

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**MISCELLANEOUS APPLICATION NO.470 OF 2021**  
**(ARISING FROM MISCELLANEOUS CAUSE NO.186 OF 2021)**

**CISSY KAWUMA MUDHASI----- APPLICANT**

**VERSUS**

**THE ATTORNEY GENERAL----- RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant brought this application by way of Chambers summons against the respondent under Section 64 (c) and 98 of the Civil Procedure Act, Section 33 and 38 of the Judicature Act cap 13 and Order 41 r 2, & 9 of the Civil Procedure Rules, for orders that;

- a) A temporary injunction doth issue to restraining the ongoing criminal investigations into the judicial work and duties of the Applicant by Uganda Police Force and State House Anti-Corruption Unit vide reference number CID HQS GEF 09/2020 and E/308/20 respectively pending hearing and final determination of the main suit.
  
- b) Costs of this application be provided for.

This application is based on grounds set out in the affidavit of Cissy Kawuma Mudhasi the applicant as well as that of Robert Mudhasi which briefly states;

1. That the applicant has filed a suit-main cause for enforcement of rights seeking to challenge the impugned criminal investigations into her judicial

work which are being conducted by Uganda Police Force and the State House Anti-Corruption Unit.

2. The applicant seeks declarations and Orders that;

- (i) The act or conduct of Uganda Police Force and the State House Anti-Corruption unit of subjecting the applicant to arrest, interrogation and continuous reporting and release on bond in respect of her judicial work, is a purge to the sanctity of judicial office and it contravenes and is inconsistent with Articles 2, 20, 28, 44, 128 and 147 of the Constitution.
- (ii) The act and conduct of Uganda Police Force and State House Anti-Corruption Unit of opening and maintaining criminal investigations under reference GEF/09/2020 and E/308/20 respectively, with regard to judicial acts of the applicant, usurps the powers of the Judicial Service Commission to investigate complaints against and discipline judicial officers contrary to and in contravention of Articles 2, 20, 28, 44, 128 and 147 of the Constitution.
- (iii) The act and conduct of Uganda Police Force and State House Anti-Corruption Unit of opening and maintaining criminal investigations under reference GEF/09/2020 and E/308/20 respectively for alleged abuse of office, deprives the applicant of her Constitutional immunity from suit for acts or omissions done in exercise of judicial power and is inconsistent with Articles 2, 20, 28, 44, 128(4) and 147 of the Constitution.
- (iv) The establishment, continued existence and operation of the State house Anti-Corruption Unit outside the established legal framework under an Act of Parliament while drawing funds from the consolidated fund, is inconsistent with Articles 2, 20, 28, 44, 79, 128, 153, and 154 of the Constitution of Uganda.

3. That in the meantime the Uganda Police Force and the State house Anti-Corruption Unit are continuing with the said impugned criminal investigations against the applicant whose validity is yet to be determined by this Honourable Court. The applicant is required to report every week to both Uganda Police Force and the State House Anti-Corruption Unit to attend to any required interrogations and police bond is extended when it is due.
4. At the same time judicial Service Commission which is constitutionally mandated to discipline judicial officers is conducting parallel disciplinary proceedings against the applicant in respect of the same judicial work complained of. Since 24<sup>th</sup> June 2020, the applicant has been under interdiction for offences of alleged abuse of judicial authority and producing poor standard of work and formal charges were forwarded to Judicial Service Commission for investigation and management.
5. That as a result of the above, the applicant is suffering double jeopardy of parallel investigations which has taken away her constitutional right to judicial immunity from suit and have visited immeasurable harm to her person.
6. That the balance of convenience is in favour of the applicant and the respondent shall not be prejudiced in anyway if the abovementioned impugned criminal investigations are stayed pending the determination of the main suit since the Judicial Service Commission is already carrying out disciplinary proceedings in the same matter.

In opposition to this Application the Respondent through No. 33086 D/Sgt Mugerwa Charles of CID Headquarters-as an Investigator among a team of Police Officers assigned by the Director CID of Uganda Police Force, to handle complaints channelled to CID by the State House Anti-Corruption Unit and filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The applicant was never required to report both to Uganda Police CID Headquarters and the State House Anti-Corruption Unit, but only at the CID office based at Parliamentary building and that the applicant absconded to report on police bond for a long period now and has never taken steps to explain her whereabouts or the reasons for her abscondment.
2. The applicant has never been arrested, she merely reported to answer police summons wherein she was lawfully interrogated by the Uganda Police Force personnel and thereafter was immediately granted Police bond.
3. That the actions of opening and maintaining criminal investigations under GEF 09/2020 and E/308/20 usurped the powers of the Judicial Service Commission as these actions by the Uganda Police Force and the State House Anti-Corruption Unit aim at prosecuting the applicant for the criminal acts she committed unlike the mandate which the Judicial Service Commission is conducting.
4. That the establishment, continued existence and operation of the State House Anti-Corruption Unit is duly created under Article 99(4) of the Constitution to receive corruption related complaints on behalf of His Excellency the President and channel them to the duly mandated agencies to handle them.
5. The actions of Uganda Police Force jointly with State House Anti-Corruption Unit and the Judicial Service Commission on the hand are dissimilar and as such the principles of double jeopardy are not applicable. The applicant is culpable to judicial accountability as a judicial officer for anything ultra vires the judicial conduct and where her conduct is an outright criminal act there is no judicial immunity.

In the interest of time the respective counsel were allowed to make brief oral submissions and i have considered the respective submissions. The applicant was

represented by *Mr Muwema Fred and Mr Nsubuga Kevin Charles* whereas the respondent was represented *Mr Atwine Jeffrey (Principal State Attorney)*.

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-

*(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 main purpose of a temporary injunction is to preserve the status quo and avoid further damage, danger or loss or violation of rights as was elucidated 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.

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. For a temporary injunction to be granted, court is guided by the following as was noted in the case of ***Shiv Construction vs Endesha Enterprises Ltd Civil Appeal No.34 of 1992***

1. The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;
2. The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the *status quo* not maintained; and
3. The balance of convenience is in the favour of the Application.

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 she 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.***

The applicant contends that her rights are about to be violated by the current investigations conducted by Uganda Police Force and State House Anti-Corruption Unit which investigations are in respect of her work as a judicial officer which according to the applicant cannot be subject to investigation and this will violate his constitutional rights. This is the eminent danger that the applicant will suffer unless she is granted a temporary injunction to preserve her rights.

Before deciding to grant or to deny a temporary injunction, it's important to consider if there is a prima facie case , according to *Lord Diplock* in ***American Cyanamid Co. v Ethicon Ltd [1975] AC 396 [407—408]***, the applicant must first satisfy court that her claim discloses a serious issue to be tried. The applicant has

satisfied this court that there is a *prima facie* arising out of a violation of her constitutional rights and specifically her right not to be prosecuted or held liable for any action or suit for any act or omission in exercise of judicial power under Article 128(4) of the Constitution.

The burden is on the applicant to satisfy the court by leading evidence or otherwise that she has a *prima facie* case in her favour. But a *prima facie case* should not be confused with a case proved to the hilt. It is no part of the Court's function at this stage to try and resolve the conflict neither of evidence nor to decide complicated questions of fact and law which call for detailed arguments and mature considerations.

It is after a *prima facie case* is made out that the court will proceed to consider other factors.

This application raises serious issues to be tried in the main cause and or a *prima facie case* on legality of actions of Uganda Police Force and State house Anti-Corruption Unit in investigating the applicant's judicial work .

The court should always be willing to extend its hand to protect a citizen who is being wronged or whose rights are being violated or threatened to be violated or is being deprived of property 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 by a person who approaches the court.

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 plaintiff or 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 plaintiff/applicant. The court grants such relief *ex debito justitiae*, i.e to meet the ends of justice. See **Section 64 of the Civil Procedure Act**.

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 decision made by the public body. ***Joweria Mukalazi vs Bank of Uganda High Court Misc. Application No. 399 of 2021.***

The actions of the respondent agents are a threat to the applicant's constitutional rights, this court as a custodian of the Constitution ought to issue orders that would ensure that the Constitution is not violated since the alleged violation will not be atoned for in damages or be adequately compensated with any amount of money or earthly possessions. See ***Hon Jim Muhwezi vs AG & IGG Constitutional Court Miscellaneous Application No. 18 of 2007.***

In the result for the reasons stated herein above this application succeeds and is allowed with costs in the cause. The order granted is in the following terms;

*A temporary injunction issues to restraining the ongoing investigations into the judicial work and duties of the Applicant by the Uganda Police Force and State House Anti-Corruption Unit vide reference number CID HQS GEF 09/2020 and E/308/20 respectively pending hearing and final determination of the main cause or until further orders of this court.*

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**28<sup>th</sup>/07/2021**