

**THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA,
AT KAMPALA**

MISCELLANEOUS APPLICATION NO 02 OF 2007

(Arising out of Misc. Application No 01 of 2007 and Constitutional Petition No. 33 of 2006)

JAMES ISABIRYE.....APPLICANT

VERSUS

1. ATTORNEY GENERAL

2.INSPECTOR GENERAL OF GOVERNMENT..... RESPONDENTS

28 February 2007

RULING OF HON. MR. JUSTICE SBK. KAVUMA, JA.

This application is brought under Articles 50, 126 and 137 of the Constitution and Rule 2 (2) of s.1 13 – 10.) The Judicature (Court of Appeal Rules) Directions, Order 41 Rules 1 and 2 of the Civil Procedure Rules, s. 98 of the Civil Procedure Act, Rules 4, 10 and 13 of the Rules of the Constitutional Court (Petitions for Declarations under Article 137 of the Constitution) Directions L.H. 4 of 1996.

The application is by Notice of Motion and is supported by an affidavit deponed to by Mr. E. Tumusime in which further grounds of the application are stated.

At the hearing of the application, the applicant was represented by Mr. M. Kabega appearing together with Mr. E. Tumusime (hereinafter together referred to as counsel for the applicant). Ms Margaret Apiny, Senior State Attorney (hereinafter called counsel for the 1st respondent) represented the 1st Respondent and Ms Betty Namuhoma (hereinafter called counsel for the 2nd respondent) represented the 2nd respondent.

The application is one for an interim order to stay the proceedings at the Buganda Road Chief Magistrate's Court and the execution of all orders issued by that Court on 21.02.2007 in Cr. Case No. 1222 of 2006 pending the hearing and final disposal of Miscellaneous Application No. 01 of 2007 pending before Court. In that application(No. 01 of 2007), the applicant seeks orders to stay the proceedings at the Chief Magistrate's Court in Criminal Case No. 1222 of 2006 and the orders issued by that Court, in that case on 21.02.2007, pending the disposal of Constitutional Petition No. 33 of 2006. In that petition, the applicant challenges the constitutionality of the proceedings at the Chief Magistrate's Court and the orders given therein. The Petition, further, seeks constitutional interpretation of important provisions of the Constitution including the right to fair trial or fair hearing and provisions on the powers of two very important public offices in this country, namely, that of the Director of Public Prosecutions (DPP) and that of the Inspector General of Government (IGG).

Counsel for the applicant submitted that the applicant is dissatisfied and aggrieved with the proceeding in the Buganda Road Chief Magistrate's Court where he stands charged with bribery contrary to s. 5(a)(iii) of the Prevention of Corruption Act. He is, further, charged with causing financial loss. Counsel further submitted that on the 21st February 2007 the Chief Magistrate's Court issued a warrant of arrest in respect of the applicant. The applicant, being aggrieved with all the above, filed Constitutional Petition No. 33 of 2006, in the Constitutional Court. Thereafter, he applied for a stay of the proceedings at the Chief Magistrate's Court pending the disposal of the Constitutional Petition but the application was rejected. Miscellaneous Application No. 01 of 2007 was then filed and is still pending in Court. The applicant now comes to this Court under the instant application for the orders already mentioned above. It is counsel's contention that this application and application No. 1 of 2007 and Constitutional Petition No. 33 of 2006 concern constitutionally guaranteed rights and freedoms of the applicant among other things.

This application, according to counsel, is urgent and if not granted, the applicant will suffer irreparable damage and both Miscellaneous Application No. 01 of 2007 and Constitutional Petition No. 33 of 2006 shall be rendered nugatory. It is counsel's further contention that Constitutional Petition No. 33 of 2006 raises serious matters for consideration, interpretation and

determination by the Constitutional Court and it is only fair and equitable that the orders sought in this application are granted by Court in the interest of Justice. Counsel referred Court to *Rubaramira Ruranga Vs The Electoral Commission and the Attorney General, Constitutional Application No. 10 of 2006,* *Dr. James Rwanyarare & Others Vs The Attorney General, Constitutional Application No. 6 of 2006; Uganda Vs Rtd. Col. Kizza Besigye, High Court Criminal Session Case No. 148 of 2005 and Charles Onyango Obbo & Another Vs The Attorney General, Constitutional Appeal No. 2 of 2002.*

Counsel prayed Court to exercise its discretion and grant the orders sought and award costs of the application to the applicant.

Although the application was served on the Respondents, none of them filed any affidavit in reply. Affidavits of service are on record.

Counsel for the 1st respondent informed Court that she would not to oppose the application and she did not oppose it.

On her part, however, counsel for the 2nd Respondent addressed Court stating she opposed the application but went on to advance arguments that would, in my view, better be brought up, either at the hearing of the main application No. 01 of 2007, or of Constitutional Petition No. 33 of 2006.

The law regarding granting interlocutory reliefs is well settled.

In the case of *Uganda Law Society and Another V The Attorney General Constitutional Application No. 7 of 2003* the Constitutional Court held that for such relief to issue, the Court must be satisfied that: -

- (a) The applicant has a prima facie case with a probability of success and

- (b) That the applicant might otherwise suffer irreparable injury. If the Court is in doubt on any of these two issues, then the Court will decide the application on a balance of convenience.

The Constitutional Court elaborated: -

“According to the first of the three principles stated above, the burden of the applicants are (sic) to satisfy the Court, first that there are serious questions to be tried in the suit and secondly that on the evidence before court there is a probability of the applicants being entitled to the relief asked for. We must stress that at this stage proof of the facts deponed in the affidavit evidence is not required. What is required at this state is to show a prima facie case and probability of success, not success.” See ***Rubaramira Ruranga V Electoral Commission & Another (supra)***.

I have carefully listened to the submissions of counsel and thoroughly perused the pleadings and evidence on record. I have also given careful consideration to the law applicable to the application now before me and I have had a careful perusal and consideration of the authorities cited in the matter.

This application was filed by the applicant against the respondents jointly. The 1st respondent did not oppose the application. Further, the fact that no affidavits in reply were filed in Court leaves the applicant’s affidavit evidence on record un rebutted.

This Court has the discretion to issue the orders sought by the applicant. I am satisfied that at the centre of the application lies the question of rights and freedoms of the applicant guaranteed by the Constitution. It is the duty of this Court to protect those rights and freedoms throughout the judicial process now under way.

I am also satisfied that Miscellaneous Application No. 01 of 2007 and Constitutional Petition No. 33 of 2006 shall be rendered nugatory if the interim orders sought in this application are not granted and the applicant stands to suffer irreparable damage. I am further satisfied that there is a prima facie case with a probability that the applicant may succeed and be entitled to the reliefs he seeks from Court. It is just and equitable, in my view, that this Court, in its discretion, orders

a stay of the proceedings at the Chief Magistrate's Court in that Court's Criminal Case No. 1222 of 2006 and a stay of execution of all the orders issued therein on the 21st February 2007 including the warrants of arrest until the hearing and final disposal of Miscellaneous application No. 01 of 2007 and I so order.

Costs of this application shall abide the outcome of the hearing and final disposal of Miscellaneous Application No. 01 of 2007.

28 February 2007

**HON. MR. JUSTICE SBK. KAVUMA, JA.
JUSTICE OF COURT OF APPEAL**