

UGANDA / JUDGMENT

Muyizzi v Attorney General (Miscellaneous Application No. 816 of 2021) [2021] UGHCCD 271 (10 December 2021)

[2021] UGHCCD 271

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Miscellaneous Application No. 816 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO.816 OF 2021

(ARISING OUT OF MISC. APPLICATION NO. 815 OF 2021)

(ARISING FROM MISCELLANEOUS CAUSE NO.313 OF 2021)

SAMUEL MUYIZZI----- APPLICANT

VERSUS

ATTORNEY GENERAL ----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Section 98 of the Civil Procedure Act and Order 52 r 1 & 2 of the Civil Procedure Rules, for orders that;

- 1. An Interim order doth issue, against the Respondent restraining Uganda Police Force and, its officers from conduction any further criminal investigations under reference *CID HQTRS GEF/442/2020* with regard to instructions of the applicant an Advocate of the High Court of Uganda and an Officer of Court in High Court of Uganda Masaka Circuit *Misc. Application No. 41 of 2020 Nets Hope Ltd & Anor v Amoti Boniface Kamanyire and Absa

Bank (u) Limited* and all matters incidental thereto until the final disposal of the applicant's Application for a temporary Injunction vide Misc. Application No. 815 of 2021 or until further Order of this court.

- 2. Costs of the application be provided for.

The grounds in support of this application are set out in the Notice of Motion and the affidavit of Samuel Muyizzi dated 17 th November 2021 which briefly states;

- 1. That the applicant instituted an application for enforcement of his Constitutional rights which are threatened with regard to his professional career and practice as an Advocate of High Court and an Officer of Court.
- 2. That the applicant's rights are likely to be infringed by Uganda police which has coercive means and in flagrant violation of the rights being sought for enforcement by the applicant.
- 3. The status quo will be changed if the application is not granted thereby subjecting the applicant to irreparable damage to his professional image which cannot be atoned for by award of damages
- 4. That the applicant received instructions from Ssemwanga Mario who represented two companies; Nets Hope Limited and Wilksen Agencies Limited for which he held powers of Attorney had received an arbitral award on the 4th day of May 2019 against a one Amoti Boniface Kamanyire and that the award was registered in the High Court of Uganda at Masaka for execution purposes.
- 5. That the applicant was further told that they had established that Amoti Boniface Kamanyire had some amount of money in Absa Bank and they had applied to attach the said sums to fulfil the sums awarded in the arbitral award and had for that purpose obtained a decree nisi and served the bank and that because of lockdown regulations they required services of an Advocate.
- 6. That upon perusal of the court documents, the applicant established that the said Nets Hope Limited and Wilksen Agencies Limited has all along acted without legal representation and he negotiated a legal fee of 5,000,000/= with Ssemwanga Mario a holder of power of attorney of the two

companies. The applicant filed the application for a certificate of urgency and consequently obtained the decree absolute which the law firm forwarded to Absa Bank by letter requiring it to comply with the Court order.

- 7. That upon executing the instructions, tighter covid period restrictions on movement were instituted and the applicant did not meet our client Mr. Ssemwanga Mario.
- 8. That on 11th November 2021, the chambers of Alaka & Co. Advocates received a letter from Uganda Police addressed to the applicant in which they informed the applicant that Criminal Investigations Department was carrying out investigations into alleged fraudulent

transactions and suspicious deposits in the Bank account of Boniface Kamanyire Amoti held at Absa Bank by some bank officials main branch and some lawyers of Byabakama, Kaboneka & Co. Advocates and Alaka & Co. Advocates and others and that the applicant was required to appear in CID Kibuli Headquarters on 12th November 2021 to provide relevant information in relation to the matter under investigation, for interview and statement recording.

In opposition to this Application the Respondent through Det. Cpl Ojago Francis-A detective corporal attached to Directorate of Criminal Investigations in the department of Urban Crime at Kibuli filed an affidavit in reply wherein he opposed the grant of the interim order being sought briefly stating that;

1. The Directorate is in the middle of investigations a high stakes crime investigation which pertains to syndicated corporate crime staking from a syndicate of law firms, some scrupulous judicial officers especially the High Court circuit in Masaka and insider dealers in banks to deprive accounts of funds.
- 2. That the investigation is a guided one, working in consonance with the Directorate of Public Prosecutions among other agencies. It is a standard practice to require information from persons of interest, by correspondence, telephone conversations and where necessary physical interactions.
- 3. That on 11th June, 2020 we required assistance of Orient Bank, on 18th June we required assistance of ABSA Bank, and on 12th June 2020 further assistance was sought from Equity Bank and all of them have duly cooperated in this investigation process.
- 4. That having obtained direction, on 05th October, 2020, we implored the Uganda Law Society President to assist in having members, Samuel Muyizzi, Buyondo Henry and Kato Fred who ply their practice with Ms Alaka & Co. Advocates and Byamukama, Kaboneke & Company Advocates come and interact with us pertaining to this investigation.
- 5. That we have implored the applicant to interface with us, to allay any queries we have through his colleague, Mr, Caleb Alaka whom we have physically met and also correspondence, as Senior Advocate to guide the ends of justice.
- 6. That cooperating with law enforcement is not unique to the applicant; even judicial officers who take oath to render justice without fear or favour do assist investigations of this nature to absolve themselves of any wrongdoing. The Investigations have a wide span and there has been several correspondences between Honourable Courts of Law who are cooperating and aiding investigations which is the hallmark of law abiding citizenry.
- 7. That in the middle of these investigations, it is routine to develop Persons of Interest (POIs) that we believe can guide the direction of the

investigation if they are interviewed, and either provide leads, and may not necessarily lead them to being prosecuted.

- 8. That we have further reminded, on 02nd March 2021, the Uganda Law Society President to assist in having members, Samuel Muyizzi, Buyondo Henry and Kato Fred who ply their practice with Ms Alaka & Co. Advocates and Byamukama, Kaboneke & Company Advocates come and interact with us pertaining to this investigation.
- 9. That all procedures being followed to have the applicant assist the investigations are being guided by the Office of the Director of Public Prosecutions and granting the order being sought will only serve to curtail the course of justice, as this is only an investigation, which is a constitutional mandate of the Uganda Police.
- 10. That the prayers and sought by the applicant have the effect of curtailing the course of justice, fairness, abuse of court process, but also there are complainants who deserve justice as the applicant seems to immunize himself from a legal and judicious process.

In the interest of time the respective counsel were directed to file written submissions and i have considered the respective submissions.

The applicant was represented by *Mr. Kabega Musa* whereas the respondent was represented by *Geoffrey Madette* Senior State Attorney.

Whether a temporary Injunction should issue against the respondent?

The applicant's counsel submitted that the applicant seeks an Interim pending the hearing and determination of the main application for temporary injunction. The applicant satisfies the grounds for the grant of interim orders which are that there is a serious threat to the act complained of and a pending application for temporary injunction.

The applicant contends that he has already been summoned by Uganda Police for an interview and statement recording. The investigation is therefore predetermined and would lead to the need disclose privileged information of clients before the determination of the main application and, or determination of his rights in the main cause.

The applicant's counsel further submitted that the applicant has a right to practice his profession as an advocate and this right is guaranteed under the Constitution. The main cause raises triable issues and is not frivolous or vexatious and that there is a serious issue to be tried i.e Whether an Advocate has immunity while executing instructions of a client.

The respondent's counsel submitted that the settled position of the law on the grant of interim injunction orders was stated in different cases and the main considerations for the grant of temporary injunctions are the same as for the interim injunction. The general principles are; is there a serious issue to be tried? Or Are damages an adequate remedy? Where does the balance of convenience

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.*

The respective parties counsel have cited several authorities for the grant of interim injunction/ temporary injunction and indeed this court agrees with the said authorities but it should be noted that temporary injunctions against public authorities or entities are treated with caution and circumspection.

The main question for this court establish is whether in such circumstances the interim injunction can still be justified. See *Regent Oil Co Ltd v JT Leavesley (Lichfield) Ltd* [1966] 1 WLR 1210.

The granting of a temporary injunction or Interim Injunction is an exercise of judicial discretion as was discussed in the case of *Equator International Distributors Ltd v Beiersdorf East Africa Ltd & Others Misc. Application No.1127 Of 2014.*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.*

Normally injunctions must not be granted against the public authorities or respondent's executing public utilities or implementation of government projects.

Public interest is one of the paramount and relevant considerations in either granting or refusing to grant a temporary injunction.

The Courts should be slow in granting injunction against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals. Public interest is one of the paramount and relevant considerations for granting or refusing to grant or discharge of an interim injunction. See *Uganda National Bureau of Standards vs Ren Publishers Ltd & Multiplex Limited HCMA No. 635 of 2019*

The courts should be reluctant to restrain the public body from doing what the law allows it to do. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold.

The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation. See *R v Secretary of State for Transport ex.p Factortame Ltd* [*1990] 2 AC 85.*

In the present case, the applicant wants to stop the Office of Directorate of Public Prosecutions and Uganda Police from doing what the Constitution enjoins them to do under Article 120(3) & 212 of the Constitution. The DPP and Uganda Police exercise the powers conferred by the Constitution in public interest, interest of the administration of Justice and the need to prevent abuse of legal process.

The sum effect of the injunction sought by the applicant is to stop the ODPP from; directing the police to investigate any information of a criminal nature or Instituting criminal proceedings against him. This is one of the core functions of the DPP granted by the Constitution and this injunction sought affects the greater public interest that is protected by the Office of Directorate of Public Prosecutions and Uganda Police. The court must in exercise of its powers and discretion to grant a temporary injunction be reasonable, judicious and act on sound legal principles.

The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good. *Alcohol Industry Association of Uganda & others v AG & URA High Court Miscellaneous Application No. 744 of 2019*

The applicant like all others persons have a duty under the constitution to be law abiding and the Director of Public Prosecutions & Uganda Police have every right and duty to investigate any person suspected of committing a crime apart from the President who is immune from civil and criminal proceedings during his term of office under Article 98 of the Constitution.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of his rights without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed or criminality by a person who approaches the court.

The court's power can be exercised judicially and in public interest, no injunction causing administrative inconvenience or resulting in public mischief should be granted.

In the result for the reasons stated herein above this application fails and is hereby dismissed with costs.

It is so ordered.

SSEKAANA MUSA JUDGE 10th December 2021

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Prepared on 13 October 2026 · Esheria