

Mpungu v Uhuru & 3 Others
(Miscellaneous Application 199 of
2024) [2024] UGHCCD 79 (17 May 2024)
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The applicant filed the main cause seeking among others:

- *To quash the decision of the 1st respondent removing the applicant from the position of Deputy Mayor Kampala Central Urban Division embedded in his letter dated 25th January, 2024.*
- *To quash the decision of the 1st respondent appointing the 2nd respondent as the Deputy Mayor Kampala Central Division Urban Council embedded in his letter dated 25th January 2024.*

The application for temporary injunction was supported by an affidavit sworn by the applicant-Mpungu Hanipher.

- 1. The applicant was elected as a woman councilor representing Old Kampala Parish in 2021 general elections and was subsequently appointed as the Deputy Mayor representing Kampala Central Division Urban Council by the 1st respondent with approval of the Division Urban Council.
- 2. That the 1st respondent did not observe the rules of natural justice before arriving at the decision by which he removed the applicant from the position of Deputy Mayor Kampala Central Division Urban Council and appointing the 2nd respondent as the Deputy Mayor Kampala Central Division Urban Council in his letter dated 25th January, 2024.
- 3. That the 1st respondent acted with manifest bias and extreme recklessness in the process of arriving at the decision dated 25th January, 2024 by which he removed the applicant from the position of the Deputy Mayor Kampala Central Division Urban Council and appointed the 2nd respondent as the Deputy Mayor Kampala Central Division Urban Council.
- 4. The 1st respondent had no legal authority and or mandate to remove the applicant from the position of the Deputy Mayor Kampala Central Division Urban Council and appointing the 2nd respondent as the Deputy Mayor Kampala Central Division Urban Council in his letter dated 25th January, 2024.
- 5. That the 1st respondent never offered the applicant any right to be heard before arriving at the impugned orders and acted ultra vires as far as reaching the said decision dated 25th January, 2024.
- 6. That the Minister for Kampala Capital City Authority and Metropolitan Affairs wrote a letter dated 8 February 2024 seeking legal guidance. In the reply dated 23rd February, the Attorney General responded with an opinion that a prima facie case is made out against the applicant on ground of misconduct and misbehavior for which the Minister should constitute a tribunal to investigate and come up with a report.
- 7. That on 12th March, 2024 the 2nd respondent was immediately sworn in as the Deputy Mayor Kampala central Urban Council after holding a Special Council Meeting

- 8. That the 3rd and 4th respondents are in high gear trying to constitute a tribunal to investigate the applicant based on the impugned orders of the 1st respondent dated 25th January, 2024.
- 9. That the Minister for Kampala Capital City and Metropolitan Affairs wrote to the Chief Magistrate Buganda Road by letter dated 26th February, 2024 appointing 2 persons to constitute part of the tribunal.

The respondents filed different affidavits in reply contending as follows;

1. The applicant assumed office of the Deputy Lord Mayor upon appointment but she subsequently failed to execute her duties with

diligence, resulting into the Council of Kampala Central Division losing faith in her.

- 2. Whereas the applicant had been relieved of her duties the letter dated 25th/01/2024 as the Deputy Mayor Kampala Central Division and appointing Hon. Tumusiime Maureen Kabanura with approval of council for the same position for which she was sworn in on the same day.
- 3. The 1st respondent was subsequently guided by the Executive Director Kampala Capital City Authority on 5/2/2024 that the removal and replacement of the Deputy Mayor had been done irregularly without following the right procedure as set out by the law.
- 4. That following the guidance of the Executive KCCA, on 6/2/2024 the 1st respondent rescinded his earlier communication of 25/01/2024 and thus reversed the appointment of Hon. Tumusiime Maureen Kabanura as Deputy Mayor Kampala Central Division and the communication was duly communicated to the applicant among others.
- 5. That all the issues relating to the applicant's removal from office before and after 25/01/2024 and all allegations of unfairness made by the Applicant in this matter forming the basis of this application collapsed with the termination and rescission of the decision removing the applicant from office.
- 6. That on 6/2/2024, an entirely new, separate and fresh process of determining whether or not the applicant should be removed from office was initiated by the Council Committee of Kampala Central Division in the petition seeking to investigate the conduct of the applicant, which was forwarded to the Minister of Kampala and Metropolitan Affairs on 6/2/2024, in line with the advice of the Executive Director KCCA.
- 7. That the Minister of Kampala and Metropolitan Affairs forwarded a copy of the council petition to the Attorney General for evaluation and further management, in an entirely new process distinct and detached from the earlier aborted displacement of the applicant from office.

- 8. That on 26/02/2024, the Minister of Kampala and Metropolitan Affairs commenced the process of constituting a tribunal to investigate the conduct of the applicant by appointing Hon. Fredrick Ruhindi as Chairperson, Hon. Sarah Kanyike as member and also requested the Chief Magistrate to appoint one grade one Magistrate as a Member of the Tribunal.
- 9. That ever since the irregular process of relieving the applicant of her duties was rescinded on 6/2/2024, the applicant has been and is still in office as the Deputy Mayor of Kampala Central Division with full rights and privileges and she draws a salary from the treasury.
- 10. That the applicant seeks to shield herself from the statutory processes i.e constituting a tribunal to investigate her, without any lawful justification

The applicant was represented by *Oluka James, Ben Ikilai & Illukor Emannuel* while the 1st and 2nd respondent was represented by *Ambrose Tebyasa* and 3rd respondent was represented by *Jackline Atugonza* and the 4th respondent was represented by *Tuhangane Wilbrod(SA)*

The parties filed their respective submissions which I have considered in this ruling.

Whether the court should issue a temporary injunction in this matter?

The applicant's counsel submitted that the applicant is challenging the decision of the 1st respondent to remove her from the position of the Deputy Mayor Kampala Central Division and specifically the legality of the process and legality of the decision contending that she was not afforded and accorded a hearing.

The decision of the Minister of Kampala and Metropolitan Affairs to constitute a tribunal is an attempt to try and legitimize or ratify an illegality and that these acts are ultra vires since the allegations against the applicant are unfounded.

The applicant denies ever receiving the rescindment of her dismissal and that the alleged notice of council was never communicated to her and that the conduct of the 1st and 2nd respondent disprove the purported claims of rescindment and never assuming office as Deputy Mayor. She contends further that the 2nd respondent was indeed sworn in office on 12th March 2024 and not 25th January 2024

The respondent's vehemently contended that the decision to remove the applicant from office of Deputy Mayor was rescinded and therefore there is no basis for the application for temporary injunction since the applicant is still in office as the Deputy Mayor. There is no prima facie case with probability of success upon which this application is founded.

According to counsel for the respondent there is no decision to quash by this court since it was rescinded and her insistence of existence of a decision which does not exist makes her case frivolous and vexatious. The Council has lawfully taken the proper procedures for the removal of the applicant which has culminated into the establishment of the tribunal which is supposed to investigate the conduct of the applicant in the fresh investigations.

Analysis

The law on granting an Order of temporary injunction is set out in *section 64(c) of the Civil Procedure Act* which provides as follows;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed-

(a).....

(b).....

(c) grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property is attached and sold.

Order 41 rule 2 of Civil Procedure Rules provides that in any suit for restraining the defendant from committing a breach of any contract or other injury of any kind.....apply to court for a temporary injunction to restrain the defendant from committing the breach of contract or any injury complained of.....

The jurisdictional and procedural principles governing interim injunctions or temporary injunctions must be sufficiently balanced and flexible to address the objectives of these remedies. The court's discretionary powers should not be curtailed with hurried exercise of power with a view of changing the status quo to defeat the grant of appropriate remedies.

If the court believes that there is a serious issue to be tried, it will prospectively consider the parties' respective positions according to whether an injunction is granted or refused. In doing so, the court will gauge the hardship which would be caused to the applicant if he is refused relief and balance it against the hardship which would be caused to the respondent if the injunction is granted. If neither party would be adequately compensated, the court would ascertain where the balance of justice lies.

The jurisdiction to grant a temporary injunction is an exercise of discretion and the discretionary powers are to be exercised judiciously as was noted in the case of *Yahaya Kariisa vs Attorney General & Another, S. C. C. A. No.7 of 1994 [1997] HCB 29.*

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as her legal right

is invaded. *See Titus Tayebwa v Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009*.

In applications for a temporary injunction, the Applicant is required to show that there must be a prima facie case with a probability of success of the pending suit. The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. *(See American Cyanamid Co v Ethicon Ltd [1975] ALL ER 504).*

A **prima facie** case with a probability of success is no more than that the Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried as was noted in **Victor Construction Works Ltd v Uganda National Roads Authority HCMA NO. 601 of 2010.**

The applicant is challenging the decisions of the Minister for Kampala Capital City and Metropolitan Affairs constituting a tribunal on grounds that it is intended to validate the decision already taken of dismissing the applicant as the deputy Mayor Kampala and replacing her with the 2nd respondent. The applicant came to this court to vindicate her rights and stop an alleged illegal exercise of power by a Minister for Kampala Capital City and Metropolitan Affairs. This court has a duty to investigate and interrogate the allegations made by the applicant and this court cannot be outrun by hurried decisions in ensuring that justice is done to a party before it.

There are serious issues to be interrogated in the main application (Cause) and this court is satisfied that the case for the applicant is not frivolous or vexatious under the circumstances.

The whole purpose of granting an injunction is to preserve the status quo as was noted in the case of **Humphrey Nzeyi vs Bank of Uganda and Attorney General Constitutional Application No.01 of 2013.** Honourable Justice Remmy Kasule noted that an order to maintain the status quo is intended to prevent any of the parties involved in a dispute from taking any action until the matter is resolved by court. It seeks to prevent harm or preserve the existing conditions so that a party's position is not prejudiced in the meantime until a resolution by court of the issues in dispute is reached. It is the last, actual, peaceable, uncontested status which preceded the pending controversy. The court should not preserve a contested status quo which is under challenge for illegality and especially under judicial review.

The court under the doctrine of separation of powers is enjoined to ensure that system of checks and balances is not casually defeated by not allowing aggrieved parties like the applicant to question decisions made by public office holders like the 1st applicant as the Mayor of Kampala Central Division and also the Minister for Kampala Capital City and Metropolitan Affairs Any misuse or abuse of power should never be a ground to deem an action overtaken by events otherwise illegalities would be perpetuated through ensuring that the status quo is changed in a hurried manner without any justification or basis.

This court has wide discretion at this stage to consider any factor which would have a bearing on the issue whether the injunction ought to be granted. It is for the court to determine the weight to be accorded to a particular factor weighed in balance and where they appear to be balanced the court ought to consider and strive to preserve the status quo.

Other factors that may be taken into account in determining the balance of convenience include the importance in upholding the law of the land or rule of law and the duty placed on the authority to enforce the law in public interest. The actions of the respondent must be rooted in the law and any divergence and abuse of power must be restrained as the court investigates the circumstances surrounding the alleged decision made by the 1st applicant and later a decision made to constitute a tribunal by the Minister for Kampala Capital City and Metropolitan Affairs.

This court in the exercise of its discretion ought to avoid any absurdity in application of the law since the damage the applicant will suffer if court rules in her favour will be greater and irreparable. It is a well settled preposition of the law that an interim injunction order can be granted only if the applicant will suffer irreparable injury or loss keeping in view the strength of the parties' case.

The courts when exercising power of judicial review have a duty of ensuring that the public body or officer has acted in accordance with the law or within the 'four corners' of the legislation or constitution and thus enforcing the rule of law. The court would be greatly inclined to granting interim remedies as it establishes the propriety of the decision in order not to render the application nugatory.

The court's power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of temporary injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the applicant. The court grants such relief **ex debito justitiae**, i.e to meet the ends of justice. The court must keep in mind the principles of justice and fair play and should exercise its discretion only if the ends of justice require it. See **Section 64 of the Civil Procedure Act**.

In the result for the reasons stated herein above this application succeeds: **A temporary injunction issues restraining and stopping the respondents from implementing the decision of the 1st respondent in the letter dated 25th January, 2024 removing the applicant from the position of Deputy Mayor Kampala Central Division.**

A further Injunction also issues to restrain the Constituted Tribunal from commencing its duties of investigating the applicant until the disposal of the main application for judicial review before this court or until further orders of this court.

The costs shall be in the cause.

I so Order

Ssekaana Musa Judge 17th May 2024

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Prepared on 14 October 2026 · Esheria