the application and said that all candidates addressed the assembly and he was appointed as one of the agents for the 2nd respondent. That at the end of voting he among others signed the tallying sheet confirming the number of votes the 2nd respondent got as per annex 'A'. He denied being appointed assistant returning officer.

In his affidavit in reply, Mr. Bruce Kyerere a past president of the 1st respondent also reiterated the depositions by the earlier witnesses. He however clarified that the elections which took place on 23rd March were properly conducted in line with the law, customs and procedure followed by the returning officer who presided over the items for elections alone. He confirmed raising a point of order pointing out a matter that put the applicant in a situation of conflict of interest with the first respondent in that he filed a Constitutional Petition against the 1st respondent seeking declarations and recovery of large sums of money in damages yet he is seeking to lead the same institution. That apart from a point of order, he did not at any time before or during the meeting move any Motion to annul the candidature of the applicant or any candidate. That no one compelled the applicant to step down and that it is not true as alleged by the applicant, Mr. Kanduh, Mr. Mugerwa Vincent and Mulalira Faisal Umar that he and Mr. Adriko booed and chased the applicant from the microphone or that he asked Mr. Adriko to block the applicant's candidature. Finally Mr. Kyerere emphasized that he only pointed out to existence of Constitutional Petition No. 53 of 2013 against the 1st respondent and others.

In another affidavit in reply by Oscar John Kihika he stated that all the annual General Meetings he has attended have in accordance with the decision of the Executive Council of the 1st respondent been held later than 31st January of each year including the time he was elected president of ULS. That in all those meetings, the outgoing president and council stepped down to enable a member of the 1st respondent duly opposed by the meeting to preside over the elections. That the established procedure has been that:-

- (a) Nominations for the office bearers have always been made on the floor.
- (b) Candidates have been given opportunity to address the meeting; and voting has been by show of hands.

Mr. John Kihika further deponed that Mr. Sebugenyi oversaw the election of Mr. Moses J. Adriko as returning officer and he stepped down from the podium.

In the affidavit by Mr. John Mary Mugisha, he reiterated the earlier deponments in reply and revealed that as a long standing member of the 1st respondent who had attended 99% of the AGMs of the 1st respondent, he told the meeting that it was in order for the elections to be conducted in the manner adopted by the returning officer. That it was wrong for the applicant who had been nominated as a candidate to approbate and reprobate by turning around to challenge the propriety of Mr. Adriko's presiding over the elections as he did. That the regulations and the laws which the applicant and his group were relying on were merely directory and not mandatory in nature as the intention of the legislature had not been defeated and they had not suffered any form of prejudice or injustice. Therefore the elections were properly and fairly conducted.

According to the affidavit in reply by Harriet Diana Musoke, she reiterates that the 1st respondent's AGM have been held later than 31st January of the due year and usually another member of the 1st respondent duly approved by the meeting presides over the elections after the outgoing president and council stepped down.

In her affidavit Deborah Gasana a staff of the Legal Aid Project said that she did not participate in the elections. She watched the whole election process of office bearers presided over by Mr. Moses Adriko and it is not true that non members voted during the AGM. That whoever voted was first verified and those who had not paid the annual subscription fee paid at the desk manned by Mr. Tom Wambi of the ULS accounts department and were registered to vote. Mr. Gasana deponed that she and fellow staff

manned a verification desk together with fellow staff of the ULS and only verified members entered the main Hall.

In the affidavit of Ssempebwa Edward Fredrick, he agreed with Mr. Oscar John Kihika's affidavit in paragraphs 3,4,5,6 and 7 thereof. He confirmed that he nominated the 2nd respondent as candidate for the office of president which nomination was seconded by John Mary Mugisha. That Mr. Lumu and the applicant were also duly nominated. The three candidates were given opportunity to address the meeting but the applicant declined to do so.

Nevertheless, the voting went on by show of hands and an oral confirmation by the voter upon being counted. After counting the 2nd respondent was declared president of the 1st respondent with 447 votes. Thereafter one of the agents of Mr. Lumu approached the deponent and congratulated him upon his candidate's success.

The applicant filed several affidavits in rejoinder refuting the averments by all the people who swore affidavits in reply to the application by the applicant. He described the averments therein as falsehoods, afterthoughts, perjury etc.

During the hearing of this application and at the instance of respective counsel, court allowed each party to file written submissions in support of their respective cases. However, learned counsel for the applicant did not comply with the schedule of filing his submissions by 07.10.2013 thus delaying the response by the respondents which was scheduled for 18.10.2013. The rejoinder was by 25.10.2013. Mention of the case was put on 04.11.2013 but neither the applicant nor his advocates were in court. This prompted

court to allow learned counsel for the respondent to file their submissions by 11.11.2013. Unknown to court the applicants had filed an application to court to extend time to file written submissions. However on the date it was fixed for hearing i.e 04.11.2013 the applicant and his counsel were absent. In the presence of Mr. Byenkya for the respondents the application was dismissed. The applicants filed yet another application to have their submissions on record which was allowed. This explained the delay in completion of this application.

In the respondent's joint submissions, a number of preliminary objections were raised contending that the applicant's cause of action does not fall within the ambit of Judicial Review and should be dismissed. Learned counsel for the applicant contended otherwise and asked this court to dismiss all the objections and deal with the suit on merits.

I have decided to deal with the preliminary objections first before deciding if it is necessary to go into the merits of this application. I will start with:-

1. Whether Judicial Review is an incompetent procedure for challenging an election?

The reason why I decided to reproduce the pleadings and affidavit evidence on both sides is to enable me determine the preliminary objections raised and the responses thereto to find whether this is a proper case for resolution under Judicial Review.

I have carefully addressed my mind to the able arguments of both counsel on this issue. I have also considered the wealth of authorities cited for my guidance. Contrary to what was submitted by Dr. Akampumuza learned counsel for the applicant, I am in agreement

with the respondent's joint submissions that paragraphs 2,3,4,5,7,11,13 and 14 of the Notice of Motion are concerned with the outcome of an election process.

I agree that the election of the 1st respondent's office bearers is not an appropriate subject of Judicial Review because neither S. 36 of the Judicature Act Cap 13 which confers jurisdiction on this court to grant prerogative orders nor Rule 3 of the Judicature (Judicial Review) Rules SI No. 11 of 2009 which sets out cases appropriate for Judicial Review provide that Judicial Review is for purposes of challenging the outcome of an election. Although the applicant denies that he is challenging the election of the 2nd respondent, his submissions and pleadings suggest otherwise. The fact that a litigant does not agree with the outcome of an election process does not mean that it did not take place. Otherwise there would be no basis for challenging the same. The respondents correctly submit that the applicant acknowledges that the 2nd respondent came to office through an election process. The applicant's complaint is that the said election was flawed and in paragraph 11 of the Notice of Motion he prays for an order directing the office bearers of the 1st respondent to vacate office they occupy as a result of the elections by the AGM. The moment the applicant based his complaint on the fact that an election took place it became an acknowledgment that the 2nd respondent is entitled to act in that position until the election result is set aside.

Part II of the Judicature (Judicial Review) Rules 11 of 2009, Rule 3 thereof provided for cases appropriate for Judicial Review and these are:-

1. An application for
 - (a) An order of Mandamus. Prohibition or Certiorari; or
 - (b) An injunction under S. 38(2) of the Judicature Act restraining a person from acting in any office in which the person is not entitled to act.

Since after election a declared winner is entitled to act in the office she/he is elected to, until the victory is successfully challenged judicial review cannot be an appropriate procedure to challenge an election. In the application under consideration, the allegations made by the applicant protesting the validity of the 2nd respondent's election include failure to follow legal rules and procedures for holding and conducting an election, disqualification of eligible candidates, incompetence of the returning officer, disenfranchisement, participation of unqualified persons in the elections, failure to allow candidates to campaign and improper voting procedures.

All these and many other complaints raised by the applicant are matters concerned with merit. It is trite law that a court exercising judicial review powers is not entitled to consider merits. Therefore by relying on matters that go to the merit of the election of the 2nd respondent, the applicant has placed his case outside the application of Rules 3 of the Judicature (Judicial Review) Rules. Matters contesting the merits of something done have to be proved by extensive evidence at trial. This cannot adequately be accomplished through judicial review which was intended to be a summary procedure.

Learned counsel for the respondent asked this court to take judicial notice of that election proceedings in Uganda are usually filed by way of ordinary plaint or by petition. I agree and take note of that.

In the absence of any provision expressly providing how a particular election may be challenged, the applicants/complainants should file a plaint under O. IV r 1 of the Civil Procedure Rules. Consequently, I will uphold this preliminary objection.

2. Whether the motion is incompetent because it seeks Constitutional declarations in the High Court in addition to award of punitive and exemplary damages.

In his submission on this objection, learned counsel for the applicant said that all suits filed in any court of law have their origin in Article 50 of the Constitution save for references. That mere reference to Articles of the Constitution in the title of the Motion and quoting one of the grounds in support is not at all sufficient to lend validity to the respondents counsel's assertion. He denied that his client has sought any constitutional declarations or interpretation. Learned counsel further submitted that under judicial review the applicant is entitled to claim for damages as provided under rule 8. That it is not correct as submitted by the respondents that a claim for damages under judicial review is limited to special damages.

Learned counsel for the respondents submitted to the contrary and I agree. When I read the pleadings in the Notice of Motion and in particular paragraph 1 thereof and the remedies sought in paragraphs 1,2,3,4,6,7 and 8, I agreed with the respondents that they are a result of alleged violation of constitutional rights. The latter paragraphs seek for a series of declarations yet paragraph 'L' states that:-

“The applicant is entitled to fair and just hearing treatment before administrative bodies as conferred upon them by Article 42 of the Constitution of the Republic of Uganda 1995”.

Furthermore, as part of the remedies sought by the applicant for the alleged violation of his constitutional rights, the applicant prayed for an order for general, exemplary and punitive damages. In such circumstances I agree with the respondents that these claims

render the motion incompetent as it is an inappropriate procedure to support the applicant cause of action.

It was held in the Supreme Court case of **Charles Harry Twagira Vs Attorney General and 2 others CA No. 04 of 2007** per Tsekooko JSC that:-

“Where a claim for redress for violation of a right or freedom is subject to interpretation of the provisions of the Constitution, the claim should be via the Constitutional Court under Article 137 by petition. Where the claim is in respect of right or freedom that is clearly protected, it should be by plaint in any other competent court.”

His Lordship Tsekooko JSC went on to hold that:-

“There can be no doubt in my mind that the application by Motion seeking declarations and impliedly, the interpretation of the Constitution from the High court was improper.”

Regarding a claim of punitive and general damages the Supreme Court made a holding in respect of the incompetence of a motion to support such a claim. It was held that:-

“Prayer 12 sought for an order that the respondents should pay to the appellant general and exemplary damages for gross violation of his constitutional rights.

In my experience at the bar and the bench, I cannot understand how by his notice of motion the appellant would be able to call evidence to establish such damages without filing an ordinary suit.”

I have not come across a Supreme Court decision to the contrary.

Although learned counsel for the applicant sought to distinguish Twagira’s case from the instant case, I am unable to agree with him. The above quoted Supreme Court holdings are on procedure and are universally applicable regardless of the facts of a given case. In the application under consideration the applicant has sought for declaration among his remedies. As rightly put by learned counsel for the respondents, this impliedly requires interpretation of the constitution which can only be done by the Constitutional Court. If no constitutional interpretation was required then the appropriate procedure to follow would be to file a plaint in the High Court not a motion.

As rightly pointed out by learned counsel for the applicant, court may award damages under rule 8 of the Judicial Review Rules. The question however is whether all types of damages may be awarded by motion including those which required extensive evidential proof.

In my considered view, the damages that can be awarded under rule 8 are those that are not proven by detailed material facts or require one the set out necessary particulars. These are type of damages envisaged under rule 8(2) of the judicature (Judicial Review) Rules 2009 which states that:-

“(2) Rules 1 to 5 of order VI of the Civil Procedure Rules shall be applied to a statement relating to a claim for damages as they apply to a pleading.”

The provisions of order VI relate to the pleading of all relevant material facts and the requirement to set out necessary particulars. Therefore an application for Judicial Review cannot support a claim for general punitive or exemplary damages. It appears the type of damages envisaged under the Judicial Review Rules are special damages only.

Consequently I will find that the motion before me is incompetent for seeking constitutional declarations in the High Court as well as an award of punitive or exemplary damages.

3. Whether a General meeting of the respondent does not constitute an administrative body and therefore the outcome of such a meeting is not amenable to Judicial Review.
4. Whether the action of electing an organization’s officer is not an administrative act.

In their submissions the respondents said that for an act or decision to be amenable to judicial review, that act or decision must be that of an administrative body. That the law creating the 1st respondent provides for three distinct categories of people/entities. The 1st being the respondent itself which is a body corporate with power to sue and be sued pursuant to S. 2 of the Uganda Law society Act. The 2nd category are the advocates who may apply to become members of the 1st respondent as per S. 4 of the Act. The 3rd category is the administrative unit of the 1st respondent which is the council under S. 9 of

ULS Act. That it is the council which exercises administrative powers on behalf of the 1st respondent under S. 10 of the Act.

The respondents further submitted that with respect to election of office bearers, the power is reserved exclusively to the membership, not the council, making it an exception to the powers vested in the council under S.10.

Therefore all matters that take place within the context and the general meeting, such as the election of office bearers, are not managerial matters and consequently not administrative matters. That those are membership matters involving the rights of individual members and cannot be subjected to judicial review. That members of the 1st respondent both collectively and individually do not constitute an administrative body for they exist separate from the 1st respondent.

In reply, Dr, Akampumuza for the applicant submitted to the contrary saying that judicial review is no longer restricted to administrative acts only. That any person natural or official bound to explain and defend in any forum the decision she/he makes in the performance of his/her duties is answerable to judicial review. Further that the decision of the AGM is a binding one in the name of the 1st respondent which is a body corporate under S. 2 of the ULS Act.

Learned counsel for the applicant further submitted that the entities referred to by respondents are simply one group of subscribers to the 1st respondent with assigned roles under one statutory personality. That all actions and decisions of the AGM duly convened are decisions of the 1st respondent and its decision is amenable to judicial review. That

the process which leads to an election is a decision making process of the AGM of the 1st respondent in their exercise of a statutory duty to choose office bearers of the 1st respondent.

Whereas I agree with the submission by Dr. Akampumuza that the Uganda Law Society is a body corporate with a common seal with power to sue and be sued and that its council, individual members and the General Meeting are part of ULS I do not agree that the process of voting by members in the AGM is an administrative action. It is the council of ULS which exercises administrative powers on behalf of the 1st respondent under S. 10 of the Act. However with respect to elections of office bearers, the power is exclusively reserved for the membership not the council.

Holding an election and voting does not constitute an administrative decision. During the election each member of the AGM casts a vote independently without direction, pressure or involvement of the ULS as a body. The decision to elect a contestant is in reality an individual decision.

As rightly pointed out by the respondents while quoting from Black's Law Dictionary 7th Edition at P. 25, an administrative act is an act made in a management capacity. It is true as submitted by the applicant that judicial review is no longer restricted to administrative decisions but the latter still remains one of the areas where judicial review is applicable.

The respondents are equally correct when they submit that when the 1st respondent's members attended the annual general meeting they were not doing so in any managerial capacity. They were simply attending as members with rights to make choices. Therefore

their action in electing the 2nd respondent to lead them is not an administrative act amenable to judicial review. It would have been different if council was exercising power to appoint persons to an office. A president of ULS is not appointed. If that was the case that action would be an administrative act capable of being subjected to judicial review. The general meeting of members of the 1st respondent does not constitute an administrative body and the action of electing an organization's officers is not an administrative act. That is why a different procedure ought to have been used instead of judicial review because most of matters complained of many of which were individual acts require rigorous evidence to prove. This cannot be done through judicial review.

5. The last point of objection is that the applicant did not “appear” before the AGM to be “tried” or for any evidence inquiry, investigation or administrative action to be taken or adduced in respect of him by the meeting. Consequently the meeting did not constitute an administrative proceeding or quasi – judicial act so as to be amenable to judicial review.

In their submission in support of this objection, the respondents submitted that the applicants action is misconceived. That the application to subject the AGM and election of the 2nd to certiorari is misconceived because what happens when the applicant as a member of the AGM was nominated to be elected for office and someone else was unfairly elected does not satisfy the various definitions of administrative proceedings or hearing.

On the other hand, Dr. Akampumuza for the applicant reiterated his earlier submission that judicial review is no longer limited to judicial and quasi judicial proceedings. That

since the Law Society Act and Regulations do not provide for a process to follow for a remedy, judicial review is the appropriate remedy in this case.

I have already ruled that the circumstances under which the complaints by the applicant arose do not warrant proceeding under judicial review. I have given my reasons for this finding. I have also ruled that judicial review is no longer limited to administrative actions alone. This, however, is not to say that one cannot move challenging an administrative action alone. The power for judicial review extends to the acts and orders of a competent statutory public authority which has power to impose liability or give a decision, which determines the rights or property of the affected party.

It is my considered view that in the instant case, no liability was imposed on the applicant by the ULS council or its administrative arm. The decision complained of was by votes which were within the control of the individual and independent members of the AGM.

From what I have gathered from the pleadings and affidavits in reply, it is not true as submitted by learned counsel for the applicants that the applicant was summoned by the AGM to defend himself for having sued the 1st respondent in the Constitutional Court. There is indication that one Bruce Kyerere was the prosecutor who led evidence and the applicant was tried by the AGM presided over by Mr. Adriko and was dismissed from the podium with a guilty verdict. Apart from being members of ULS, neither Mr. Kyerere nor Mr. Adriko are members of the executive of the ULS to render the latter to be accountable as an administrative body in judicial review. Therefore no administrative adjudication or hearing took place during the AGM.

As rightly submitted by the respondent while quoting Black's Law Dictionary 7th Edition pp 45-46, administrative adjudication is the process used by an administrative agency to issue regulations through an adversary proceeding.

Administrative hearing is an administrative agency proceeding in which evidence is offered for argument or trial.

Administrative hearing is a hearing, inquiry, investigation, or trial before an administrative agency, usually adjudicatory in nature but sometimes quasi legislative - also termed as evidentially hearing, full hearing, trial type hearing, or agency adjudication before an administrative tribunal before which a matter may be heard or tried.

The above definitions demonstrate that the applicant's action is misconceived. As I have stated earlier the fact that the applicant attended the meeting as a member, was nominated to be elected for office and then someone else was unfairly elected does not satisfy the above definitions or hearings nor does it indicate that the rights of the applicant were adversely affected to warrant moving court under judicial review for grant of any prerogative orders or order for certiorari.

Having upheld all the preliminary objections raised by the respondents, I am constrained to find that the applicant's cause of action does not fall within the ambit of judicial review. This was a wrong procedure adopted by the applicant. The application stands dismissed with costs.

Stephen Musota

J U D G E

23.01.2014