

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 006 OF 2023

USHER WILSON OWERE:.....APPLICANT

VERSUS

- 1. NATIONAL ORGANIZATION OF TRADE UNIONS (NOTU)**
- 2. CHRISTOPHER PETER WERIKHE**
- 3. STEPHEN MUGOLE**
- 4. BIGIRWA RICHARD:.....RESPONDENTS**
- 5. MAUKU MOSES**
- 6. BADARU BARBARA**
- 7. AMITI TOM**

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed this application for judicial review under Article 42 of the Constitution; Sections 36, 37, 38 and 39 of the Judicature Act; Judicature (Judicial Review) Rules 2009, 3,4,5,6,7 & 8 for the following orders:

- 1. A declaration doth issue that the purported Extra Ordinary General Council meeting held on 15th November 2022 and its resolutions therein are illegal and ultra vires.*
- 2. A declaration doth issue that the purported petition against the applicant dated October 25, 2022 was incompetent, illegal and ultra vires the Labor Unions Act 2006 and the NOTU constitution.*

3. *A declaration doth issue that the purported removal of the applicant from the office of Chairman General of NOTU was unfair, unjust, malicious, irrational and illegal and contravenes the principle of fair hearing and natural justice.*
4. *A declaration doth issue that the purported election of the 3rd, 4th, 5th and 6th respondents respectively as acting Chairman General, acting Secretary General, acting Treasurer General and acting Treasurer of NOTU at the unlawful meeting of November 15, 2022 was illegal, irrational and null and void.*
5. *A declaration doth issue that the applicant is the lawful Chairman General of NOTU.*
6. *A declaration doth issue that the purported meeting of NOTU General Council scheduled for 9th January 2023 is null and void.*
7. *A declaration doth issue that the 7th respondent has no locus nor mandate to convene meetings for NOTU organs.*
8. *A permanent injunction doth issue restraining the respondents and their agents from suspending and or removing the applicant from the office of Chairman General of NOTU or carrying out any activities for and on behalf of the 1st respondent.*
9. *An order for general damages doth issue against the respondents.*
10. *An order for exemplary damages doth issue against the respondents.*
11. *Costs.*

The application was supported by the sworn affidavit of the applicant setting out the grounds of the application but briefly.

1. That the respondent have been attempting to unlawfully and unfairly remove the applicant from office without a due process and without a fair hearing.
2. That the respondents purporting to remove him from the position as the Chairman General of the 1st respondent. An Extra Ordinary General Meeting was purportedly called on the 15th of November 2023 where a petition was signed to remove the applicant from office.
3. The respondents' decision taken on the 15th of November 2022 was taken unilaterally in total breach of the rules of the NOTU Constitution, natural justice and administrative justice.
4. The results of this meeting and alleged change in leadership were however rejected by the Registrar of Labour Unions who invited the leaders of NOTU for a meeting to address the looming disagreements.
5. A purported NOTU General Council Meeting was called on the 9th of January 2023 where the petition to remove the applicant from his position was discussed. It was resolved to suspend the applicant and also referred him for disciplinary action which was actuated by malice against the applicant.

The respondents filed affidavits in reply opposing the application contending that it was incompetent and ought to be dismissed with costs.

They contended that the applicant had been notified of the meeting on the 9th day of January 2023 but informed the 1st respondent through his lawyers that he would not attend the said meeting.

The 3rd respondent contended that he supported the motion to remove the applicant from the office of Chairman General of the 1st respondent due to acts/conduct of misuse of authority exhibited on the 15th September, 2022 and 24th October, 2022 during the 1st respondent's General Council meetings at Abba Hotel.

That on 22nd day of December, 2022 at a consultative meeting at Ministry of Gender, Labour and Social Development at Kampala it was resolved that;

- *The resolutions, meeting minutes and list of attendance of Extra Ordinary General Council meeting that took place on the 15th day of November, 2022 be disregarded by the 1st respondent.*
- *The applicant be summoned before the 1st respondent's General Council where he would be accorded an opportunity to be heard on allegations of misconduct.*
- *The 1st respondent calls a General Council meeting on 9th January 2023.*
- *The applicant be notified of the 9th General Council Meeting accordingly.*

The 2nd respondent in his affidavit in reply contended that he is not privy to the impugned decisions against the applicant upon his resignation from the position on 15th November 2022. He has never been involved in taking any decision against the applicant. He contended that he was wrongly dragged to court.

The applicant filed an affidavit in rejoinder reiterating his earlier statements. He also added that the meeting that was held on the 9th January 2023 was tainted with illegality and bias and all actions emanating from it should be struck down.

The 2nd applicant illegally called for the meeting on the 15th November 2022 and also signed the illegal memorandum of understanding. He also participated in the meeting of the 9th of January 2023 and accepted service of the letter from the applicant's lawyers.

All consultative meetings alluded to are not provided for under the Labour Unions Act nor the NOTU constitution and therefore the actions arising from the same are illegal. The General Council Meeting of NOTU is called by the Executive Committee passing a resolution over the same and not consultative meetings. The Executive Committee did not meet to call the General Council Meeting for the 9th of January 2023.

The applicant raised the following issues for determination.

- 1. Whether the application discloses sufficient grounds to warrant the orders sought under judicial review?*
- 2. Whether the applicant is entitled to the remedies sought?*

The applicant was represented by *Counsel Okello Peter Jabweli and Counsel Emma Opio* while the respondents were represented by *Counsel Alex Tuhimbise and Henry Kurukayo*

The applicant filed final written submissions that were considered by this court. The respondents failed or refused to file their submissions as directed and this court shall proceed to determine the matter.

Determination

Whether the application discloses sufficient grounds to warrant the orders sought under judicial review?

In submissions, the applicant raised a preliminary objection in regard to there being no valid affidavit in reply for the 1st respondent. Counsel submitted that the 3rd respondent purported to swear on his behalf and that of the 1st respondent but did not attach any document or resolution from the Executive Board of NOTU empowering him to do so. Counsel cited the case of *Ssenyimba Vincent & 2 others vs Birikade Peter Misc. App 378 of 2018* in support of his argument.

Counsel further submitted that since there was no valid affidavit in reply opposing the application, the 1st respondent was deemed by law to have conceded to the application. Counsel cited *Ugafin Limited vs Beatrice Kiwanuka Misc. App No. 682 of 2014* in support of that submission.

The applicant submitted that the meeting held on 15th November 2022 was illegal since the NOTU Constitution does not provide for an 'Extra Ordinary General Council Meeting and the agenda of the meeting did not provide for the removal from office of the Chairman General. The majority of the respondent's concede that the suspension of the applicant was irregular as the registrar of trade unions also advised.

The applicant further contended that the meeting of 9th January 2023 was equally null and void ab initio as it was laced with procedural irregularity and irrationality. The General Council of NOTU is called by resolutions of the Executive Committee. Article 7(4) of the NOTU constitution allows for the calling of the Extra Ordinary Delegates Conference by the Secretary general on authority of the council.

It was also submitted that the Minister of Gender, Labour and Social Development has no power to cause a consultative meeting that leads to calling an organ of NOTU.

Analysis

It is trite that applications for Judicial review under rule 3 of The Judicature (Judicial Review) Rules, 2009, S.I. 11 of 2009, made under section 38 (2) of The Judicature Act, for orders of mandamus, prohibition, certiorari or an injunction are directed at the legality, reasonableness, and fairness of the procedures employed and actions taken by public decision-makers, i.e. the lawfulness of the decision-making process, and not the decisions themselves.

As per the case of *Council for Civil Service Unions v Minister of Civil Service [1985] AC 374*

- (i) Illegality: means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality: means particularly extreme behaviour, such as acting in bad faith, or a decision which is “perverse” or “absurd” that implies the decision-maker has taken leave of his senses. Taking a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it and
- (iii) Procedural impropriety: encompasses four basic concepts; The need to comply with the adopted (and usually statutory) rules for the decision-making process; the common law requirement of fair hearing; the common law requirement that the decision is made without an appearance of bias; the requirement to comply with any procedural legitimate expectations created by the decision maker.

The applicant contended that the respondents’ actions in dismissing him were tainted with illegality, irrationality and procedural impropriety. This court agrees with the applicant that the process leading to the illegal decision was indeed unlawful and tainted with procedural impropriety.

The applicant contended that there was an illegality since the NOTU Constitution did not provide for an Extra Ordinary General Council Meeting and that the agenda of the said meeting did not provide for the removal of the applicant from the office of the Chairman General.

The respondents admitted that the above meeting was held. The Registrar of Trade Unions wrote a letter addressed to the respondents and intimated to them that this meeting was illegally convened and the resolutions made could not be effected by his office.

This court agrees with the Registrar of Trade Unions that the respondents illegally convened a meeting that was not sanctioned by the NOTU Constitution on 15th November 2022.

The applicant also contended that the meeting held on the 9th of January 2023 was null and void ab initio as it was laced with procedural irregularity and irrationality. He contended that the NOTU Constitution Article 7(4), allows for the calling of the Extra Ordinary Delegates Conference by the Secretary-General on the authority of the General Council, the body immediately below it. It follows that the General Council could only be called by the Secretary-General on the authority of the Executive Committee, the body immediately below it. The applicant contended that as a member of the Executive Committee, no Executive Committee meeting was ever called to discuss and/ or resolve to call the General Council.

The respondents on the other hand stated that they had had a consultative meeting with the Minister of Gender, Labour and Social Development that led to the calling of the meeting of 9th January 2023.

The Labour Unions Act did not give the Minister such a mandate to cause a consultative meeting that leads to the calling of an organ of NOTU. NOTU meetings are held in accordance with their Constitution and not at the whims of a Minister of Gender, Labour and Social Development or any other person in the Ministry. The 1st respondent can only do things authorized by the law and their constitution. The meeting called outside the constitution is not within the jurisdiction of the organization and it means it was illegal and baseless.

Lastly was the contention that the meeting on the 9th of January 2023 was irrational for the reason of an irrational and illegal memorandum of understanding for the resolution for the leadership conflict in NOTU. The applicant contended that the MoU discussed how he would be removed from office and that the conspirators went on to allocate themselves by way

of negotiation and appeasement of different constitutional offices in NOTU. The applicant also noted that apart from the position of Chairman General, the allocation or sharing of positions in NOTU was per the illegal meeting of November 15, 2022.

This court further agrees with the counsel for the applicant that the MoU went against Article 2 of the NOTU constitutional guiding principles of good governance. It was indeed irrational since the movers of the illegal meeting were to benefit from the new positions after the successful organization 'coup d'etat'. Whatever was done was rehearsed from the memorandum of understanding with one clear intention of removing the applicant.

The meeting held on the 9th of January 2023 was to be chaired by the applicant in a letter dated 22nd December 2022. That the 3rd respondent had also admitted in his affidavit in reply that he had supported the motion to remove the applicant from office which was outright partiality and bias.

The court is concerned with the exercise of legal power, i.e acts which if valid themselves produce legal consequence. The effect of the meeting if lawfully conducted would have resulted in change of leadership of NOTU. The exercise of power by the respondents was illegal and unlawful since it was intended or used for improper purposes and irrelevant considerations for unauthorized purpose of removing the applicant.

The respondents failed to also follow the rules of natural justice in their effort of removing the applicant. The removal of the applicant as the Chairman General had to follow the rules of fairness and natural justice. The body with power to decide lawfully, like NOTU, cannot unlawfully proceed to remove the applicant without affording him a proper opportunity to state his case.

Since the meeting was illegally convened by the 2nd -7th respondent then any resolutions arising therefrom cannot be of any legal effect and this would make everything void ab initio.

This issue is resolved in the affirmative.

Whether the applicant is entitled to the remedies sought?

Since the meetings which culminated in the removal of the applicant were illegal, procedurally improper and irrational the court will automatically grant the remedies sought by the applicant as hereunder:

1. *A declaration doth issue that the purported Extra Ordinary General Council meeting held on 15th November 2022 and its resolutions therein are illegal and ultra vires.*
2. *A declaration doth issue that the purported petition against the applicant dated October 25, 2022 was incompetent, illegal and ultra vires the Labor Unions Act 2006 and the NOTU constitution.*
3. *A declaration doth issue that the purported removal of the applicant from the office of Chairman General of NOTU was unfair, unjust, malicious, irrational and illegal and contravenes the principle of fair hearing and natural justice.*
4. *A declaration doth issue that the purported election of the 3rd, 4th, 5th and 6th respondents respectively as acting Chairman General, acting Secretary General, acting Treasurer General and acting Treasurer of NOTU at the unlawful meeting of November 15, 2022 was illegal, irrational and null and void.*
5. *A declaration doth issue that the applicant is the lawful Chairman General of NOTU.*

6. *A declaration doth issue that the purported meeting of NOTU General Council scheduled for 9th January 2023 is null and void.*
7. *A declaration doth issue that the 7th respondent has no locus nor mandate to convene meetings for NOTU organs.*
8. *A permanent injunction doth issue restraining the respondents and their agents from suspending and or removing the applicant from the office of Chairman General of NOTU or carrying out any activities for and on behalf of the 1st respondent.*

The actions of the respondent were illegal and the same should be discouraged in future to avoid violating the NOTU Constitution. The respondents' conduct was unconstitutional, high handed and oppressive and this should be discouraged and disincentived by way of remarkable punitive damages.

It is clear from the Applicant's evidence that the acts and conduct of the Respondents were in violation of the law and human rights and therefore an award of punitive damages would serve not only as a punitive measure but also as a deterrent the commission of similar acts in the future.

The rationale behind the award of exemplary damages: exemplary damages should not be used to enrich the Applicant, but to punish the Respondents and deter them from repeating this conduct.

An award of exemplary damages should not be excessive. The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal. Per Spry V.P. in *Obongo vs Municipal Council of Kisumu [1971] EA 91*.

Bearing those principles in mind I find that an award of **UGX 30,000,000** sufficient as punitive damages against all of the 6 respondents from 2nd to 7th respondents. Each of the said respondent shall pay a sum of 5,000,000/=.

The 2nd respondent tried to deny any involvement in the decision making or meetings and contending that he had resigned by 15th November 2022. The evidence on record under the Memorandum of Understanding shows that the 2nd respondent signed on the Memorandum of Understanding as the Secretary General and yet he purports to claim that he had resigned that position.

The applicant is awarded costs of the application.

I so order.

SSEKAANA MUSA

JUDGE

07th June 2023