

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA

AT KAMPALA CIVIL APPLICATION NO. 275 OF 2015

[Arising from Civil Application No. 265 of 2015, Arising from Civil Application No. 264 of 2015 Arising from Civil Application No. 263 of 2015 Arising from Miscellaneous Application No. 310 of 2013]

Dr. James AkampumuzaApplicant

VERSUS

1. Makerere University Business School
2. Wasswa Blunywa
3. Prof. Venansius Baryamureba.....Respondents

Coram: Before the Hon. Justice Remmy Kasule, Justice of Appeal, sitting as a single Justice

RULING

The applicant seeks an interim order to stay proceedings in Civil Applications Numbers 263 of 2015, 264 of 2015 and 265 of 2015 lodged and being prosecuted by the respondents in this Court.

In Civil Application No. 263 of 2015 the respondents seek leave to appeal, while in Civil Application No. 264 of 2015, they pray this Court to order a stay of proceedings and in Civil Application No. 265 of 2015 an interim order of stay of proceedings is sought.

All the three above applications arise out of the proceedings in High Court at Kampala Miscellaneous Cause No. 310 of 2013 which was Judicial Review application brought by the applicant against the respondents.

In the course of the hearing of the said Judicial Review Application No. 310 of 2013 the respondents' Counsel prayed Court to raise a number of preliminary points of law at a stage when the hearing of the application had already commenced and was in advanced stage. The presiding trial Judge, allowed the preliminary points to be raised, but directed that, since the hearing had advanced so much, the preliminary points were to be raised in the final written submissions of Counsel for the respondents to which the so applicant's Counsel would respond in their written reply to the respondents' submissions. The trial Judge was then to resolve the said preliminary points in the final decision of Court.

Counsels for the respondents were dissatisfied with the above Court direction and sought leave from the trial Judge to appeal to this Court against the same. The trial Judge refused to grant the prayed for leave to appeal. The respondents then proceeded to lodge in this Court the stated applications numbers 263/2015, 264/2015 and 265/2015.

On 30.10.2015, this Court, presided over by Hon. Lady Justice Solomy B. Bossa, JA, heard and dismissed with

costs Civil Application No. 265 of 2015 which was for an Interim Order to stay proceedings in High Court Miscellaneous Cause No. 310 of 2013 pending the hearing and determination by this Court of the substantive Civil Application No. 264 of 2015. Hence for purposes of this Ruling Civil Application No. 265 of 2015 of 2015 is not under consideration since the same is already disposed of.

At the hearing learned Counsel Simon Tendo Kabenge represented the applicant. The applicant was also physically present in Court.

The respondents and their respective Counsel, though duly served with the application and notification of the hearing date, were, without any explanation to Court, absent. Court thus ordered the hearing to proceed in their absence.

Counsel for the applicant submitted that the respondents are committing abuse of Court process by lodging in this Court and purporting to prosecute Civil Applications Numbers 264/2015, and 263/2015, their aim being to delay, as long as they can succeed to do so, the final determination by the High Court of Judicial Review Miscellaneous Application Number 310 of 2013; which application concerned questioning the acts of the second and third respondents as members of staff of the first respondent, in as much as such acts adversely affected the applicant interests, who too, happened to be associated with the staff of the first respondent. The delay in disposal by the High Court of the Judicial Review Miscellaneous Application Number 310 of 2015, would benefit the second and third respondents, as, according to their terms of employment with the 1st respondent, they will have left the employment of the first respondent by the time a final decision is made in Miscellaneous Application Number 310 of 2015. Therefore their employment with the first respondent was soon to end. Their aim was for them to cause as much delay as possible so that the said Application No. 310 of 2015 would be resolved by the High Court, if at all, when the two of them were no longer in the employment of the first respondent.

Further, according to Counsel for the applicant, there was no possibility that the respondents' intended application for leave to appeal would be granted, as there was nothing wrong at all, that could constitute a reasonable ground of appeal against the decision of the trial Judge directing that the respondents address their preliminary points of law by incorporating them in their written submissions in Miscellaneous Cause No. 310 of 2013.

The applicant had thus lodged a substantive application No. 274 of 2015 to strike out, amongst other prayers, Civil Applications 264/2015 and 263/2015. As such, it was necessary to stay the proceedings of those two applications pending disposal of the substantive application No. 274 of 2015.

This Court thus proceeds to resolve this application on its merits. Court is satisfied that the applicant has shown a prima facie case with a probability of success of the substantive application No. 274 of 2015 whose existence in this Court is not disputed by the no respondents. The delay in disposal of High Court Miscellaneous Cause No. 310 of 2013, the Judicial Review application, which delay is likely to go on as long as Civil Applications Numbers 264/2015 and 263/2015 remain unresolved in this Court, is likely to result in the applicant suffering irreparable loss or injury, that us may not be adequately compensated for by an award of damages as regards the subject matter in dispute in High Court Miscellaneous Cause No. 310 of 2013 since the said delay may result in the second and third respondents serving out their terms of service and leaving the employment with the first respondent. The applicant may have no remedies against both of them once this happens as his claims against

them is intertwined with the second and third respondent's employment with the first respondent.

As to the matter of convenience, it is the considered view of this Court, that it is more convenient as it will stop multiplicity of Court Proceedings and decisions if the hearing of Civil Applications 204/2015 and 263/2015 is stopped pending disposal of the applicant's Civil Application No. 274 of 2015 that questions the legitimacy of the said two applications in this Court.

Accordingly this application is allowed. An Interim Order is hereby issued staying the proceedings in Civil Applications 263/2015 and 264/2015 pending disposal of the applicant's Civil Application No. 274 of 2015.

The Registrar of this Court is hereby called upon to summon the parties to Civil Application No. 274 of 2015 with a view to fixing a hearing date for disposal of the said Application as quickly as the Court calendar can permit.

The costs of this application are to abide the outcome of Civil Application Number 274 of 2015.

It is so ordered.

Dated at Kampala this 26th day of April 2016.

Hon. Justice Remmy Kasule

JUSTICE OF APPEAL

