

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CONSOLIDATED MISC. APPLICATION NO. 678 of 2020 & 77 of 2021

(Arising from Miscellaneous Cause No. 147 of 2020)

DR. CHARLES BARUGAHARE:..... APPLICANT

VERSUS

- 1. MAKERERE UNIVERSITY**
- 2. PROFESSOR BARNABAS NAWANGWE**
- 3. YUSUF KIRANDA**
- 4. ATTORNEY GENERAL:.....RESPONDENTS**

AND

DR. CHARLES BARUGAHARE:.....APPLICANT

VERSUS

- 1. MAKERERE UNIVERSITY**
- 2. PROFESSOR BARNABAS NAWANGWE**
- 3. YUSUF KIRANDA**
- 4. ATTORNEY GENERAL**
- 5. LORNA MAGARA**
- 6. DANIEL FRED KIDEGA**

7. DR. UMAR KAKUMBA
8. DR. NABUKENYA JOSEPHINE
9. ENG. DR. S. P KAGODA
10. KIRYOWA KIWANUKA
11. JOHN C. NINSIIMA
12. DR. SARAH N. SSALI
13. BRUCE BALABA KABAASA
14. DR. FREDRICK EDWARDS KITOOGO
15. JOLLY UZAMUKUNDA KARABAAYA
16. DR. HELLEN NAMBALIRWA NKABALA
17. DR. WISTON TRUMPS IREETA
18. DOREEN NYANJURA
19. GEORGE W. OPEERESPONDENTS

BEFORE: HON.JUSTICE SSEKAANA MUSA

RULING

The applicant brought the 1st application No. 678 of 2020 under Article 128(2); 28(12); 21(1) of the Constitution and Section 98 of the Civil Procedure Act and sections 33 & 37 of the Judicature Act for the following Orders;

1. An Order that the 2nd and 3rd respondents be committed to civil prison for contempt of court Orders.

2. An Order doth issue directing the respondents to pay a compensation of 800,000,000/= for unpurged contempt.
3. An Order doth issue directing the Respondents to pay a fine to the tune of 100,000,000/=.
4. An Order for sequestration doth issue attaching the respondents' properties until they purge their contempt.
5. General damages, punitive and exemplary damages.
6. The respondents pay the costs of the application.

The 2nd application was brought under the same laws seeking the following orders;

1. A declaration that the 19 respondents who have altered the status quo of the applicant being the 1st respondent's University Secretary preserved by court pending the hearing of Miscellaneous Cause No. 147 of 2020 are in unpurged contempt of court.
2. An Order that the 2nd, 3rd and 5th -19th respondents being officials and council members of the 1st respondent be committed to civil prison for contempt of court orders.
3. An Order doth issue directing the respondents to pay compensation of UGX 1,000,000,000 for unpurged contempt.
4. An Order directing respondents to pay a fine of UGX 500,000,000/=.
5. An Order of Sequestration doth issue attaching the Respondents' properties until they purge their contempt.
6. General, Punitive and exemplary damages.
7. Respondents pay the costs of the suit.

The above application both arise out of **High Court Miscellaneous Cause No. 147 of 2020; Dr. Charles Barugahare vs Makerere University & 3 others** for judicial review of the administrative decisions taken by the Vice Chancellor of Makerere University and

the Permanent Secretary/ Secretary to the Treasury of the Ministry of Finance, Planning and Economic Development. The applicant complained of the following actions;

- The appointment of the 3rd respondent to the position of accounting officer of the 1st respondent by the permanent secretary/ secretary to the treasury.
- The setting up of an investigation committee by the 2nd respondent, to investigate the allegations against the applicant.
- To be investigated by the investigation committee set up by the 2nd respondent.
- Removal from office of the university secretary by the 2nd respondent by sending the applicant on compulsory leave.

From that arose two applications that sought for injunction orders that is HCMA No. 328 and 319 of 2020; Dr. Charles Barugahare vs Makerere University & 3 others. At the hearing, the parties agreed by consent that the status quo as at the 13th July 2020 be maintained.

The applicant brought the present applications alleging that the respondents in both applications had committed contempt of the court order in HCMA No. 328 and 319 of 2020. He alleged that the respondents had since altered the status quo by the following actions or omissions;

1. That the applicant was removed from the Makerere University mak.academic leaders forum, a whatsapp group on which they discuss, share, deliberate, generate ideas and generally influence the governance and leadership of Makerere University.
2. That the applicant was removed from his official mailing list on unisec@admin@mak.ac.ug and he no longer receives any official data communication channel.

3. That the applicant was removed from the 1st respondents' whatsapp group of MAK.CM FINANCE and no longer receives information on it.

The respondents filed several affidavits in reply and opposed the applications for contempt contending they are not in contempt and briefly as follows;

1. Prof Nawangwe and Yusuf Kiranda denied violating the court order and contending that the investigation committee which had earlier been appointed to investigate the applicant had not done any work in relation to the investigations and any Notice issued was ignored as being of no consequence.
2. The vice chancellor and Acting University Secretary denied removing the applicant from the whatsapp groups since they are not the administrators and removal from the mailing list was a technical issue that required every member to upgrade their passwords. The applicant was not entitled use to the email address of the University Secretary since he was not performing any functions/responsibilities of the University Secretary.
3. That the applicant is not entitled to any travel facilitation and monthly allowances since he duly received all emoluments due to him under his contract of employment.
4. That prior to going on study leave in 2019, the applicant had handed over the official vehicle and his driver was allocated to the 3rd respondent and by the time the order to preserve the status quo was entered, the said vehicle was not in his possession and is now on compulsory leave.

The applicant in the 2nd application contended that the respondents are contempt of court because of the following;

1. That the respondents breached the order when they advertised the job of University Secretary as per the copy of the advert which appeared in the New Vision of Monday 14/12/2020 and in social media.
2. The stoppage of the salary, emoluments, allowances and privileges attached to the office as preserved by the order.

The 19 respondents filed several affidavits in reply all denying the alleged contempt of court and in substance the following is the summary of what they stated.

1. That the status quo which obtained at the time on 13th July 2020 was that the Permanent secretary and Secretary to the Treasury had already by letter dated 8th June 2020 appointed the 3rd respondent as the accounting officer of the 1st respondent and had started work as such. Secondly, the investigation Committee of Management had already been set up, but had not commenced its work and it was accordingly stopped. Lastly, the 2nd respondent had already sent the applicant on compulsory leave by letter dated 29th June 2020.
2. That on the 2nd of November 2020, the employment contract of the applicant with the 1st respondent expired by effluxion of time and it was not terminated by any of the respondents. The contractual relationship with the applicant ended and this was the end of his enjoyment of employment emoluments like salary, allowances, etc
3. The 1st respondent was under obligation to fill-up the management gap that had been created by the expiry of the employment contract of a substantive University Secretary/Secretary to Council.
4. That the 1st respondent advertised for the suitable persons to apply for the post of University Secretary and the applicant was not precluded from applying for the same job and compete with other applicants equally.

5. The injunction issued by court did not and could not be interpreted to extend the employment contract of the applicant.
6. That the 1st respondent's University charter to which the respondents subscribe, exonerates Council members of any liability for actions done in good faith while carrying out any liability for actions done in good faith while carrying out their duties and responsibilities, hence the said respondents ought not to be liable to punishment of committal to civil prison.

The applicant was represented by Dr. James Akampumuza while the respondents had several advocates representing each of them separately; K&K Advocates, Ssemambo & Ssemambo Advocates, Makerere University Directorate of Legal Affairs, Orima & Co Advocates, Tumwebaze, Atugonza, Kobusingye (TAK) Advocates, Messrs Kirunda & Wasige Advocates, PathwaysAdvocates

The parties filed submissions in support which I have considered in this application.

I shall now determine the alleged contempt in each application separately.

Court Analysis

In **High Court Miscellaneous Application No. 678 of 2020**, the applicant alleged that the respondents committed contempt by;

Constituting a committee of management to conduct disciplinary hearings against the applicant;

- Proceeding with the disciplinary hearing
- Removal from the official mailing list of the university secretary
- Denying travel facilitation and monthly allowances
- Imposition of the three months' compulsory leave

The applicant contended that the respondents violated the court order by the imposition of the three months' compulsory leave. The 2nd respondent wrote a letter dated **29th June 2020** informing the applicant that he was sent on compulsory leave to pave way for investigations in several disciplinary matters involving the applicant. This leave took effect from the **1st July 2020**. The injunctive order was issued on the 13th of July 2020 which was after the applicant was sent on compulsory leave. The order was to maintain the status quo as at the date of issuance of the order and was not to reverse the respondents' action of sending the applicant on compulsory leave.

According to the respondents' submissions, the status quo at the time the injunctive order was sought was that the investigation committee had already been set up and had also communicated to the applicant on 9th July 2020.

This is confirmed by the 2nd respondent's affidavit in reply paragraph 5 wherein he stated that he had already appointed an investigation committee before the order was issued. The 2nd respondent also stated that the committee never commenced with investigations after the issuance of the order.

The applicant relied on an invitation by the investigation committee dated 6th August 2020 to show that the respondents violated the order by inviting him for the said interaction with the committee. From the evidence of the 2nd and 3rd respondent, the invitation was rescinded and the applicant was asked by the respondents to disregard the invitation. In a letter dated 13th August 2020, the applicant was informed to disregard the letter inviting him for the interaction as the same was issued inadvertently.

The applicant alleged that his removal from the official mailing list of the university secretary was contemptuous. It would be a stretch to hold the respondents in contempt for this act. The applicant was no longer a holder of the office of the university secretary

and was therefore not performing the official duties of the university secretary. There was no necessity to have access to the official email of the university secretary.

Furthermore, there was alleged denial of travel facilitation and monthly allowances. The applicant did not provide specifications of instances when he was denied allowances. It would be unjustifiable to pay travel facilitation to the applicant minus proof by the applicant that he had to travel for official duties. The applicant did not show any proof that while in conduct of his official duties, he was denied travel facilitation. The applicant did not lead any other evidence showing that he was not paid any other allowances he was entitled to.

It therefore suffices to conclude that there was no contempt of the court order in HCMA No. 328 and 319 of 2020 by the respondents. The respondents' actions as contended by the applicant did not violate any of the orders by the court.

In **High Court Miscellaneous Application No. 77 of 2021**, the applicant contended that the respondents had altered the status quo in the following ways;

- Proceeding to advertise the applicant's job on 14th December 2020.
- Halting payment of the applicant's salary, emoluments, allowances and privileges attached to the applicant's office.

From the applicant's appointment letter dated 28th October 2015 on the court's record, the applicant was appointed as university secretary of the 1st respondent effective 2nd November 2015. The appointment was for a period of five years from the date of assumption of duty. The applicant's contract was therefore to expire on the 2nd November 2020. The injunctive orders issued cannot be said to have extended the contract period of the applicant. The court is not clothed with powers to extend the contract period of the applicant.

The expiry of the contract also resulted into the halting of all salary, emoluments and allowances and privileges attached to the position of university secretary that he held. The monies that were paid to the applicant as University Secretary were sanctioned by the public service from the consolidated fund which would not sanction the same when there was no existing contract between the applicant and the university. It is erroneous for the applicant to expect continuation of all payments owed to the University Secretary when his contract had duly expired.

Furthermore, the expiry of the applicant's contract left the office of the University Secretary necessitating a replacement. The respondents were at liberty to advertise the open position. Their actions in doing so cannot be categorized as contemptuous since the court order as already held above did not freeze the applicant's contract. If the applicant had thought that the employment contract was preserved by the injunctive relief, then that would be an absurdity in extreme.

The power to punish for contempt should be sparingly used. There must be restraint in its exercise more so as it is entirely at the discretion of the judge how to punish for contempt. Similarly, parties who institute contempt proceedings should not interpret court orders in a whimsical manner in order appear like a 'scarecrow' proceedings. There must be an act of disobedience of the court order and an act to disregard the lawful orders given by court. Any slight slip by an innocent party should not by any stretch of imagination be interpreted as contemptuous conduct.

In judicial review, where a public authority fails to comply with a court order, a mere finding of contempt rather than a penalty may suffice to mark the gravity of the situation. The court making a finding of contempt must bear in mind the responsibility of the duty bearer in exercise of power. If an official is willful in disobedience to a court order, then such conduct would expose such official to the risk of being held in contempt. See *Beggs* [2007] UKHL 3:[2007] 1 WLR 455

Whenever a party is desirous of making persons holding office liable for contempt breach of a court order, they ought to specify the likely persons or particular individuals who are ordered to refrain and from doing what. This will make it clear to that individual that a breach of the order is punishable by contempt instead of bundling the entire Makerere University Council membership as being contemptuous on matters that may never have been brought to their notice or attention.

The applicant is seriously contending that the status quo was preserved in the matter and indeed at the time of granting the injunctive reliefs, certain things had already been done. The injunction should never be interpreted to reverse what had already been done as this would not be the status quo prevailing at the particular moment in time. The applicant was already sent on compulsory leave of three months, and it had taken effect. The applicant was not in office and a new accounting officer had been appointed and had accepted the new assignments by Ministry of Finance. The injunction could not reverse this appointment until court had made any final decision in the matter.

The applicant's contract as stated earlier expired and the act of finding a replacement could not be contemptuous since the court proceedings should never have been interpreted to mean a stoppage on contract period from expiry. The actions of the 19 respondents were made in accordance with the University statutes and Charter they are not liable as members of the University Council.

"A Council member shall not be liable for any act done in good faith while carrying out duties and responsibilities of the University. However, this limitation of liability shall not apply to negligence or breach of the member's duty of care to the University or its stakeholders, or for acts or omissions not done in good faith, or which involve intentional misconduct or violation of the law."

The applicant could not claim for the salary and other employment benefits arising out of an employment contract which has expired. The expiry of the contract automatically stopped any benefits that would accrue from that contract relationship. The act of not effecting payments was not contemptuous as the applicant contended.

Therefore none of the actions complained of by the applicant were in violation of the court order issued in HCMA No. 328 and 319 of 2020.

The applications are dismissed with costs to the respondents.

It is so ordered.

SSEKAANA MUSA

JUDGE

30th September 2022