

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL DIVISION**

**MISC. APPLIC. NO. 31 OF 2017**

**IN THE MATTER OF THE JUDICATURE ( JUDICIAL REVIEW) RULES, 2009**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**HENRY BYANSI.....APPLICANT**

**V**

- 1. NKUMBA UNIVERSITY**
- 2. JAKUDU BETTY**
- 3. AREKAHO ALLAN**

**BEOFE HON. LADY JUSTICE H. WOLAYO**

**RULING**

The applicant brought an application for judicial review under articles 28, 42, 44 (c) and 45 of the Constitution , section 3 of the Judicature Amendment Act 3 of 2012 and rules 3,6,7, and 8 of the Judicial review rules.

The applicant sought the following orders:

1. Certiorari to call for and quash the notice of no competence motion and any other resolutions or decisions through which the 1<sup>st</sup> respondent's students' Guild Parliament purportedly impeached or censored the applicant from the office of Guild President on 10.2.2017.
2. Declaration that the proclamation of the third respondent as the new Guild president is illegal, null and void.
3. Permanent injunction restraining the respondents , their servants, and agents from implementing the impugned decision;
4. Declaration that the decision of the 1<sup>st</sup> respondent's Student's Guild Parliament to remove the applicant from the office of Guild president is illegal, irrational, null and void;

5. An order for general, punitive and aggravated damages for breach of the applicant's constitutional rights, loss of reputation, emotional distress, loss of emoluments.

The gist of the applicant's complaint is that he was removed from office as guild president without due process as required by the Guild Constitution.

It is not in dispute that the 3<sup>rd</sup> respondent the Guild speaker received a petition from nine members of the Guild Parliament led by Kaweesi Gerald to move a vote of censure against the president. The petition is dated 10.10.2016. On 21.10.2016, the applicant informed the guild parliament that he had notice of the intended petition to censure him and asked that all documents be served on his lawyers.

On 24.10.2016, the 3<sup>rd</sup> respondent notified the applicant in writing that the petition would be considered on 26.10.2016 and invited the applicant to participate in the deliberations.

From the affidavit in reply of the 3<sup>rd</sup> respondent, the meeting did not take place on 26.10.2016 as scheduled however, he generated an order paper or an agenda for the meeting to take place on 10.2.2017.

The applicant learnt that he had been removed from office on 10.2.2017 and the 2<sup>nd</sup> respondent elected as guild president.

The applicant sued the 1<sup>st</sup> respondent for unfair removal from office by the students guild parliament.

Mr. Semakadde appeared for the applicant while Mr. Luswata appeared for the respondent.

Both counsel made oral submissions that I have carefully considered.

Four issues were framed for trial at the commencement of the hearing.

1. Whether the applicant has exhausted all remedies under the guild constitution.
2. Whether the applicant was lawfully removed from post of guild president.
3. Whether the application against the 1<sup>st</sup> and 3<sup>rd</sup> respondent is competent.
4. Remedies .

**Whether the applicant exhausted all remedies under the Constitution**

Before I discuss this issue, I need to be satisfied that disputes involving students and their leaders can be a subject of judicial review.

Judicial review is concerned with judicial scrutiny of decisions of public bodies carrying out public functions. Hon. Justice Kasule J as he then was determined a dispute between **Jet Tumwebaze and Makerere University and the chairman Electoral commission of Makerere guild elections ( HCMA. No. 353 of 2005 )** in which he expounded that courts give a liberal interpretation to section 36 of the Judicature Act which is the enabling law for prerogative orders.

The first respondent is a private university established by Legal Notice 3 of 2007 and regulated by the Universities and Tertiary Institutions Act 7 of 2001. Therefore decisions by its internal institutions fall under the public domain . The students guild is one of the governance structures recognised by regulation 7 of Legal Notice 3 of 2007. It is an administrative body within the meaning of art.42 of the Constitution. Therefore, its decisions can be the subject of judicial review.

As to whether the applicant should be heard before exhausting alternative remedies, the general principle is that courts will not normally give remedies in judicial review where an alternative remedy is available. **R v Huntingdon District Council ex parte Cowan and another . QB 1983.**

This means that the court has discretion to give remedies in judicial review even if alternative remedies exist.

The applicant has averred in his supplementary affidavit and affidavit in rejoinder that the court established under article 19 of the guild constitution is largely ineffectual and does not have power to adjudicate disputes between students and the university administration.

I therefore find that this application is properly before this court.

### **Whether the applicant was lawfully removed**

The guild constitution prescribes two procedures for removal of a president .

In article 11 clause 12 procedure for removal of a guild president is as follows:

1. A vote of no confidence in the president and speaker shall be initiated by the electorate.
2. A seven days notice is required.
3. For a motion of no confidence to be carried, at least two third of the open electorate must vote for it.

In article 12 clause 3, Parliament has powers to impeach or censure or move a vote of no confidence against the guild president and other leaders.

From annexure E to the affidavit in reply of the 3<sup>rd</sup> respondent, the guild parliament convened on 10.2.2016 and by a vote of 9 to 5, Parliament voted to censure the applicant.

It seems that parliamentary removal was the preferred procedure. That being the case, the fact that the applicant had earlier indicated his willingness to participate in the proceedings to remove him but did not participate on 10.2.2017 raises question whether he was formally notified of the 10<sup>th</sup> February sitting of Parliament and its purpose. This was important because the earlier communication for a sitting of 26.10.2017 did not take place.

The 3<sup>rd</sup> respondent avers in his affidavit that he served the agenda of 10.2.2017 on the applicant but that cannot be sufficient proof of service especially as the applicant had expressed willingness to participate in the proceedings.

The logical conclusion is that the applicant was not notified of the proceedings of 10<sup>th</sup> February and therefore he could not attend. This means the adverse decision to censure him in that meeting was made without affording him an opportunity to be heard contrary to the principle of natural justice for no one to be condemned unheard.

Orders in judicial review are available where the applicant demonstrates that the process of arriving at a decision is riddled with procedural impropriety and unfairness.

The applicant has shown that he heard of the censure on 15.2.2017 after the event. The 3<sup>rd</sup> respondent failed to prove he served the applicant with the agenda for 10.2.2017. In any case, the agenda names the substantive item as

*‘presentation of vote of no competence against the president’.*

The constitution refers to removal variously as censure, impeachment and moving a vote of no confidence. The reference to ‘vote of no competence’ was irregular which means

proceedings that were based on this item are of no consequence . I agree with the submission of counsel for the applicant that the choice of the word ‘competence’ was deliberate and intended to hide the real purpose of the impending proceedings.

The applicant has proved that he was denied the right to be heard by failure to notify him of the date of the parliamentary session and secondly by the irregular reference to ‘vote of no competence’ as an item on the agenda.

As a result of these irregularities, the guild parliament acted with procedural impropriety and therefore the applicant was removed from office without observing due process . The decision to remove the applicant was not unlawful but the process of his removal was tainted with irregularities and unfairness. The process was in violation of the applicant’s right under article 42 of the Constitution to be treated fairly by administrative bodies.

**Whether the application against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents is competent.**

With respect to the 2<sup>nd</sup> respondent, the fact that the applicant sought orders that concern her as the person who was installed as the guild president and therefore affected by the final orders means she was properly added as a party to the application.

With respect to the 3<sup>rd</sup> respondent, he was simply the messenger of parliament and should not be singled out to be sued. Therefore, he was wrongly added as a party.

**Remedies.**

The applicant prayed for damages. Rule 8 of the judicial review rules permits the court to award damages to compensate a successful applicant. General damages are awarded to compensate a party for the injury suffered.

The unfair removal of the applicant has caused him much distress and embarrassment and moreover due process was not observed. Counsel for the respondents submitted that damages should not be awarded because the applicant did not seek intervention of the administration to address his grievances and that moreover, he was accused of financial impropriety by the students .

While it is a correct statement of the law that the injured party has a duty to mitigate loss, the applicant has demonstrated in para. 7 that the university leadership condoned his unfair removal from office .

I will therefore award the applicant a sum of five million/= as general damages to be paid by the 1<sup>st</sup> respondent.

In the result, I make the following orders.

1. An order of certiorari will issue quashing the decision of the guild parliament made on 10.2.2017 removing the applicant as guild president of the students' guild.
2. The installation of the 2<sup>nd</sup> respondent as guild president is declared a nullity.
3. The 1<sup>st</sup> respondent shall pay the applicant general damages of five million/=.
4. Costs to the applicant to be paid by the 1<sup>st</sup> respondent.

**DATED AT KAMPALA THIS 30<sup>TH</sup> DAY OF MARCH 2017.**

**HON. LADY JUSTICE H. WOLAYO**