

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 0697 OF 2022
(ARISING FROM MISC.CAUSE NO. 0275 OF 2022)**

DR. ODONGO SAMUEL OLEDO:..... APPLICANT

VERSUS

UGANDA MEDICAL ASSOCIATION:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a temporary injunction against the respondent restraining their officers or persons acting under them, her agents or employees and any other persons claiming under her from implementing her resolutions dated 6th December, 2022 until the main cause is disposed of.

The applicant filed the main application (cause) seeking declaratory orders and other judicial review orders against the respondent to quash the decision made on 6th December, 2022 to wit:

- (a) A declaration doth issue that the decision by the respondent dated 6th December, 2022 to conduct an investigation on the applicant's conduct is illegal, ultra vires, biased, highhanded and irrational.*
- (b) A declaration doth issue that the decision of the respondent dated 6th December, 2022, directing the applicant to step aside from office was ultra-vires arrived at illegally, highhandedly, irrationally and substantiated with bad faith and breach of the rules of natural justice.*

- (c) An Order of Certiorari doth issue quashing the decision of the respondent dated 6th December, 2022 to conduct an investigation into the applicant's conduct and directing the applicant to step aside from office.*
- (d) An order of Certiorari doth issue quashing the decision of the respondent dated 6th December, 2022 appointing the UMA Vice president as "Acting President"*
- (e) An order of Prohibition doth issue restraining the respondent and or her agents from conducting the said investigation and or/ or suspending the applicant from office.*
- (f) A permanent injunction doth issue restraining the Respondent, her servants and/ or agents from implementing the resolutions dated 6th December, 2022 to conduct an investigation and to dismiss and/or suspend the applicant from office*

The application for temporary injunction was supported by an affidavit sworn by the applicant Dr. Oledo Samuel Odongo.

1. The applicant contended that he is the current President of Uganda Medical Association having been elected on 6th day of November, 2021. On the 6th day of December 2022, the respondent through her Ag President Edith Nakku Joloba and Secretary General Dr. Herbert Luswata issued a communication of the resolutions made in the UMA NEC consultative meeting with the NGC and Elder's Forum held on 6/12/2022.
2. That the applicant is challenging the resolutions dated 6th December, 2022 for being illegal, procedurally improper and against the rules of natural justice.
3. The applicant contended that there is imminent threat that the respondent will or has started to implement the resolutions to the applicant's detriment by appointing an Acting President.

4. That the respondent's resolutions are scheduled for implementation within short periods of 5 working days and 21 working days and if no injunction is granted and other actions will result in other negative resolutions.

While the respondent filed an affidavit in reply sworn by Dr. Herbert Luswata-the Secretary General of the respondent contending as follows;

1. The respondent in their affidavit contended that the Respondent-Uganda Medical Association is a nonexistent legal entity with no legal existence and capacity to be sued and as such, no legal action can be instituted or maintained.
2. That on 5th December 2022, the Secretary General received a request to call for an extra ordinary general assembly by paid-up members of Uganda Medical Association complaining that the Applicant lead a group of unsuspecting medical students, pre-interns and a few interns donning clinical coats to a national youth event at Kololo independence grounds, the majority of whom were not members of Uganda Medical Association.
3. The applicant was accused of mobilizing medical students through their umbrella body the Federation of Uganda Medical Interns (FUMI) and promised to get them refreshments and a photo opportunity with President Yoweri Museveni.
4. That the applicant was aware of the request for an extra ordinary general assembly where his alleged conduct would be discussed but instead rushed to prematurely file the present application in an attempt to frustrate his censure motion.
5. That the applicant had notice of the extra ordinary general assembly that was duly convened on 28th December 2022(may be 18th December 2022) that passed resolutions removing him from the office of

President Uganda Medical Association and duly confirming Dr. Edith Nakku Joloba as the President with immediate effect.

6. The application has been overtaken by events and there is no status quo to maintain.

The applicant was represented by *Elvis Ssemuyaba & Twinomugisha Ivan* while the respondent was represented by *Martin Asingwire, Katamba Pius Busobozi, Oketcho Stanley and Ronald Ewalu*.

The parties made brief oral submissions which I have considered in this ruling.

Preliminary Considerations

The respondent's counsel attempted to raise several preliminary objections which I did not find fit and proper to be determined in the present application.

The respondent's counsel further argued in opposition to the application by way of raising the same or similar preliminary objections which I find not fit to be determined at the preliminary stage without sufficient evidence.

I wish to take judicial notice of the fact that the respondent is indeed a registered entity with a certificate of registration under the laws of Uganda in the names of Uganda Medical Association Limited.

I do not understand the basis of respondent's argument or contention that the respondent is nonexistent legal entity with no legal existence or capacity to sue or be sued.

The determination of these preliminary matters goes to the root of the application and its determination may involve evaluation of evidence in the main cause. Since the respondent has not yet filed any affidavit in reply

to the main application, I would decline to make any pronouncements on these points of law at this stage. The same will be determined together with the main cause.

Whether the court should issue a temporary injunction in this matter?

The applicant's counsel submitted that the applicant is challenging the decision of the respondent contained in resolutions dated 6th December, 2022 because it is depriving the applicant of his position as President of Uganda Medical Association and the process leading to his suspension or removal is tainted with illegality and procedural impropriety. It was counsel's contention that there are serious issues to be determined and that the case is not frivolous or vexatious.

The applicant's counsel contended that when the respondent was served with the application on Friday-16th December 2022, they brought forward the Extra General Meeting in order to circumvent the process of court and defeat the fundamental rights under the constitution.

It was further argued that he will suffer irreparable injury as the duly elected President and if removed from his elected position and it will affect his reputation.

The applicant contended that there is a status quo to be preserved which was prior to the Extra General Assembly in order not to defeat the court process.

The respondent's counsel only argued preliminary points as noted earlier and contended that the application for temporary injunction has been overtaken by events.

Analysis

The jurisdictional and procedural principles governing interim injunctions or temporary injunctions must be sufficiently balanced and flexible to address the objectives of these remedies.

If the court believes that there is a serious issue to be tried, it will prospectively consider the parties' respective positions according to whether an injunction is granted or refused. In doing so, the court will gauge the hardship which would be caused to the applicant if he is refused relief and balance it against the hardship which would be caused to the respondent if the injunction is granted. If neither party would be adequately compensated, the court would ascertain where the balance of justice lies.

The jurisdiction to grant a temporary injunction is an exercise of discretion and the Discretionary powers are to be exercised judiciously as was noted in the case of *Yahaya Kariisa vs Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29*.

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as her legal right is invaded. *See Titus Tayebwa v Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009*.

In applications for a temporary injunction, the Applicant is required to show that there must be a *prima facie* case with a probability of success of the pending suit. The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. (*See American Cyanamid Co v Ethicon Ltd [1975] ALL ER 504*).

A *prima facie* case with a probability of success is no more than that the Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried as was noted in *Victor Construction Works Ltd v Uganda National Roads Authority HCMA NO. 601 of 2010*.

The applicant is challenging the decision that resulted in resolutions which have now culminated in his removal from the elected position of President Uganda Medical Association. The applicant came to this court to vindicate his rights and stop illegal exercise of power by some individuals who wanted to stage a 'Leadership Coup'. This court has a duty to investigate and interrogate the allegations made by the applicant and this court cannot be outrun in ensuring that justice is done to a party before it.

There are serious issues to be interrogated in the main application and this court is satisfied that the case for the applicant is not frivolous or vexatious under the circumstances.

The whole purpose of granting an injunction is to preserve the status quo as was noted in the case of *Humphrey Nzeyi vs Bank of Uganda and Attorney General Constitutional Application No.01 of 2013*. Honourable Justice Remmy Kasule noted that an order to maintain the status quo is intended to prevent any of the parties involved in a dispute from taking any action until the matter is resolved by court. It seeks to prevent harm or preserve the existing conditions so that a party's position is not prejudiced in the meantime until a resolution by court of the issues in dispute is reached. It is the last, actual, peaceable, uncontested status which preceded the pending controversy.

The applicant came to this court while he was still holding the position of President of Uganda Medical Association. The respondent or its agents were fully aware of the pending matters in court and were duly served on 16th December 2022. The action of the respondent to change the status quo is untenable and this court cannot be overrun through illegalities and 'mob' decisions like what was done on 18th December 2022.

The status quo prior or as at the time the application was filed in this court on 9th December, 2022, ought to be preserved to avoid prejudice of rights of the applicant pending the determination of the main cause.

This court has wide discretion at this stage to consider any factor which would have a bearing on the issue whether the injunction ought to be granted. It is for the court to determine the weight to be accorded to a particular factor weighed in balance and where they appear to be balanced the court ought to consider and strive to preserve the status quo.

Other factors that may be taken into account in determining the balance of convenience include the importance in upholding the law of the land or rule of law and the duty placed on the authority to enforce the law in public interest. The actions of the respondent must be rooted in the law and any divergence and abuse of power must be restrained as the court investigates the circumstances surrounding the decision made by the respondent which has 'colourings' of a public body.

The applicant has been interrupted in his term as a duly elected President of Uganda Medical Association and this is a greater inconvenience caused to him and if the temporary injunction is not issued he may lose an opportunity which may have been filled by another person (third party) since the respondent has attempted to have him replaced. The balance of convenience favours the applicant as he would suffer greater loss (loss of leadership position) if the injunction is not granted than the respondent who may not suffer any damage if the injunction is granted. The purported new leadership has not been in office for more than 24 hours and therefore there is no prejudice suffered by the respondent.

This court in the exercise of its discretion ought to avoid any absurdity in application of the law since the damage the applicant will suffer if court rules in his favour will be greater and irreparable. It is a well settled proposition of the law that an interim order can be granted only if the applicant will suffer irreparable injury or loss keeping in view the strength of the parties' case.

The courts when exercising power of judicial review have a duty of ensuring that the public body or officer has acted in accordance with the

law or within the 'four corners' of the legislation or constitution and thus enforcing the rule of law. The court would be greatly inclined to granting interim remedies as it establishes the propriety of the decision in order not to render the application nugatory.

The court's power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of temporary injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the applicant. The court grants such relief *ex debito justitiae*, i.e to meet the ends of justice. The court must keep in mind the principles of justice and fair play and should exercise its discretion only if the ends of justice require it. See ***Section 64 of the Civil Procedure Act***.

In the result for the reasons stated herein above this application succeeds: A *temporary injunction issues restraining the respondent, her agents or employees and any other persons claiming under her from implementation of resolutions dated 6th December, 2022 and this court stays whatever was done on 18th December 2022 until the main cause is disposed of*. The costs shall be in the cause.

I so Order

Ssekaana Musa

Judge

22nd December 2022