

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO 322 OF 2018**

REBECCA NASSUNAAPPLICANT

VERSUS

- 1. DR.DIANA ATWINE**
- 2. UGANDA NURSES AND MIDWIVES COUNCILS.....RESPONDENTS**
- 3. HEALTH SERVICE COMMISSION**
- 4. ATTORNEY GENERAL**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application for Judicial Review under Article 42 of the Constitution, Section 33,36, 38, 41 & 42 of the Judicature Act as amended, Rules 3, 6, 7 and 8 of the Judicature (Judicial Review) Rules, 2009 for the following reliefs that;

- 1.) A declaration that the decision made by the 1st respondent and the Senior Management of the Ministry of Health to interdict the applicant was ultra vires and or arbitrary and or oppressive and or illegal and or unconstitutional and is null and void.
- 2.) A declaration that the Applicant is entitled to remain in her office and run the office of the Acting registrar of the Uganda Nurses and Midwives Council and to continue receiving all her entitlements.
- 3.) An order of Certiorari doth issue to quash the interdiction by the 1st respondent and Senior Management of the Ministry of Health as contained in the 1st respondent's letter to the applicant dated 09/11/2018.
- 4.) An Order of Prohibition doth issue to restrain all the respondents from effecting and or implementing the instructions or directives or orders contained in the letter of interdiction of the applicant dated 09/11/2018.
- 5.) Costs of the application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant- Rebecca Nassuna but generally and briefly state that;

- 1) The applicant was is the Acting Registrar of Uganda Nurses and Midwives Council since 10/04/2017.
- 2) The applicant has at all material times effectively, efficiently, professionally and diligently executed her duties as enshrined in the Uganda Nurses and Midwives Council Act No. 2 of 1996 and her appointment letter.
- 3) On 09/11/2018, without any prior warning, before being summoned and tries in any disciplinary committee, the 1st respondent and the Senior Management of the Ministry of Health interdicted her, served her with the interdiction letter on the 15/11/2018 and required and or ordered her to hand over office on 16/11/2018.
- 4) The actions and decisions of the 1st respondent with the Senior Management of the Ministry of Health, the conduct of the 2nd, 3rd and 4th respondent for not giving the applicant any prior warnings, fair hearing, a right to be heard and the opportunity to defend herself are ultra vires and or unconstitutional, arbitrary, oppressive, illogical, illegal and null and void.
- 5) The Respondent's actions and decisions have subjected the applicant to enormous stress, psychological torture, mental anguish trauma, suffering and unwarranted inconveniences, and persistent worries on top of the grave injustices to her for which she deserves damages.
- 6) The applicant protested to the Chairperson of the Uganda Nurses and Midwives Council and the Secretary of the 3rd respondent trying to show them that he was being witch hunted, falsely accused, victimized, maliciously and unfairly being forced out of her job for which she was about to be confirmed by the 3rd respondent in a few days thereby destroying all her chances of becoming a full Registrar and achieve a milestone in her career.

The respondent opposed this application and filed an affidavit in reply through the Principal Assistant Secretary at the Ministry of Health-Mr David Katarwa.

The applicant has been in acting capacity as a Registrar as decided by the Permanent Secretary who also resolved to replace her due to reports of mismanagement and abuse of office.

The respondent contended that money was released by Government to the Accounts of the 2nd respondent where the applicant is the Principal signatory, she in her stewardship, utilized the

funds without following the right procedure and she left out key and important aspects that should have been in the budget that include the following;

- (i) Expenditure without an approved budget for the period 2018-2019 financial year.
- (ii) Failed to pay or cause to be paid the salaries of the 2nd respondents employees for over four months.
- (iii) That the applicant failed to account for money amounting 2,600,000,000/=

The respondent's contended that the applicant was invited for a disciplinary meeting and she was in full knowledge of what the meeting was all about and they explained issues raised against her and later was given a chance to respond.

That by letters dated 17th August 2018 and 6th September 2018, the applicant was given several notices to show cause why disciplinary action should not ensue for spending funds without an approved budget and warned to desist from doing so but she failed to heed.

The applicant was given the opportunity by the Health Monitoring Unit to answer queries raised and was granted an extension of the time upon her request although her explanations were unsatisfactory.

That the interdiction of the applicant was based on the report made by the Internal Audit Department and the Health Monitoring Unit. The interdiction was legally made to pave way for the investigations which are currently being handled by the Health management Unit, wherein the applicant is entitled to defend herself as of right and the findings of the investigations will determine the next action.

The applicant denied the allegations and accusations made against her and contended that she was maliciously removed from office or interdicted on allegations of mismanagement and abuse of office.

The applicant denied having been formally invited for any formal disciplinary committee hearing and that the said meeting was not a disciplinary committee hearing forum for her to defend herself but rather it was impromptu operations meeting convened by the 1st respondent.

The applicant contends that she responded to all the allegations and accusations made against her by the Minister of Health to her satisfaction and delay for the payment of salaries was because of delayed approval of the budget by the Minister and denied causing any financial loss.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

Two issues were proposed for court's resolution;

Issues

1. *Whether the 1st respondent in her capacity as Permanent Secretary has the power to interdict Applicant?*
2. *What remedies are available to the parties?*

However the applicant's advocate opted to raise broad issues

1. *Whether the interdiction of the Applicant was illegal, null and void?*
2. *Whether the proceedings leading to the decision directing the Applicant to hand over office involved procedural irregularity or impropriety.*
3. *Whether the Applicant is entitled to the remedies sought.*

I shall resolve this application in the order of the issues so raised. The applicant was represented by Mr. Kazibwe Magellan whereas the respondent was represented by Ms Sylvia Cheptoris.

In Uganda, the principles governing Judicial Review are well settled. Judicial review is not concerned with the decision in issue but with the decision making process through which the decision was made. It is rather concerned with the courts' supervisory jurisdiction to check and control the exercise of power by those in Public offices or person/bodies exercising quasi-judicial functions by the granting of Prerogative orders as the case may fall. It is pertinent to note that the orders sought under Judicial Review do not determine private rights. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case where there has been violation of the principles of natural Justice. The purpose is to ensure that the individual is given fair treatment by the authority to which he/she has been subjected to. *See; John Jet Tumwebaze vs Makerere University Council & 2 Others Misc Cause No. 353 of 2005, DOTT Services Ltd vs Attorney General Misc Cause No.125 of 2009, Balondemu David vs The Law Development Centre Misc Cause No.61 of 2016.*

For one to succeed under Judicial Review it is trite law that he/she must prove that the decision made was tainted either by; illegality, irrationality or procedural impropriety.

The dominant consideration in administrative decision making is that public power should be exercised to benefit the public interest. In that process, the officials exercising such powers have a duty to accord citizens their rights, including the right to fair and equal treatment.

ISSUE ONE

1. *Whether the interdiction of the Applicant was illegal, null and void.*

The applicant's counsel submitted that the applicant diligently and professionally executed her duties as the Deputy Registrar and Acting Registrar of the 2nd Respondent. She was familiar and knowledgeable with the relevant laws governing the operations of the Council and the public service in general.

She contends that the Respondents unfairly and illegally interdicted her and even wanted to hand over office in one day.

Under **Article 42** of the **Constitution**, it is enacted that:

“Any person appearing before administrative official or body has a right to be treated justly and fairly and shall have a right to apply to court of law in respect of any administrative decision taken against him or her”.

Sections 33, 36, 38, 41 and **42** of the **Judicature Act** provide for the remedy of judicial review wherein this honorable court is given unfettered powers to grant any and all the remedies sought in the instant application.

On the other hand, the Respondents through their affidavit in reply of one David Katarwa deponed on 14/01/2019; contends that the Applicant was lawfully interdicted. That the lawful procedure was followed when interdicting her. That the interdiction was based on a report made by the Internal Audit department and the Health Monitoring Unit.

In rejoinder, the Applicant contends, foremost that Katarwa has never been directly involved in her case, he has never worked with her, he is not her immediate boss, he is not a member or employee of the 2nd Respondent. She contends that Katarwa’s affidavit is unreliable in support of the Respondent’s case and the same should be rejected in its entirety.

Further, the Applicant contends in her rejoinder that the 1st Respondent was not the one legally responsible for her appointment and or replacement and or removal and or interdiction from the office of the Acting Registrar of the 2nd Respondent.

Under **Article 170(1)(b)** of the **Constitution**, it is enacted that:

*“The Health Service Commission shall have power to appoint persons to hold or act in any office in the health service, including the power to confirm such appointments, to exercise disciplinary control over those persons and to **remove** them from office”.*

Further, **article 170(2)** of the same **Constitution**, enacts that the Health Service Commission shall be independent in exercising any of the above functions including the one to remove any officer in the health service.

Section 11(1) of the **Nurses and Midwives Act, No. 2 of 1996** enacts as hereunder:

“There shall be a registrar of the Council who shall be a public officer appointed by the Health Service Commission from among the registered nurses and midwives”.

Section 81(b) of the **Health Service Commission Act, No. 15 of 2001**, was enacted as hereunder.

*“The Commission shall have the following functions have power to appoint persons to hold or act in any office in the health service, including the power to confirm appointments, to exercise disciplinary control over those persons and to **remove** them from office”.*

According to the **Public Service Standing Orders, 2010** under Disciplinary Procedures (F-S) it is provided in paragraph 3 thereof that:

*“The power to exercise disciplinary control is vested in the president for officers of the rank of Head of Department and above. **While the rest of the public officers, the powers are vested in the respective Service Commissions.**” (emphasis mine).*

The applicant’s counsel further contended that the foregoing statutory provisions clearly vests the powers to appoint, discipline and remove which includes the power to interdict the Applicant are vested in the 3rd Respondent i.e the Health Service Commission. For that matter the 1st Respondent in her capacity as the Permanent Secretary of Ministry of Health does not have the powers to interdict the Applicant.

In the case of **Mrs. Geraldine Ssali Busuulwa =versus= National Social Security Fund & Another, High Court Civil Division Misc. Cause No. 032 of 2016**, the Hon. Justice Stephen Musota defined illegality as follows:

“Illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint”.

He went on to hold that:

“acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality”.

In the instant case, the 1st Respondent’s action to interdict the Applicant was ultra vires and outside her jurisdiction hence illegal. Under Article **170(1)(b)** of the **Constitution** and Section **8(1)(b)** of **Health Service Commission Act**, the powers of interdict the Applicant are expressly vested in the said commission but not in the Permanent Secretary Ministry of Health. Still under the **Public Service Standing Orders** of 2010 cited above the powers to interdict the Applicant is vested in the Health Service Commission.

In the case of **Thugitho Festo =versus= Nebbi Municipal Council, Arua High Court Misc. Application No. 15 of 2017**; the Hon. Justice Stephen Mubiru, held *inter alia*’ that:

“An action or decision may be illegal on the basis that the public body has no power to take that action or decision or has acted beyond its powers”.

In the instant case, the permanent secretary is responsible for all the officers under the main stream Ministry of Health but not those of the Health Service Commission.

Under **Regulation 8 Part (F-S)** of the **Public Service Standing Orders, 2010**, which defines interdiction “*as the temporary removal of a Public officer from exercising the duties of his/her office while investigation over a particular misconduct is being carried out*”. The regulation provides further that this shall be carried out by the “*Responsible Officer*”.

Regulation 2 of the **Public Service Commission Regulations, SI No. 2009** defines a “*Responsible Officer*” to be “*a Permanent Secretary of the Ministry in or under which the officer is serving*”.

Incidentally in the instant case, the Ministry of Health- Permanent Secretary does not have the powers to interdict the Acting Registrar of the 2nd Respondent because she is under the Health Service Commission who recruited or appointed her but not a main stream employee of the Ministry of Health recruited through the Public Service Commission. The Applicant was recruited by the 3rd Respondent and under section **8(1)(b)** of the Health Service Commission Act, it is the Commission to interdict her. The 3rd Respondent is independent of the 1st Respondent.

Still under Regulation 3 of the Uganda Public Service Standing Orders under disciplinary Procedures (F-S) it is clearly enacted that it is the respective Service Commission that is the Health Service Commission to interdict the Acting Registrar of the 2nd Respondent.

The respondent’s counsel submitted that Sections 11 and 13 of the Nurses and Midwives Act, provide for the positions of Registrar and Deputy Registrar who shall be public officers appointed by the Health Service Commission.

Regulation 8 Part (F-S) of the Public Service Standing Orders (2010) defines interdiction as **a temporary removal of a public officer from exercising the duties of his/her office while investigation over a particular misconduct is being carried out.** _The Regulation provides further that **this shall be carried out by the Responsible Officer.**

Regulation 38 of The Public Service Commission Regulations S.I No. 1 of 2009 further vests that power in the responsible officer, which expression under The Uganda Public Service Standing Orders (2010) and The Public Service Commission Regulations means a Permanent Secretary of a Ministry or Department under which the officer is serving or Heads of Department as defined in the Public Service Act, Or Chief Administrative Officer or Town Clerk of a local Government.

Further, **Regulation 2 of the Public Service Commission Regulations, 2009 defines a responsible officer** as;

(a) A Permanent Secretary of the Ministry in or under which, the officer is serving.

Regulation 38 Public Service Commission Regulations S-1 No. 1 of 2009 provides thus;

38 (1) Where: -

- (a) A responsible officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his or her office; or
- (b) (b) Disciplinary proceedings are being taken or are about to be taken or if criminal proceedings are being instituted against him or her, he or she shall interdict the officer from exercising those powers and performing those functions.

There is therefore no doubt that the Applicant is a public servant within the meaning of the above provisions and Articles 175 (a) and (b) and Article 257 (1) of the Constitution of the Republic of Uganda, 1995 and **therefore bound by the Public Service Standing Orders.**

Article 174 (1) that the that the Ministry or Department of the Government of Uganda shall be under the supervision of the Permanent Secretary (3) (a) of the constitution states that;

The Permanent shall among others ensure the organization and operation of the Departments or Ministry.

(b) Tendering advice to the responsible Minister in respect of business at the Ministry.

(b) Ensure the implementation of the policies of the Government of Uganda.

(d) subject to Article 164 of the Constitution responsibility for proper expenditure of funds in the Ministry.

Section 8 (1) (b) of the Health Service Commission Act, No. 15 of 2001 provides for the functions of the 3rd Respondent to appoint persons to hold or act in any office in the health service, including the power to confirm appointments, exercise disciplinary control over those persons and to remove them from office.

However, the third Respondent appoints and hands over officers to the deferent Departments and Institutions, in this case the Ministry of Health who supervises them and just in case there is need they forward the matter to the 3rd Respondent to take further action usually to expel officers found guilty of some offence and or on a legal ground.

It is essential to note that the Second Respondent, the Institution that the Applicant worked for as the Deputy Registrar is under the Ministry of Health.

Section 24 of the Interpretation Act and Regulation 10(d) of Part (A) of the Uganda Public Service Standing Orders (2010), provide that where, by any Act, a power to make any appointment is conferred, the authority having power to make the appointment also has power to remove, confirm, suspend, discipline, re-appoint or reinstate any person appointed in the exercise of the power.

The Permanent Secretary communicates officially on appointment of officers of the Ministry of Health who are handed to Ministry of the and the appointment of the Applicant

where signed by the Permanent Secretary of the Ministry of health. Please refer to annexure ‘‘A’’ to the Applicant’s Affidavit.

The Applicant’s official file as the Deputy Registrar of the Second Respondent is kept at the Ministry of Health and she is supervised by the Permanent Secretary Ministry of Health who appraises her otherwise she would have no supervisor.

The Uganda Public Service Standing Orders, 2010 and the Public Service Commission Regulations S.1 No. 1 of 2009 deals with the question of interdiction in a more specific manner.

The Applicant is substantively appointed as a Deputy Registrar as indicated in annexures ‘‘A’’ and ‘‘B’’ of the Applicant’s Affidavit in support, and was **ONLY ASSIGNED** duties of Acting Registrar on 11th April, 2017 by the 1st Respondent as per Annexure ‘‘D’’ of the Applicant’s Affidavit in support, upon the retirement of Mr. Wakida John Kennedy, former Registrar of the 2nd Respondent on 28th March 2017.

This was done as an interim measure until the post was substantively filled by the 3rd Respondent.

The 2nd Respondent is a statutory Health Professional body established under Ministry of Health to set and regulate standards of training and practice of nursing and midwifery professions in the country. The mandates executed by the 2nd Respondent are therefore delegated functions of Ministry of Health which has supervisory powers over the 2nd Respondent.

As such there is a Board appointed by the Minister of Health and secretariat headed by the Registrar who is appointed by the Permanent Secretary under Annexure ‘‘A’’ of the Applicant’s Affidavit in support, as directed by the 3rd Respondent which is the recruitment body for the personnel working under Ministry of Health in Civil service capacity, under **Annexure ‘‘B’’** of the Applicant’s affidavit in support. Paragraph 2, Annexure ‘‘B’’ of the Applicant’s Affidavit in support thus reads; ‘‘you are therefore requested to immediately report to the Permanent Secretary, Ministry of Health who will issue you with an appointment letter.’’

It is therefore, the Respondent’s submission that the Applicant being employed as a public officer for the 2nd Respondent and by virtue of Regulation 38 of the Public Service Commission Regulations No. 1 of 2009, the 1st Respondent being a Responsible Officer of Ministry of Health which is the Line Ministry under which the Applicant is employed by the 2nd Respondent and directly supervised by Ministry of Health, has the legal capacity to interdict the Applicant from exercising her powers and performing the functions of her office.

The Permanent Secretary’s decision is therefore, not ultra vires and cannot be criticized for illegality or amount to absence of legal power to interdict.

Section 8 (1) (b) of the Health Service Commission Act, No. 15 of 2001 referred by Counsel for the Applicant is quoted out of context and is not applicable to this case since it deals with appointments, confirmation of appointments, disciplinary control and power to remove from

office. The Act does not talk about interdiction which was lawfully done by the 1st Respondent within the confines of her mandate as the Responsible Officer and dealt with specifically under the above mentioned provisions of the law.

Fair hearing

The Applicant alleges further that the interdiction was illegal since she was not subjected to a fair hearing, a right to be heard and the opportunity to defend herself.

It is the Respondent's case that the decision to interdict was taken in accordance with the laws, rules, relevant procedural requirements and the 1st Respondent and Senior management of Ministry of Health was legally empowered to do so since supervisory powers are vested with them to pave way for investigations which are being handled by Health Monitoring Unit under Reference Number 391/2018, where the Applicant is entitled to defend herself depending on the outcome of the investigations.

The Applicant's interdiction was issued in consideration of the preliminary findings from the investigations carried out by internal auditors of Ministry of Health and Health Monitoring Unit as indicated in *annextures "E" and "F"* of the 1st Respondent's affidavit in reply. The report revealed gross financial mismanagement facilitated by the Applicant herself in the Bank, the Applicant had made payments by use of RTGs without payment requisitions and payment vouchers, made payments to companies/firms that were found not to have bided, evaluated and supplied any goods to the 2nd Respondent contrary to the provisions of the Public Finance Management Act, abusing the powers of the office she had been entrusted with, denying management of the 2nd Respondent access to Bank statements with intents to defraud the property of the 2nd Respondent.

The Applicant was given opportunity to offer an explanation or show cause why disciplinary action should not be taken against her as indicated in paragraph 9(a), *Annextures "B" and "C"* respectively of the Respondents Affidavit in reply but she failed to do so and she never furnished any proof of having responded or defend herself on the same.

That during an exit meeting with the 2nd Respondent, the Applicant was given opportunity to respond to the queries raised but she again failed. She was also granted an extension of time upon her request as indicated in paragraph 9(b) *Annexture "D"* of the Respondents Affidavit in reply but the explanations were not satisfactory.

The Applicant was in addition given verbal warnings from her supervisors which she also ignored.

Following the preliminary investigations, the Applicant was invited for a meeting which she duly attended as indicated in paragraph 8 *Annexture "A"* of the Respondents affidavit in reply and

was in full knowledge of what the meeting was about. The 1st Respondent cited several incidences of financial mismanagement of the 2nd Respondent for financial years 2016/2017, 2017/2018 and quarter one of 2018/2019 and procurement irregularities that had been disclosed during the audit.

The Applicant was again given opportunity to defend herself and she never replied or defended herself on such serious allegations.

In view of the preliminary investigations report it was injurious and risky to trust the office of the Registrar and council bank accounts of the second Respondent in the person of the Applicant.

It is in the best interest of justice for the Applicant to give way for investigations to be concluded.

The Applicant was accordingly made aware of the nature of investigations as indicated in the interdiction letter attached as Annexure “F” to the Applicant’s Affidavit in support which clearly stated *...you are being investigated on matters related to financial mismanagement and abuse of office at the Uganda Nurses and Midwives Council... “in accordance with the provisions of the Uganda Public Service Standing Orders Section F-S (8), the senior management of the Ministry of Health has decided that you be interdicted until investigations have been concluded or a decision has been made by the relevant court” and is a requirement under Regulation 8 (c) of Part (F-S) of the Uganda Public Service Standing Orders.*

Regulation 8 (c) of Part (F-S) and (g) of Part (F-S) of the Uganda Public Service Standing Orders provides; *interdiction is a temporary removal of a public officer from exercising his or her duties while an investigation over a particular misconduct is being carried out. This shall be carried out by the responsible officer by observing that;*

(c) Where a public officer is interdicted, he or she shall be informed of the reasons for such an interdiction.

Under Regulation 38 Public Service Commission Regulations, a public officer may be interdicted pending a disciplinary enquiry. It provides;

Regulation 38, the Responsible Officer may interdict an officer from exercising his/her powers and performing the functions of his/her office where;

- a) A Responsible Officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his/her office.
- b) Disciplinary proceedings are being taken or about to be taken or if criminal proceedings are being instituted against her.

This means that interdiction is not in itself a form of disciplinary sanction but is a first step taken towards possible disciplinary sanctions.

Interdiction shall be carried out by the responsible officer by observing that:

(g) After investigations, the responsible officer shall refer the case to the relevant service commission with recommendations of the action to be taken and relevant documents to justify or support the recommendations.

HON. JUSTICE STEPHEN MUBIRU in the case of **OYARO JOHN OWINY VS KITGUM MUNICIPAL COUNCIL Miscellaneous Civil Cause No.007 of 2018**, gave a clear distinction between interdiction and suspension as follows; “within the context of employment relations, interdiction is not the same as suspension. Whereas both measures involve the temporary stoppage of a public officer from reporting to work, suspension may be taken as a disciplinary sanction. On the other hand, interdiction is not a disciplinary sanction but invariably taken as a step pending a disciplinary enquiry and adjudication. Unlike interdiction which is a neutral action taken to allow unfettered investigations, suspension is in most cases a disciplinary action that must therefore be taken in the context of natural justice...” (Page 11- 4th paragraph)

Interdiction as a neutral act, implies no assumption of guilt, but is simply the first step taken before a disciplinary enquiry and adjudication. “...Interdiction is based only on preliminary investigations conducted by the employer and is the initial stage within the disciplinary process. An officer on interdiction remains innocent until proven otherwise and will be given an opportunity to respond to any adverse findings arising out of the preliminary investigations conducted by the employer. I therefore find that the decision to interdict does not subject to the right to be heard.” (Page 12, paragraphs 2 and 3).

From the above submission it is clear that the disciplinary enquiry is a process. The preliminary investigations are meant to enable the responsible officer to decide if the evidence against the officer is sufficient to proceed to the respective commission, in this case Health Service Commission for actual disciplinary hearing as stated under Regulation 8 (g) of Part (F-S) of the Uganda Public Service Standing Order; (g) after investigations, the responsible officer shall refer the case to the relevant service commission with recommendations of the action to be taken and relevant documents to justify or support the recommendations.

It is was therefore the Respondents counsel’s submission that the Applicant having been given a chance to respond to the issues raised during the preliminary inquiry cannot allege that her right to be heard was violated. In the interdiction letter, she was again asked to prepare her defence which she has not done to date thus stalling the disciplinary inquiry before the 3rd Respondent for actual hearing of her case. It is the Respondents submission that the Application is premature and ought to be dismissed with costs to the Respondents.

- 1. The Applicant’s failure to follow standard operating procedures has greatly affected the operations of the 2nd Respondent since the month of July to the effect that no service has been rendered to the public and the nursing and midwifery fraternity given the core mandate of the 2nd Respondent in upholding standards and protecting**

the public against unsafe nursing and midwifery practices, no staff salaries for that period save for the Applicant who is a public servant, which are all matters of public interest.

Besides, Section 17 of the Nurses and Midwives Act provides that; (1) the Council shall within three months before the end of each financial year, prepare and submit to the Minister for his or her approval estimates of income and expenditure of the Council for the next ensuing year and may, at any time before the end of a financial year, prepare and submit to the Minister for his or her approval any supplementary estimates.

(2) No expenditure shall be made out of the funds of the Council unless that expenditure is part of the expenditure approved by the Minister under estimates for the financial year in which the expenditure is to be made.

In consideration of its supervisory powers, the budget of the Council is approved by the Minister of Health on recommendation of the board and the Permanent Secretary who must oversee its implementation but the Applicant in contravention of the above provisions of the law, spent billions of monies from the account of the 2nd Respondent without an approved budget indicated in annexures “B” and “C” of the 1st Respondent’s Affidavit in reply.

The Applicant was further given opportunity by Health Monitoring Unit following its report to respond to queries raised and upon her request as per annexure “D” she was granted an extension to allow her respond but her responses were not satisfactory.

In addition, the Applicant was given verbal warnings from her supervisors including the 1st Respondent, the line Minister, Commissioner in- Charge Nursing which she adamantly ignored.

The preliminary investigations based on the audit report dated September, 2017 and an investigative report by Health Monitoring Unit dated October, 2018 prompted the Applicant’s interdiction to pave way for investigations to be concluded and determine the next action.

The interdiction was justified by the reasonable concern that the complaint was of a serious nature that it would not be in the public interest for the Applicant to continue to discharge her official duties until she is cleared, and the business interest of the 2nd Respondent, which is a Government entity would be harmed by the Applicant’s continued presence at the work place as well as interference with investigations.

The Applicant challenged the interdiction on grounds inter alia that the 1st Respondent is not vested with such powers of interdiction and was granted an Interim Order, still in force and the Respondents have duly complied with the same. Whatever she has done is her initiative and not perpetrated by the Respondents; for instance she signs the attendance book as Deputy Registrar.

Resolution of issues;

According to the interdiction letter marked as anexture “A” of the Applicant’s Affidavit in support there was no finding that attributes to misconduct that was made according to the letter.

Therefore, the preliminary investigations are for Responsible Officer to decide if the evidence against the officer is sufficient to proceed to the respective Service Commission, in this case the 3rd Respondent for disciplinary action or any other relevant forum.

Since interdiction is a stage leading to disciplinary action, the Applicant at the stage of interdiction was entitled to be given reasons for interdiction and this was done in a meeting held on the 9th November 2018 and later reduced into writing as contained in the interdiction letter under her annexure “F”. The interdiction letter does not state that she was interdicted because she was found guilty of any offence by the 1st Respondent (which is a disciplinary action) but was intended to pave way for investigations to be concluded (leading to disciplinary action or acquittal)

Determination

This court agrees with the submissions of counsel for the respondent to the extent that the Permanent Secretary of Ministry of Health is the responsible Officer responsible for the general supervision of the Staff within the Ministry of Health.

It would be great absurdity in the law if such person under the Ministry of Health like the applicant is not subject to the supervision and yet she was assigned the responsibilities of Deputy Registrar-(Uganda Nurses and Midwives Council).

The applicant’s letter of appointment of the applicant dated July 1st 2014 clearly states that;
“You are therefore requested to immediately report to the Permanent Secretary, Ministry of Health who will issue you with an appointment letter”

This appointment letter envisages that the 1st respondent as the responsible officer to offers guidance and plays a supervisory role as the person responsible for the day-to-day operations of the entire Ministry of Health, the same she would supervise any other staff recruited by the Public Service Commission.

Similarly, the special assignment that was given to the applicant as Acting Registrar was made by the 1st respondent in an interim measure before the Health Service Commission could fill the vacancy.

The applicant was on the 11th day of April 2017 assigned duties of Registrar-Uganda Nurses and Midwives Council by the Permanent Secretary-Dr Atwine Diana;

“ As an interim measure, Management has assigned Ms Nassuna Rebecca (Deputy Registrar Uganda Nurses and Midwives Council) to carry out the duties of Registrar-Uganda Nurses and Midwives Council until the post is substantively filled by the Health Service Commission.”

The 1st respondent would definitely be responsible for the direct supervision of the applicant who she had appointed in the interim measure until the vacant position is filled by the Health Service Commission.

Interdiction requires an employee not to attend the work place either for investigative purposes or as a disciplinary sanction.

In **Fredrick Saundu Amolo vs Principal Namanga Mixed Day Secondary School & 2 others** [2014] eKLR, the court had occasion to look into the interdiction question and the decision has been endorsed in many subsequent decisions. The following was held in that case: –

It is important to note that there can be preventive interdicts or punitive interdicts. On the one part being an interdict that is done in the context of allegations of misconduct prior to finding of guilt and the other interdict is implemented as a sanction after the finding of guilt.

A Punitive interdict can only issue in circumstances where the employment contract, the employer code of conduct, the Collective Bargaining Agreement or the law allows for it as a sanction...

*Whether it is preventive or punitive, the interdict, suspension...to be valid must meet the requirements of substantive and procedural fairness. This is the position articulated in **Chirwa versus Transnet and Others [2008] 2 BLLR 29, at the Constitutional Court of South Africa** and reiterated by this Court in **Industrial Petition No 150 of 2012, in the Matter of Joseph Mburu Kahiga et al versus KENATCO Co. Ltd et al**. This is so because, suspensions and interdictions are not administrative acts as the detrimental effect of it impacts on the employee's reputation, advancement, job security and fulfillment...*

There must be a **clear reason why the employee's interdiction is necessary**, independent of any contention relating to the seriousness of the misconduct... Thus a suspension or interdiction should only follow pending a disciplinary enquiry only in **exceptional circumstances**, where there is reasonable apprehension that the employee will interfere with any investigation that has been initiated, or repeat the misconduct in question. The purpose of such removal from the workplace even temporarily, must be rational and reasonable and conveyed to the employee in sufficient detail to enable the employee to defend himself in a meaningful way...

Once these preliminaries are addressed, **then the employee must be heard on the merits of the case as a cardinal rule**. This is not to revisit the decision to suspend or interdict, the hearing is simply aimed at determining the allegations levelled against the employee and any defences that the employee may wish to make. Only then, after the close of the hearing or investigation is a sanction issued to the employee.

In the case of **Oyaro John Owiny vs Kitgum Municipal Council High Court Miscellaneous Application No. 8 of 2018**, Justice Stephen Mubiru stated that; the decision to interdict is not subject to the rules of natural justice. See also **Cheborion Barishaki vs Attorney General High Court Miscellaneous Application No. 851 of 2004**

This means that interdiction is not in itself a form of disciplinary sanction but is a first step taken towards possible disciplinary sanctions. According to the Public Service Standing Orders;

Interdiction shall be carried out by the responsible officer by observing that:

(g) After investigations, the responsible officer shall refer the case to the relevant service commission with recommendations of the action to be taken and relevant documents to justify or support the recommendations.

The 1st respondent-Permanent Secretary interdicted the applicant upon receiving information and status report into Alleged Financial Mismanagement and Abuse of Office at Uganda Nurses and Midwives Council, and indeed such serious allegations required the applicant to step aside as the investigations are concluded.

The question of whether to interdict or not is an exercise of discretion by the responsible officer and such exercise ought not to be disturbed unless such exercise was a wrongful exercise of discretion.

Public Service Standing Orders under Regulation 38 provides that;

The Responsible Officer may interdict an officer from exercising his/her powers and performing the functions of his/her office where;

- a) A Responsible Officer considers that public interest requires that a public officer ceases to exercise the powers and perform the functions of his/her office

Similarly, the applicant's demand that she should have been accorded a hearing before interdiction is also devoid of any merit. The right to be heard is only applicable during the investigation and formal disciplinary process.

This application was prematurely made before this court and the same is dismissed with costs.

SSEKAANA MUSA
JUDGE
11th/04/2019