

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO.385 OF 2021
(Arising out of Misc. Cause No. 134 of 2021)

KWETE ANDREW ::: APPLICANT

VERSUS

1.UGANDA NATIONAL TEACHERS UNION (UNATU)

2. THE DISCIPLINARY COMMITTEE

OF UGANDA NATIONAL TEACHERS UNION ::RESPONDENTS

BEFORE; HON. JUSTICE SSEKAANA MUSA

RULING

This was an application brought under S.33 of the Judicature Act Cap. 13, S.98 of the Civil Procedure Act Cap 71, O.41 r 1and 9 CPR SI-1) for Orders that;

1. A temporary injunction doth issue restraining the Respondents , their agents, nominees, assignees, servants, and/ or, persons acting under them, from carrying out or conducting any elections in the Kayunga branch till the final determination of Misc. Cause No. 134 of 2021 which is pending before this Honourable court.

2. Costs of this Application be provided for.

The grounds for this application were contained in the affidavit in support of the application and a supplementary Affidavit both deponed by Kwete Andrew the applicant as follows;

1. That the applicant is a branch Chairperson of Uganda National Teachers Union (UNATU) Kayunga Branch.

2. That the applicant filed miscellaneous Cause No. 134 of 2021, for illegal suspension and replacement by the respondents.
3. That the Application is yet to be heard to be heard by this honorable court.
4. The Respondents are threatening to conduct elections to elect a new committee and leadership for the Uganda National Teachers Union (UNATU) Kayunga Branch which elections are slated to start on the 17th May 2021 which shall render the application for judicial review ineffective.
5. That if the application is not granted, the Respondents are likely to replace the Applicant which act will render the main application nugatory.

In response, the Respondents filed an Affidavit in Reply Deponed by **Filbert Baguma Bates** the General Secretary of the 1st Respondent opposing the application and briefly stated that;

1. That the suspension of the applicant was a result of preliminary investigations into allegations leveled against the applicant wherein the applicant was deemed to have conducted himself in a manner prejudicial to the interests of the 1st respondent contrary to sections 12 and 18b and the 1st respondent's members Code of Conduct.
2. That the investigations were arising from the applicant's improper use of his position as the chairperson of the 1st respondent's District Branch in Kayunga to enrich himself by charging the 1st respondent rent which in an office the 1st respondent was indirectly cost sharing with the applicant's wife yet the said respondent had been releasing funds to the district branch to rent suitable office space.
3. That the elections took place prior to the applicant bringing this application and thus the application is a nugatory ab initio.
4. That the application is misconceived and bad in law because it has been overtaken by events as the elections have already been held.

The applicant was represented by *Counsel Waiswa Ramathan* while the respondent was represented by *Counsel Mwesiga Phillip*.

Whether the application is moot and overtaken by events?

Analysis

I have had an opportunity to read the pleadings of both the Applicant and the Respondent including submissions for both counsel. I have realized that the applicant intended to stop elections which were due to happen on 17th May 2021.

The respondent stated in their affidavit in support that the elections were already concluded before the applicant came to court and therefore the application is misconceived and bad in law because it has been overtaken by events as the elections have already been held.

This assertion was not rebutted by the applicant and if it is true then this application is already useless and nugatory. It is therefore moot and of no consequence. In the case of ***Environment Action Network vs Joseph Eryau Court of Appeal Civil Application No. 95 of 2005***; The court of Appeal held that;

“The reliefs which the respondent is seeking on appeal cannot be granted because there is no live dispute between the parties. Courts do not decide cases for academic purposes because orders must have practical effect and must be capable of enforcement...”

The present application falls in the mootness doctrine which bars court from deciding moot cases; that is cases in which there is no longer any actual controversy. The exercise of judicial power depends upon existence of a case or controversy.

The function of a Court of law is to decide an actual case and to right actual wrongs and not to exercise the mind by indulging in unrewarding academic casuistry or in pursuing the useless aim of jousting with windfalls. The elections the applicant intended to stop was already held even before he came to court, then it is useless to waste courts time in hearing this application.

The doctrinal basis of mootness is that courts do not decide cases for academic purposes because court orders must have a practical effect and be capable of

enforcement. **Ref: High Court Civil Suit No 248 of 2012: Abdu Katuntu -vs- MTN Uganda Limited and Others**

Similarly, Justice Musota (as he then was) in the case of **Julius Maganda vs NRM. H.C.M.C No. 154/2010**, held that;

“Courts of law do not decide cases where no live disputes between parties are in existence. Courts do not decide cases or issue orders for academic purposes only. Court orders must have practical effects. They cannot issue orders where the issues in dispute have been removed or merely no longer exist.”

Additionally, in the case of **Pine Pharmacy Ltd and 8 others v National Drug Authority Misc. Application 0142 of 2016** Hon. Justice Stephen Musota cited **Joseph Borowski vs Attorney General of Canada (1989) 1 S.C.R.** in which it was held that;

“The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. Accordingly, if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be moot.”

This application is moot and wastage of courts valuable time. For the reasons set out herein is dismissed with costs to the respondent.

I so Order

Ssekaana Musa
Judge
15th August 2022