

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**MISCELLANEOUS APPLICATION NO.476 OF 2022**  
**(ARISING FROM MISC CAUSE NO.178 OF 2022)**

**NATUKUNDA TRACY BAMANYA----- APPLICANT**

**VERSUS**

**ST. PETERS SENIOR SECONDARY SCHOOL NAALYA LTD----- RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The applicant brought this application by way of chambers summons against the respondent under Section 98 of the Civil Procedure Act, Order 41 r.2(1),(2),(5), (9) of the Civil Procedure Rules, for orders that;

1. A temporary injunction doth issue restraining the Respondent and its servants, agents or other persons acting under its authority from enforcing the impugned decision of the respondent complained of in Miscellaneous Cause 178 of 2022 (herein referred to as “the main suit”) or conducting illegal disciplinary hearing against the applicant until the disposal of the main suit;
2. A temporary injunction doth issue restraining the Respondent and its servants, agents or other persons acting under its authority from preventing the applicant reporting to school Third term on the 4<sup>th</sup> September, attending classes, sitting for mocks and or tests, and /or examinations pending the disposal of the main suit.

3. A temporary injunction doth issue restraining the respondent and its servants, agents or other persons acting under its authority to prevent the applicant from continuing to reside at their dormitory and enjoying services ordinarily provided to a resident student of the respondent pending the disposal of the main suit;
4. Costs of the application be provided for.

The grounds in support of this application are set out in the affidavit of Natukunda Tracy Bamanya which briefly states;

1. The applicant is a student of St Peters Senior Secondary School Naalya Limited in Senior Six Arts Offering Divinity, Entrepreneurship and Literature (DEL).
2. That on the 11th august 2022, the applicant was unfairly dismissed or indefinitely suspended from the respondent by the Respondent's Head teacher without being accorded any hearing.
3. That on the 12<sup>th</sup> August 2022 while other students were receiving report cards the applicant was handed the impugned suspension letter.
4. That the applicant went to the head teacher to inform him that she had not committed any offence and had not appeared before any disciplinary committee or school body for any discipline case.
5. That the head teacher informed her that his Secretary Hawa had called the applicants mother on 10<sup>th</sup> August 2022 on her known mobile number +256772481814 using her personal line +256775220251 inviting her for a disciplinary hearing where she declined to come and appear before the disciplinary committee hence the decision.
6. That the applicant together with her mother who had come to collect her from the school tried to interface with the head teacher for an explanation since no any ill behavior had been brought to her notice in the course of the

term even in the letter. The head teacher advised her to schedule an appointment in the coming week to settle the matter.

7. That when the applicant's mother tried to schedule an appointment on his known whatsapp number, +256772991526 he instead offered to schedule for an appointment to meet the Disciplinary Committee (DC) which is out of order for a parent to appear before a DC after allegedly indefinitely suspending the applicant.
8. Thus the respondent's decision was not only unfair but it was illegal, irrational and procedurally improper and contrary to the principles of natural justice.
9. That as a result of the irrational, unfair and illegal conduct of the respondent, the applicant has suffered great shame, anguish and mental suffering which has occasioned the applicant psychological torture and damage.
10. That if the Respondent is not restrained from enforcing the impugned decision pending the disposal of the main suit, the Applicant will be prevented from reporting for third term, attending classes, discussions, sitting for tests, mocks and examinations thereby subjecting her to irreparable harm which cannot be atoned for by any award of damages given that she is in a candidate class in her final term which is scheduled to begin on 4th September 2022.
11. That the balance of convenience is in favor of the applicant given that if this application is not granted the Applicant may lose a chance to complete the syllabus and other topics that had not been covered and this may result in her missing classes and eventual failure of exams.

In opposition to this application the respondent filed an affidavits in reply by Katongole John-Headmaster wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. That the applicant was admitted to St Peters Senior Secondary School Naalya on 3<sup>rd</sup> February 2020 to study Divinity, Enterprenuership and Literature in Senior Five.
2. That throughout the course of her studies with the respondent, the applicant was always indisciplined and disobedient to the rules set by the respondent.
3. That in the first term of the 2022 academic year, the applicant was found in possession of cannabis (commonly referred to as “Marijuana”) and a matchbox.
4. That the applicant was questioned by the school teachers on these illicit items and then asked to record a statement. In her statement, the applicant admitted possession and use of cannabis and asked for forgiveness.
5. That the other students who were subsequently questioned revealed that the applicant had been distributing cannabis cookies and cannabis for smoking to students of the respondent.
6. That due to the gravity of these findings and fact that possession of cannabis is illegal under the laws of Uganda, the school decided to conduct a thorough investigation on these findings.
7. That the school management investigated these allegations and then summoned the applicant and her parents to the school to present the findings to them. The committee also wanted to discuss any further amicable ways to ensure that the applicant is able to reform and complete her final exams successfully.
8. That the Disciplinary Committee informed the parents and the applicant that they had decided to indefinitely suspend the applicant as she had grossly violated the school rules, but instead decided to allow the applicant a leave of absence after her parents pleaded with them for time to ensure that their daughter is able to change.
9. That the applicant instead chose to abuse the discretion that had been exercised by the Disciplinary Committee by attacking students who had

testified against her to the teachers and the disciplinary Committee and continued to harass other students of the school.

10. That since the applicant had been allowed to stay in the schools after her parents pleaded to the mercy of the disciplinary committee, her parents were invited once more for a meeting with the disciplinary committee to discuss the continuing disregard for school rules by the applicant on 10<sup>th</sup> August 2022 which they declined to attend.
11. That the applicant and her parents left the school management with no other option but to indefinitely suspend the applicant because she posed a danger to the lives and health of other students of the respondent.
12. That the school management allowed the applicant to do her final A'Level UNEB Examinations from the respondent but could not tolerate her continuing to be a danger to the health and safety of other students.
13. That the applicant and her parents were informed that they could still be able to meet the disciplinary committee and both make their representations on 18<sup>th</sup> August 2022 which they still chose to ignore.
14. That the applicant was accorded a fair hearing by the disciplinary committee and she was at all material times given the chance to present her case and defend herself. She instead chose to abuse the mercy that had been shown to her by the disciplinary committee by continuing to harass other students and make the school environment unbearable for other students.
15. That the applicant has never been expelled and remains a registered candidate of the respondent.

At the hearing of this application court directed the parties to file in written submissions which the parties complied with. The applicant's counsel seems to have argued the main cause or the merits for the main cause which I have ignored in this ruling. I have considered the respective submissions and ignored the preliminary objection.

The applicant was represented by *Counsel Harriet Tumuhairwe* of TMKayemba Advocates while the respondent was represented by *Counsel Alex Ntale* of MMAKS Advocates

Both counsel submitted that the law on granting temporary injunctions in Uganda has since been well settled in the locus classicus case of **E.L.T Kiyimba Kaggwa vs Haji Abdu Nasser Katende [1985] HCB 43** where **Odoki J** (as he then was) laid down the rules for granting a temporary Injunction; thus:-

**The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.**

**The conditions for the grant of the interlocutory injunction are;**

- i. Firstly that, the applicant must show a prima facie case with a probability of success.**
- ii. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.**
- iii. Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.**

I will now consider the above principles in the determination of this application.

***The Applicant must show a prima facie case with a probability of success.***

I have had the occasion of meticulously reading the Applicant's pleadings and the respondents' replies to this application and have carefully evaluated the parties' affidavit evidence on record before arriving at my decision.

When considering this ground all that the applicant has to prove to court is whether there exists a triable issue for the court to resolve in the main suit.

The applicant's counsel contends that she was denied a hearing and therefore according to her this makes her application to set out the prima facie case.

The respondent's counsel submitted that the Applicant has brought these proceedings having not only broken the school rules and regulations but also having broken the laws of Uganda. There is therefore no prima facie case.

I must state that it is not that every dispute between private parties that should be amenable to litigation. If it were so the court would be so laden with all forms of disputes that do not necessary necessitate the adjudication of court. It is for this reason that before the consideration of an application for temporary injunction, the applicant needs to satisfy court that there is a triable issue in the main cause. The consideration of whether there is a triable issue is the exercise of judicial discretion.

Lord Diplock in *American Cyanamide vs Ethicon [1975] ALLER 504* had this to say about the exercise of judicial discretion when considering establishment of a prima facie case, for which I am in agreement with;

**“Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as "a probability", "a prima facie case", or "a strong prima facie case" in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.”**

In that regard, I have labored to discern from the applicant's affidavit evidence together with his pleadings as to nature of the complaint set out in the application for judicial review. The applicant contends that she was not heard before her indefinite suspension and indeed this is subject to investigation whether she indeed deserved any right to be heard before the decision.

In this regard at this stage the law does not require Court to delve into the merits of the main suit. All that is required to be proved is that there is a serious issue which is not frivolous or vexatious to be tried by court. The nature of the complaint of the claim indeed raises serious issue to be tried but this is not the only determining factor.

However in **Kiyimba Kagwa (supra)** the purpose for granting a temporary injunction is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.

The status quo in this case as alluded to in submissions of the respective parties is that the applicant was suspended indefinitely by the respondent and the same decision is in force until otherwise overturned or reviewed by the respondent.

The applicant's counsel contended that the fact that the Applicant never appeared before the disciplinary Committee to be heard is the very reason that the status quo prior to this impugned decision should be maintained to preserve the applicant's legal rights. Short of which the application for Judicial review shall be rendered nugatory.

This court with the greatest respect does not agree with the submission of counsel, the said status quo is that the applicant was suspended and the court should not attempt at the preliminary stage make orders that would in effect be disposing of the entire application.

An order of temporary injunction is intended to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.

The court would have to preserve the status quo prevailing at the moment but this would not stop the court from quashing or giving any orders sought in the main application. The main application will not be rendered nugatory since in matters of judicial review the court is at liberty to grant any remedies that fits the circumstances of the case. It does not mean that since the applicant is already serving an indefinite suspension then the court should never quash it.

There are no hard and fast rules that can be laid down for granting interim reliefs or temporary injunctions in public law matters or judicial review applications. The exercise of the power to grant temporary injunction must be exercised with caution, prudence, discretion and circumspection. The circumstances of each case will determine whether to grant them or not bearing in mind the various existing factors. The grounds for grant may sometimes defer from the grounds in ordinary



civil suits and the same are considered with caution and appropriateness of the case.

This court deprecates the practice of granting temporary injunctions which practically give the principal relief sought in the main application for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, public interest and a host of other considerations. Where there is a serious dispute on the facts, it cannot be said that a prima facie case had been made out for the grant of temporary injunction.

The applicant's case is rooted in the some history where the parents of the applicant were seriously involved and it should not be looked at as merely a one incident of suspending a student without a hearing or following rules of natural justice. This history was equally a consideration or factor which should not be disregarded in this application for temporary injunction. The applicant was allegedly found to have broken the school rules which in turn broke the laws of Uganda when she was found in possession of cannabis/marijuana in school.

In the case of ***Samuel Muyizzi v Attorney General Misc. Application 861 of 2021***, this court held that;

*"The Court should always be willing to extend its hand to protect a citizen who being wronged or is being deprived of his rights is 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 or criminality by a person who approaches the Court. The Court's power can be exercised judicially and in public interest, no injunction causing administrative inconvenience or resulting in public mischief should be granted."*

The students and staff of the Respondent would suffer more from the grant of the temporary injunction to the Applicant as she has not only been supplying drugs to the students at the school but also disrupting those she considers to have reported her. The Applicant's presence in the school is a danger to the health and safety of the students at the school.

Public bodies or schools which exercise public functions should not be prevented from exercising disciplinary powers in such instances of grave violations of their rules and national laws unless the person seeking an injunction can establish a prima facie case that the public authority or school is acting unlawfully. The public body or school should be deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good of its students or staff. In the case of ***Associate Professor Ssempebwa and Anor v Makerere University HCMisc App No.21 of 2021***), this court stated as follows:

*“The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good.”*

The school should be given a benefit of doubt in exercise of its disciplinary powers against the student until the court finds otherwise. The rights of the applicant against the entire school community should be a factor to consider and the likely danger of the applicant returning to the school and the entire school atmosphere in such circumstances.

In the result for the reasons stated herein above this application is hereby dismissed and the costs shall abide the outcome of the main cause.

It is so ordered.

**SSEKAANA MUSA**  
**JUDGE**  
**21/09/2022**