

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

HCT-00.CV-MA-0326-2022

(Arising from Miscellaneous Application No0324 OF 2022)

(Arising from Civil Suit No.185 of 2022)

TEAM UNIVERSITY..... APPLICANT

VERSUS

NATIONAL COUNCIL FOR HIGHER EDUCATION.....RESPONDENT

BEFORE HW KAREMANI JAMSON.K DEPUTY REGISTRAR

RULING

This an application brought by Notice of Motion under Section 33 of Judicature Act as Amended, Section 98 of Civil Procedure Act and Order 52 Rules 1 and 3 of the Civil Procedure Rules as amended.

It seeks the orders of this court that:

1. An interim order doth issue restraining the respondent, its employees, subordinates, agents or any other person from investigating/inquiring into the qualification awarded to one Sakaja Johnson Arthur by Team University and/or relying on, for the decision any report arising from such an inquiry/investigation pending the determination of the high court miscellaneous application No.0324 of 2022.
2. An interim order doth issue restraining the respondent, its employees, subordinates, agents or any other person from publicizing the inquiry/investigation in any mainstream or any other media and/or relying on the report or relying same for any decision pending the determination of miscellaneous application No.0324 of 2022.
3. That costs of this application be provided for.

The grounds of the application are contained in the affidavit deposed by Dr.Ssegawa James Kiggundu the Academic Registrar of the applicant University. The grounds of the application are that;

1. The applicant an accredited University in Uganda by the respondent with a provisional license to operate a private University.
2. The applicant has at all times duly executed and exercised its mandate of admitting and awarding students legally, efficiently and diligently.
3. The applicant was requested by the respondent to provide information relating to the enrolment and award of Bachelor of Science in Management to Sekaja Johnson Arthur.
4. The respondent commenced an inquiry/investigation into the qualification award to Sekaja Johnson Arthur by the applicant.
5. Being aggrieved, the applicant has since filed High Court Civil Suit No. 2022 for orders challenging the same which is pending hearing.
6. The applicant filed an application seeking a temporary injunction vide Miscellaneous Application No.0324 of 2022 to restrain the respondent from investigating/inquiring into the qualification awarded to Sekaja Johnson Arthur pending the hearing the main suit.
7. The threat of discrediting and damaging the applicant is imminent and if this application is not granted the main application for a temporary injunction shall be rendered nugatory.
8. The applicant shall suffer irreparable damage that cannot be atoned to by award of damages.

The respondent filed an affidavit in reply deponed by Professor Mary J.N Okwakol the Executive Director of the National Council of Higher Education.

The deponent stated that:

1. That she read the application and the affidavit in support of the application and with the help of the respondents lawyer she understood the affidavit.
2. That she has been advised by the same lawyers that which advice she believes that the application is bad in law and should be dismissed with costs.
3. That the preserve of equating academic and professional qualification is the mandate of the respondent.
4. That the email annexed to the affidavit in support of application was part of the verification exercise into the qualification of Sekaja Johnson Arthur following a request from the Commissioner for University Education in Kenya annexed to her affidavit.
5. That she is informed by the respondent's lawyers and she verily believes that the verification exercise is part of the respondent's mandate under Section 5(1) of the University and Other Tertiary Institutions Act 2001 as amended.
6. That the process of verification required the reviewing of the documents to make sure that the verification is supported by documentary evidence.
7. That the results could not be shared the Commission for The University Education because the respondent received a communication from the IGG that it was investigating the said Sekaja Johnson Arthur 's qualification.
8. That in any event, the decisions of the respondent's Council are not shared with the media but are only shared with the person requesting and that is why a letter was written to the Commission for University Education in Kenya informing it of the IGG's investigation.

9. That as such there is no investigation being undertaken by the council into any matters touching Sekaja Johnson Arthur's qualification or Team University for that matter as the IGG had in an earlier communication stayed the respondent's investigation into non-compliance issues at the applicant university following the respondent's invitation into discuss the matter.
10. That therefore the publication of any report touching Sekaja Johnson Arthur's qualifications or Team University has been overtaken by events being the ongoing investigation by IGG.
11. That the rightful party against whom the applicant should seek an injunction is the investigating entity to wit IGG.

Consideration of the merits of the application

The Law based on

Section 33 of the Judicature Act provides that the High Court shall in exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal equitable claim properly brought before it so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of these matters avoided.

Section 98 of the Civil Procedure Act is about the inherent powers of court to make orders so as to stop abuse of court process or to make ends of justice met.

The application before court is for grant of an interim order pending the disposal of the main application for a temporary injunction.

The principles necessary for the grant of interim injunctions are cited in the case of **Mathew Rukikaire vs INCAFEX Limited Supreme Court Civil Application No.11 of 2015 (Unreported)** where Justice Arach-Amoko sitting as single judge in application for an interim order of injunction to restrain the respondent from accessing and/or receiving payment from Government of Uganda of compensation until the final determination of the application for temporary injunction while quoting the submission of Counsel Walubiri had this to state;

“Consideration for the grant of an interim order of any execution of interim injunction is whether there is a substantive application pending and whether there is a serious threat of execution before the hearing of the substantive application.....”

In another case of **Souna Cosmetics Ltd Vs The Commissioner Customs URA & Anor Commercial Court Miscellaneous Application No.267 of 2011** where Justice Christopher Madrama held that an application for an interim injunction is not an application on the merits but is meant to preserve the right to appeal or the right of hearing on the merits which right may be curtailed if the status quo is changed. That it would be strange for the judge to consider the grounds for grant of an injunction and at the same time after basing on the same consider the merits of the main application on the same grounds. That the practice has been that such interim measures/orders are heard by the registrar pending the obtaining of hearing date before the judge.

That the law concerning the interim injunction is that the court preserves the right of the applicant/appellant to be heard on the merits which is very limited jurisdiction which does not deal with the merits of the suit.

The judge further held that in exercising the discretion to prevent an appeal or application from being rendered nugatory the court does not consider the merits of the appeal/application for a temporary injunction. The court considers whether the appellant/applicant has a bona fide appeal or application and whether the right to have it heard will be curtailed if an interim measure of injunction or stay of execution is not granted. That all the applicants need to prove to the registrar is that there is a bona fide arguable case for consideration on the merits before the court. That it is necessary to grant an interim measure of protection to preserve the status quo to prevent the appeal or main application from being rendered nugatory. That the purpose of the interim measure is to preserve the right to be heard on the appeal or application.

From the above two authorities I can ably conclude that the grounds for the grant of an interim injunction are:

1. That there is a status quo to be preserved.

2. That there is a substantive pending application for a temporary injunction with likelihood of success.
3. That there is an imminent threat of changing the status quo.
4. That the change of the status quo will render the main application nugatory.

Whether there is a status quo to be maintained.

Status quo means the state of affairs or circumstances of the existing order of things.

According to **Syed Muhammad Aala Imuran** in an Article titled “**Status Quo To Be Maintained**” the literal meaning of phrase status quo is the existing state of affairs, the present situation or condition.

In the instant case the applicant stated vide the affidavit of Dr Ssegawa James Kiggundu that the University was granted a provisional license by the respondent as a private University. That an investigation/inquiry into the qualification of a Sekaja Johnson Arthur awarded by the applicant University has commenced and the applicant is aggrieved by the same. That it has filed a suit and an application for a temporary injunction to restrain the respondent from further investigations.

The respondent stated vide the affidavit of Professor Mary J.N Okwakol that it had commenced a verification exercise into the academic qualification of Sekaja Johnson Arthur which was halted by the Inspector General of Government (IGG). That there is no investigation on going at the time that touches Sekaja Johnson Arthur’s qualification or Team University.

According to the affidavit in support of the application and the submissions of the learned counsel for the applicant the application was based on the request for information sent to the applicant dated 14th June 2022 to conclude that there was an investigation going on in the matter.

According to the affidavit in reply and the submissions by the learned counsel for the respondent the communication by the Inspector General of Government to the Executive Director of the respondent dated 20th June 2022 the investigation was stopped.

I do believe that the respondent's submissions that indeed the investigations were stopped and at moment there is no investigation being carried out by the respondent.

The status quo is that there is no investigation being carried out by the respondent. The second issue has not been proved.

Whether there is a substantive application for a temporary injunction with likelihood of success that is pending

According to the affidavit in support there is a pending application No.0324 of 2022 for a temporary injunction.

And according to the affidavit in reply it is not denied that there is an application for a temporary in injunction, it only claims that it is misconceived and bad in law.

I have looked at the affidavit in support of the application and the one in reply, I have considered the submissions of the counsel for the applicant and the respondent, am convinced that there is an application for a temporary injunction pending hearing. The same doesn't appear frivolous and vexatious. I don't have to go into its merits at this level to examine its legalities.

According the case of **Alcon International Ltd versus The New Vision Printing & Publishing Co.Ltd & Anor Civil Application No.0004 of 2010 (Unreported)** Justice GM.Okelo held that it was not necessary for him at that stage to consider whether the publication complained of plainly and deliberately passed the limit of frank candid and honest comments expected of journalist. That this a matter reserved for consideration

The second ground has been fulfilled.

Whether there is a threat of imminent change of status quo.

According to the applicant in the affidavit in support, the respondent is carrying out an investigation. The respondent's affidavit shows that the investigation was halted.

In his submissions the learned counsel for the applicant stated that the respondent has been threatening to carry out an investigation. The respondent's counsel submitted that the investigation was stopped by IGG.

I have looked at the averments in the affidavits and the submission of both counsel and it is my finding that there is no imminent threat to carry out the investigations anymore. The third condition has not been proved.

Whether failure to grant the order will render the main application nugatory

According Justice Madrama in to **Souna Cosmetics Ltd Vs The Commissioner Customs URA & Anor (supra)** held that an application for an interim injunction is not an application on the merits but is meant to preserve the right to appeal or the right of hearing on the merits which right may be curtailed if the status quo is changed.

It is my finding that since the investigations have already been halted my not to granting an interim order may not render the main application nugatory.

All in all, I find no merit in this application which I dismiss.

Costs

As for the issue of the costs, it is my finding that at the time of filing this application the developments about the halting of the investigations by the IGG had not been communicated to the applicant and for that reason I absolve the applicant of the costs. Each party to bear its own costs.

Dated this14th..... Day ofJuly.....2022


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KAREMANI JAMSON.K

DEPUTY REGISTRAR

