

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**MISC. APPLICATION NO. 540 OF 2018**

*(Arising from Misc. Application No. 539 of 2018; & arising out of the Law Council Disciplinary Committee No. LCD 70 of 2015 and Civil Appeal No. 0080 of 2018)*

**GEOFFREY NANGUMYA ..... APPLICANT/APPELLANT/ADVOCATE**

**VERSUS**

1. **EMMY TUMWINE** }  
2. **LAW COUNCIL** } ..... **RESPONDENTS**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**RULING**

The Application is brought under Section 98 Civil Procedure Act, Section 33 Judicature Act and Order 52 Rules 1 and 2 of the Civil Procedure Rules seeking an Interim Order in the matter.

The gist of the Application are that;

- (a) An Interim Order doth issue restraining the Respondents from executing of Orders in Complaint No. LCD 70 of 2015 against the Applicant be stayed pending the determination of his Appeal to the High Court.
- (b) Costs of this Application be provided for.

The Application is supported by the Affidavit of the Applicant, Geoffrey Nangumya. The grounds in the Application briefly are that:

1. The Applicant has filed a Notice of Appeal to the High Court and the Law Council Disciplinary Committee and also applied for proceedings to enable him draw the Memorandum.
2. The said proceedings are still in process and not yet availed.
3. The Applicant has a good case on appeal because he contends that:
  - (a) The Disciplinary Committee erred in law and fact when it ordered that the Appellant/Advocate hands over Ug. Shs. 59,900,000/= to the Complainant/1<sup>st</sup> Respondent.
  - (b) The Disciplinary Committee erred in law and fact having found that the Appellant/ Advocate had a lien over the sum of Ug. Shs. 59,900,000/= held by him as but ordered that the Appellant/Advocate to surrender the money without recourse to his lien.
  - (c) The Disciplinary Committee erred in law and fact when they failed to evaluate evidence on record thereby coming to a wrong.
  - (d) The Disciplinary Committee erred in law when they relied on the Complainant's inadmissible and contradictory evidence to find the Appellant guilty of unprofessional conduct.
  - (e) The Disciplinary Committee erred in law and fact when they came to a conclusion that the Appellant was guilty of conduct unbecoming of an Advocate without addressing itself as whether the Appellant committed the acts complained of by the Complainant.
  - (f) The Disciplinary Committee erred in law and fact when it ordered the Appellant/Advocate to handover the money Ug. Shs. 59,900,000/= to the Complainant now willing to receive without executing the Consent Judgment.

- (g) The Disciplinary Committee erred in law and fact when they found that the Appellant/Advocate did not inform the Complainant that he had received the money from the Defendant/Judgment Debtors.
- (h) The Disciplinary Committee erred in Law and fact when it reached a decision when one member of the Committee had not heard the entire evidence.
- (i) The Disciplinary Committee erred in law when they awarded excessive damages and costs to the Complainant.

The applicant contends that the decision, if not stayed, has immediate serious repercussions on his livelihood and that of his family as he shall not be able to work/fend for his family and pay the compensation and costs adjudged as well.

It is fair and equitable that an Interim Order be granted pending the hearing and final determination of the main application for stay now pending before this Court. If this application is not granted, Miscellaneous Cause No. 539 of 2018 shall be rendered nugatory.

In opposition to this Application the Respondents through Emmy Tumwine for the 1<sup>st</sup> respondent and Mark Muwonge for the 2<sup>nd</sup> respondent filed affidavits in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The applicant has not raised pertinent appealable issues that would call for the appellant court to determine whether the 2<sup>nd</sup> respondent did not misdirect itself but merely alleges and the appeal will not succeed.
2. That the purported lien is misconceived as the applicant has never filed a taxed bill of costs for recovery of his purported legal fees rather his intention is extort money from the respondent and his conduct has been found unprofessional and amount to professional misconduct.

3. All the legal fees rendered to me by the applicant was duly received by him as rightly found by the law council.
4. That the applicant was my lawyer in civil suit No. 182 of 2014 and entered into a consent without the 1<sup>st</sup> respondent's knowledge and received payments to the tune of 63,000,000/= in 2014.
5. The appeal has no chances of success but a misuse of courts time by the applicant to frustrate the 1<sup>st</sup> respondent from realizing his money.
6. The court must ensure that a successful litigant should not be deprived of the fruits of his judgment without just cause.
7. The applicant has not adduced any evidence to show that I cannot restore him to his status in the event of his appeal being successful.
8. The applicant has not described the purported loss he is likely to suffer if he pays the sums he was ordered to pay other than ordinary loss which every judgment debtor is bound to suffer in fulfilment of the judgment against him.

The 2<sup>nd</sup> respondent in their affidavit in reply also opposed the application on grounds that;

1. The application is barred in law, an abuse of court process and is merely meant to subvert the course of justice.
2. The intended appeal raises no triable issues.
3. The applicant is unjustifiably holding onto the 1<sup>st</sup> respondent's money being proceeds from a consent judgment and continues to refuse to remit the same to the 1<sup>st</sup> respondent.

4. The applicant was given ample opportunity to defend himself before the law council disciplinary committee but chose to regularly absent himself from court without justification.

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 Geofrey Kandebe Ntambirweki* whereas the 1<sup>st</sup> respondent was represented by *Mr. Geofrey Sserwanga* and the 2<sup>nd</sup> respondent was represented by *Mr Allan Mukama*.

***Whether the application is competently before the court?***

The 1<sup>st</sup> respondent's counsel submitted that, there is no substantive application upon which the present interim application can be premised. He argued that there is no evidence no evidence that a substantive application has ever been filed.

It is therefore clear that there is substantive application for a stay of execution upon which the present application could be premised. It Miscellaneous Application No.539 of 2018 and this is clearly indicated on the application the 1<sup>st</sup> respondent was served.

It is true that the order sought is crafted in such a way that it is pending the determination of the appeal. But this is not to say that there is no main application and indeed the court will be alive to that.

The application is therefore competently before the court.

***Whether an interim order should issue against the respondents?***

The applicant's counsel submitted that the applicant seeks an order of an interim order to be issued against the respondents staying of execution until the main application is heard and determined on its merit.

The Applicant is an Advocate of this Honourable Court. The Complainant filed a Complaint with the Law Council against him and Law Council, 2<sup>nd</sup> Respondent's Disciplinary Committee passed a Ruling on 27<sup>th</sup> day of July, 2018, against him, it is

upon this premise that the Applicant filed an Appeal in this Honourable Court which is pending determination because up to now the 2<sup>nd</sup> Respondent has not availed typed proceedings.

The Applicant deponed in his Affidavit in Support that he immediately applied for the records of proceedings and thereafter instructed his advocates to handle the matter and through the said advocates he lodged a Notice of Appeal and again applied for a Record.

He further states in his Affidavit in support that he has a lien over the sum of Ug. Shs. 59,900,000/= which is the subject of the said Complaint held by the Applicant as an Advocate but the Disciplinary Committee erred in law and fact when it ordered that the Applicant surrenders the said money without recourse to the Applicant's lien, as provided by law.

**Lawrence Musitwa vs. Eunice Busingye; SCCA No. 18 of 1990 [1992] IV KALR 55** where Court laid down the conditions for granting stay of execution pending appeal as; whether there is an arguable appeal and whether the appeal would be rendered nugatory if such application is not granted.

The applicant's counsel submitted that from the foregoing if an Interim Order is not granted, the Applicants' rights will be denied since the 1<sup>st</sup> Respondent in the above Application who is the Complainant in LCD No. 70 Of 2015 is in the process of executing the Orders given against the Applicant which will lead to grave consequences on the Applicant's livelihood and career as set out in the Motion and also it would render the Application for Interim Order nugatory. If the decision was also to be executed right now, the Applicant would also lose his lien which is protected by law. The decision and Orders in the said Ruling are unfair to the Applicant in the circumstances and he ought to be given an opportunity to challenge the same on Appeal before they can be finally executed.

The Interim Order applied for, is intended to preserve the status quo pending the determination of the main application or as Court may otherwise direct.

From the foregoing, the Applicant applied for an Interim Order to restrain the Respondents from executing the Orders in Complaint No. LCD 70 of 2015 against the Applicant. It is therefore, our submission that the status quo be maintained until the determination and final disposal of the main application and Appeal.

My Lord, there is a pending application for stay and as well as the Appeal and sufficient cause has been shown to warrant the grant of the Interim Order as the Applicant's livelihood and career is at risk before the determination of the main Application and/or Appeal and this can only be remedied by the grant of an Interim Order.

The 1<sup>st</sup> respondent's counsel has submitted that the applicant shall not suffer any irreparable damage and substantial loss if execution is not stayed. The applicant has not substantiated his allegation of how his livelihood will be affected by not staying the orders of law council.

The handing over or depositing of 59,900,000/= received in 2014 by the applicant on behalf of the 1<sup>st</sup> respondent does not in any way amount to irreparable damage or substantial loss and does not render his purported appeal nugatory or otherwise affect his career or livelihood since the subject money is the respondent's money as agreed fact in principle.

It is clear that what is important in an application for an interim order for stay of execution is for the applicant to satisfy the Court that there is pending main application and appeal and if the stay of application is not granted it will be the intended appeal nugatory.

In the case of **Alcon International Ltd vs The New Vision Ltd & Anor Supreme Court Civil Application no.04 of 2010**; Okello JSC stated; “ *...for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the pending substantive application.*”

In addition, It was held in the case of **Hwan Sung Industries Ltd Vs Tajdin Hussein & 2 Others C.A No. 19/2008** that “*for an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a*

*serious threat of execution before the hearing of the pending substantive application”.*

There is pending application before this court and pending appeal that are yet to be heard. Without pre-empting the possible merits of both the application and appeal, I would not comment on the merits.

In the final result for the reasons stated herein above this application allowed and an Interim order of Stay of Execution is granted until the determination of the main application or within 60 days from today whichever is earlier and Order 51 rule 4 of the Civil Procedure Rules shall be applicable in the computation of time.

The costs shall be in the cause.

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**1<sup>st</sup>/11/2018**