

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. CAUSE NO. 78 OF 2024

MARTIN ANTHONY NSUBUGA:.....:APPLICANT

VERSUS

- 1. MINISTER OF FINANCE, PLANNING & ECONOMIC DEVELOPMENT**
- 2. UGANDA RETIREMENT BENEFITS REGULATORY AUTHORITY**
- 3. HON. BIGIRWA JULIUS JUNJURA**
- 4. MUTEBI DAVID RONNIE :.....:RESPONDENTS**
- 5. NINSIIMA RONAH RITA**
- 6. DR. MARY KANYIGINYA TIZIKARA**
- 7. RITA NANSASI WASSWA**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for judicial review brought under Articles 42, 44 and 50 of the Constitution, Section 38 of the Judicature Act as amended and Judicature (Judicial Review) Rules, 2009. The Applicant filed this application seeking for the following orders;

- a) A declaration that:
 - i. The 2nd Respondent's Board abused its discretionary powers when it made a decision dated 8th May 2024 declining to recommend to the 1st Respondent the renewal of the Applicant's appointment as Chief Executive Officer of the 2nd Respondent.
 - ii. The 2nd Respondent's Board abused its discretionary powers when it decided to externally advertise the vacancy of the position of Chief Executive Officer of the 2nd Respondent without considering the Applicant's expression of interest for renewal of his

appointment in office, and his performance in that office in accordance with its Human Resource Manual and the Uganda Retirement Benefits Regulatory Authority Act.

- iii. The 3rd Respondent acted maliciously and illegally on 9th May 2024 when he announced to the 2nd Respondent staff the alleged appointment of the 7th Respondent as Acting Chief Executive Officer with immediate effect while the Applicant still had office.
 - iv. The acts and omissions of the 2nd – 6th Respondents in relation to the Applicant's expression of interest for reappointment in the position of Chief Executive Officer were biased, unfair and prejudicial to the Applicant's statutory entitlement to reappointment to office.
 - v. The acts and omissions of the 2nd – 6th Respondents in relation to the Applicant's expression of interest for reappointment in the position of Chief Executive Officer were biased, unfair and procedurally improper.
 - vi. The 3rd – 6th Respondents' continued occupation of membership positions on the Board of the 2nd Respondent is illegal for failure to possess the requisite statutory qualifications for their membership on the Board.
- b) An order of *Certiorari* to move to this Court to set aside and quash:
- i. The decision of the 2nd Respondent's Board made on 8th May 2024 declining to recommend to the 1st Respondent's renewal of the Applicant's appointment as Chief Executive Officer of 2nd Respondent.
 - ii. The decision of the 2nd Respondent's Board made on 8th May 2024 to externally advertise the vacancy of the position of Chief Executive officer of the 2nd Respondent without evaluating the

Applicant's expression of interest in his reappointment in accordance with the 2nd Respondent's Human Resources Manual and the Uganda Retirement Benefits Regulatory Authority Act.

- iii. The decision of the 2nd Respondent's Board made on 8th May 2024 recommending to the 1st Respondent's appointment of the 7th as Acting Chief Executive Officer of the 2nd Respondent.
 - iv. The decision of the 3rd Respondent made on 9th May 2024 appointing the 7th Respondent as Acting Chief Executive Officer of the 2nd Respondent with immediate effect.
- c) An injunction to restrain the Respondents or any of their agents from implementing any of the impugned decisions made by the 2nd Respondent on 8th May 2024.
- d) An injunction against the 3rd – 6th Respondents from performing any duties as members of the 2nd Respondent's Board.

The application was supported by the Applicant's sworn affidavit which briefly stated as follows;

- 1) The Applicant was appointed by the 1st Respondent on the recommendations of the 2nd Respondent's then Board as the 2nd Respondent's Chief Executive Officer on 14th May 2019 and has always had extensions of his contract.
- 2) The Applicant served the 2nd Respondent diligently and his performance has been continuously evaluated and consistently rated highly by the Respondent's Board over the years.
- 3) On 1st November 2023, the Applicant expressed to the 2nd Respondent's Board his interest in a renewal of his appointment in accordance with the 2nd Respondent's Human Resources Manual, and Uganda Retirement Benefits Regulatory Authority Act.

- 4) The 2nd Respondent's Board made a decision dated 8th May 2024, among others, declining to recommend the Applicant's reappointment to the 1st Respondent, and further decided to externally advertise the vacancy for the position.
- 5) The decisions by the Board are irrational, illegal and procedurally improper as they were made in contravention of the 2nd Respondent's Human Resources Manual, Uganda Retirement Benefits Regulatory Authority Act and the rules of fairness and natural justice.
- 6) The 2nd Respondent Board is not properly constituted for having as its members, persons that do not meet the qualifications stipulated under the Uganda Retirement Benefits Regulatory Authority Act. The appointment of the 3rd to 6th respondents as Board members based on their curriculum vitae was unlawful since they lacked demonstrable knowledge or experience in administration of retirement benefit schemes, banking, insurance, law, accounting, economic or actuarial science.
- 7) That the 1st respondent had earlier carried out their fit and proper qualification and which test is administered by Bank of Uganda upon request by the Minister but no such test has ever been done and no results have ever been returned by the Governor Bank of Uganda.
- 8) That the 3rd to 6th Board members have been hostile and difficult to manage and since joining the board they demanded for official cars and an office expecting to participate directly in the daily management of the 2nd respondent contrary to known rules and principles of corporate governance. They have continued to make demands and receive fuel allowance and mileage from their village homes instead of their Kampala homes.
- 9) That the decision not to renew the applicant's contract is tainted with bad faith with the sole aim of edging the applicant out of office after refusing to

succumb to financial demands. They intend to recruit a person who would be more pliable to schemes of taking money out of the authority.

10) That this is matter of public interest for which this court should exercise justice and fairness protect public savings and to ensure the integrity of pension and retirement benefits sectors whose investment value now stands in excess of 23 trillion from a standing membership of about 3 million savers.

11) That it is in public interest and the benefit of the pensions and retirement benefits sector that this application is allowed.

The Respondents opposed the application stating that the Applicant's contract as the Chief Executive Officer of the 2nd Respondent had duly expired on the 14th of May 2024 and he therefore was not currently serving as the Chief Executive Officer. They noted that the 1st Applicant had applied for the renewal of his contract but the Board had found irregularities with the procedure of his previous appointment. They found that there was no Board resolution made recommending the Applicant for substantive appointment as the Chief Executive Officer. They also found that there was no performance assessment tool developed to evaluate the Applicant's performance as CEO.

The 3rd respondent contended that he possesses requisite knowledge to serve as a member of the Board of Directors as required under the URBRA Act given his knowledge in Financial Accounting and Management, Economics and Public Finance and Public Policy and Management at Master's level and further experience as a Member of the 9th Parliament who was a member of the Budget Committee of Parliament for 5 years and holds other qualifications from Kenya.

The 4th respondent also contended that he possesses qualification to be a member of the Board since he studied Economic studies which included Money, Banking and Public Finance, Industry and Labour, Economic Development, Policy and Planning, Principles of Development Economics among other at graduate level.

Following this, the Board was constrained in considering the Applicant's request for renewal and it was resolved not to recommend the renewal of his contract.

The Respondents concluded that they had followed the procedures and processes as indicated in the 1st Respondent's affidavit in consideration of the Applicant's expression of interest in the renewal of his contract and resolved not to recommend the Applicant for a contract renewal.

The following issues were raised for determination by this Court:

1. *Whether the application is amenable for judicial review?*
2. *Whether the application raises any grounds for judicial review?*
3. *Whether the Applicant is entitled to the reliefs sought.*

The applicant was represented by *Kabiito Karamagi* while the 2nd to 7th respondents were represented by *Ham Mugenyi* and the 1st applicant was represented by *Ochol Sahid Kiwanuka (SA)*

The parties filed written submissions that were considered by this Court.

DETERMINATION

Whether the application raises any grounds for judicial review.

Whether the 2nd respondent's Board is properly constituted?

The applicant contended that the 2nd respondent's board is not properly constituted and or is illegally constituted by persons who are not qualified to sit on the board due to lack of requisite qualifications. The applicant submitted that the performance of the board has been below par as compared to other boards and this is because they are not qualified to hold the office as provided under Section 8 (1)(d) of the URBRA Act which specifically empowers the minister to Appoint to the Board: Four persons, not being public officers, *who are knowledgeable or experienced in matters relating to the administration of retirement benefits schemes, banking and insurance, finance, law, accounting, economic and actuarial studies.*

Two of the members have not contested this contention while the two have contended that they have experience or knowledge in public administration and

the 4th respondent asserts in his CV to have worked in organisations with some of the best retirement savings scheme. In addition, counsel for the applicant contended that the 3rd & 4th respondent seek to rely on academic qualifications, their respective experiences as former Members of Parliament and course certificates obtained during their service as board members to demonstrate their competence for office.

The 3rd respondent is qualified as a social worker and a Master's in Public Administration as well as being a Resident District Commissioner, while the 4th respondent is qualified as a teacher and later added qualifications in diverse trainings with specialty in Marketing and Sales.

It was counsel's submission that the appointment of persons not qualified with experience and knowledge in the areas specified breached the law and was thus illegal. It was contended that the Minister did not undertake a fit and proper test to determine their integrity, moral character and fitness for office. Section 8(6) of the URBRA provides and lists the criteria the Minister must consider in determining one's fitness for office, and these include general probity, competence and soundness of judgment, diligence concerning fulfilment of responsibilities, past convictions.

It was counsel's assertion that it was manifestly illogical to expect a morally untested team to effectively superintend over an organization such as the 2nd respondent and supervise a professional such as the applicant without incidents of moral conflict.

Analysis

This court is duty bound to exercise its supervisory capacity to the exercise of power by the Minister and the court is required to confine its enquiry to whether any errors of law had been committed by the Minister of Finance. The scope of enquiry by the courts in acting in accordance with its supervisory jurisdiction is confined to the heads of challenge of illegality, irrationality, procedural impropriety and proportionality.

The circumscribed scope of review under the supervisory jurisdiction has resulted in the description of the exercise of the court power in a judicial review as a form of “*controlled judicial activism*”. The court must act with restraint to avoid “*judicial excessivism*” in order to allow the wheels of public administration to move freely in a guided manner.

Judicial review also establishes a clear nexus with the supremacy of the Constitution, in addition to placing a grave duty and responsibility on the judiciary. Therefore, judicial review is both a power and duty given to the courts to ensure supremacy of the Constitution. Judicial review is an incident of supremacy, and the supremacy is affirmed by judicial review.

The court must be guided by the powers conferred on the Minister to constitute the Uganda Retirements Benefits Regulatory Authority in order to assess their exercise of power in execution of their mandate as prescribed by the Act. The court has been obliged to consider the subsequent events in determining the sustainability of the impugned decision which affected the applicant.

The Board is constituted under section 8 of the Uganda Retirement Benefits Regulatory Authority Act and provides;

The Authority shall have a Board of Directors appointed by the Minister which shall comprise of-

- (a) The Permanent Secretary of the Ministry responsible for finance or his or her representative authorized in writing.
- (b) The Permanent Secretary of the Ministry responsible for Labour or his or her representative authorized in writing.
- (c) The Permanent Secretary of the Ministry responsible for public service or his or her representative authorized in writing.
- (d) Four persons, not being public officers who are *knowledgeable or experienced in matters relating to administration of retirement benefits schemes, banking, insurance, finance, law, accounting, economic or actuarial studies*; and
- (e) The Chief Executive Officer appointed under section 15.

The Authority has a major objective of supervising the establishment, management and operation of retirement benefits schemes, and to protect the interests of members and beneficiaries of retirement benefits schemes in Uganda.

The spirit of the law in ensuring that persons appointed to the board should be knowledgeable or experienced in matters relating to *administration of retirement benefits schemes, banking, insurance, finance, law, accounting, economic or actuarial studies* is rooted in technical expertise required in order to execute the functions of the Uganda Retirement Benefits Regulatory Authority as set out under Section 5 of the Act.

The four 3rd, 4th, 5th & 6th respondents were expected to possess the necessary qualifications and experience in matters relating to retirements benefits schemes or *banking, insurance, finance, law, accounting, economic or actuarial studies*. The 3rd and 4th respondents have deposed and contended that they are qualified by virtue of the academic qualifications or degrees or other experience as former Members of Parliament and as members of the Budget Committee. The other two members 5th and 6th respondents did not file any affidavit and they never availed this court an opportunity to assess their suitability to be board members.

The 3rd respondent possess a bachelor's degree in Social Work and Social Administration and a Masters degree in Public Administration and Management with a dissertation on the Performance of UPE Schools in Bugangaizi County Hoima District. He possesses some work experience as Resident District Commissioner. He also had some trainings in Insurance and other related trainings acquired while he was a board member. The 4th respondent possesses a bachelor's Arts with Education and other qualifications or trainings in Corporate Governance.

The basis for the challenge of the applicant is that the 1st respondent acted without authority or contrary to the law when he constituted the Board of the 2nd respondent without considering the qualifications and experience of the 3rd, 4th, 5th and 6th respondents to become Board Members.

It is a fundamental principle of the rule of law, recognised widely, that the exercise of public power is only legitimate where lawful. The rule of law-to the extent at

least that it expresses this principle of legality-it is generally understood to be a fundamental principle of constitutional law.

A particularly challenging part of lawfulness relates to the reason, purpose or motive for which the action was taken. This is especially the case where the empowering provision grants a wide discretion to the decision maker/administrator.

The nature of the Uganda Retirement Benefits and Regulatory Authority Act required some technical expertise and experience of the Board members. The Minister was empowered to appoint the Board members in accordance with the parameters set out under Section 5 of Uganda Retirement Benefits Regulatory Authority Act. The Minister's exercise of power or discretionary power to appoint or constitute a proper Board was guided by the law and failure to take the guidance of the law, the appointment had to be challenged for lack of mandate or for acting outside the 'four corners' of the Act.

No administrative power is given without a reason or purpose, doing so would breach the principle of rationality which is a requirement for all public action including legislation. See ***Pharmaceutical Manufacturers Association of South Africa & Another: In Re Ex Parte President of the Republic of South Africa & Others*** 2000 (2) SA 674(CC)

Whatever the Minister's choice of members of the Board may be in exercising his (wide) discretionary powers, the Minister's purpose in making that choice or his reasons for doing so must be aligned to what is authorised in the empowering provision: *Four persons, not being public officers who are knowledgeable or experienced in matters relating to administration of retirement benefits schemes, banking, insurance, finance, law, accounting, economic or actuarial studies; and*

Parliament cannot be supposed to have intended that the power should be open to serious abuse by the Minister of Finance by appointing persons without necessary experience and knowledge or qualifications. It must have assumed that the designated Minister would act properly and responsibly, with a view to doing what was best in the public interest and most consistent with the policy of the statute to always ensure that the Board is properly constituted by qualified and experienced members of the board to guide proper guidance in the management

of the retirement benefits Authority. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion and power. See ***Sundus Exchange & Money Transfer and 5 Others v Financial Intelligence Authority High Court Miscellaneous Cause No. 154 of 2018***

The 2nd respondent's Board was not properly constituted and the persons holding the positions as Board members lack the requisite qualifications and experience and knowledge in retirement benefits schemes. They were equally rated lowest in performance as board members which could be attributed to the lack of experience and expertise and necessary qualifications.

I resolve this issue in the affirmative.

Whether the application raises any grounds for judicial review?

The Applicant contends that the decisions of the Board were irrational, illegal, and procedurally improper in contravention of the 2nd Respondent's Human Resource Manual, the Uganda Retirement Benefits Regulatory Authority Act and the rules of fairness and natural justice.

Procedural impropriety

The Applicant contended that the Respondents failed to comply with the adopted rules of the decision-making process. The Applicant submitted that according to the URBRA Act and the Human Resource Manual, he had to apply for reappointment and three months prior to expiry of the contract which he did but the 2nd Respondent dragged its feet and waited until under a week to end the employment term after attracting the concern of the Minister to decline the Applicant a recommendation for reappointment with no valid reason for non-compliance with the stipulated timelines. He also submitted that the Respondents' contention that the 2nd Respondent did not have a tool to evaluate his performance as CEO was a blatant lie. The Applicant led evidence to show that he had been properly evaluated for the period that he held the office.

The Applicant also contended that the Respondents failed to exercise fairness in the consideration of the Applicant's expression of interest and that there was an appearance of bias in the decision-making process. Counsel for the Applicant

submitted that the attempt to find fault with his initial appointment was a deliberate fault find clutch to straws in the drowning sea of resolve to deny him a chance to retain his position as his recruitment was never objected to by any of the Board members at the time including the 3rd Respondent who had just joined the Board at the time. Counsel submitted that the Board was swayed by the frustrations and personal interests of the 3rd- 6th Respondents to influence the Board's exercise of its statutory powers regarding the Applicant's appointment as the CEO.

The Applicant also contended that there was a requirement to comply with any procedural legitimate expectations created by the decision maker. Counsel submitted that the 2nd Respondent's Board and the 1st Respondent's refusal to consider the Applicant's performance over the last 5 years and the delay/refusal to respond to the Applicant's expression of interest to renew his appointment as CEO of the 2nd Respondent within the timelines stipulated in the manual is denial or frustration of his legitimate expectation that he would be reappointed within the stipulated time.

The Respondents disagreed stating that 2nd – 7th Respondents duly complied with Section 17(1) URBRA Act 2011 and the provisions of the URBRA Human Resources policies and procedures manual where applicable. They submitted that the submissions on fairness were mere allegations, wishful thinking and baseless assumptions arrived at without a scintilla of proof. Counsel also submitted that the Applicant had not proved any scenarios of bias and that the Applicant's submissions were hearsay not backed by any proof. The Respondents also argued that the Applicant's letter of appointment did not create any legitimate expectation as to reappointment.

In rejoinder, Counsel for the Applicant reiterated their earlier submissions and also submitted that the 2nd Respondent's Board meeting of the 8th May 2024 took place just 6 days as opposed to the 2 months before the expiry of the Applicant's contract which was procedurally improper and instigated by bias.

Irrationality

The Applicant submitted that it was simply illogical and irrational that the 1st Respondent could assert that the Board never recommended or ratified the Applicant's original recommendation for his appointment when he was personally involved in the efforts to ensure the retention of the Applicant when he informed him and the members of the Board that he would not participate in their interviews.

Counsel submitted that it was illogical for the 3rd – 7th Respondents to claim that the Board didn't ratify this decision when the Board minutes showing ratification by conduct were well documented by the 7th Respondent as Board Secretary and the deliberations attended and witnessed by the 3rd Respondent as Board member at the time.

Further that, it was illogical for the 2nd – 7th Respondents to claim that the Applicant's performance could not be evaluated because of the absence of a CEO's evaluation tool in the presence of a tool and evaluation reports that they all knew about. Counsel added that even if the same was true, it was irrational to blame and penalize the Applicant when the responsibility of evaluating the CEO fell on the Board.

Counsel submitted that it defied logic for the Respondents to claim that the Board did not have prior agreed targets with the Applicant when he was appointed to office yet at the first meeting he was introduced to the Board as the new substantive CEO, the Applicant presented a report about the development of a strategic plan for the period 2019/2020- 2024/2025.

On the other hand, the Respondents argued that the Board was mandated under Section 15 of the URBRA Act to recommend to the Minister of Finance Planning and Economic Development a CEO for appointment therefore by not recommending the Applicant and instead recommending the 7th Respondent to serve in acting capacity until a substantive CEO was appointed, was done within its powers.

They further contended that the Applicant had submitted that the Board members were incompetent and they did not qualify to be appointed to the Board but was also claiming that the same Board should have recommended him for

reappointment indicating approbating and reprobating at the same time which was an indication that the application was devoid of merit and should be dismissed.

On the other hand, the Respondents counsel submitted that the Applicant's contract as CEO had expired on the 14th day of May and during the Board of Directors' meeting on 8th May 2024, the Board had resolved not to renew said contract as evidenced in the minutes for the following reasons;

1. That in a letter reference MFP92/286/01 the minister declined to approve the extension of the Applicant's appointment as acting CEO and advised the Board to consider making a recommendation for appointment as CEO or the Board embark on recruitment of a competent person for the cost;
2. That the 31st Board meeting held on 21st March 2019 resolved that the position of the CEO should be advertised however the Board noted that the resolution was never communicated to the 1st Respondent.
3. That the Applicant was then recommended for the position of CEO without reference being made to any Board resolution instead reference was made to his recommendation issued to the human resource committee to the Board for his appointment as director supervision/ acting CEO
4. The 32nd Board meeting held on the 14th of July 2019 never ratified the Chairman's letter dated 7th May 2019 and subsequently no Board resolution was issued recommending the Applicant as CEO of the 2nd Respondent. The absence of a recommendation of the Board to the Minister raises a question on due process regarding the appointment and contravened S. 15(1) of the URBRA Act. As such the Board the Board was constrained in considering the Applicant's request for contract renewal.
5. Further, there was no performance assessment tool for the position of CEO and the Board found it improper to administer a performance appraisal tool that had been developed to assess the Applicant's performance for his tenure as CEO in the absence of prior targets and deliverables agreed upon between the Board and the CEO.

Counsel concluded that the Board resolved that the post of CEO be publically advertised and the Applicant was encouraged to apply given that the position would be open to competitive process which was not an illegality.

Analysis

The applicant expressed interest in continuing to work in accordance with the human resource manual of the 2nd respondent and Uganda Retirement Benefits Regulatory Authority Act. Section 17 of the Act provides that; *The Chief Executive Officer shall hold office for 5 years and is eligible for re-appointment for only one more term*. The Human Resource Manual provides under its policy objectives; *to recruit and appoint suitably qualified and competent persons; to ensure that all appointments are on merit, fair and transparent; to promote institutional memory, continuity and succession management*.

The applicant in accordance with the employment manual expressed interest in having his employment renewed six months on 1st November 2023 before the expiry of his term of 5 years. The 2nd respondent's board never considered his application within the stipulated time and only belatedly tried to delay the process in order to prejudice the applicant. The actions of the 1st and 2nd respondents were bordering on procedural impropriety and specifically breach of the applicant's legitimate expectation coupled with biased determination of his new term of office.

Where a public authority's promise or practice has resulted in a legitimate expectation of a substantive benefit or a particular outcome of a situation. The court is to decide whether frustration of the expectation would be so unfair as to amount to an abuse of power or authority. The court bears the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy. The applicant legitimately expected that his contract would be renewed in accordance with the Act and Human Resource Manual after his excellent performance.

The applicant had a legitimate expectation to be heard by the board prior to the decision not to renew his contract of employment for a fresh term of 5 years. The reasons advanced by the 2nd respondent's board for non-renewal of his contract of employment are extremely 'dilute' and may indeed point to biasness.

The respondents contended that *“the 32nd Board meeting held on the 14th of July 2019 never ratified the Chairman’s letter dated 7th May 2019 and subsequently no Board resolution was issued recommending the Applicant as CEO of the 2nd Respondent. The absence of a recommendation of the Board to the Minister raises a question on due process regarding the appointment and contravened S. 15(1) of the URBRA Act. As such the Board the Board was constrained in considering the Applicant’s request for contract renewal.”* The refusal to renew the applicant’s contract was hinged on failure of the actions of the 2nd respondent’s board, contending that there was no recommendation of the board to the Minister, which was their mandate and the same should not be vested on the applicant and should not be used to frustrate his genuine legitimate expectation.

The 2nd respondent did not invite the applicant to explain the anomaly which in the board’s view was the main reason for the refusal to renew the applicant’s term of office. The applicant expected to get a new term or renewal based on his excellent performance in the initial 5-year term. The reason for denial was extremely flimsy and pointed to bias in arriving at the decision due to some acrimony between the applicant and some board members.

The refusal to renew was irrational and unreasonable in the circumstances of case as it can be deduced from the decision of the board, which was hinged on lack of recommendation of the board to the Minister. It was the duty of the board to issue a recommendation to the Minister and its absence should never have been visited on the applicant or used to deny the applicant who performed his duties excellently in the 5-year period. They ought to have conducted a hearing to determine the absence of the recommendation instead of victimizing the applicant for the error or mistakes of the Board.

The 2nd respondent’s decision of refusing to recommend the applicant’s contract renewal of contract was equally a clear breach of the legitimate expectation as enshrined in the human resource manual. The respondents ought to have followed the guidance given under the human resource manual to avoid exercising their discretionary powers arbitrarily and without any justifiable reasons which was illegal and irrational.

A patently unreasonable decision like in this case reflects unfairness, bad faith, victimization and bias on the part of the 2nd respondent. The denial of the applicant's renewal of contract was a *malafide* exercise of power or, in other words, an act of victimization, thus avoiding a fair enquiry into the absence of a resolution of the board for his contract. It was a clear case of trying to find any irrational reason to deny the applicant an opportunity to have his contract of employment to be renewed. See ***R Rama Chandran v Industrial Court of Malaysia & Anor [1997] 1 CLJ 147***

Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud or dishonesty, malice or personal interest. These motives, which have the effect of distorting or unfairly biasing the decision-maker's approach to the subject of the decision, automatically cause the decision to be taken for an improper purpose and thus take it outside the permissible parameters of the power. The 2nd respondent's board exercised the power maliciously since the non-renewal of the applicant's contract was motivated by personal animosity towards the applicant.

The reasoning for the refusal to renew the applicant's contract for another term of 5 years and the manner of reaching such a decision was based on considerations which were accorded manifestly inappropriate weight. The main ground of non-renewal was because of missing resolution of the board to the Minister and this ought not to have been given such weight to become the basis of refusal to renew the applicant's contract. The decision of the 2nd respondent's board was supported by inadequate or incomprehensible reasons which resulted in the non-renewal or refusal to renew the contract which is apparently illogical or arbitrary.

The decision of the Minister of Finance to appoint the 7th respondent as recommended by the Minister of Finance was equally illegal. The court had issued an interim Order to stop the illegalities which was totally ignored in contempt of court and contrary to the Uganda Retirements Beneficiary Regulatory Authority Act and Human Resource Manual. The board failed to give any guidance to the Minister of Finance and indeed their actions or resolutions are illegal and devoid of any

lawful basis. The decision of the Board and then Minister of Finance are tainted with illegalities, procedural impropriety and are equally irrational.

Whether the Applicant is entitled to the reliefs sought?

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available. The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

Certiorari

The applicant has sought an order of certiorari to quash and reverse the decision of the 1st and 2nd respondent to renew his contract without any justifiable reason and or basis. The respondent's hurriedly tried to change the status quo by making decisions on 4th May 2024 which have been successfully challenged.

Certiorari is one of the most powerful public law remedies available to an applicant. It lies to quash a decision of a public authority that is unlawful for one or more reasons. It is mainly designed to prevent abuse of power or unlawful exercise of power by a public authority. See ***Public in East Africa by Ssekaana Musa page 229***

Certiorari is simply concerned with the decision-making process and only issues when the court is convinced that the decision challenged was reached without or in excess of jurisdiction, in breach of rules of natural justice or fairness or contrary to the law. Certiorari occupies a fundamental place in the entire scheme of judicial review of administrative action.

The effect of the order of certiorari is to restore *status quo ante*. Accordingly, when issued, an order of certiorari restores the situation that existed before the decision quashed was made.

This court therefore issues an Order of Certiorari quashing the following decisions:

- 1. The decision of the 2nd respondent's Board made on 8th May 2024 declining to recommend to the 1st respondent the renewal of the applicant's appointment as Chief Executive Officer of the 2nd respondent.*
- 2. The decision of the 2nd respondent's Board made on 8th May 2024 to externally advertise the vacancy of the position of Chief Executive Officer of the 2nd respondent without evaluating the applicant's expression of interest in his reappointment in accordance with Human Resource Manual and the Uganda Retirement Benefits Regulatory Authority Act.*
- 3. The decision of the 2nd respondent's board made on 8th May 2024 recommending to the 1st respondent the appointment of the 7th respondent as Acting Chief Executive Officer of the 2nd respondent.*

Prohibition

The main object of prohibition is prevention rather than to cure. The function of prohibition is to prohibit the board concerned from proceeding with the matter further or continuing to act in a particular way or manner.

This court having found that the 2nd respondent's board is not properly constituted or that it is constituted by persons who lack requisite qualifications, it is only fair and in the interest of the general public or the retired persons or pensioners that they are stopped from continuing to manage or sit on the board.

This court issues an Order of Prohibition against the 3rd, 4th, 5th and 6th respondents from performing any duties as members of the 2nd respondent's Board with immediate effect. The Minister should appoint persons with the requisite qualifications set out under Section 8 of the Uganda Retirement Benefits and Regulatory Authority Act.

The 7th respondent should stop to carry on duties of the Chief Executive Officer and should resume her duties under her proper employment: *An Order of prohibition issues to restrain the 7th respondent from continuing to execute the duties of the Chief Executive Officer.*

This court issues a declaratory order to the effect that *the decision of the Minister of Finance (1st respondent) to disregard the order of court stopping the removal of the applicant from office was contemptuous* and is accordingly cautioned.

The applicant is awarded costs of this application.

I so Order

SSEKAANA MUSA
JUDGE
31st January 2025