

UGANDA / JUDGMENT

Mwerinde v Bunamwaya Central Masjid Limited & 6 Others (Miscellaneous Application 570 of 2024) [2024] UGHCCD 137 (30 August 2024) [2024] UGHCCD 137

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Miscellaneous Application 570 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION) MISCELLANEOUS APPLICATION NO. 0570 OF 2024 (ARISING FROM COMPANY CAUSE NO. 0007 OF 2023)

IN THE MATTER OF BUNAMWAYA CENTRAL MASGID

MWERINDE ABDULKARIM :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

- 1. BUNAMWAYA CENTRAL MASGID LTD
- 2. BULEGA SULAIMAN
- 3. SULAIMAN SENKUNGU
- 4. MUSISI MUSA :::::::::::::::::::::::::::::::::::RESPONDENTS
- 5. ABDUKARIM SEBANAKITA
- 6. KAFAKI MUSA
- 7. NAKITTO RAZIA

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a Mandatory Injunction against the respondents brought under Section 33 of the Judicature Act, Sections 64(e) and 98 of the Civil Procedure Act and Order 41 rule 1 and 9 of the Civil Procedure Rules seeking the following Orders;

- *(a) A temporary Injunction doth issue halting any form of process, disciplinary action, or decisions against the applicant in regard to his position as the Imam of Bunamwaya Central Masjid until the final determination of the main cause or any further orders of this Honourable court.*
- (b) Costs of this application be provided for.

The grounds upon which the application is based are set out notice of motion and is supported by an affidavit of the applicant which briefly states that;

- 1. The applicant together with other 22 Muslims mobilized and registered a community organization called Bunamwaya Central Masjid Ltd a company limited by Guarantee, to run Islamic Affairs in Bunamwaya Central area.
- 2. The applicant is the Imam of Bunamwaya Central Masjid in which capacity he has acted for over 12 years.
- 3. That in October 2023, the respondent's Executive Committee without according the applicant a fair hearing irregularly sat and resolved to suspend him as the Mosque Imam for 60 days citing Insubordination to the Executive Committee.
- 4. That the applicant complied with the said suspension albeit irregular and only returned in December 2023 to continue his duties as the Imam since no meeting was convened to discuss the matter.
- 5. That on 11th March 2024 after leading dhuhur prayers, the applicant attempted to talk to the mosque congregants present but was intercepted by one of the Executive committee citing lack of clearance from the Executive Committee
- 6. That the 2nd respondent in total disregard of the Articles of Association of the 1st defendant have attempted to constitute themselves into the Executive board and purportedly dismissed the applicant as the Imam of the Mosque.
- 7. That on 16th March 2024, the respondent's Executive Committee without according the applicant a fair hearing and acted ultra vires and illegally when it allegedly dismissed the applicant as mosque Imam.
- 8. That because of the actions of the 2nd -7 th respondent, the smooth operations of the company have been hindered by their actions which are oppressive to the applicant.

- 9. That the applicant filed a company cause which is pending before this court which suit shall be rendered nugatory if the temporary injunction is not issued.
- 10. That the applicant will suffer irreparable damages if the 2nd -7 th respondents are not restrained from acting with impunity and the balance of convenience is in favour of the applicant.

The respondent filed an affidavit in reply opposing the application through Dr. Ayoub Twahir Sekitto the Chairman of the 1st respondent company contending as follows;

- 1. That the posit of Imam of Bunamwaya Central Masgid is not institutionalized under the Memorandum & Articles of the 1st respondent company, thus making it a normal employable post that can be occupied by any other person apart from the applicant.
- 2. That upon incorporation of the 1st respondent, it institutionalized the executive committee with such powers as to oversee the management and staffing of the company.
- 3. That since the applicant or petitioner was chosen as the Imam of the 1st respondent, the termination of his role as Imam/employment rests with the 1st respondent, which has powers under its Memorandum and Articles to appoint and disappoint.
- 4. That the applicant remains a member of the 1st respondent company but he was just relieved of his duties as the Imam of the Masjid.
- 5. That the applicant went against the guidance and resolution of the Executive Committee of the 1st respondent which refused him from collecting money for the Palestinian cause due its sensitivity nature, as it involved both political & security issues. Further, the exercise was stopped because it had been done without due clearance from the governing body.
- 6. That the applicant has on several occasions got involved in acts of dishonesty contrary to the financial guidelines put up by the Executive Committee. Further when the applicant insisted on collecting money for Palestinian cause, he appointed a new treasurer different from the known treasurer of the 1st respondent. The applicant has on several gotten money from the members of the mosque and donot remit the same to central pool of the 1st respondent, as well as exposing and or harassing masjid congregants by soliciting money to feed the students at his own Qur'an Memorization school. All that combined, became a conduct unbecoming of a masjid Imam.
- 7. That after terminating his services, the applicant in a letter dated 30th March 2024, showed that he was not bound by the Executive Committee as the governing body of the 1st respondent. He demonstrates a sense of entitlement of ownership of the 1strespondent, which put its operations and survival at stake, the letter is full of falsehoods.
- 8. That the 1st respondent has always kept proper books of accounts for all the monies it receives from the congregants. The same is always laid down to the members during the general assembly, the last time having been on 15th April 2024.

- 9. That the applicant is no longer a resident of the 1st respondent community as he lives in Kasanje-Nakawuka where he has a memorization school and another mosque he leads. Accordingly, a genuinely moslem person seeking to serve the muslim community,

would not be fighting for the post of imam for a community where he does not reside.

The applicant was represented by *James Kiiza & Mutesasira Shafiq* while the respondents were represented by *Hamza Muwonge*

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 applicants' counsel submitted that prior to the filing of the petition, the applicant was and continues to be the Imam of the 1st respondent which position he has held for the last 12 years. This is the status quo which is being sought to be preserved under this application for temporary injunction.

The applicant further contended that there is a prima facie case since the respondents without according him a fair hearing, irregularly sat and resolved to suspend him. The 2nd - 7th respondents in total disregard of the Articles of Association of the Association have attempted to constitute themselves in the executive board and purportedly dismissed him as the Imam of the mosque.

The applicant is challenging the actions of the 1st - 7th respondents for prejudicial conduct, mismanagement and illegitimate actions which involve serious issues to be tried. The applicant contends further he would suffer irreparable damage as the 2nd - 7th respondents shall continue operating the affairs of the 1st respondent with impunity, in an oppressive manner against him in total disregard that he is a subscriber, his commitment, time and financial effort he has dedicated to the mosque.

The balance of convenience lies in favour of the applicant who stands to suffer more and it outweighs the harm the 2nd - 7th respondents would suffer. It should be in favour of the applicant to retain the position of Imam and preserve the smooth running of the affairs of the mosque.

The respondent's counsel argued that the applicant has not shown how he will suffer if the application is not granted. He contended that the applicant was not the Imam of the 1st respondent by the time he filed this application and has not demonstrated that he derives his sustenance from exercising the role of Imam. He will not suffer any damage as alleged because his role was more charitable than business.

The respondent counsel further contended that if the applicant is reinstated as the Imam, against the will and interest of the community that uses the mosque, such enforcement might worsen the relations of the congregants of the respondent's mosque.

Analysis

The jurisdictional and procedural principles governing temporary or mandatory injunctions must be sufficiently balanced and flexible to address the objectives of this remedy. An interlocutory injunction is directed to ensure that a particular act or acts do not take place or continue to take place pending the final determination by the court of the rights of parties. An interlocutory/temporary injunction is to regulate the position of the parties pending the trial and determination of the issue between them, whilst avoiding a decision on such issues which could be resolved at the trial.

The purpose of temporary/interlocutory injunction is to protect a party against injury by violation of his or her right for which he could not be adequately compensated in damages recoverable in the action if the case were resolved in his favour at the trial. The right to protect the plaintiff/petitioner/applicant to be protected has to be weighed against the corresponding need of the defendant/respondent to also be protected against injury resulting from having been prevented from exercising his own legal right if the uncertainty were resolved in his/her favour at the trial.

The goal of temporary injunction is to maintain the status quo pending the outcome of the litigation. The status quo which will be preserved by a temporary injunction is the last actual, pre-dispute, peaceable, noncontested status which preceded the pending or forthcoming controversy to be resolved in the suit. This means that the injunction shall preserve or restore such relationship to a desirable state. See **Lwanga Stephen Gobero v Commissioner Land Registration & HCMA 0185 of 2024**

In addition, a temporary injunction is intended to keep parties in an action in status quo, in which they were before judgment or act complained of. 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 jurisdiction to grant a temporary injunction is an exercise of discretion and the discretionary powers are to be exercised judicially and judiciously and has to be kept flexible and discretionary 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 a mandatory injunction is intended not to allow a party retain a position of advantage that has been obtained through a planned and blatant unlawful act or extreme fraudulent means intended to alter the status quo or the prevailing state of affairs. Therefore, a litigant cannot wrongfully and illegally bring about the state of affairs and later seek to preserve that state of affairs as the status quo.

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 was relieved of his duties as the Imam of the 1st respondent which in his view is contrary to the Memorandum and Articles of Association. The court must be allowed an opportunity to interrogate the allegations through substantive evidence tested under a full trial through cross examination. In the determination of any interlocutory application pending the trial of the substantive case, care should be taken not to make pronouncements which may prejudice the trial of the claims filed and still pending before the court. To do otherwise is to prejudice the matter in respect of which evidence is yet to be led.

There exist triable issues which are genuine and **bonafide** under the oppressive conduct of the respondents against a minority in the manner of managing the affairs of 1st respondent. The decision to have the applicant terminated as the Imam goes to the root of the major function of the 1st respondent establishment and is not merely an employee/employer relationship of a private company. This is a community project which would be prejudiced if rational decisions are not made in fairness and will erode the purpose for the establishment of the 1st respondent.

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 sought under the inherent powers of court, 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 temporary 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 final result and for the reasons stated herein above this application succeeds. *A temporary Injunction doth issue halting any form of process, disciplinary action, or decisions against the applicant in regard to his position as the Imam of Bunamwaya Central Masjid until the final determination of the main cause or any further orders of this Honourable court.* (The applicant should continue executing his duties as the Imam until the determination of this cause)

The costs shall be in the cause.

I so Order

Ssekaana Musa Judge 30th August 2024

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Prepared on 14 October 2026 · Esheria