

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT HOIMA
MISCELLANEOUS CAUSE NO.17 OF 2022

1. OPIO VINCENT ALPHER
2. KIIZA NICHOLAS
3. MUNGURYEK EVERCE:.....APPLICANTS
VERSUS

KIKUUBE DISTRICT LOCAL GOVERNMENT:.....RESPONDENT
AND

BARUNGI EDITH
KOBUSINGE RUTH
BYENSI ALEX

CHRISTOPHER NKALU:.....THIRD PARTY
BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

RULING

- [1] The Applicants brought this application for prerogative orders by way of Judicial Review under Art. 5 of the Constitution of the Republic of Uganda 1995, Ss. 36 & 38 of the Judicature Act Cap. 13 (as amended) and Rules 3, 4, 5, 6, & 7 of the Judicature (Judicial Review) Rules SI.11 of 2009) seeking the following reliefs:
- (a) *A declaration that the decision of the Respondent to move a censure motion against the Applicants who are members of the District Committee is illegal, ultra vires and irrational.*
 - (b) *An order of prohibition stopping the Respondent Barungi Edith, a female councillor representing People with Disabilities, Kobusinge Ruth, District Woman Councillor Buhimba Sub-County and Byensi Alex, Male Councillor representing Kabwoya Upper Sub-County, from moving a motion to censure the Applicants and/or members of the District Executive Committee outside the Local Governments Act Cap. 243 as amended and the standard Rules of Procedure for Local Government Councils in Uganda 2019 forthwith.*
 - (c) *An order of certiorari to quash the decision of the Respondent to initiate the process and debate of the motion to*

censure the Applicants without being afforded an opportunity to be heard and/or conducted with illegality, irrationally and procedural impropriety.

(d) General damages and costs of the application.

[2] The grounds for the application are contained in the affidavit of the 1st Applicant, **Opio Vincent Alpher** filed in support of the application which briefly are:

1. The Applicants are; (a) **The District Vice Chairperson, Kikuube District/Councillor for Kabwoya Lower, Kabwoya Sub-County/Secretary for Gender and Community Development**, (b) **Secretary for Production and Natural Resources/Male District Councillor Representing Workers** and (c) **Secretary for Works and Water/Female District Councillor Representing Workers** respectively for the period 2021-2026.
2. During the **Council Sitting of 26.5.2022** at Kikuube District Headquarters, a motion was sneaked on the order paper in violation of **Rule 98 (2) of the Standard Rules of Procedure for Local Government Councils in Uganda 2019** for the censure of the Applicants who are members of the District Executive Committee Kikuube District.
3. The reason for censure advanced was falsification of Councillors' signatures attached to the petition requesting for transfer of the Resident Commissioner Kikuube District, **Mr. Amlan Tumusiime** authored by the District Chairperson L.C5 Kikuube District dated 19/4/2022 and abuse of office.
4. The Respondent illegally and in utter violation of the law sneaked the motion on the order paper and in addition:
 - (a) Wrote to the speaker instead of the District Chairperson contrary to **section 21(2) of the Local Governments Act Cap. 243**.

- (b) The motion of the resolution to censure the Applicants was debated before lapse of 14 days after the petition is sent to the District Chairperson contrary to **section 21(4) of the Local Governments Act Cap. 243 and Article 187 of the Constitution of the Republic of Uganda 1995 as amended.**
- (c) The motion of the resolution to censure the Applicants was debated before seeking technical and legal guidance from the **Office of the Chief Administrative Officer and Legal Officer** contrary to **Rule 98 (3) of the Standard Rules of Procedure for Local Government Councils in Uganda 2019.**
- (d) The petition did not disclose the evidence upon which it was premised contrary to **Rule 102 of the Standard Rules of Procedure for Local Government Council in Uganda 2019.**
- (e) The petition was not served on the Applicants which is a violation of their right to a fair hearing and denied them chance to file a defence.
- (f) The motions were consolidated and not filed separately requiring 3 movers or 6 seconders contrary to **Section 21 (1) (3) and 5 of the Local Governments Act Cap. 243 and Rule 101 of the Standard Rules of Procedure for Local Government Councils in Uganda 2019.**

[3] The Applicants contended that the speaker overruled the advice of the Chief Administrative Officer to comply strictly with the censure process and ruled that the Council would sit to censure the Applicants in 14 days contrary to **Section 11 of the Local Government Act Cap.243** and that the conduct of the Respondent and its agents therefore, was irrational intended to create disorder and anarchy in Kikuube District.

[4] The Respondent opposed the application through **Muganzi Sam**, the Principal Assistant Secretary of the Respondent who deposed in his affidavit in reply, briefly as follows;

- (a) That during the Council meeting of 20th May, 2022 held at the Kikuube District Headquarters, **Hon. Barungi Edith**, the District Female Councillor representing people with disability moved the motion for the censure of the 3 Applicants and she was supported and

seconded by **Hon. Kobusinge Ruth**, female Councillor for Buhimba Sub-County and **Hon. Byensi Alex Kabusomba**, male Councillor for Kabwoya Upper.

- (b) That as per the order paper of that particular sitting of 26th May, 2022, the petition and motion for the censure of the 3 Applicants was not part of the order of business of the day.
- (c) That the Clerk to Council alive to the Rules of Procedure for Council pertaining to censure motion sought the opinion and/or guidance of the **Chief Administrative Officer** while the Respondent also sought legal opinion of the District Counsel and a secondary opinion from the office of the **Solicitor General**.
- (d) That all the sought opinion returned were in rhythm echoing similar legal and procedural faults and lacunas with the petition to wit interalia; that the petition is to be addressed to the Chairperson and not the Speaker, the motion for censure was not to be debated until the expiry of 14 days after the petition is sent to the Chairperson, and the affected members of the Executive Committee in respect of whom a vote of censure is debated were to be given an opportunity of being heard by way of annexing the evidence to be used against them on the petition to be served upon them.
- (e) That todate, the petitioners who are aware of the legal provisions/opinion on the matter, have not officially communicated to the Respondent/district leadership or the Applicants that they are withdrawing the petition and therefore the intended censure exercise.
- (f) That the Respondent/district leadership being totally against the legality and procedure of the censure motion, instituted 3rd party proceedings against the petitioners so that they bear all the liability court may condemn the Respondent to arising from this action.

[5] The petitioners/3rd parties filed an affidavit in reply deposed by the 4th Third party, **Christopher Nkalu**, the District Speaker, denying that Council debated on the censure motion.

- [6] That during plenary on 26th May 2022, the 2nd third party **Kobusinge Ruth** also a seconder of the mover of the motion requested that the motion to censure the Applicants be received, and added to the order paper for signing by the seconders which was seconded by the 3rd third party, **Byensi Alex** and all the Councillors in the Council.
- [7] Lastly, that the speaker sought technical advice from the **Chief Administrative Officer** who advised that the petition can only be included on the order paper for the mover and seconder to append their respective signatures before the sergeant at arms and Clerk to Council and that in compliance, the Speaker placed the motion on the order paper for the mandatory preliminary process of signing before the Clerk to Council and sergeant at arms and it was forwarded to District Chairperson who received it pending its discussion after the 14 days stipulated under the Local Government Act. That otherwise, the minute extract attached to the application as the minutes of 26/5/2022 is a concoction and forgery of the authors thereof.
- [8] The Applicants were represented by **Mr. Simon Kasangaki** of **Ms. Kasangaki & Co. Advocates, Hoima** while the Respondent was represented by **Mr. Raymond Kasaija** of **Kabega, Bogezi and Bukenya Advocates, Hoima Office** and the 3rd parties by **Mr. Ahumuza Edward** of **M/s JP Baingana & Associates Advocates, Kampala**. The counsel for the parties filed their respective submissions for consideration of this court in the determination of this application save for counsel for the Respondent.
- [9] In their submissions both counsel framed the following issues for determination:
1. *Whether the Applicants are entitled to the prerogative orders sought by way of judicial review.*
 2. *What remedies are available to the parties.*

Issue 1: Whether the Applicants are entitled to the prerogative orders sought by way of judicial review.

[10] Counsel for the Applicants submitted that in order for the Applicant to succeed in an application for judicial review, he/she has to satisfy court that the matter complained of is tainted with any, or a combination of illegality, irrationality and/or procedural impropriety, **Counsel of Civil Service Unions vs Miniro for the Civil Service [1995] A.C2.**

[11] Counsel argued that during the Council sitting of 26/5/2022 at Kikuube District Headquarters contrary to Rule 98 (2) of the Standard Rules of Procedure for Local Councils in Uganda 2019, a motion was illegally sneaked on the order paper for the censure of the Applicants who are members of the District Executive Committee, Kikuube District and in addition, did the following:

- (i) Petitioned to the District Speaker instead of the District Chairperson contrary to **S.21 (2) of the Local Governments Act.**
- (ii) The motion of the resolution of censure of the Applicant was debated before lapse of 14 days after the petition is sent to the District Chairperson contrary to **S. 21 (4) of the Local Governments Act** and **Art. 187 of the Constitution of Uganda** which is in *pari materia* with **S.21 (4) of the Act.** That the censure of the Applicants was reflected in the Kikuube District Council minutes of 26/5/2022 when the petition dated **20th day of May 2022** was received by the Speaker on **23rd day of May 2022**, thus it was debated after only 6 days which was procedurally wrong and illegal.
- (iii) The motion of the resolution of censure of the Applicants was debated before seeking technical and legal guidance from the office of the Chief Administrative Officer and legal officer contrary to **Rule 98 (3) of the Standard Rules of Procedure for Local Government to Councils in Uganda 2019.**
- (iv) The petition did not disclose the evidence upon which it was premised contrary to **Rules 102 of the Standard Rules of Procedure for Local Government Councils in Uganda 2019** which provide that subject to the Local Government Act, a motion shall comply with the following:

- (a) The petition shall recite the grounds upon which it is based; and
 - (b) The particulars of the charges including any documents that may prove the charges.
 - (v) The motion/petition was not served on the Applicants which is a violation of their right to a fair hearing and that this denied them a chance to file a defence (**S.21 (5) of the Local Governments Act**).
 - (v) The motions were consolidated and not filed separately requiring 3 movers and 6 seconders contrary to **s.21 (1), (3) & (5) of the Local Government Act and Rule 101 of the Standard Rules of Procedure for Local Government Councils in Uganda 2019**.
- [12] Counsel concluded that the above irregularities constitute sufficient grounds for grant of the reliefs sought in the application because such acts or decisions were devoid of merit and reason in law and were contrary to dictates of natural justice. That a combination of the above justify the granting of this application.
- [13] Counsel for the 3rd parties on the other hand, relying on the affidavit in reply by the 4th **third party, Christopher Nkalu** submitted that the allegations of the Applicants are not true on the following grounds:
- (i) That the motion was not sneaked on the order paper. That the motion was added on the order paper on request by the 2nd **Third party**, seconded by the 3rd **Third party** and all the Councillors in the Council for purposes of signing and receiving only and not for debating.
 - (ii) That the petition was addressed to the right forum as required by **S.21 (2) of the Local Governments Act** since though it was addressed to the District Speaker through the Clerk to Council, later the Clerk to Council passed the motion to the District Chairman who did acknowledge its receipt with a promise to act on it in compliance with the Local Government Act and Standard Rules of Procedure.

- (iii) That as to whether the motion to censure was debated before the lapse of the statutory 14 days, whether technical or legal advice were sought before the alleged debate and whether there was service of the motion/petition upon the Applicants, the Third parties contended that no debate of the motion/petition ever took place, that the minutes purporting the same were forged and therefore, the allegations are irrelevant.
- (vi) That as to whether the petitioners disclosed evidence, Counsel contended that it was not mandatory for the petitioners to include documents to prove the charges in the petition.
- (v) That the consolidation of the motions were proper because they all fell under the same act and therefore needed not be individually.

[14] Counsel concluded that in addition, the 4th Third party being a Speaker of the Respondent district, he was wrongly included as a party to the application since under the Local Government Regulations, he is immune from being sued in his capacity since the business conducted by a Speaker in a Council meeting is done for and on behalf of the District Local Government. He prayed this court to find that the Applicants have not made out a case for judicial review and therefore are not entitled to any of the sought prerogative orders.

Consideration of the application.

[15] In **Clear Channel Independent (U) Ltd v Public Procurement & Disposal of Public Assets Authority**, H.C.M.C. No. 380 of 2008, Judicial Review was defined to mean the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies and persons who carryout quasi-judicial functions, or who are engaged in the performance of public acts and duties. In **Chief Constable of North Wales Police vs Evans [1982]3 All ER.141**, it was held that the purpose of judicial review is to ensure that the individual is given fair

treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matter in question, see also **Rule 2 of the Judicial (Judicial Review) Rules 2009 (as amended)**.

[16] In the case of **Erias Lukwago vs Jennifer Musisi H.C.M.C. No. 116 of 2011**, Justice Eldad Mwangusya stated that:

“Judicial review is concerned not with the decision but with the decision making process. Essentially judicial review involves an assessment of the manner in which a decision is made, it is not an appeal and the jurisdiction is exercised in a supervisory manner.....to ensure that public powers are exercised in accordance with the basic standard of legality, fairness and rationality.....In exercise of its jurisdiction this court is not required to vindicate anybody’s rights but merely to examine the circumstances under which an act is done and determine as to whether the standards set out above have been met and if not prescribe the remedies in form of prerogative orders set out in the Rules”.

[17] In the instant case, the Applicants are challenging the procedure and manner in which the Respondent and the 3rd parties reached the decision to debate the motion to censure the Applicants.

(a) The Petition/Motion on Order Paper

[18] The Applicants allege that the motion was sneaked on the order paper. From the affidavit in reply of the Third parties, **para. 4** states that a request was made to add the motion on the order paper for purposes of signing and receiving only and not for debating. That the Speaker ruled to have the motion/petition on the order paper after seeking advice from the CAO.

[19] From the affidavit in reply, I find it clear that the petition and motion for the censure of the 3 Applicants was not part of the agenda on the Order paper of the Council meeting of **26/5/2022**

but as admitted by the 4th Third party in his affidavit in reply, it was added on the Order paper allegedly at the request of the 2nd Third party, seconded by the 3rd Third party and all the Councillors. The position given by the 4th Third party is however not supported by any evidence. The minutes of the Council meeting of 26/5/2022 provided by the Applicants do not reflect the position as given by the 3rd parties. It is also not correct as Counsel for the 3rd parties put it that the business on the said date was not to debate on the censure of the Applicants but for signing of the motion censure. This is because the minutes of the Council meeting of the day provided by Applicants (Annexure "C" to the application) clearly show that the censure of the Applicants were debated.

[20] The 3rd parties claim that the minutes, annexure "C" to the application were forged. This is a very serious allegation. The minutes in question were signed by a one **Koojo Irumba Naphtal** for Clerk to Council. Under **S.106 of the Evidence Act**,

"In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person".

[21] The 4th Third party being a speaker of the Respondent Council, upon disputing the draft minutes adduced in evidence by the Applicants, the burden shifted to the 3rd parties to adduce evidence to rebut the authenticity of the draft minutes by production of the minutes they deem were the correct ones of the day. The Third parties in this case failed to discharge that burden.

[22] As a result of the foregoing, I find that the motion to censure the Applicants was illegally sneaked on the Order paper and the minutes of the Council meeting of 26/5/2022 annexed to the application, in the absence of the version of the purported actual minutes claimed by the Third parties, are found to be the actual minutes of the day's business of the Council. There is no evidence that the minutes provided by the Applicants were either manipulated and or forged as alleged by the Third parties.

- (b) **Right address of the petition and whether it was debated before lapse of the statutory 14 days.**

[23] Under **S. 21 (2) of the Local Council Governments Act**,

“Proceedings for censure shall be initiated by a petition to the chairperson through the speaker, signed by not less than one third of its members of the council, to the effect that they are dissatisfied with conduct of the district executive committee”.

As per **Annexure “E”** to the application, i.e. the petition, it was clearly addressed to the District Speaker, Kikuube District. Whereas Counsel for the 3rd parties argued that thereafter, the Clerk to Council passed the motion to the District Chairman and the latter did acknowledge receipt of the same, the evidence on record show that the petition dated **20th day of May, 2022** was received by the Speaker on **23rd day of May, 2022** and it was debated on the **26th day of May, 2022**. Therefore, even if court is to find that it is true the petition ended up with the District Chairperson through the Speaker, it was prematurely debated, i.e. after 3 days from the date it was received by the Speaker. Counsel for the Applicants rightly observed in his submissions that the motion was debated before the lapse of the statutory 14 days which as per **S.21 (4) of the Local Government Act** are to run from the time the motion is sent to the Chairperson. This is also the constitutional requirement provided for under **Art. 187 (3) and 5 of the Constitution of Uganda** which provide that the proceedings of censure shall be initiated by a petition to the Chairman through the Speaker and the motion for the resolution of the censure shall not be debated until the expiry of 14 days after the petition was sent to the Chairman.

[24] In the premises, I find that by the 3rd parties omission to address the petition to the District Chairperson and their decision to cause a petition to be debated before the lapse of 14 days after the petition is sent to the Chairperson, the actions were illegal, irregular and or fundamentally procedurally flawed.

(c) **Seeking of the technical and legal advice before the alleged debate**

[25] Whereas Counsel for the 3rd parties claim that the Respondent and the 3rd parties sought the required technical and legal advice from the **Chief Administrative Officer**, the **District Legal Counsel** and the **Solicitor General**, what is apparent is that the said technical and legal advice or opinions were sought and obtained after the debate of the censure of the Applicants; the CAO's legal advice/opinion and that of District Legal Counsel is dated 2/6/2022 while that of the Solicitor General is dated 29/6/2022.

[26] In the premises, I find that the motion of the resolution to censure the Applicants was debated before seeking technical and legal guidance from the office of the **Chief Administrative Officer** and **District Legal Counsel** contrary to **Rule 98 (3), of the Standard Rules of Procedure for Local Government Councils in Uganda 2019** which provide that before a motion of censure and removal from office is brought to Council, it shall be subject to technical and legal compliance in accordance with the Local Government guidelines for seeking Technical Guidance **Regulation No. 5 of 2007**. The Respondent and the 3rd parties/petitioners sought and obtained the relevant legal guidance long after the motion of the censure was debated which was illegal and procedurally wrong.

(e) **Failure of the petition to disclose evidence and service of the petition.**

[27] The Applicants stated that the motion/petition was neither served on the Applicant nor, though the petition recited the grounds for censure, the particulars of the charges including any documents that may prove the charges were never provided.

[28] Counsel for the 3rd parties appear to admit the omission to serve the petition/motion on the Applicants and the evidence intended to be used against the Applicants. He however concluded that the allegations were irrelevant since there was no debate of the

motion and that in any case, it is not mandatory to include documents to prove any charges.

[29] Whereas I agree that it is not mandatory to include documents to prove any charges, in the instant case, one of the grounds for censure was "Falsification of Councillors' signatures". Surely, in my view, to prove such an allegation which is serious in nature, documentary evidence of the alleged falsified signatures is required. However, **Rule 102 (b) of the Standard Rules of Procedure** require the petition to disclose the evidence and that evidence, in my view must be evidence that is available. In the instant case, such documentary evidence which appear to had been necessary for the censuring of the Applicants may not have been readily available and therefore the omission to provide evidence that may not have been available would not render the petition defective or the actions of the petitioners irrational. It would merely render the petition unreasonable.

[30] As regards the failure to serve the petition on the Applicants, I find that it was illegal for it amounted to denying them an opportunity to defend themselves which was contrary to **S.21 (5) of the Local Government Act** which provides that a member of the executive committee in respect of whom a vote of censure is debated is entitled to be heard during the debate.

[31] For the above reasons, without going into the other issues, I find that the above highlighted illegalities and irregularities constitute sufficient grounds for the judicial reliefs sought by the Applicants.

Issue No. 2: What remedies are available to the parties.

[32] This court having found that the Respondent and 3rd parties' decision to move a censure motion against the Applicants was marred with illegalities and irregularities, the Applicants are accordingly granted the sought orders:

- (a) **A declaration** that the decision of the Respondent and 3rd parties to move a censure motion against the Applicants who

are members of the District Executive Committee is illegal, irregular and irrational.

- (b) **An order of prohibition** stopping the Respondent, the 3rd parties from moving a motion to censure the Applicants and/or members of the District Executive Committee outside the Local Government Act as amended and the Standard Rules of Procedure/of Local Government Councils in Uganda issues forthwith.
- (c) **An order of certiorari** quashing the decision of the Respondent and the Third parties to initiate the process and the debate of the motion to censure the Applicants without being afforded an opportunity to be heard accordingly issues.
- (d) **General damages:** In the premises that the Applicants have been embarrassed, inconvenienced and disorganised in the face of their electorates, each of the Applicant is awarded general damages of **Ugx. 10,000,000/=** each and costs of this application.

[33] The Third parties are liable for the liability of the Respondent in this application. They are not immune from 3rd party liability which arises from their personal actions.

Dated at Hoima this **18th day of October, 2024.**


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Byaruhanga Jesse Rugyema
JUDGE