

**REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 10 OF 2008**

**IN THE MATTER OF A PETITION BY EIGHT COUNCILLORS OF IGANGA
TOWN COUNCIL TO REMOVE THE TOWN CLERK IGANGA**

AND

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY TUSUBIRA STEVEN**

TUSUBIRA STEVEN ::: APPLICANT

VERSUS

1. **IGANGA TOWN COUNCIL**
2. **BUTANDA SALIM**
3. **KAKUBA AGGREY**
4. **KALENGE ABDULLAH TIFFU**
5. **NKONO AMINI**
6. **NABIRYE MARGARET**
7. **LEHANA MUHAMAD**
8. **DHABASADHA UTHMAN ::: RESPONDENTS**

RULING

The applicant who is the current Town Clerk of Iganga brought this application under sections 33, 36 and 38 (1) of the Judicature Act and the Civil Procedure (Amendment) (Judicial Review) Rules, 2003, SI. No. 75 of 2003, now Order 46A of the Civil Procedure Rules. The applicant sought for leave to file an application for judicial review of a

decision by the 2nd to 8th respondents to bring a petition to have him removed from the office of town clerk and for orders for prerogative writs of certiorari and prohibition, as well as an injunction and general damages against the respondents. The application was supported by a statement and an affidavit of the applicant both dated the 17th of September 2008.

The grounds on which the application is based are that the petition presented by the applicants seeking to impeach and remove the applicant from office is incurably defective and incompetent. Further that the applicant has never been served with the petition, which was supposed to have been considered by the Council in September 2008. That the petition was premature and in the interests of justice leave ought to be granted to the applicant to file an application for judicial review.

The facts on which the application is based are in the affidavit in support, briefly that the applicant is the Town Clerk of the 1st respondent who was unlawfully removed from office in 2003 but was reinstated without loss of seniority by the Inspector General of Government in May 2007. That on the 13th August the 2nd to 9th respondents presented a petition to the Speaker of the 1st respondent seeking to impeach and remove the applicant from office for abuse of office, incompetence and misconduct.

The applicant also stated that the petition against him was presented to the speaker of the first respondent when he was away from office on leave, attending a course at the Law Development Centre in Kampala. The applicant further stated that he was not served with a copy of the petition, which was supposed to have been heard on the 18th September 2008. It is also the contention of the applicant that the said petition which was attached to the affidavit as Annexure B is irregular, illegal, incurably defective and incompetent because it was not signed by 2/3 majority of the council as is required by s.68 (1) of the Local Governments Act. Further, that the petition also contravenes provisions of rule 107(5) of the Standard Rules and Procedures for Local Governments in Uganda. It is further contended that the allegations in the petition are anchored on internal audit reports

that have not yet been considered by the Local Government Public Accounts Committee and for that reason the petition is premature.

The applicant contends that the petitioners' action of appointing a date on which to table the petition aimed at impeaching him and removing him from office without serving him with the petition and inviting him to attend the meeting at which it was to be tabled, while he was away on study leave was a fundamental breach of the rules of natural justice. It was further contended that the petition, which was lodged by Councillor Butanda who had been suspended from participating in all council activities, could not stand since the person who lodged it had no *locus standi*. That in the interests of justice, the petition should be quashed and orders of prohibition, an injunction be granted prohibiting the respondents from going ahead with the incompetent petition aimed at unlawfully removing the applicant from the public office of Town Clerk.

In order for this court to consider such an application the applicant must present facts that satisfy court that a prima facie case exists before leave can be granted. This test was established in the case of **Kikonda Butema Farmers Ltd. v. Inspector General of Government, Uganda Court of Appeal Civil Appeal No. 35 of 2002** (Unreported). In the case of Professor **Francis Omaswa & Dr. Catherine Omaswa, Msc Application No. 179 of 2006 (unreported)**, this court held that in such applications the court also considers the magnitude of seriousness of the complaint raised by the applicant; the more serious the complaint the greater the necessity that the same be investigated by the court by way of judicial review. Having stated the law, I shall now turn to the case made out by the applicants and examine whether it is deserving of bringing an application for judicial review before this court.

The facts stated by the applicant in his affidavit clearly point at some flaunting of the rules of natural justice. The respondents attempted to have the petition discussed in council without giving the applicant notice of it. They also did not serve him with a copy of the same. Had he not got wind of it and filed this application and one for an

injunction, the applicant could have been condemned unheard contrary to the provisions of article 28 of the Constitution of the Republic of Uganda. The applicant also raised concern about the validity of the petition, the fact that it had not been signed as required by law, and that it was premature. These are also matters worthy of consideration by this court.

In conclusion, I find that the applicant has made out a prima facie case against the respondents. He is therefore hereby granted leave to bring an application for judicial review for the reliefs claimed in the application. Such application shall be filed within 14 days from the date of this order and the costs of this application shall abide the main application for judicial review.

Irene Mulyagonja Kakooza

JUDGE

14/10/08