

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 94 OF 2021

H.E YOWERI KAGUTA MUSEVENI-----PLAINTIFF

VERSUS

- 1. THE EDITOR-IN-CHIEF, DAILY MONITOR NEWSPAPER**
- 2. MONITOR PUBLICATIONS LIMITED----- DEFENDANTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The plaintiff filed a suit against the defendants for defamation after the defendants run a story on 23rd February 2021 titled *Museveni 'inner Circle' Got Covid Jabs-US Paper*. The parties filed a joint scheduling memorandum which set out the following preliminary issues for determination.

- 1. Whether the President is barred by constitutional immunity from bringing these proceedings?*
- 2. Whether the President can waive any Constitutional provision in absence of an express provision in the Constitution so declaring?*
- 3. Whether Civil or any other proceedings involving the President as a party would afford parties equality in terms of Articles 21(1), 44(c) and 126(2) of the Constitution when the court is barred from granting any remedies in favour of the opposite litigant against the serving person of the President.*

When the matter came up for mention after scheduling, the defendants' counsel informed court that they have filed a Constitutional petition in the Constitutional Court.

The plaintiff was represented by *Counsel Edwin Karugire* while the defendants were represented by *Counsel James Nangwala & Mrs Mugweri Nangwala*.

The issue for determination is:

Whether the court should stay these proceedings pending the determination of the issues in that petition.

The defendants' counsel submitted that on 29th September 2022 he filed a constitutional petition; *Monitor Publications Limited v Attorney General of Uganda* which raises issues about the constitutionality of the present suit to wit;

Whether a serving President can file proceedings in Court? And secondly, Whether in such proceedings the parties can be afforded equal opportunity as provided in the Constitution.

Counsel implored the court to stay proceedings pending the constitutional petition citing the case of *Charles Onyango Obbo & Andrew Mwenda v Attorney General* as authority for giving guidance in case there is a pending constitutional petition.

The plaintiff's counsel opposed the application for stay of the court proceedings and submitted that at scheduling, the counsel agreed that the defendant had a constitutional issue and the same was to be raised in this court to determine whether it can be referred to the Constitutional court.

Counsel further submitted that the petition on the Constitutional court does not operate as a stay and the authority of *Charles Onyango Obbo & Another v AG* is quite distinguishable on facts since the plaintiff in the present case is not a party to the Constitutional Petition pending in the Constitutional court.

Secondly, the reading of the case clearly refers to a situation where there is a reference made by a lower court to the Constitutional court and not where a party has filed a Constitutional petition like in the present case directly to the court.

Analysis

The defendants counsel had intimated before court when the case came up for hearing that he intended to raise a preliminary objection on the constitutionality of the case. The parties at their joint scheduling they formulated preliminary issues for determination before the suit could be set down for hearing.

When the matter was adjourned to enable the parties explore an out of court settlement, the defendants' counsel opted to file a constitutional petition challenging the constitutionality of the suit and also raised some issues which he contended that they directly affect part of the suit. This court has not had an opportunity to peruse the same since it was filed via ECCMIS.

The defence counsel cited the case of ***Charles Onyango Obbo & Andrew Mwenda v Attorney General Supreme Court Constitutional Appeal No. 2 of 2002*** as the basis for the preliminary objections seeking to have the court proceedings stayed until the said constitutional petition is heard and determined. I do not agree with defence counsel since the decision of the Supreme Court is distinguishable to extent that the matter in question was a constitutional reference from a lower court and the present matter is not a constitutional reference but rather a constitutional petition duly filed with different parties or without the plaintiff being made a party. Justice Mulenga noted as follows;

Where a court refers a question that arises in the proceedings before that court, then the referring court must wait for the determination of the question by the Constitutional Court and dispose of the case in accordance with the determination of the question by the Constitutional Court.

This court should not stay its proceedings simply because one of the defendants has decided to file a constitutional petition. This court would have abdicated its responsibility and duty to hear the plaintiff's matter duly filed in this court. The defence counsel should only seek the said order from the Constitutional court

which may be in a better position to grant such orders based on the constitutional matter pending before them.

The above analysis is buttressed by the ***Constitutional Court in the Constitutional Petition Application No. 50 of 2012: Geoffrey Kazinda v Attorney General*** where it was observed as follows;

“However, where a party to the proceedings before a court of law, petitions on his/her own to have the Constitutional Court determine some question to do with the proceedings before that court of law, it does not automatically follow that the court has to stay the proceedings before it pending the determination of the question a party to the proceedings petitions the Constitutional Court to determine.

In such a case the issue of whether or not to stop the proceedings pending the determination of the petition appears to be left to the discretion of either the trial court or the Constitutional Court.”

The defendants counsel argument that the filing of a constitutional petition should result in an automatic stay of proceedings in the lower court would be abused by lawyers or litigants who intend to frustrate the hearing. In the case of ***British American Tobacco Uganda Limited v Fred Muwema & 4 Others Civil Suit No. 751 of 2014***: Justice David Wangutusi stated that;

“if it were otherwise, then every litigant trying to delay proceedings would rush and file proceedings in the Constitutional Court. This would heavily clog not only the Constitutional court where the petitions would be filed but also the High Court because the cases before it would be brought to a halt and yet filings continue daily”

The court’s power to exercise discretion to stay court proceedings before it can be exercised judicially and in public interest. The same should not be used to cause delay of hearings or inconvenience to the other party or result in public mischief should be granted

In the result for the reasons stated herein above this application to stay proceedings in this matter fails and the court shall proceed to set the suit down for hearing.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/11/2022