

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
MISC. CAUSE NO. 128 OF 2008  
IN THE MATTER OF SECTION 36 OF THE JUDICATURE ACT CAP.13

AND

IN THE MATTER OF THE INSPECTOR GENERAL OF THE  
UGANDA POLICE FORCE TO DISMISS AIP JUSTUS KABAGAMBE  
FROM THE UGANDA POLICE FORCE

AND

IN THE MATTER OF AN APPLICATION FOR THE PREROGATIVE ORDERS OF  
CERTIORARI AND PROHIBITION

AIP JUSTUS KABAGAMBE :::::::::::::::::::::::::::::::::::::: APPLICANT

**VERSUS**

THE INSPECTOR GENERAL  
OF THE UGANDA POLICE FORCE :::::::::::::::::::::::::::::: RESPONDENT

**BEFORE HON. JUSTICE V.F KIBUUKA MUSOKE**

**RULING:**

The applicant was until 15<sup>th</sup> October, 2008, a police officer within the Uganda Police Force. He held the rank of Assistant Inspector of Police. The respondent is the commander of the Uganda Police Force, in accordance with the provisions of Article 213, of the Constitution.

Through this motion, the applicant seeks two Prerogative Orders:

- Certiorari to call for and quash the decision of the respondent, dated 15<sup>th</sup> October, 2007, dismissing the applicant from the Uganda Police Force;
- Prohibition preventing the OC, Ntinda Police Barracks from removing the Government kit from the applicant and evicting him from the Ntinda Police Barracks.

The Motion is accompanied by an affidavit in support deposed by the applicant. The respondent filed no reply to the motion. The hearing proceeded ex-parte as due service had been effected.

The background to this motion appears to be that the applicant was charged and tried before the Chief Magistrate's Court at Buganda Road, in Kampala, with three criminal offences:-

- **Count 1 – Malicious damage to property**
- **Count 2 – demanding money with menaces**
- **Count 3 – attempted extortion.**

The Chief Magistrate's Court convicted the applicant of the offences of malicious damage to property and demanding money with menaces. It, however, acquitted him of the third offence of attempted extortion. That was on 01.09.04 Vide High Court Criminal Appeal No. 47 of 2004, the applicant appealed to the High Court against the convictions. He was partly successful in his appeal. The High Court set aside the conviction against the offence of causing malicious damage to property but upheld the conviction in respect of the offence of demanding money with menaces.

On 31<sup>st</sup> March, 06, E.S. Lugayizi, J., the head of the Criminal division of this Court, granted leave to the applicant to file an appeal in the court of Appeal of Uganda, out of time. The applicant, however, failed to comply with the order of Lugayizi J. giving him a period of ten days within which to file the appeal. He later secured another order from the court of appeal extending time for filing his appeal. He filed the appeal in the Court of Appeal on 15<sup>th</sup> January, 2007.

On 15<sup>th</sup> October, 07, the following letter was written to the applicant for the Inspector General of Police.

**“15<sup>th</sup> October 2007  
D/AIP Kabagambe Justus  
Central Police Station,**

**Thru: The Regional Police Commander  
Kampala Extra,**

**DISMISSAL OF AIP KABAGAMBE JUSTUS**

**You were convicted and sentenced by Buganda Road Chief Magistrate court on 01/09/2004.**

**You are consequently dismissed from the Police Force.**

**You will hand over all government kit and vacate the police barracks.**

**You also forfeit any benefit from the government of Uganda.**

**EUGENE NKORE  
FOR: INSPECTOR GENERAL OF POLICE”**

The grounds set out in the motion are, among others, that:-

- The decision of the Inspector General of the Uganda Police Force to dismiss the applicant before the hearing and determination of the applicants appeal which was pending before the court of Appeal was ultra vires his powers and was illegal and unconstitutional.

- The decision of the Inspector General to dismiss the applicant was reached in excess of the jurisdiction of the Inspector General of Police and with material irregularity.

The nature and purpose of Certiorari are very well known. That Prerogative Writ of Certiorari lies, upon an application by a person aggrieved, to bring the proceedings of an inferior tribunal or body of persons or by a Public Officer to the High Court for review so that the Court can determine whether to quash such proceedings or decision for excess or lack of jurisdiction, or for error of law on the face of the record or for breach of the rules of natural justice or where the determination or decision was proved through fraud, collusion or perjury. See **Halsbury's Laws of England, 4<sup>th</sup> Edition, Vol.I, Paragraph 147.**

Certiorari will ordinarily lie to control an administrative decision only to statutory authorities or bodies or persons who are exercising statutory authority. **R. Vs. National Joint Council For Dental Technicians Ex-Parte Neate (1953).**

The primary objection of the Prerogative Writ of Certiorari is to prevent the exercise of excessive power or to prevent the abuse of statutory authority or jurisdiction by public authorities. Certiorari aims at keeping the machinery of government operating properly according to law and in the public interest. **Sharp Vs Welfield (1891) AC 173.**

In the instant case, section 58, of the Police Act, Provides as follows:-

**“58 Criminal Proceedings take Precedence Over disciplinary Proceedings  
If Criminal Proceedings of a nature likely to warrant disciplinary proceedings are instituted against a person subject to the code, no such disciplinary proceedings shall be taken until conclusion of the Criminal Proceedings and the determination of any appeal from those proceedings.”**

From the provisions of the Police Act set out above, it is quite clear that the Inspector General's action or decision to dismiss the applicant from the Police Force when the applicant's appeal, against his conviction, was still pending before the Court of Appeal of

Uganda was ultra vires the powers given to him in the Police Act. It was illegal as on 15<sup>th</sup> October, 07, the applicant's appeal was still pending before the Court of Appeal.

Secondly, that decision was in excess of the powers given to the Inspector General of Police by the Police Act. The power to exercise disciplinary control over police officers is regulated by Sections 46 and 47 of the Police Act. Officers who are below the rank of fast Commissioner are disciplined by the Police Council. Since the applicant was at the rank of AIP, the only authority that could dismiss him from the Police Force was the Police Council. The Inspector General of Police, although he chairs the Police Council, has no powers legally to dismiss any police officer from the Police Force, as the impugned letter seems to suggest.

Neither the Police Act nor the Disciplinary Code, contained in the Schedule to the Police Act, contain any provision to the effect that where a police officer is convicted by a Court of law or the police court, he or she must be automatically dismissed from the Police Force, as the impugned letter again tends to suggest. Dismissal as a disciplinary penalty, even where a police court convicts any police officer upon a disciplinary charge, the police court can only recommend dismissal of the officer to the police council or in the case of officers above Assistant Commissioner to the Police Authority. Thus dismissal is never automatic upon conviction.

Where, as in the instant case, an officer is convicted by an ordinary court of law, the question of whether he or she deserves to be dismissed from the Force is equally not automatic. It must be the subject of different disciplinary proceedings before the Police Council or, as the case may be, the Police Authority.

At such proceedings the effected officer must be given a full hearing. The decision must not be arbitrary and oppressive as appears to have been the case with the applicant.

In the circumstances, therefore, Certiorari issues. The decision of the Inspector General of Police dismissing the applicant from the Police Force on 15<sup>th</sup> October, 07, is quashed. The

applicant is still a member of the Uganda Police Force to date. He is entitled to all the benefits he was entitled to upon his interdiction and before conviction.

Prohibition also issue restraining the Inspector General of Police from causing or forcing the applicant to hand over the police kit and vacate the police barracks. The applicant is to recover the costs of this application from the respondent.

**V.F. Musoke Kibuuka**

**Judge**

**26-09-08**