

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 0220 OF 2023
(ARISING FROM MISC.CAUSE NO. 0219 OF 2023)**

CHARLES MUSEKUURA:..... APPLICANT

VERSUS

ATTORNEY GENERAL:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a temporary injunction against the respondent restraining the respondent or agents/officers and any other persons in any way against enforcing the termination of the applicant from his service as the Chairperson of National Standards Council until the disposal of the main application for Judicial Review before this court.

The applicant filed the main cause seeking *to quash the decision of the Hon Minister of Trade, Industry and Cooperatives Francis Mwebesa, terminating the applicant's service as Chairperson, National Standards Council and also a prohibition of the Hon. Minister of Trade, Industry and Cooperatives Francis Mwebesa from appointing a new Chairperson of the National Standards Council during the existing tenure/term of service of the applicant in the same position.*

The application for temporary injunction was supported by an affidavit sworn by the applicant Charles Musekuura.

1. The applicant was duly appointed as the Chairperson to the National Standards Council on the 4th August 2022, wherein his tenure of

service was to run for a period of 3 years, which appointment was duly accepted by the applicant.

2. That since his appointment as the Board Chairperson, the applicant has been diligently and professionally executing his duties as mandated at all times.
3. That however, on the October 11th 2023, without any reason, and with clear disregard to the rules of natural justice, Hon. Francis Mwebesa, the Minister of Trade, Industry and Cooperatives, wrote a letter terminating the applicant's services as the Chairperson of National Standards Council of the Uganda National Bureau of Standards with immediate effect.
4. That on the same day pursuant to section 5(1) of the Uganda National Bureau of Standards Act also wrote to the Acting Executive Director of Uganda National Bureau of Standards informing him that the applicant was being replaced as the Chairperson of the Board of the National Standards Council by Mr. James Kabali Kalibbala.
5. That the said S.5(1) of the Uganda National Bureau of Standards Act, the Minister relied on to terminate the applicant from his position is repealed law by virtue of S.5(a) of the Uganda National Bureau of Standards (Amendment) Act, 2013.
6. That the said termination of the Minister is ultra vires as it is not founded on any law and it is a clear violation of the principles of Natural Justice particularly those of; a right to an adequate notice containing the reasons for the termination, *audi alteram partem* (a right to a fair hearing.)

While the respondent filed an affidavit in reply sworn by Alfred Oyo Andima –the Under Secretary in the Ministry of Trade, Industry and Cooperatives;

1. The respondent in their affidavit contended that the instant application is devoid of merit and the main application out of which it originates does not raise a prima facie case warranting the grant of the prerogative orders of judicial review.
2. That on the 11th October, 2023, the Minister of Trade in exercise of his statutory powers removed the applicant from his duties as the Chairperson, National Standards Council.
3. That on the 11th day of October, 2023, The Minister of Trade in exercise of his statutory powers appointed Mr. James Kabali Kalibbala as the Chairperson, National Standards Council.
4. That I have been advised by the Attorney in Attorney General's chambers whose advice I verily believe to be true that the status quo has been irrevocably changed as the applicant was duly removed from National Standards Council and his replacement has assumed his duties.
5. That this application is misconceived and an abuse of court process and the applicant has not shown that failure to grant interim injunction will cause him to suffer irreparable loss where damages will not be an adequate remedy.

The applicant was represented by *Sseninde Saad & Ssekantuuka Joachim* while the respondent was represented by *Mukama Allan(SA)*

The parties filed their respective submissions which I have considered in this ruling.

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 Minister of Trade, Industry and Cooperatives to dismiss him and replace him with another person without according him a hearing and contrary to the Uganda National Bureau of Standards Act.

The decision of the Minister of Trade, Industry and Trade is tainted with illegality and procedural Impropriety and therefore there is a prima facie case which raises a triable issue to be determined in the main cause. The dismissal and immediate removal would prejudice the applicant who will suffer irreparable damage which cannot be atoned for in damages.

The respondent's counsel submitted and contended that the application for temporary injunction has been overtaken by events and in his view their no status quo to be preserved since the applicant was dismissed and removed immediately.

The respondent contends that the applicant has not satisfied any of the grounds for the grant of a temporary injunction and the maintain of the applicant would have the effect of reversing the status quo which is not envisaged under an application for temporary injunction.

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. The court's discretionary powers should not be curtailed with hurried exercise of power with a view of changing the status quo to defeat the grant of appropriate 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 decisions of the Minister of Trade, Industry and Cooperatives for illegality or simply wrongful exercise of power to remove and replace the applicant with immediate effect without according him a fair treatment. The applicant came to this court to vindicate his rights and stop illegal exercise of power by a Minister of Trade, Industry and Cooperatives who seems to be taking public decisions of a Ministry as if it is a personal private entity contrary to principles of rule of law and the National Objectives and Directive Principles of State Policy. This court has a duty to investigate and interrogate the allegations made by the applicant and this court cannot be outrun by hurried decisions in ensuring that justice is done to a party before it.

There are serious issues to be interrogated in the main application (Cause) 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 court should not preserve a contested status quo which is under challenge for illegality and especially under judicial review.

The applicant came to this court as the person who was holding office as Chairperson Board National Standards Council who was removed and immediately replaced on the same day 11th October, 2023. The action of the respondent to change the status quo with immediate effect and the new appointment are being challenged in this court. These are public offices which ought to be run with bear minimum standards of just and fair treatment as provided under Article 42 of the Constitution.

The court under the doctrine of separation of powers is enjoined to ensure that system of checks and balances is not casually defeated by not allowing aggrieved parties like the applicant to question decisions made by public office holders like the Minister of Trade, Industry and Cooperatives. Any misuse or abuse of power should never be a ground to deem an action overtaken by events otherwise illegalities would be perpetuated through ensuring that the status quo is changed in a hurried manner without any justification or basis.

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 Minister of Trade, Industry and Cooperatives.

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 preposition of the law that an interim injunction 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 and stopping the respondent or their agents from in any way against enforcing termination of the applicant from his service as the Chairperson of National Standards Council until the disposal of the main application for judicial review before this court.*

The costs shall be in the cause.

I so Order

Ssekaana Musa

Judge

15th December 2023