



On the 11<sup>th</sup> June, 2020, the applicant alleges to have received a letter from the 1<sup>st</sup> Respondent interdicting him from executing his duties as the education officer and requesting that he files a defence within 14 days. He appealed to the 1<sup>st</sup> respondent and informed him that since he had already been sanctioned, there was no need to file a defence as the sanction came in before he could be heard. He requested that the 1<sup>st</sup> respondent addresses himself on the procedure before interdiction and requested that he is availed a copy of the forged signature but to no accord.

He alleged that on the 10<sup>th</sup> August, 2020, the 1<sup>st</sup> respondent wrote to the Criminal Investigations Department (CID) headquarters requesting her to investigate the allegation that he had forged the head of department's signature and irregularly requisitioned for funds.

The applicant alleges that the 1<sup>st</sup> respondent being well aware that the main suit is still pending before this court for hearing and that the police is still investigation the matter he placed before it, has gone ahead to irregularly order the applicant to file a defence. The 1<sup>st</sup> respondent has gone ahead to summon the applicant to appear before the Ministry's Rewards and Sanctions Committee for a quasi-judicial trial by the same authority for a matter still under investigations by police which is prejudicial and double jeopardy thus the applicant commencing this suit.

The 1<sup>st</sup> respondent filed his affidavit in reply wherein he argued that the application does not disclose a cause of action, no triable issue and the same is an abuse of court process. He stated that he was wrongly added as a party as proceedings against government are commenced in the names of the 3<sup>rd</sup>

respondent. he further stated that an application for an interim order cannot arise from contempt of court proceedings and therefore the applicant was not entitled to the reliefs sought.

The applicant represented himself whereas the 1<sup>st</sup> respondent was represented by Mugisha Achleo.

The parties proposed the following issue for determination by this court;

**Whether the Applicant is entitled to an interim order in this Application?**

The parties were ordered to file written submissions; the parties accordingly filed the same. Both parties' submissions were considered by this court.

**Submissions**

The applicant while relying on the case of Ashogbon –vs- Oduntan (1935) 12 N.L.R. 7 submitted that a person whose right is being infringed has a right to enforce the infringed right through any actions before a court because courts are keepers of the conscience of the community in regard to absolute enforcement of the law. He further relied on the case of Busulwa Ssali where court held that it is not only a court of law but it is also a court of justice to curtail the suffering of citizens under the law. He therefore submitted that his rights and freedoms were infringed on thus resorting to court to seek relief.

The applicant submitted that the 1<sup>st</sup> respondent in his affidavit in reply claimed that the applicant has in contempt failed to file his defence without any justification. The respondents may therefore invoke Regulation 34 (1) - (4) of the Education Service Regulation; SI. No. 51 of 2012, for dismissal on grounds of

insubordination and other allegations. He stated that thus this application to prevent such undue occurrence where the respondents may deem fit to dismiss him from service.

The applicant submitted that this court considers restraining the respondents from adjudicating over a matter that is before it for determination. He relied on the case of Onyaro –vs- Kitgum Municipal Council Misc. Cause No. 007 of 2018 where court held that public authorities need to be particularly careful to ensure that all aspects of their actions and decisions are not only lawful but can be clearly shown to be fair and reasonable in the circumstances. Decisions will be unlawful if they are made without legal power. The applicant therefore sought for an order restraining the respondents from adjudicating over the matter against him pending court's final determination of Misc. Cause No. 182 of 2020 because their decisions and actions are not only in contempt of court orders but are also unlawful, unfair and unreasonable.

The applicant further submitted that the letter written by Mr. Brighton Barugahare, the director Government analytical laboratories on behalf of the Rewards and Sanctions Committed carrying out the investigation, was a scenario of excess jurisdiction since the mandate of the Rewards and Sanctions committee does not include carrying out investigations into any matter but to receive recommendations from the responsible officer.

The applicant while relying on the case of Uganda Law Society –vs- Attorney General Const. Petition No. 1 of 2006 submitted that while he has been indicted to a tribunal; the Rewards and Sanctions Committee, he is at the same time under

investigation over forgery by police for prosecution still filed by the same complainant being the 1<sup>st</sup> respondent whereby the conclusion of these may lead to being prosecuted before a judicial court hence double jeopardy.

He further submitted that he does not expect impartiality in the exercise of the quasi-judicial roles by the Rewards and Sanctions Committee given that has constituted itself in being the complainant, investigator, witness and jury at the same time. He therefore prayed that the respondents be restrained from determining the matter until police investigations are concluded and court determines Misc. Cause. No. 186 of 2020.

The 1<sup>st</sup> respondent submitted that the applicant filed this application for an interim order alongside a very unclear application for contempt of court and disguised the same as an application for an injunction without grounds and evidence. The 1<sup>st</sup> respondent submitted that the remedy for an interim order was considered in the case of Patrick Kaumba Wishire –vs- Ismail Dabule Supreme Court Misc. Applic. No. 03 of 2018 where court stated that it suffices to show that a substantive application is pending and there is a serious threat of execution before hearing of the substantive application. The court stated that granting of an interim order is to help the parties to preserve the status quo and have the main issues between the parties determined by the full court as per the rules.

The 1<sup>st</sup> respondent submitted that there is no pending substantive application for a temporary injunction pending before this court with grounds in support of thereof. The applicant seeks to call Misc. Applic. No. 550 of 2020 the substantive application yet the same cannot be defined as such for a temporary application.

He further stated that no legal grounds for the same have been laid as per Gapco Uganda Ltd –vs- Kaweesa & Anor Misc. Applic. No. 259 of 2013 to include the existence of prima facie suit, existence of an eminent threat of danger and likelihood of suffering an irreparable loss or damage.

The respondent submitted that Misc. Applic. No. 550 of 2020 is devoid of eminent threat of danger, irreparable loss, prima facie suit and balance of convenience as supporting grounds. It was stated that the head application of the applicant is a contempt of court proceedings and not an application for a temporal injunction.

Counsel therefore submitted that there is no substantive application to warrant a grant of an interim order and no threat likely to be suffered by the applicant was disclosed and that the status quo is that the applicant is already on interdiction. He therefore prayed that this application is dismissed with costs to the 1<sup>st</sup> respondent.

In his submission in rejoinder, the applicant stated that due to the respondents' noncompliance with the courts orders, there was need to file an application for contempt of court and injunction to restrain them from an adjudicating in a matter before court and police for investigations. The applicant stated that it is trite law that when one of the pleadings in the main application is a prayer for an injunction, the applicant who has reasonable belief that he will suffer injury and inconvenience can apply for stay of such actions to preserve the status quo.

The applicant submitted that he adduced sufficient evidence to show court that the respondents tried to conduct a trial against him before his travel abroad

hence the need for an injunction. He further submitted that the respondents have never raised any preliminary objections on points of law in respect of Miscellaneous Applic. No. 550 of 2020 and as such, there concerns have been overtaken by circumstances.

The applicant submitted that there's no law in Uganda which strictly provides that an application for an interim order must only be filed following or arising out of a pending application for a temporary injunction in court and court should disregard the 1<sup>st</sup> respondent's submissions on the same.

He submitted that there is a threat of double jeopardy against him by allowing the respondents to compete with the police and Directorate of Public Prosecutions for investigations and trial of the applicant over the same matter. He therefore prayed that court allows this application with costs.

**Analysis:**

The main question for this court to establish is whether in such circumstances the grant of interim order has been justified.

The law on granting of interim orders in our legal jurisprudence is well settled. The said orders are discretionary in nature and court is at liberty to grant them depending on the circumstances of the case. In *Hon. Anifa Bangirana Karwooya - vs- Attorney General & Another Misc. Applic. No. 46 of 2010*, Arach-Amoko, JA observed that; "an interim injunction is a discretionary order issued by court for a short time, and usually to a particular date pending the determination of the main application."

The consideration for the grant of an interim order of stay of an interim injunction is whether there is a substantive application pending and whether there is a serious threat of execution before the hearing of the substantive application.

The Supreme court in *Hwang Sung Industries Ltd –vs- Tajdin Hussein & 2Ors; Civil Application No. 19 Of 2008* held that:

*“... 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. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”*

In the instant case, the Applicant has not proved to this court that there is a pending substantive application for a temporary injunction before court. I do not agree with his submission that there is no law as to this effect as courts of law have pronounced themselves on this being a ground where an interim order may be granted.

Furthermore, the Applicant has not adduced any evidence before this court to show that there is a serious threat by the Respondents that when that is done, the substantive application would be rendered nugatory.

The applicant further submitted that the Respondents were in contempt of court orders. Court in **Stanbic Bank (U) Ltd & Anor v The Commissioner General, URA MA 42 of 2010** defined contempt of court as stated in **Halsbury’s laws of England, Vol 9 (1) 4<sup>th</sup> Edition** as follows;



'Contempt of court can be classified as either criminal contempt, consisting of words or acts which impede or interfere with the administration of justice or which create substantial risk that the course of justice will be seriously impeded or prejudiced, or contempt in procedure, otherwise known as civil contempt consisting of disobedience to judgment, orders or other process of court and involving in private injury'.

The primary purpose of contempt of court proceedings is to preserve the effectiveness and sustain the power of the court and the secondary purpose is to protect and enforce the party's rights by compelling obedience to court orders and judgments. Civil contempt proceedings are appropriate where the court is able to restore the status quo.

In the instant case however, the applicant has not adduced any evidence whatsoever to show that the respondents are in contempt of any court orders made by this court. I therefore find that the respondents are not in contempt of any court order as alleged by the applicant.

In the premises, and for the reasons given above, I have no evidence upon which to base the exercise of the court's discretion to grant the order sought. I accordingly disallow the application, with costs to the Respondent.

This application is therefore dismissed with costs

I so order.

**SSEKAANA MUSA**

**JUDGE**

**15<sup>th</sup> July 2021**