

The applicant challenged the issuance of the travel ban thereby filing a suit vide HCCS NO. 377 of 2018 which is pending before this Honourable Court in which the applicant/plaintiff seeks for among others a declaratory order that the issuance of the travel ban preventing him from moving out of Uganda is unlawful, unjustified and an infringement of his rights and freedoms under **Article 29 (2) and 40 (2)** of the Constitution of the Republic of Uganda.

In consideration of whether or not to grant a temporary injunctive order, court will follow three major principles as discussed in *Kiyimba Kaggwa vs Haji Abdu Nasser Katende [1985] HCB 43* which was also cited by counsel for the applicant in their submissions.

In that case Odoki J (as he then was) held that;

The granting of a temporary injunction is an exercise of Judicial Discretion and the purpose of the granting-It is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed of.

- 1. The conditions for the grant of an injunction are first that; the applicant must show a Prima facie case-with a probability of success*
- 2. Secondly, such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.*
- 3. Thirdly if the court is in doubt, it will decline an application on the balance of convenience.*

According to *Daniel Mukwaya v Administrator General HCCS 630/1993* (unreported) court stated that to determine whether there is a prima facie case, courts have to inquire as to whether there is a serious issue to be tried at trial.

In the instant application, the applicant filed a main suit as earlier on discussed which raises serious questions of law and fact that need to be determined at trial by this court. The applicant in his affidavit states that the travel ban issued was unlawful and unjustified and disputes the amount alleged to be due to the 1st respondent whereas the 1st respondent

states in the affidavit in reply paragraphs xv – xvii that the travel ban is lawful and justified and not an infringement of his rights.

These facts stated need to be determined at trial by this court therefore fulfilling the condition of existence of a prima facie case.

The respondents in their submissions stated that this application was *res judicata* within the meaning of section 7 of the Civil Procedure Act Cap 71 and as such should be dismissed with costs.

They contended further that the application and main suit have been overtaken by events in light of the Judgment of the Supreme Court which binds this Honourable Court. In the Supreme Court judgment, the Court found the applicant liable to refund the said sum of **UGX 4,314,906,176** thereby making that amount an outstanding debt due to the Government of Uganda within the meaning of Section 29(1) of the Tax Procedure Code Act 2014.

However the respondents need to appreciate that the main suit pending before this Honourable Court is for enforcement of rights in which the applicant/plaintiff seeks for among others a declaratory order that the issuance of the travel ban preventing him from moving out of Uganda is unlawful, unjustified and an infringement of his rights and freedoms under Article 29 (2) and 40 (2) of the Constitution of the Republic of Uganda.

Furthermore, this court when granting a temporary injunction should not devolve much in to issues raised in the main suit at this stage. I concur with the applicant's submissions that the parties should caution themselves not to discuss the merits the main suit but rather focus on the merits of the application before court at this stage.

The applicant states in his affidavit paragraph 23 that unless the orders sought are granted he stands to continue suffering business loss and the right to practice his profession or trade and this loss is irreparable as a result of the travel ban.

The applicant has a constitutional right under Article 40 (2) of the 1995 Constitution of the Republic of Uganda to practice his profession and continued infringement of that right will cause irreparable damage to the applicant. This Article provides that;

Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.

Loss suffered as a result of infringement of a constitutional right cannot be properly atoned for through compensatory damages.

On the balance of convenience, the 1st respondent in the affidavit in reply paragraph xvi contends that it rightly imposed the travel ban on the applicant to compel him to pay the Excise duty due before any such travels outside the country which the applicant has neglected to do so.

Section 105 of the Income Tax Act Cap 340 provides for the issuance of a travel ban. It states that;

Where the commissioner has reasonable grounds to believe that a person may leave Uganda permanently without paying all tax due under this Act, the Commissioner may issue a certificate containing particulars of the tax due to the Commissioner of Immigration and request the Commissioner of Immigration to prevent that person from travelling.

In this instance the 1st respondent in their affidavit did not make mention of any reasonable grounds that the applicant intends to permanently leave the country. The applicant on the other hand in his affidavit paragraph 21 states that he has never intended to leave and stay permanently out of Uganda. He therefore has not given the 1st respondent reasonable grounds to issue a travel ban under section 105 of the Income Tax Act Cap 340.

The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicants suffer then probably the balance of convenience is favourable to him/her and the court would most likely be inclined to grant him/her the application for a temporary injunction. In this

case, the balance of convenience is in favor of the applicant whose trade has been restrained and is likely to suffer loss due to the travel ban.

Hon. Justice Rubby Aweri Opio in Tim Kabaza & 2 Ors v Chatha Investments Ltd (Miscellaneous Application No.745 of 2007) stated that in considering the above principles, the court should bear in mind the following guidelines:-

(a) *That temporary injunctions are discretionary orders and therefore all the facts of the case must be considered and balanced judicially.*

(b) *That the same being an exercise of judicial discretion, there are no fixed rules and the vetting may be kept flexible.*

(c) *The court should not attempt to resolve issues related to the main suit: See: Prof. Peter Anyang 'Nyong'O & others vs The Attorney General of Kenya & others; East African Court of Justice Case Ref. No 1 of 2006 (unreported).*

In the premises, I am satisfied that a temporary injunction should issue and the costs shall be in the cause.

I so Order

Ssekaana Musa

Judge