

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISC APPLICATION NO.s 916 and 921 OF 2021**  
**(ARISING OUT OF MISC APPLICATION NO. 843 OF 2021)**  
**(ARISING OUT OF MISC CAUSE No 287 of 2021 )**

**MALE MABIRIZI K . KIWANUKA:::APPLICANT**

**VERSUS**

**ATTORNEY GENERAL:::RESPONDENT**

**BEFORE; HON. MR. JUSTICE SSEKAANA MUSA**

**RULING**

THESE APPLICATIONS are brought under Articles 1, 3(4), 28(1),29(1), 38(1) ,44(c)& 126(1) of the Constitution of Republic of Uganda, Section 33 and 39 of the Judicature Act, Order 6 rule 30,Order 52 r1 & 2 of the Civil Procedure Rules for the following Orders:

1. Misc. Application No. 843 of 2021 be struck out.
  
2. The costs of this application be personally and individually paid to the applicant by Ms Patricia Mutesi, Assistant Commissioner and Mr. Jimmy Oburu Odoi, Principal State Attorney in Ministry of Justice & Constitutional Affairs.

In the second application 921 of 2021 the applicant seeks the following orders;

1. Misc. Application No. 843 of 2021 be struck out.

2. The Costs of this application be personally and individually paid to the applicant by Mr. Hillary Ebila, State Attorney in Ministry of Justice & Constitutional Affairs

**THE GROUNDS OF MALE MABIRIZI upon** which these applications are based are contained in an affidavit of the applicant which shall be relied upon at the hearing and hereto attached to the Notice of Motion but briefly are :

1. The applicant who is an alien /stranger, not being a party to the main cause has no locus to file an interlocutory application under it.
2. The application is undertaken by Court's final determination of Misc Cause No 287 from which the application arises.
3. The application does not disclose the Cause of Action.
4. The application was neither dated nor signed by the drawer.
5. The supporting affidavit is incurably defective for containing hearsay.
6. The application undermines High Court Constitution principle of Sovereignty of the people in the administration of Justice.
7. Ms. Patricia Mutesi Assistant Commissioner and Jimmy Oburu Odoi, Principal state Attorney in the Ministry of Justice and constitutional affairs were professionally, reckless and negligent in filing the application.
8. The application amounts to abuse of Public Power by Ms. Patricia Mutesi, Assistant Commissioner and Jimmy Oburu Odoi the principle state Attorney in the Ministry of Justice and Constitutional affairs.

The applicant states in the 2<sup>nd</sup> application as follows;

1. The application is permeated by fraud.
2. The application is permeated by collusion between the respondent and court staff.
3. Page 2 of the Notice of Motion was fraudulently switched by the respondent colluding with court staff who removed an undated and unsigned page with a backdated and signed page.

4. Page 2 of the Notice of Motion was fraudulently switched by the respondent colluding with Court staff who reduced the number of grounds from 6 to 4, without leave of court.
5. The fraud was intended to defeat Misc. Application No. 846 of 2021 seeking to strike out the application.

The respondent filed affidavit in reply through Jimmy Oburu Odoi contending that;

1. Misc. Application No. 846 of 2021 was dismissed by court for want of prosecution.
2. On the 23<sup>rd</sup> December 2021 at 1.10pm the applicant filed the present application seeking to strike out M.A No. 843 of 2021 on the same grounds as those raised in the dismissed application.
3. On the same date the applicant filed simultaneously M.A No. 917 of 2021 seeking to reinstate Misc. Application 846 of 2021.
4. The applicant's simultaneous filing of this present application which seeks the same orders as the dismissed application, and M.A No. 917 of 2021 which seeks to reinstate the dismissed application, amounts to abuse of this court's process.
5. The applicant on 27<sup>th</sup> December 2021 filed another application in which he raised the claims of fraud/collusion, unprofessional conduct or abuse of office, which are raised in the present application.
6. The same claims were raised in miscellaneous Application No. 843 of 2021 which he seeks to strike out.

### **The Case**

1. The gist of the application is that the Respondent filed Miscellaneous Cause No 287 of 2021 in the **case of MALE MABIRIZI v CAPITAL MARKET AUTHORITY to prove the IPO of MTN (Uganda) Ltd.**

2. On 15<sup>th</sup> November 2021 the Court delivered a ruling on the preliminary point of Law which had been raised in the above application.
3. Following the delivery of the above said ruling the Respondent has made contemptuous comment and utterance on his twitter handle @male mabiriziHKK and on his face book page Uganda people's interest which are calculated to bring the presiding Judge into disrepute and to lower his Judicial authority hence violating his right to dignity of Article 24 (1) of the Constitution of the Republic of Uganda 1995.

***Whether these applications are an abuse of court process and vexatious?***

**Analysis**

Where an earlier application was dismissed for want of prosecution it is not open to the applicant to file the same application again unless the facts pertaining thereto are different, as to entertain the same would amount to gross abuse of the Court process.

The actions of the applicant in bringing the two applications is highly questionable and an abuse of the court process. The applicant has filed Miscellaneous Application No. 917 of 2021 seeking to reinstate his earlier dismissed application No. 846 of 2021. It is inconceivable that the same applicant can now separately try to file two fresh applications seeking the same orders he had earlier sought to strike out Miscellaneous Application No. 843 of 2021.

It is an abuse of court process to bring several applications to challenge the same order. Common sense dictates that a party brings one application at a time, to challenge the order. See ***Billy George Ng'ong'ah v Khan & Associates HCCA No. 47 of 1996(HCK)***

It is not within the rights of the applicant to engage in multiplicity of applications since such multiple applications are meant to obstruct the due process of law and when a party shows design to abuse the powers of the court like the applicant herein, such actions must be stopped to avoid unnecessary costs and waste of judicial time.

The duty of court is to safeguard its dignity and authority in order to stop errant applicants or legal busybodies from clogging the court system with hopeless and baseless applications.

Parties and their respective counsel should ensure that all necessary steps are taken to safeguard the integrity of the judiciary and to avoid a multiplicity of suits or applications likely to abuse its process. It has always been the policy of the law to avoid multiple suits or applications dealing with more or less similar subject matter and issues. Parties must show that they are acting in good faith and not merely delaying a cause or wasting valuable judicial time. Bad faith will be imputed where a party tries to obtain similar orders to those sought in an earlier application or where a party like the applicant herein brings several applications challenging the same thing. This would invariably be an abuse of the court process.

The conduct of the applicant in this application is tainted with bad faith and deliberate since it is aimed at frustrating or delay and forestalling the wheels of justice in hearing of the main application for contempt.

It bears emphasis to note that the actions of the applicant in the eight applications filed in this court points to a '*vexatious litigant*'.

A *vexatious litigant* is someone who persistently begins legal action but does not have sufficient grounds for doing so. Vexatious proceedings include cases started or pursued; to abuse the process of a court or tribunal to harass or annoy, to cause delay or detriment or for another wrongful purpose.

Access to justice is a basic principle of the rule of law; the courts will therefore strive to ensure that everyone who has a legitimate claim has the opportunity to have their complaint heard in court. However, occasionally some limits have to be imposed for access to justice to work fairly for all. Some litigants, particularly litigants in person-*vexatious litigants*, can become fixated with their cause and refuse to accept decisions made by the court. For the opposing party, this can be like fighting the 'mythical Hydra', no sooner has one application or set of proceedings been successfully defended than another is made. This can be costly,

time consuming and immensely frustrating. It also places a disproportionate burden on the finite resources of the courts and judicial system.

A 'vexatious litigant' usually exhibits the following hallmarks:

- Subjecting the defendant/respondent to inconvenience, harassment, expense out of all proportion to any likely gain.
- Repeating the same cause of action against the same party perhaps with minor variations.
- Automatically appeals or challenges every decision.
- Fails to take notice of or give effect to court orders.
- Non-compliance with procedure, e.g. last minute presentation of evidence, delay/non-compliance with deadlines, not following court orders, defective service or complete failure to serve, complaining that the other litigants should not be served or had not been served.
- When present at a hearing, some vexatious litigants are unable to conduct themselves with decorum and may hurl abuse at the opposite parties and/or the judge.
- Will almost invariably be unrepresented or refused legal aid based on the merits tests.
- Deceitful conduct
- Appeals, using parallel appeal routes, and multiple proceedings, including complaining to administrative bodies, commencing new action for damages in District Court or High Court and seeking appeals to the Court of Appeal and Court of Final Appeal.

*See (Attorney General v Barker [2001] WL 191122 (English Queen's Bench)). (Ng Yat Chi v Max Share Ltd and Another [2005] 1 HKLRD 473 (CFA)). (Yuen Oi Yee Lisa v Charoen Sirivadhanabhakdi & Ors [2015] HKDC 1336); (X v MM and Anor [2018] HKDC 215); Attorney General v Wentworth (1988) 14 NSWLR 481 at 491.*

The above hallmarks squarely describe the applicant in this matter and this court takes judicial notice of his several applications filed in this court and other courts all the time.

This court cannot be a tool in hands of such a vexatious litigant – It will be a mockery of justice to permit applicant to enjoy luxury of re- litigation or filing several applications to abuse the process of court. Court is also expected to filter

out and throw all unwanted and vexatious litigations which would be an obstruction to get justice.

The Court has got inherent powers to see that the vexatious litigations are not allowed to take or consume the time of the Court. The Court has got inherent powers to see that frivolous and vexatious litigations are nipped in the bud.

If these kinds of frivolous and vexatious litigations are entertained by Courts, public will lose faith in the judiciary. In order to prevent such frivolous and vexatious litigations, it is the bounden duty of the Courts to nip it in the bud at the earliest. The Courts cannot be a mute spectator when such kind of frivolous and vexatious litigations by the applicant are filed.

These applications for reasons stated herein above are dismissed with costs to the respondent.

I so Order

***Ssekaana Musa***

***Judge***

***27<sup>th</sup> January 2022***