**THE REPUBLIC OF UGANDA**

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

**(CIVIL DIVISION)**

**MISC. CAUSE NO. 325 OF 2020**

**MUKOSE ARNOLD ANTHONY======================APPLICANT**

**-VERSUS-**

**1. ATTORNEY GENERAL**

**2. BANK OF UGANDA**

**3. DR. TWINEMANZI TUMUBWEINE =============RESPONDENTS**

**BEFORE: HON. MR. JUSTICE PHILLIP ODOKI**

**RULING ON PRELIMINARY OBJECTIONS**

**Introduction:**

[1] This ruling arises from the preliminary objections raised by counsel for the respondents regarding the competency of this application.

**Background:**

[2] On 7th February, 2018 the Governor Bank of Uganda issued an Internal Memo in which he communicated, inter alia, that he had appointed new employees in the 2nd respondent. The appointment included the 3rd respondent as the Executive Director Supervision.

[3] A compliant was subsequently lodged to the Inspectorate of Government regarding the procedure of the appointment and the lack of minimum qualifications of some of the employees. On 23rd February, 2018, the Inspector General of Government wrote to the Governor to respond to the allegations.

[4] On the 6th March, 2018, the Governor Bank of Uganda wrote to the Inspector General of Government explaining that under Section 28(4) of the Bank of Uganda Act, all appointments of employees in made by the Board of Directors of Bank of Uganda. However, the impugned appointments were made by him at a time when the Board was not fully constituted. The Governor explained that, he made the appointments pursuant to his delegated authority given to him by the Board through a board resolution dated 30th May 2012 in which he was permitted by the Board to consider and approve, subject to ratification of the Board, all matters and issues that would call for board consideration and approval to enable the bank continue to operate until when the board would be in place. As for the qualifications of the employees, the Governor explained that the Bank recruits persons with first or upper second degree, but in the case of the 3rd Respondent, he was recruited on the basis of his specialized skills acquired after completing his first degree.

[5] On the 12th March, 2018, the Inspector General of Government directed the Board of Directors of the 2nd Respondent not to ratify the action or decision of the Governor until such a time when the Inspectorate concluded its investigations or directed otherwise.

[6] Because of increased press coverage of the matter, His Excellency the President established a tripartite committee comprising of some Members of Parliament, the Inspector General of Government and some staff from the Inspectorate of Government and some members of the Board of Directors of Bank of Uganda. The committee was to study the allegations and report back to the President.

[7] The committee made its report in February 2019 and recommended,

inter alia, that the ratification of the appointment of externally recruited persons, including the 3rd Respondent, be handled by the Board as per their mandate. The committee further recommended that the ratification should involve an independent professional firm familiar with recruitment process and which would verify the competencies and present a report to the Board.

[8] By August 2020, those staff who were appointed by the Governor on the 7th February 2018 were working with the Bank but had not yet been confirmed. Some of the board members were of the view that the directive of the IGG constituted an injunction which was still in force. At a meeting held on the 6th August 2020, the board took a decision that the staff who were recruited on 7th February 2018 should not be shortlisted to participate in internal interviews for internally advertised positions in the Bank on the grounds that they were a subject of the Tripartite investigations.

[9] On the 17th August 2020, the Governor Bank of Uganda wrote to the Attorney General seeking legal opinion on the implications of delay in confirming those staff recruited on the 7th February, 2018 considering that they had already worked with the bank for 2 years. The Governor also sought advice on the implication of the decision of the board to bar those staff from competing for internally advertised positions in the Bank.

[10] On the 24th August 2020 the Deputy Attorney General wrote back to the Governor giving his legal opinion that the board, after being fully constituted, ought to have considered and approved or disapproved the appointments. According to the Deputy Attorney General, the Bank’s inaction to confirm the said employees made them to believe that their employment was now regular and confirmed on 8th August 2018, six months from the 7th February 2018 when they were appointed, since their probation period could not be extended beyond 6 months. The Deputy Attorney General further advised that the appointed employees should be granted equal opportunity to compete for internally advertised jobs because any attempts to bar them may amount to discrimination and expose the bank to complaints to the Equal Opportunities Commission or Labor Office or Industrial Court.

[11] The 3rd respondent in his affidavit in reply attached a letter of the Governor dated 28th September 2020 showing that on the 17th September, 2020 the Board of Directors of Bank of Uganda resolved to confirm the 3rd Respondent’s service with the bank.

**The Applicants case:**

[12] The applicant filed the instant application on the 4th November 2020 seeking for:

1. Declarations that;
2. The actions and decisions of the Governor and the 2nd respondent regarding the sourcing, appointment and confirmation of the 3rd respondent as the 2nd respondent’s Executive Director Supervision is tainted with illegality, irrationality, procedural impropriety and unfairness and as such void.
3. The actions of the 2nd respondent without a board resolution before 24th August, 2020 contravened section 28 (1) of the Bank of Uganda Act, are illegal, irrational and void.
4. The appointment of the 3rd respondent before 17th August, 2020 and after 24th August, 2020 is inconsistent with the law, procedurally irregular, illegal and void.
5. The Board of the 2nd respondent cannot purport to confirm the appointment of the 3rd respondent made irregularly.
6. An order of certiorari be issued to call for and quash;
7. The letters of appointment of the 3rd respondent as the 2nd Respondent’s Executive Director Supervision.
8. The 2nd respondent’s letter to the 1st respondent dated 17th August, 2020.
9. The 1st respondent’s letter to the 2nd respondent dated 24th August, 2020.
10. An order of mandamus be issued to compel the 2nd respondent to terminate the purported appointment of the 3rd respondent as the 2nd respondent’s Executive Director Supervision.
11. An order of mandamus be issued to compel the 2nd respondent to take all lawful, credible, transparent and proper action to source and recruit a qualified person to the office of Executive Director Supervision.
12. A permanent injunction be issued to restrain the 2nd respondent from implementing or otherwise using the impugned advice of the 1st respondent contained in the 1st respondent’s letter of 24th August, 2020 as regards the sourcing, recruitment and promotion of the 2nd respondent’s staff.
13. A permanent injunction to restrain the 3rd respondent from acting in the office of Executive Director Supervision of the 2nd Respondent.
14. An order that the Respondents pay the costs of this application.

[13] The grounds of the application were stated in the Notice of motion that;

1. The decision of the Governor of the 2nd respondent dated 7th February, 2018 to source and appoint among others the 3rd respondent as the Executive Director Supervision was illegal and was tainted with irrationality, procedural impropriety, and unfairness.
2. The continued employment of the 3rd respondent as the Executive Director Supervision of the 2nd respondent in spite of the intervention of the office of the Inspector General of Government and in spite of the report of the Presidential Tripartite Committee is illegal and continues to be tainted with irrationality, procedural impropriety and unfairness.
3. The decision of the 2nd respondent contained in its letter to the 1st respondent dated 17th August, 2020 to seek advice on, inter alia, impugned staff recruitment of 7th February, 2018 was made in bad faith and is tainted with procedural impropriety, irrationality and illegality.
4. The decision of the 1st respondent contained in its letter to the 2nd respondent dated 24th August, 2020 was made illegally and is tainted with bias, procedural impropriety and irrationality.

**Representation:**

[14] The applicant was represented by Peter Mukidi Walubiri and Kizito Sekitoleko. The 1st respondent was represented by Geoffrey Madete. The 2nd respondent was represented by Andrew Kibaya and Vincent Dubang. The 3rd respondent was represented by Enock Bararata.

**Preliminary objections:**

[15] Counsel for the respondents raised 5 preliminary objections regarding the propriety of this application.

[16] The 1st preliminary of objection was that the applicant does not have the locus standi to commence the above application for judicial review. Counsel submitted that the applicant described himself as a citizen of Uganda, a practicing journalist, and a passionate activist in the field of human rights, rule of law, good governance and political and socio-economic environment. He further states that he is passionate about enforcement and application of the constitution and all statutory and regulatory provisions, including the Bank of Uganda Act. He further stated that he is a concerned Ugandan seeking to safeguard the banking industry, the economy and to vindicate the rule of law.

[17] Counsel submitted that, under Rule 3A of ***The Judicature (Judicial Review) Rules, 2009*** (as amended by S.I. 32 of 2019), only a person with direct or sufficient interest in a matter may apply for judicial review. According to counsel, a person is said to have sufficient interest in the matter if the matter in issue directly affects him in some way. Counsel further submitted that the party seeking judicial review must be a person aggrieved. Counsel relied on the case of: ***Hon. Sekikubo Theodore and 2 others versus Attorney General, HCMC No. 092 of 2015; Community Justice and Anti-Corruption Forum versus Law Council and Another, HCMC No. 301 of 2016*** and ***Dickens Kagarura Versus Minister of Works and Transport and 3 others HCMC No.149 of 2012.***

[18] Counsel submitted that the in instant application, the applicant is not an employee of the 2nd respondent or a member of the board. He does not have any qualification that takes him out of the class of all Ugandans. There is nothing personally or directly affecting him. According to counsel, being a citizen interested in rule of law, good governance, political and socio-economic environment is not enough for one to be said to have sufficient interest in a matter.

[19] The 2nd preliminary objection was that the application was filed out of time. Counsel submitted that the application was filed on the 4th November 2020 seeking to challenge the decision of the Governor Bank of Uganda which was made on the 7th February, 2018. The application was thus filed 2 years and 8 months after the decision. According to counsel, the attempt by the applicant to avoid mentioning the date of 7th February, 2018 but rather referring to; decisions culminating in the correspondence of 17th August 2020, to actions before 24th August, 2020 and the appointment before 17th August 2020 was only to bring this matter within the time limits of judicial review.

[20] Counsel submitted that under Rule 5(1) ***The Judicature (Judicial Review) Rules, 2009***, judicial review applications are required to be filed expeditiously and in any event within three months from the date when the grounds of the application first arose unless time is extended by the court. According to counsel, the grounds of this application first arose of the 7th February, 2018 and the Applicant did not seek the leave of court for extension of time. The application is therefore time barred. Counsel relied on the case of; ***Community Justice and Anti-Corruption Forum*** (supra), ***Hon. Lukwago Erias and 13 others versus Electoral Commission and 2 others HCMC No. 431 of 2019*** and the case of ***Nwoya District Local Government Council versus John Paul Onyee High Court Civil Application No. 031 of 2019*** for the position of the law that applications for judicial review presented after the lapse of time limitation cannot be entertained.

[21] The 3rd preliminary objection was that the applicant did not exhaust the available remedies as required by the law. Counsel submitted that the applicant did not show that he filed any compliant to the 2nd respondent’s Board of Directors whose power was said to have been taken away by the Governor. Counsel relied on the case of ***Classy Photo Mart Ltd versus the Commissioner Customs URA HCMC No. 30 of 2009*** and the case of ***Sewanyana Jimmy versus Kampala International University, HCMC No. 207 of 2016.***

[22] The 4th preliminary objection was that the matters complained of are not amenable to judicial review. Counsel specifically pointed out that the act of the 2nd respondent in seeking for legal advice from the 1st respondent and the act of the 1st respondent in giving advice to the 2nd respondent are not matters that are amenable to judicial review. According to counsel, an opinion may be followed or not. However, what can be challenged is the decision following the opinion which the applicant has failed to show.

[23] The 5th preliminary objection was that the affidavit in support of the application is incompetent as it is based on inadmissible evidence. Counsel pointed out that the applicant relied on several documents: The Internal Memo of the Governor dated 7th February, 2018; the extracts of the Administrative Manual of the 2nd respondent for October 2015 and April 2018; correspondences from the Inspector General of Government; the report of the tripartite committee and the letter of the Governor to the 1st respondent. According to counsel, since the applicant is neither the author nor one of the people to whom the documents was copied, and he does not show how he obtained them, he is a stranger to those documents and therefore not possessed with personal knowledge of the contents. Counsel relied on ***Order 19 Rule 3(1) of the Civil Procedure Rules*** and the case of ***Julius Maganda versus National Resistance Movement, HCMC No. 154 of 2010***.

[24] In his reply, Counsel for the applicant submitted that the preliminary objections raised by the Respondents were not properly raised because they raise questions of law and fact which are disputed. According to counsel, preliminary objections can only be raised on strictly matters of the law and cannot be raised where facts have to be ascertained or what is sought is the exercise of judicial discretion. Counsel relied on the case of ***Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributers Ltd (1969) 696.***

[25] On the 1st preliminary objection, counsel for the applicant submitted that once an applicant demonstrates that he or she is bringing a judicial review application in public interest and not for selfish motives but to vindicate the rule of law and to get unlawful conduct stopped he or she has sufficient interest. Counsel relied on the English cases of: ***R versus Inland Revenue Commissioners, Exparte National Federation of Self Employed and Small Businesses Ltd (1982) A.C, 617*** and ***R versus Inspectorate of Pollution, exparte Greenpeace Ltd, (1994) 4 All ER 329***.

[26] On the 2nd objection, counsel for the applicant submitted that the process to make staff appointments started in February 2018 and received various queries and challenges until the 17th August 2020 that a legal opinion for the purpose of regularizing the appointment was sought and the Board of the 2nd respondent sat on the 17th September 2020 to ratify the appointment. Counsel for the Applicant submitted the cause of action in judicial review arises when the final decision is made and not when the provisional decision subject to further action. Counsel relied on the case of ***MTN Uganda Limited versus Uganda communication commission High Court Misc. Application No. 240 of 2020.***

[27] On the 3rd preliminary objection, counsel for the applicant submitted that there was no alternative remedy available once the Board ratified the illegal appointments of the 3rd respondent except by judicial review. Counsel further submitted that the facts in the case of ***Classy Photo Mart Ltd*** (supra) are distinguishable from those in the instant case since in that case, there was a clear alternative remedy available under the law.

[28] On the 4th preliminary objection, counsel for the applicant submitted that: the actions of the Governor culminating into the correspondence of 17th August 2020; the actions of the 2nd respondent without the board before the 24th August 2020; the appointment of the 3rd Respondent before the 17th August 2020; the 2nd respondent seeking opinion of the 1st Respondent in August 2020 and the Board of the 2nd Respondent purporting to confirm the 3rd Respondent irregularly are amenable to judicial review.

[29] On the 5th preliminary objection, counsel for the applicant submitted that the affidavit is competent because the documents were admitted by the Respondent. Counsel further submitted that the case of ***Julius Maganda*** (supra) never considered the scenario akin to the instant case.

[30] In rejoinder, counsel for the Respondents submitted that the objections raised matters of law based on the case of the applicant as presented. According to counsel, there were no unsettled facts or contested evidence which was relied on.

[31] In rejoinder on the issue whether the application was filed out of time, counsel submitted that the cause of action did not accrue in July or august 2020 but when the ground first arose which was in 2018. Counsel argued that the facts in the case of ***MTN Uganda Limited*** (supra), relied on by counsel for the applicant, are distinguishable from the instant case. According to counsel for the respondents, in that case the court had to establish which of the two letters had contained a decision in respect of which an application for judicial review would be made but in the instant case, the decision was made in February 2018.

**Determination of the court:**

[32] The first matter that I have to determine is whether the preliminary objections were properly raised. In the case of ***Mukisa Biscuits Manufacturing Co. Ltd*** (supra) Law JA stated at page 700 that;

*“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”*

(underlined for emphasis).

[33] In the instant case, the 1st preliminary objection is that the applicant does not have the locus standi to institute this application for judicial review. Counsel for the applicant submitted that the applicant has sufficient interest in the matters. The determination of the question whether the applicant has sufficient interest in the matter being complained about involves the exercise of judicial discretion. In the case of R ***versus Inland Revenue Commissioners, Exparte National Federation of Self Employed and Small Businesses Ltd*** (supra), Lord Scarman at page 653 held that;

*“The one legal principle, which is implicit in the case law and accurately reflected in the rule of court, is that in determining the sufficiency of an applicant’s intertest it is necessary to consider the matter to which the application relates. It is wrong in law, as I understand the case, for the court to attempt an assessment of sufficiency of an applicant’s interest without regard to the matter of his complaint.”*

Lord Scarman further held that:

*“The sufficiency of the interest is, as I understand all your Lordships agree, a mixed question of law and fact. The legal element in the mixture is less than the matters of fact and degree: but it is important, as setting the limits within which, and the principle by which the discretion is to be exercised.”*

(underlined for emphasis)

Lord Scarman further held that:

*“But, that being said, the discretion belongs to the court: and as my noble and learned friend, Lord Diplock, has already made clear, it is the function of the judge to determine the way in which it is to be exercised.”*

(underlined for emphasis)

[34] Since a preliminary objection cannot be properly raised if it involves the exercise of court’s discretion, I will therefore find that the 1st preliminary objection was improperly raised. It is accordingly overruled.

[35] However, as for the 2nd – 5th preliminary objections, in my view they were properly raised. They are point of law based on the evidence presented by the applicant.They do not involve the exercise of courts discretion. For convenience, I shall first determine the 3rd and 5th preliminary objections and then proceed to determine the 2nd and 4th objection.

[36] The 3rd preliminary objection was that the applicant did not exhaust the available remedies as required by the law. Rule 7A (1) (b) of ***the Judicature (Judicial Review) Rules, 2009 (as amended by SI 32 of 2019)*** provides that:

*“The court shall in determining an application for judicial review, satisfy itself of the following-*

*(a)…*

*(b) that the aggrieved person has exhausted the existing available remedies within the public body or under the law; and*

*(c)…”*

(Underlined for emphasis).

[37] Counsel for the respondents submitted that the applicant did not show that he filed any compliant to the 2nd respondent’s Board of Directors. Counsel did not however point out any laws, regulations or practice within Bank of Uganda which permitted the applicant to have made a similar complaint to Board for redress.

[38] I agree with the submissions of counsel for the applicant that the facts in the case of ***Classy Photo Mart Ltd*** (supra) are different from those in the instant case. In that case, there was a clear alternative remedy available to the applicant by appealing to the Tax Appeal Tribunal. No similar remedy was available to the applicant in the instant case. I will accordingly find no merit in the 3rd preliminary objection.

[39] On the 5th objection, I find the argument by counsel for the respondents that, since the applicant was neither the author nor one of the people to whom the documents attached to his affidavit was copied, therefore he is not possessed with personal knowledge of the contents, rather strange and devoid of any legal merit. Order 19 Rule 3(1) of the ***Civil Procedure Rules*** which was relied upon by counsel for the applicant does not in any way provide that a deponent cannot attach to their affidavits documents not authored by them or not copied to them. What the rule provides is that affidavits should be confined to such facts as the deponent is able of his or her knowledge to prove. The applicant stated that those facts were within his knowledge. How he got to know the facts is immaterial.

[40] The case of ***Julius Maganda*** (supra) relied upon by counsel for the respondents was clearly cited out of context. In that case, the affidavit contained averments not within the knowledge of the applicant. In the instant application, the applicant has clearly stated that the facts are within his knowledge. I will accordingly find that the 5th preliminary objection has no merit.

[40] On the 2nd preliminary objection, which was that this application was filed out of time, Rule 5 (1) of the ***Judicature (Judicial Review) Rules, 2009***  provides that:

*“An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made.”*

(underlined for emphasis)

[41] In the case of ***R (Burkett) versus Hammersmith LBC (Lord Steyn) [2002] 3 All ER*** the House of Lords considered, in some considerable detail, the issue of when time starts to run in judicial review applications. Suffice it to say that the rules applicable in the UK at the time was coughed in similar wording like those in our rules, that is, that application for judicial review should be made ‘promptly and in any event within three months from the date when grounds for the application first arose.’

[42] Perhaps it is important to first set out the facts in that case in order to put it into proper context. In February, 1998 a developer applied to a local authority for permission to develop a site comprised of 32 acres in London. On the 15th September, 1999 the local authority’s planning and traffic management committee considered the application and passed a resolution authorizing the authority’s director of environmental department to grant the permission to the developer on condition that; the local authority and the developer entered into a satisfactory agreement and there being no contrary direction by the Secretary of State. On the 6th April, 2000 Mrs. Burkett, who lived on the adjoining land where the development was to take place, filed an application for permission to apply for judicial review. The decision she was challenging was the resolution of 15th September, 1999. She sought an order of certiorari to quash the resolution. The application was thus made more than six months after the resolution of 15th September, 1999.

[43] Before the application of Mrs. Burkett could be determined, on the 24th February, 2000, the Secretary of state decided not to object the application. On the 12th May, 2000 the local authority and the developer concluded the agreement and on the same day the director of environmental department of the local authority granted the permission to the developer. Mrs. Burkett put an amendment to the application challenging the grant of the permission. Mrs. Burkett argued that the time limit of the three months only ran against her from the date of the actual grant of the planning permission. Alternatively, she argued that time only started to run from the time the Secretary of state decided to not object to the application.

[44] The High Court and the Court of Appeal held that the three months’ time limit for seeking for judicial review ran from the date of the resolution on the 15th September, 1999 and not from the date of granting the permission on the 12th May 2000.

[45] On appeal to the House of Lords, Lord Slynn of Hadley held that;

*“It is clear that if the challenge is to the resolution (as it may be) time runs from that date. …where there is a challenge to the grant itself, time runs from the date of the grant and not from the date of the resolution. It seems to me clear that because someone fails to challenge in time a resolution conditionally authorizing the grant of permission, that failure does not prevent a challenge to the grant itself brought in time, i.e. from the date when the planning permission is granted.”*

[46] Lord Steyn who wrote the lead judgement which the other Lords concurred, at page 109 held that;

*“…it can readily be accepted that for substantive judicial review purposes the decision challenged does not have to be absolutely final. In a context where there is a statutory procedure involving preliminary decisions leading to a final decision affecting legal rights, judicial review may lie against a preliminary decision not affecting legal rights. Town planning provides a classic case of this flexibility. Thus it is in principle possible to apply for judicial review in respect of a resolution to grant outline permission and for prohibition even in advance of it…It is clear therefore that if Mrs. Burkett had acted in time, she could have challenged the resolution.”*

[47] In respect to the challenge to the final planning decision and whether time runs from the date of the resolution or from the date of grant of planning permission, he held that;

*“The court has jurisdiction to entertain an application by a citizen for judicial review in respect of a resolution before or after its adoption. But it is a jump in legal logic to say that he must apply for relief in respect of the resolution on pain of losing his right to judicial review of the actual grant of planning permission which does not affect his rights. Such a view would also be in tension with established principle that judicial review is a remedy of last resort.”*

[48] He further held that;

*“If a decision maker indicates that, subject to hearing further representations, he is provisionally minded to make a decision adverse to a citizen, is it to be said that time runs against the citizen from the moment of the provisional expression of view? That would plainly not be sensible and would involve waste of time and money. Let me give a more concrete example. A licensing authority expresses a provisional view that a licence should be cancelled but indicates a willingness to hear further arguments. The citizen contends that the proposed decision would be unlawful. Surely, a court might as a matter of discretion take the view that it would be premature to apply for judicial review as soon as the provisional decision is announced. And it would certainly be contrary to principle to require the citizen to take such premature legal action. In my view the time limit under the rules of court would not run from the date of such preliminary decisions in respect of the challenge of the actual decision.”*

[49] From the reading of the above decision, it appears clear to me that where a party files an application to challenge a preliminary decision of public body or official, by judicial review, time limitation starts to run from the date when the preliminary decision was made. Where the challenge is directed to the final decision, time limitation starts to run from the date when the final decision is made and not from the date when the preliminary decision is made.

[50] In the instant case, the decision by the governor Bank of Uganda to appoint the 3rd respondent as the executive Director Supervision was made on the 7th February 2018. The decision, according to the Governor, was subject to ratification of the Board of Directors of Bank of Uganda. That decision in my view was a preliminary decision subject to ratification by the board. The board made the final decision by ratifying the decision of the 3rd Respondent on the 17th September 2020.

[51] I note that the applicant is not challenging the final decision of the board, but rather the preliminary decision. A reading of Paragraph 25 of the affidavit in support of the application clearly shows that the applicant was not aware that the final decision had been made by the time of filing this application. Having been made aware of the decision when the 3rd Respondent attached to his affidavit the letter of the Governor, the applicant should have opted to seek for the leave of the court to amend the application to challenge the final decision of the board but he did not. Therefore, the question of time starting to run from the date of the final decision cannot arise in the circumstances since the final decision is not an issue before this court.

[52] The case of ***MTN Uganda Limited*** (supra) is not of any help to the applicant since in that case, the applicant challenged the final decision of the respondent. In the instant case the decision being challenged is not the final decision but the preliminary decision.

[52] In the end, my finding is that this application, in so far as it seeks to challenge the decision of the Governor Bank of Uganda to appoint the 3rd respondent as the executive Director Supervision, was filed out of time.

[54] The other decisions which the applicant is challenged are the subject of the 4th preliminary objection, that they are not amenable to judicial review. The alleged decisions are that;

1. The **continued employment** of the 3rd Respondent as the Executive Director Supervision of the 2nd Respondent in spite of the **intervention** of the office of the Inspector General of Government and in spite of the Report of the Presidential Tripartite Committee.
2. The **decision** of the 2nd Respondent contained in its letter to the 1st Respondent dated 17th August, 2020 **to seek advice** on, inter alia, impugned staff recruitment of 7th February, 2018.
3. The **decision** of the 1st Respondent **contained in its letter** to the 2nd Respondent dated 24th August, 2020.

[55] In my view, the alleged decision to continue to employ the 3rd Respondent by the 2nd Respondent in spite of the **intervention** of the office of the Inspector General of Government and in spite of the Report of the Presidential Tripartite Committee is actually not a decision and therefore cannot be a subject of a challenge by way of judicial review. The Inspector General of Government did not direct the 2nd respondent to stop the employment of the 3rd respondent, but rather directed the Board of Directors of the 2nd Respondent not to ratify the impugned action or decision of the Governor until such a time when the Inspectorate concluded its investigations or directed otherwise. Similarly, the Presidential Tripartite Committee did not direct the 2nd respondent to stop the employment of the 3rd Respondent but rather recommended that the ratification of the employment had to be done by the board of directors of bank of Uganda. There was thus no continued employment contravening the intervention of Inspector General of Government or the Presidential Tripartite Committee.

[56] The alleged decision by the 2nd respondent to seek for advice and the alleged decision by the 1st respondent to give advice to the 2nd respondent are not decisions which can be quashed by the High Court in judicial review. An advice is not binding on the person seeking it nor is it a decision by the person giving it since it can be accepted or refused. In the case of ***Dott Services Ltd versus Attorney General and another, HCMC No. 125 of 2009***, Musoke-Kibuuka J held that;

*“Certiorari issues to quash decisions made by a statutory body or by a public officer or an inferior court or tribunal. It cannot issue against mere findings, recommendations, suggestions or observations.”*

[57] In another case of ***Comtel Integrators Africa Ltd versus Aditor General, HCMA 0017 of 2010,*** Zehurikize J while agreeing with the above decision of Musoke-Kibuuka J held that;

*“The orders of certiorari and prohibition are tools by which the High Court exercises its supervisory powers over inferior courts, tribunals and administrative and statutory authorities under judicial review.*

*In exercising this power the court does not consider the merits of the case but is concerned with the decision making process.*

*In other words there must be a decision made by the inferior courts, tribunal and administrative or statutory authorities before this court can examine the process leading to the impugned decision.*

*It is for this reason that I entirely agree with my brother judge Hon. Justice V.F Musoke – Kibuuka in* ***Dott services Ltd*** *(supra) when he held that certiorari issues to quash decisions made by a Statutory body or a Public officer or an inferior court or tribunal. it cannot be against mere findings, recommendations, suggestions or observations.”*

[58] Since the 2nd respondent only sought for advice and the 1st respondent only gave the advice, they are not decisions that can be challenged in judicial review proceedings, those actions are not amenable to judicial review.

[59] In the end, I find that there is merit in the 2nd and 4th preliminary objection. I will accordingly strike off this application with costs to the respondents.

I so order

Dated and delivered by email this 3rd day of December, 2021.

****

**Phillip Odoki**

**JUDGE.**