THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 550 OF 2020

(*Arising From Miscellaneous Application No. 410 and 411 of 2020)*

Arising From Miscellaneous Application No. 186 of 2020

ISABIRYE CHARLES :: APPLICANT

VERSUS

1. **ALEX KAKOOZA**
2. **MINISTRY OF EDUCATION AND SPORTS**
3. **ATTORNEY GENERAL ::: RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this suit under section 33 of the Judicature Act and section 98 of the Civil Procedure Act seeking orders that;

1. A declaration that the respondents' actions are in contempt of court orders.
2. An order restraining the respondents from adjudicating over the matter against the applicant pending court's final determination of Miscellaneous Cause No. 186 of 2020.
3. An order restraining the respondents from threatening the applicant and destabilizing his preparations for his travel to the United Kingdom.
4. Damages worth Ugx. 500,000,000/= as compensation for the embarrassment, physical torture, mental anguish and agony occasioned to the applicant by the respondents.

5. Costs of this Application be granted to the applicant.

The applicant was employed by the 2nd respondent since 17th March, 2019 when he was transferred from Kamuli district local government to the Ministry of Education and Sports headquarters as the education officer. The applicant alleges to have received a letter on the 11th June 2020 interdicting him from executing his duties and requesting him to file a defence regarding allegations of forging the Head of Department's signature. He alleged that when he went to meet the Commissioner, Physical Education on the 16th June, 2020 on appointment, he was physically assaulted by the Special Presidential Assistant (SPA)/ Sports for having not obtained express written permission from the 1st Respondent.

The applicant appealed to the 1st respondent and informed him that since he was already sanctioned, there was no need to file a defence as the sanction came before he could be heard. He filed Miscellaneous Cause No. 186 of 2020 for judicial review, Miscellaneous Application No. 410 for a temporary injunction and 411 of 2020 for a certificate of urgency where by the court granted the temporary injunction and certificate of urgency with the application of judicial review yet to be heard. He stated that the court in Misc. Applic. No. 410 of 2020 ordered that the travel ban imposed by the 1st respondent be lifted but declined to lift the interdiction.

The 1st 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 3rd respondent. He stated that court did not bar proceedings of disciplinary action

but only permitted the applicant to travel for studies. He further stated that the applicant is in contempt for declining to file his response to the allegations of forgery and abuse of office shielding himself to the ruling in Misc. Applic. No. 410 of 2020. That at all times, the 1st respondent respected the decision of court and prayed that this application is dismissed with costs for being an abuse of court process.

The 3rd Respondent in its affidavit in reply stated that this Application is without merit, incompetent and raises no relevant grounds for the remedies sought as no court order was defied by the Respondents.

In rejoinder, the Applicant in his affidavit stated that the Application raises triable issues as the Respondents' actions were an abuse of court process and contempt of court orders which require court's intervention.

The applicant represented himself whereas the 1st respondent was represented by *Mr. Mugisha Acheo* and the 2nd and 3rd respondents were represented by Allan Mukama.

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

1. Whether the respondents' actions are in contempt of court orders.
2. Whether there is need for a court order to restrain the respondents from adjudicating over the matter against the applicant pending court's final determination of Miscellaneous Cause No. 186 of 2020.
3. Whether the 1st respondent has threatened the applicant and destabilized his preparations for his travel to the United Kingdom.
4. Whether the applicant is entitled to the remedies sought.

In the interest of an adequate discussion of the legal issues at hand, the court rephrases the issues for determination to reflect as;

1. ***Whether the Respondents are in contempt of any court orders in Misc. Applic. No. 410 of 2020.***
2. ***Whether the Applicant is entitled to the remedies/ prayers sought.***

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

Preliminary objection

The Respondents in their submissions raised a preliminary objection to the effect that all the affidavits in the application filed by the Applicant have annextures that were never commissioned and sealed by a commissioner of oaths and prayed that the evidence contained in the annextures be expunged.

Counsel relied on the case of ***Jeremiah Nyangwara Matoke vs the Independent Electoral and Boundaries Commissions and 2 Ors Elec. Petition No. 1 of 2017***, where Hon. Justice W. Okwany refused exhibits that were attached to an affidavit and were never sealed by the commissioner for oath. He therefore invited court to refuse the evidence that was not commissioned.

In rejoinder, the Applicant submitted that the said affidavits were commissioned by the Assistant Registrar of the Civil Division of the High Court at Kampala and it was an oversight that the Registrar forgot to sign on the annextures which is a technicality that must not be visited on him pursuant to Article 126 of the

Constitution of Uganda and the case of Twaha Sebbi Olega vs Alidriga Adinan; Civil Appeal No. 06 of 2013.

Analysis

The Respondents raised a Preliminary objection that the Applicant's annextures were not commissioned and sealed by the Commissioner for oaths and that these should be expunged from the record.

Rule 8 of the Commissioner of Oaths Rules provides that; *"all exhibits to affidavits shall be securely sealed to the affidavits under the seal of the commissioner and shall be marked with serial letters of identification."*

The Supreme Court in ***Egypt Air Corporation t/a Egypt Air Uganda vs. Suffish International Food Processors Ltd & Anor SCC Application No. 14 of 2000*** as regard to the failure to seal and mark the annextures stated that sealing and marking of annextures to affidavits is a legal requirement which, inter alia, facilitates the easy identification of annextures and in our view the procedure must be adhered to.

But due to the peculiar circumstance of the proceedings before the court, the Honorable Justices reluctantly treated the omission to comply with the requirements to the Commissioner for Oaths (Advocates) Act and all its Scheduled regulations as a technicality curable under Article 126(2) (e) of the Constitution as it was felt that the failure did not occasion any injustice.

In view of the peculiar circumstances of the matter before me, where the oaths or affirmations were administered by an officer of this Honorable Court, as

evidenced by the Seal of the High court affixed thereon, whose omissions should not be unjustifiably visited on the respective deponent, I hereby find that the defects complained of are curable under Article 126 (2) (e) and should not be visited on the Applicant.

I shall then proceed to determine the issues as proposed.

Whether the Respondents are in contempt of any court orders in Misc. Applic. No. 410 of 2020.

The applicant submitted that this Court ruled in Misc. Applic. No. 410 of 2020 that Misc. Cause No. 186 of 2020 had triable issues that required to be resolved hence proving a prima facie case against the Respondents. He stated that court allowed him to travel to the United Kingdom for further studies and investigations and the case reported against him for misconduct to continue upon his return.

He submitted that under Misc. Cause No. 186 of 2020, he was not accorded a hearing prior to his interdiction and thus prayed for an order of certiorari to quash the interdiction and applied for an order for mandamus. The Applicant stated that court in Misc. Applic. No. 401 of 2020 allowed him to travel for further studies. However, the 1st Respondent wrote demanding that he files a defence in respect of the interdiction and required him to appear before the Rewards and Sanctions Committee which was illegal on grounds of procedural impropriety.

The Applicant relied on the case of *Ashogbon vs Oduntan (1935) 12 N.LR. 7* where court held 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 submitted that there was impunity on the part of the respondents leading to the infringement of his rights, contempt of court orders, vindictive and arbitrary actions against him that require court's intervention.

He submitted that he sought formal permission from the 1st Respondent to travel abroad was denied this being in contempt of the orders in Misc. Applic. No. 410 of 2020.

In respect of suing the 1st Respondent, the Applicant submitted that individuals have been sued for tortuous acts committed in the course of their employment which has reduced on the burden of vicarious liability on the employers where the employees deliberately commit torts knowing the master will pay. He cited the case of *Mrs. Geraldine Busulwa Ssali vs NSSF & 2 Ors Misc. Applic No. 0116 of 2016* where it stated that it is trite law that if a body corporate is involved in litigation, a director or manager could be personally liable for costs and contempt of court. He therefore stated that the 1st Respondent could be in contempt of court if he fails to obey court orders and thus his defence as stated under par. 4 of the Affidavit in Reply cannot stand.

On whether the interim order issued in Misc. Applic. No. 410 of 2020 had elapsed; the Applicant submitted that the said order was for one year regardless of whether he traveled or not until the October, 2021. He stated that due to the

travel conditions in view of Covid-19, his course had been changed and was free to travel up to not later than 6th February, 2021. Therefore, court or any other person had no concern to interfere with the Applicant's travel arrangements since the order could only elapse after a year and thus the Respondent's defence should fail.

The Applicant cited the case of Mega Industries (U) Ltd vs Comfoam Uganda Ltd where court stated that for contempt of court to exist, there must be a lawful court order, the contemnor must be have been aware of court order and failed to comply with the order or disobeyed the same. He submitted that the Respondents were aware of the court order that he was granted permission to travel abroad for his post graduate studies but refused to lift the travel ban and grant permission to the Applicant to travel.

In opposition to the application, the Respondents submitted that apart from the a reminder to the Applicant to file his defence and invitation to the rewards and sanctions committee in respect of the interdiction which was not lifted by court, there was no contempt of any court order by the Respondents. Counsel stated that this court granted the Applicant the permission to travel further studies and disregarded that the respondents had stopped him from travelling. It was further submitted that the Applicant in his evidence did not adduce any evidence for any halt to his travel by the Respondents.

The Respondents submitted that it was Applicant who was in contempt of the court order since he has no respect for the quasi-judicial body that called him for an interaction and/ or file a defence but refused to do so. Counsel submitted that

the Applicant misinterpreted the ruling that there was a stay of the disciplinary proceedings against him whereas not.

The Respondents therefore prayed that this court disallows this order as prayed for and find that the Applicant is in contempt of the court order for failure to travel, extend or even inform court as to developments pertaining thereto.

In rejoinder to the Respondents' submissions, the Applicant submitted that the travel ban that had been publicized indicated to the whole world that he had criminal liability. He further submitted that by the Respondents demanding him to file a defence within 10 days amounted to pressure on the Applicant to appear for trial before the Rewards and Sanctions Committee which was contemptuous.

The Applicant further submitted that court ordered that he be granted permission to go for his further studies in the United Kingdom by the Respondents unconditionally thus being in contempt of the court order.

He therefore submitted that the Applicant's failure to travel was a result of the Respondents' refusal to lift the travel ban and thus prayed that this court finds that they acted in contempt of this court's orders.

Analysis

Relying on the case of **Stanbic Bank (U) Ltd & Anor v The Commissioner General, URA MA 42 of 2010**, there are several conditions necessary to prove contempt of court to wit:-

1. *Existence of a lawful order.*

2. *The potential contemnor's knowledge of the order.*
3. *The potential contemnor's failure to comply i.e. disobedience of the order.*

In the instant case, the Applicant contends that the Respondents are in contempt of this court's order issued in Misc. Applic. No. 410 of 2020; Isabirye Charles vs Alex Kakooza and 2 Ors. This court in its ruling stated as such;

"I am satisfied that an interim order should issue allowing the applicant to travel for his postgraduate studies in the United Kingdom for a period of one year commencing 24th September 2020 until October, 2021. The interdiction is not lifted since it would greatly change the status quo to the detriment of the respondent."

From the reading of this statement, it is very clear that this court granted the Applicant permission to travel for his studies that were to commence on the 24th September, 2020 for a period of one year until the October, 2021. There was no need for the Respondents to grant the Applicant any sort of permission as alleged by the Applicant since both parties were in the know of the order of this court that lifted the travel ban.

However, it appears that the Applicant decided not comply with the said order when his course was changed from MSc. Exercise Physiology to MSc. Sport Management where he upon he indicated that he was supposed to travel not later than the 6th of February, 2021. The Applicant did not bring it to this court's attention as to the changes in his travel dates and alleges it had nothing to do with this court or any other person as to when he wished to travel as long as he was still within the one year time period.

I however disagree with the Applicant as an interim injunction/order is a discretionary order issued by court for only a short time and usually to a particular date pending the determination of the main application. Interim orders are in principle supposed to last a short stated period so that the party to whom it is granted does not abuse court process by delaying to cause the other inter-parties application to be heard expeditiously. **(See: Hon. Anifa Bangirana Kawooya –vs- Attorney General & Anor CA Misc. Appeal No. 46 of 2010, Soroti Municipal Council –vs- Pal Agencies (U) Ltd MA. 326 of 2009)**

The interim order issued by this court in Misc. Applic. No. 410 of 2020 was for the Applicant to travel to the U.K for his studies that were to commence of the 24th of September and continue for a period of one year. The Applicant did not need any permission from the Respondents after this order was issued.

The Applicant therefore cannot claim that the Respondents disobeyed this court order as his travel was entirely dependent on him. Equity aids the vigilant and not those who slumber on their rights which is clearly what the Applicant did even after being manned with an interim order permitting him to travel for his post graduate studies.

It is therefore very clear that the Respondents did not disobey this court order in Misc. Applic. No. 410 of 2020 as there's no evidence adduced by the Applicant claiming that the Respondents interfered with his travel in any way.

I therefore find that the respondents are not in contempt of the court order in Misc. Applic. No. 410 of 2020; Isabirye Charles –vs- Alex Kakoza & 2 Ors.

This issue is answered in the negative.

Whether there is need for a court order to restrain the respondents from adjudicating over the matter against the applicant pending court's final determination of Miscellaneous Cause No. 186 of 2020.

The Applicant while relying on the case of Oyara vs Kitgum Municipal Council Misc. Cause No. 007 of 2018 where it was stated that public authorities need to be careful to ensure that all aspect of their actions and decisions are not only lawful but can be clearly shown to be fair and reasonable in the circumstances, sought an order restraining the respondents from adjudicating over the matter against him pending court's final determination of MC No. 186 of 2020 because their decisions/ actions are not only in contempt of court orders but also unlawful, unfair and unreasonable.

The Applicant further alleges that the Respondents are acting in excess of jurisdiction since the mandate of the Rewards and Sanctions committee in terms of roles, procedure and scope of operation does not include carrying out investigations into any matter but to receive the recommendations from the responsible officer .

The Applicant stated that according to Article 28 (9) of the Constitution, a person should not be punished twice from offences arising from the same facts. He stated that he has been indicted before the Rewards and Sanctions Committee, a tribunal with quasi-judicial powers and at the same time, he is under investigations over forgery by the police filed by the 1st Respondent which may lead to being prosecuted and charged before a judicial court. He therefore

submitted that if both the committee and court find him guilty, he will be charged twice thus double jeopardy. He therefore prayed that this court restrains the Respondents until the matter before court in MC No. 186 of 2020 is determined and also police investigations are concluded.

In reply to the Applicant's submissions, the Respondents contended that the Applicant seeks to stay proceedings in the quasi-judicial body; the Rewards and Sanctions Committee which he has frustrated. The Respondent while citing M/s Stanzen Toyotesu India P. Ltd vs Girish V & Ors (2014) 3 SCC 636 stated that the law does not bar a person from facing a quasi-judicial body for any wrongs, but also appear in court for trial.

In rejoinder, the Applicant stated that the Respondents did not state any law that supports the proposition that the law does not stop a person from facing a quasi-judicial body for any wrongs and appear in court for trial.

He reiterated his submission that the procedure taken by the Rewards and Sanctions Committee in their quest to investigate and also try the Applicant is irregular as per the law as it is ultra vires.

Analysis

The Applicant in seeking for an order restraining the Respondents from adjudication over the matter against him is seeking for stay of the quasi-judicial proceedings against him by the Respondents. Stay of proceedings is usually a relief in the form of suspension of proceedings in an action, which may be temporary until something requisite or ordered, is done; or permanently, where

to proceed would be improper. ***(See: National Housing & Construction Corporation v Kampala District Land Board and Anor Civil Application No. 6 of 2002).***

Section 6 of the Civil Procedure Act, Cap. 71, provides that;

> *No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.*

In the instant case, the Applicant has not adduced any sufficient reason as to why this court should exercise its discretionary powers to stay the quasi-judicial proceedings against him. The Applicant seems to working on speculations and assumptions where he states that he may tried after the police investigations are concluded. This court cannot act on the whim of mere speculations made by the Applicant.

Furthermore, the Applicant submitted that the Respondents are acting ultra vires and illegally by adjudicating over the disciplinary proceedings. From the outset, it is observed that the nature of this application is such that the Applicant appears to also be pursuing remedies under judicial review. However, it can be deduced from the facts, pleadings and evidence that the Respondents have not carried out the disciplinary hearing nor made a final decision in the matter.

The above is akin to the Applicant being on a fishing expedition since there is no decision that has been made by the Respondents to warrant judicial review. A court is responsible for protecting against the unreasonable investigation into a party's affairs and must deny discovery if it is intended to annoy, embarrass, oppress or injure the parties or the witnesses who will be subjected to it. A court will stop this discovery when used in bad faith. I do not think this is such a case since the Applicant is being given an opportunity to explain himself before the Respondents' committee on the complaint made against him and be heard on the merits of the case as a cardinal rule of natural justice.

This court will not try to make any finding of fact in absence of a final decision since this will prejudice the parties if the final decision is made later and such decision is challenged in any court.

Judicial review may be used to compel the performance of public duties by public authorities or decision makers. The Respondents have the power and mandate to inquire into the actions of the Applicant and make a finding on the complaint lodged against him. Failure to act is automatically unlawful and can be remedied by judicial review, by grant of an order of mandamus.

The law requires that statutory power is exercised reasonably, in good faith and on correct grounds. The courts assume that Parliament cannot have intended to authorise unreasonable action, which is therefore ultra-vires and void. *See* ***Wanzusi Robert Fulton Matukhu & Nandawula Shamim v Kampala Capital City Authority High Court Miscellanous Cause No. 02 of 2019***

I therefore find no need for a court order to restrain the Respondents from adjudicating over the disciplinary matter against the Applicant. This issue is therefore answered in the negative. This order sought in this application is directly similar to the main orders that were sought in the main cause.

The applicant has not made out to warrant this court's orders on the reliefs sought in the application.

As such, this application is dismissed with costs to the Respondents.

I so order.

SSEKAANA MUSA
JUDGE
13TH August 2021