

UGANDA / JUDGMENT

**Dr. Shadat Ssemakula Mutyaba Mohmeded v
Gulu University (Miscellaneous Application 48
of 2024) [2024] UGHC 1072 (25 November 2024)
[2024] UGHC 1072**

COURT
High Court of Uganda

BEFORE
Okello, J

CASE / FILE NUMBER
Miscellaneous Application 48 of 2024

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5 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

**MISCELLANEOUS APPLICATION NO. 48 OF 2024 10 [ARISING FROM MISC. CAUSE NO/ 001 OF
2024]**

**DR. SHADAT SSEMAKULA MUTYABA MOHMEDED.....APPLICANT 15 VERSUS
GULU UNIVERSITY..... RESPONDENT**

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

The instant proceeding is quite unconventional and sui generis because the Applicant seeks to stay execution of the orders of this court pending appeal to the next court and at the same time seeks for order of prohibition and injunction to stop his expulsion by the respondent, and maintenance

30 of the status quo until the disputes in which the parties are engrossed are resolved.

The application traces itself to a concluded ruling and orders of this court in Misc. Cause No. 001 of 2024 given on 27th May, 2024. The Applicant

35 had challenged his interdiction as Senior Lecturer Faculty of Law and Dean Faculty of Law of the respondent. The interdiction was to pave way

- 5 for investigations into the Applicant's questionable academic profile as the respondent believed the Applicant's documents were forged. Points of law were raised by the respondent at the hearing which this court over-ruled. However, court did not proceed with the merits determination because it found that the Application was moot as the interdiction was followed with
- 10 dismissal of the Applicant and so proceeding to determine the issues regarding the interdiction would serve no useful purpose and would be simply academic. Court ordered each party to bear its own costs. Court also noted that the Applicant had since lodged Miscellaneous Cause No. 002 of 2024 in which he was challenging his dismissal and the same was
- 15 pending before court.

Aggrieved and dissatisfied with the ruling and orders, the Applicant has since lodged Civil Appeal No. 705 of 2024 in the Court of Appeal.

20 The present application and the orders being asked is because the respondent has issued a notice on October 22, 2024 informing its full-time academic staff of the Faculty of Law that the position of Dean Faculty of Law will fall vacant after November 30, 2024, and will be filled through elections in accordance with section 53 of the Universities and Other 25 Tertiary Institutions Act, 2001 (as amended) in 2003 and 2006 (now Cap 262), and the relevant Guidelines for Election and Appointment (2017). The Notice is signed by the Academic Registrar, Dr. Jerry Bagaya. It gives

5 details on eligibility, nomination, declaration of candidates, campaigns, voting, appeals, and appointment of elected candidate. It says the voting would take place on November 8, 2024 at the Law Faculty.

The present Motion was filed in court on 29 October, 2024. It is grounded 10 on sections 98 and 100 of the Civil Procedure Act Cap 282; section 37 of the Judicature Act Cap 16; Order 43 rule 4 (2) of the Civil Procedure Rules S. I71-1; and rules 2 (2) and 6 (2) (b) of the Judicature (Court of Appeal Rules) Directions, S. I 13-10. There is a supporting affidavit of the Applicant.

The Applicant gives background facts leading to the instant application much of which I have alluded to. He states that the scheduled election is a ploy to defeat the legal processes which both sides are engaged in. That if the election of Dean Faculty happens, it would extinguish his subsisting 20 status of Dean Faculty of Law of the respondent to his great prejudice. He asserts that if a stay of execution is not granted, the 'main application' (there is none) and the appeal will be rendered nugatory and the applicant will suffer substantial loss. The Applicant avers that the orders being sought will prevent abuse of court process and prevent the appeal from 25 being rendered nugatory. He claims he stands a great chance of success,

and the balance of convenience weighs in his favour.

- 5 The Application is resisted by the respondent. She raises points of law by a replying affidavit of Ms. Cakuru Christine, her Deputy Chief, Human Resource Management. Basing on the advice of lawyers, Ms. Cakuru deposes that the status quo of the matter is that the Applicant was dismissed on 01 February 2024 and is no longer in employment. She
- 10 asserts that the orders sought are not capable of enforcement. She claims the applicant will not suffer substantial loss if the application is denied and that any damages can be quantified and paid to the Applicant should the appellate court find for him and award damages. According to the respondent, the Applicant's engaging of the process of this court is
- 15 designed to frustrate the respondent from carrying out its public duty and the obligation of getting a suitable replacement of the Applicant. The deponent asserts that the present application has been filed late following the ruling of 27 May, 2024.
- 20 There is a rejoinder affidavit in which the Applicant denies Ms. Cakuru's allegations. He also questions her authority to depose to an affidavit on behalf of the respondent because she is not a member of the University Council to represent the University in Court.
- 25 Having considered the rival averments, and the parties' submissions, the main issues for court resolution are whether court should stay the execution of its order; and whether it should issue an injunction, and order

5 of prohibition to stop the election of the Dean Faculty of Law of the respondent University and the vacation of office of Dean Faculty by the Applicant.

Mr. Jimmy Muyanja, learned counsel, prepared written arguments for the 10 Applicant, while Mr. Paulsen Nuasasira, learned counsel, did for the respondent.

I must, however, with respect, confess some difficulty in appreciating the relevance and applicability of the provisions of rules 2(2) and 6 (2) (b) of

- 15 the Court of Appeal Rules in an application of this nature before me. This Court is not regulated by the mentioned provisions of the Court of Appeal Rules when considering an injunction or stay of execution of its order or decree pending appeal to the Court of Appeal. So anchoring the application in those provisions is wrong. The Applicant's similar reliance on section 20 100 of the Civil Procedure Act (CPA) which provides for amendment of
- defect or error in proceeding in a suit, is misconceived.

The Applicant also anchors his Motion in section 37 of the Judicature Act Cap 16. That provision is general providing for grant of remedies by the 25 High Court. In my opinion, section 37 of Cap 16 is not relevant when the

High Court is considering a stay of its orders/decree pending appeal. Having determined the judicial review matter by dismissing it, and having

- 5 been appealed, this court retains only circumscribed powers to hear the parties, as in this case, to consider whether to issue an injunction which has the effect of stay of its orders or stay execution of its orders pending appeal. Court cannot purport to hear request for injunction which lacks the flavor of stay of execution as is being sought here. It cannot also
- 10 purport to consider a prayer of prohibition as if it were sitting in the exercise of its supervisory powers over public body in judicial review. Court can only consider whether or not to stay its orders, a power which is available by dint of section 98 of the CPA. Rule 42 of the Court of Appeal rules bolsters this conclusion because it requires an Applicant to first seek
- 15 a stay of the orders/ decrees of the High Court from the Court before applying to the Court of Appeal. An Application to the Court of Appeal may be made on refusal by the High Court. The Court of Appeal in hearing an application for stay would not be sitting on appeal from the refusal by the High Court but would be entertaining it in the exercise of its powers under
- 20 rule 6 (2) (b) of its rules. See: **Lawrence Musiitwa Kyazze Vs. Eunice Busingye, [1990] UGSC 13**. In exceptional circumstances an Applicant may be allowed to file an Application for stay direct in the Court of Appeal without first applying to the High Court. This always depends on the facts and circumstances of each case. The court of appeal may thus hear a 25 matter lodged directly before it in the exercise of its wide discretion to safeguard the right of appeal. This may be for example where there is a need to expedite the hearing of the application for stay so that the

5 substantive matter can be resolved expeditiously. These views were expressed by the Supreme Court in **Akankwasa Damian Vs. Uganda, Constitutional Application No. 7 and 9 of 2011** which interpreted rule 5 (2) (b) of its then Rules (now rule 6 (2) (b) which is in **pari materia** with rule 6 (2) (b) of the Court of Appeal Rules.

In the circumstances I would reject the prayer of prohibition.

I will consider the prayer of injunction deeply in spite of my reservations. I will also consider the prayer of stay of execution.

In his address, Mr. Muyanja did not specifically canvass which orders of this court the Applicant seeks to stay. Learned counsel digressed and argued the aspects of the respondent's move to fill the position of Dean Faculty of Law. As I will demonstrate, learned counsel appears to be alive 20 to the fact that the orders of this court only dismissed Misc. Application No. 001 of 2024, and ordered each party to meet its own costs. So by its nature, it is a negative order incapable of being executed. That is why learned counsel and his client have not shown how the respondent is moving to execute the orders of court. As noted by Lord Denning MR in **Re**

25 **Overseas Aviation Engineering (GB) Ltd [1962] 3 All ER 12, at p.16**, execution is the process for enforcing or giving effect to the judgment of court, or stated differently, it signifies the enforcement of or the giving

5 effect to the Judgment or orders of a court of justice. See also *Words and Phrases Legally Defined, Vol. 2, 3rd Ed., London and Butterworths 1989 at pp195-6*.

In the instant case, the respondent does not hold any decree within the 10 meaning of section 2 of the CPA that would be executable under section 38 of the same Act. Similarly, the Applicant is not a Judgment debtor within the province of the CPA. To drive the point home, I can do no better than defer to the wisdom of the Kenyan Court of Appeal in **Exclusive Estates Ltd Vs. Kenya Posts and Telecommunications Corporation &**

- 15 **another, [2005] 1 E. A 53 (CAK)**. There, the court held that the order which dismissed the suit was a negative order not capable of execution and that the order sought, if not granted, the appeal would not be rendered nugatory because if the appeal succeeded the dismissal order would be set aside and the suit restored on the register. I am of the same opinion. In
- 20 this case, if the appellate court were to find that the order of this court holding that Misc. Cause No. 001 of 2024 was moot is wrong, court would direct for hearing of the Application on merit. I do not think the appeal court can sit to determine the question of the Applicant's dismissal when the matter that was placed before this court related to his interdiction. I 25 do not wish to preempt the appeal. All I can say is that whether the appeal will be found to be meritorious or not, there is, to my knowledge, no order

5 of this court given in Misc. Cause No. 001 of 2024 which is capable of being stayed. This alone would suffice to dispose of the Application.

I wish, however, to consider the arguments made for the Applicant on an interesting matter of law.

Learned counsel submitted that the Applicant's appointment as Dean Faculty of Law is still subsisting and will expire on 30 June 2026, and so this court should prohibit his expulsion from office and stop his replacement. Counsel relies on annex 7 to the Applicant's affidavit. It is an

- 15 appointment letter. By that letter, it shows that the Applicant was appointed Dean Faculty of Law from 1st July 2022 and expires on 30th June 2026. The letter stipulates that other terms and conditions of service would remain as per the 'earlier letter of appointment'. Court understands this to refer to the earlier appointment of the Applicant as Senior Lecturer,
- 20 as per A6, dated August 18, 2016. The appointment as Senior Lecturer was made retrospectively effective September 1, 2015. A6 thus makes reference to the terms and conditions. It, too, refers to an 'earlier letter of temporary appointment'. The referenced letter of temporary appointment is, however, not adduced in evidence.

Mr. Muyanja then argues that the respondent has not evidenced any legal step taken to cause cessation of the applicant's tenure as Dean Faculty of

5 Law. Learned counsel, however, does not state which legal steps he envisioned. I am also certain counsel is aware of the Applicant's dismissal of 1st February, 2024.

Learned counsel cites section 57 (3) and (5) of the Universities and Other Tertiary Institutions Act, Cap 262 to argue that, since the Applicant was removed from employment by the respondent's Appointments Board (through dismissal), he is deemed to have only been suspended until the expiry of the period allowed for appeal (to the University Staff Tribunal) at which date the removal shall become effective. He argues that where the 15 appeal has been lodged in time to the Tribunal, the suspension remains in force until the court determines the Appeal (by way of judicial review). Learned counsel contended that, to the extent that the Tribunal has not made a determination regarding the Applicant's appeal before it, the respondent is bound under section 57 (5) of Cap 262 to treat the Applicant 20 as a subsisting employee save for the suspension status. In learned counsel's view, the Applicant is still the holder of office of both Senior Lecturer and Dean Faculty of Law until final determination of his appeal by the Staff Tribunal. Counsel asserted that the Applicant cannot be faulted for not completing the Tribunal appeal process as he does not 25 command the machinery for causing the Tribunal sitting. He added that

Court of Appeal so the High Court should act in line with judicial comity

the Applicant has in any case appealed the decision of this court to the

- 5 and with restraint not to render that appeal nugatory. Learned Counsel claims that the respondent's hands are unclean as it has failed to cause the sitting of the Staff Tribunal to hear the appeal against his dismissal. Learned counsel concluded that the Applicant is legally deemed to have only been suspended until final determination by either the Staff Tribunal
- 10 or the High Court.

For the respondent, it was argued generally that the application has been overtaken by the events; the applicant has not exhausted internal remedies; he has since been dismissed and thus no longer in employment.

It seems to me the foregoing arguments for the Applicant form the basis for counsel's invocation of section 37 of the Judicature Act Cap 16 although not expressly stated so in his submission. That appears to be the reason why he prays for injunction not of the kind and effect of a stay of 20 execution. It seems that is why he also prays for an order of prohibition.

I have read the provisions of the Universities and Other Tertiary Institutions Act, Cap 262. First, section 57 (3) does not make the stipulation claimed by Mr. Muyanja. However, to give the matter its proper 25 context, I summarize the substance of the entire section 57.

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5 Section 57 (1) provides for the right of a member of the University staff to appeal to the University Staff Tribunal against a decision of the Appointments Board within 14 days after he/she is notified of the decision.

S.57 (2) obligates the Tribunal to, within 45 days, confirm, vary, amend,

10 or set aside the decision appealed against or give such decision as it thinks appropriate. It seems to me that the 45 days run from the date the staff is notified about the decision of the University's Appointments Board.

Section 57 (3) accords the staff a right, if aggrieved with the Tribunal 15 decision, to apply to the High Court for judicial review within 30 days from the date he/she is notified of the decision of the Tribunal.

Section 57 (4) gives the High Court powers to make such orders (in judicial review) as it may consider just.

Lastly, section 57 (5) provides that where a member of staff has been removed from office or employment by the Appointments Board, the member shall be deemed to be suspended until the expiry of the period allowed for appeal (to the Tribunal), at which date (if it expires) the removal 25 shall become effective, or, where an appeal has been lodged in time, the suspension shall remain in force until the University Staff Tribunal or the

Court determines the Appeal.

In my view, the use of the term 'appeal' in section 57 (5) of Cap 262 refers to an appeal to the Tribunal, and where a staff is dissatisfied with it, an appeal to the High Court by filing for judicial review. The term 'appeal' does not cover a situation where an appeal has been preferred further to

10 the Court of Appeal against the decision of the High Court in judicial review.

In the instant case, the impugned decision of the respondent's Appointments Board which was sought to be challenged through judicial 15 review in Misc. Cause No. 001 of 2024, was the interdiction of the Applicant from his job. The Applicant chose to file Misc. Cause No.001/2024 to challenge his interdiction. He did not appeal to the University Staff Tribunal. Therefore, he cannot purport to invoke the provision of section 57 (3) of Cap 262 which is irrelevant to his submission, 20 or subsection (5) of s.57 which avails only to a person who has appealed to the Tribunal. Accordingly, the notion that the Applicant is deemed to be suspended, is fallacious. Therefore, all the arguments by Mr. Muyanja about the alleged engagement of the Tribunal process by his client, in as far as the present application is concerned, are misconceived. I note that 25 learned counsel did so having fallen in the trap of copying and pasting aspects of submission in another case (Misc. Application No. 050/2024) to the instant matter. The confusion could have been avoided had the

- 5 applicant properly understood and contextualized the matters before this court. That said, even if court were to accept for arguments sake that the Applicant is still Senior Lecturer and Dean Faculty of Law of the respondent simply because he was interdicted, court is aware that the status quo obtaining is that the interdiction was followed with dismissal.
 - 10 The submissions on the aspects of dismissal will be considered in the mentioned application. In conclusion, the arguments and prayers that the respondent should be stopped from expelling the Applicant from his job as if the job still exists, is misconceived and lacks force and logic. That is not all. The prayers are not tenable within the remit of court's exercise of
 - 15 inherent powers to stay its orders. The prayers have nothing to do with the negative orders of this court. The truth of the matter is that the respondent appears to simply be moving to fill the vacant position of Dean Faculty of Law under section 53 of Cap 262 since the then holder who must be fulltime Senior Lecturer of the Law Faculty was dismissed. It appears there is 20 no holder and the Applicant has not shown that following that decision he still holds the office of Dean Faculty apart from his reliance on section 57
- (5) of Cap 262 to claim that he is deemed to have been suspended. I do not think it would be proper for court to stop the respondent from performing its statutory duty under section 53 of Cap 262 in the guise of stopping 25 enforcement of its orders.

5 For the reasons I have given in this ruling, Misc. Application No.048 of 2024 is not well thought out, and I accordingly dismiss it with costs to be paid by the Applicant to the respondent.

It is so ordered.

Delivered, dated and signed this 25th November, 2024

George Okello 15 JUDGE

Ruling read in court

20 25th November, 2024 11:37am

Attendance

Ms. Among Veronica, official of the Respondent in court.

25 Advocate for the Applicant absent. Applicant is absent.

Advocate for the Respondent absent.

Mr. Ochan Stephen, Court Clerk

George Okello JUDGE

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