

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MC NO. 323 OF 2018

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

5 **DENNIS NDUHURAAPPLICANT**

V

1. ATTORNEY GENERAL

2. EQUAL OPPORTUNITIES COMMISSION

BEFORE HON. LADY JUSTICE H. WOLAYO

10 **RULING**

Introduction

By a motion under section 38 of the Judicature Act 3 of 2002 as amended and Judicial Review Rules, the applicant sought the following relief:

1. A prerogative order of certiorari quashing the decision of the Minister of Gender, Labour
15 and Social development terminating the applicant's appointment as Vice chairperson of the Equal Opportunities Commission .
2. An order of prohibition restraining the Government of Uganda , the 2nd respondent and all their agents, servants , and agencies from implementing the decision of the Minister terminating the appointment of the applicant as Vice chairperson of the 2nd respondent.
- 20 3. General damages , interest and costs.

The grounds of the motion are contained in the motion itself and affidavits in support and rejoinder of Denis Nduhura .

The respondent opposed the motion and relied on affidavits in reply of Hon. Hajat Mukwaya and Sylvia Muwebwa .

25 **Applicant's case**

It was the applicant's case he was appointed Vice chairperson of the Equal Opportunities Commission (EOC) on 16th December 2015 and on 18th November 2018, he was served with a letter authored by the Minister of Gender, Labour, and Social Development terminating his appointment on the grounds he was director of National Water and Sewerage Corporation (NWSC) Board.

In summary, the applicant's case is that there is no law that bars him from holding two positions and that the termination was illegal, ultra vires, irrational and unreasonable.

Respondents case

It was the 1st respondent's case that following the appointment of the applicant in December 2015, the line Minister of Gender, Labour and Social Development (GLSD) learnt that the applicant was also a member of the Board of Directors of NWSC. According to the Minister, the applicant was invited for a meeting at which he was asked to resign from one of the two bodies without success.

It was the 1st respondent's case that a Cabinet Policy Directive under Cabinet Minute No. 16 of 2016, directs that no person should serve on more than one board.

In summary, the 1st respondent's case is the applicant was lawfully terminated.

2nd respondent's case

It was the 2nd respondent's case the termination of the applicant of his membership of the EOC was a decision of the Executive branch of Government and not the Commission and that therefore there are no grounds for judicial review against the Commission.

Both counsel made oral submissions that I have carefully considered.

Preliminary issues

Counsel for the respondents submitted that the applicant's complaint is not amenable to judicial review but an employment dispute to be managed under the Employment Act. Counsel cited **Amal v EOC MC. No. 233 of 2016 and Makuza Civil Aviation Authority MC. No. 205 of 2007 (ulii)** in support.

Counsel for the applicant countered that the applicant's appointment is a constitutional appointment and regulated by the Equal Opportunities Commission Act and therefore cannot be deemed an employment dispute to be managed under the Employment Act.

5 By section 5(2) of the EOC Act 2 of 2007, Members of the Commission are appointed by the President with approval by Parliament. The same Act also prescribes grounds for their removal, therefore disputes regarding their tenure are not regulated by the Employment Act but by the EOC Act that defines court as a court of competent jurisdiction.

This dispute is therefore properly before me by way of judicial review.

10 With respect to the 2nd respondent, I agree with counsel for the applicant that as the implementing body on which the applicant served, the Commission was properly joined as a party.

Whether the impugned termination of the applicant's appointment on the EOC was illegal, ultra vires, irrational and unreasonable.

15 The thrust of counsel for the applicant's submissions is that the letter of termination of appointment was ultra vires as it is His Excellency the President empowered to remove the applicant from office. Secondly, that the applicant has not conducted himself in a manner that brings him within the grounds for removal from office contained in section 6 (3) of the EOC Act.

20 Thirdly, that clause 27 of the Public Service Contract Agreement under which the applicant was terminated is inconsistent with section 6 (3) of the EOC Act on removal from office.

I have already found the EOC Act regulates the appointment and removal from office of the applicant and therefore the submission by counsel for the respondent the applicant was lawfully terminated under the contract is without merit.

25 Turning to the issue at hand, as established by precedents and the Judicature Act as amended by Act 3 of 2002 prerogative orders of certiorari and injunction prayed for by the applicant are discretionary remedies given to restrain persons in authority in public bodies from exceeding their legal authority in the exercise of administrative functions. For an administrative decision to attract remedies in judicial review, the applicant needs to demonstrate that the decision was outside the law or illegal and ultra vires; the process

was unfair and there was denial of the right to a fair hearing; the decision was irrational and no reasonable tribunal would have arrived at the same decision. **Thugitho Festo v Nebbi Municipal Council Arua High Court Civil Applic. No. 15 of 2017** cited by counsel for the applicant clearly brings out these principles.

- 5 The fundamental question is whether the Minister acted ultra vires the Act in terminating the appointment of the applicant.

An examination of the correspondence between the Minister and the applicant reveals the reason for the termination was her discovery the applicant was holding two different positions on two public bodies, a fact admitted by the applicant.

- 10 In her letter dated 1st March 2018, the Minister cited section 6 (4) (b) of the EOC Act as a basis for possible action against the applicant. It seems the Minister meant section 6 (3) (b) which gives misbehaviour and misconduct as a ground for removal of a member of the Commission.

- 15 But even without going into whether there were grounds for removal as prescribed by section 6(3), Section 10 of the EOC Act requires members of the Commission to relinquish previous offices once appointed to the Commission. These are:

Member of Parliament; Member of the East African Legislative Assembly; Member of the executive of a political party or organization at all levels; a public office.

A public officer is defined by article 175 of the Constitution as:

- 20 *Any person holding or acting in an office in the public service.*

‘Public service’ means service in any civil capacity of the government the emoluments for which are payable directly from the Consolidated Fund or directly out of monies provided by Parliament.

- 25 National Water and Sewerage Corporation is a statutory body established by cap 317 and under section 27 thereof, some of its funds are appropriated by Parliament. This means the applicant’s appointment as a director on the board of NWSC falls under the definition of public office since his emoluments come from funds appropriated by Parliament.

While section 9 (2) of the National Water and Sewerage Corporation Act permits the Minister to appoint a person employed by a public authority as a director, section 10 of the EOC Act forbids a commissioner from holding a public office elsewhere.

5 In his letter to dated 9th March 2018 the applicant admits he was a member of the NWSC board before he was appointed to the Commission, a position he ought to have relinquished once he was appointed .

Therefore, the Minister did not act ultra vires the EOC Act when she terminated his appointment in her capacity as the line Minister and member of the Executive headed by His Excellency , the appointing authority.

10 The decision followed a request to the applicant to respond to the concern of holding two positions, followed by a meeting with the Minister , followed by a written refusal by the applicant to relinquish one of the two positions. By all accounts, the applicant was accorded a fair hearing before the decision to terminate his appointment on the Commission.

15 The termination or removal was within the parameters of section 10 of the EOC Act that forbids a member of the Commission from holding a public office elsewhere. To say there were no grounds for removal is to miss the point because the enabling law itself was breached by the applicant who failed to comply with its condition of relinquishing a previous public office.

20 The reference to a Cabinet policy by the Minister as a reason to terminate the applicant's appointment does not render the termination invalid because it is consistent with the spirit of section 10 of the EOC Act.

In the premises, this application is dismissed with the following orders:

1. The interim order given on 26th November 2018 is hereby vacated.
2. Costs of the application to the respondents.

25 **DATED AT KAMPALA THIS 14TH DAY OF JANUARY 2019.**

HON. LADY JUSTICE H. WOLAYO

Legal representation

Kwesigabo, Bamwine & Walubiri Advocates for the applicant

Attorney General's chambers for the 1st respondent

Nambale, Nerima & Co. Advocates for the 2nd respondent