

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL APPLICATION NO. 008 OF 2015

[Arising from Constitutional Application No. 07 of 2015, itself Arising from Constitutional Petition Number 08 of 2015]

1. TULSA INVESTMENTS Limited

2. KASANGAKI GEORGEIOUS -Applicants

VERSUS

1. The Attorney General

2. KCB Bank (Uganda) Limited Respondents

Coram: Hon. Justice Remmy Kasule, Justice of Appeal/Constitutional Court, sitting as a single Justice

RULING

The applicants seek an interim order restraining both respondents from carrying out against the applicants, jointly and/or severally acts of reprisal and victimization as regards the applicants' bank

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accounts operated with the second respondent numbers 2202428917 for Uganda currency and Number 2201841616 **FOR** United States Dollar currency.

A further Interim Order is also sought to restrain the respondents from proceeding to implement a decision to remove the second applicant from her post of Corporate Banker, Corporate Division, Senior Managerial level, with the second respondent.

The Interim Orders are sought to be operative pending the determination by this Court of the main Application number 07 **OF** 2015 whereby the applicants seek a temporary injunction in the same terms against the respondents.

The Application is stated to be brought under Articles 28(1), 50(1) and (2), 126 and 137 of the Constitution, Section 33 of the 45 Judicature Act, Sections 64(c) and (e) and 98 of the Civil Procedure Act, Rules 10 and 23 of the Constitutional Court (Petitions and References) Rules: SI 91 of 2005 and Rules 2(2) and 43(1) and (2) and 44 of the Judicature (Court of Appeal Rules) Directions SI: 13 of 2010.

At the hearing Dr. James Akampumuza represented the second applicant and also held a brief for Counsel Simon Kabenge for the first applicant. The second applicant was physically in Court. Counsel Andrew Oluka holding brief for Counsel Fred Muwema appeared for the second respondent. One Patrick Aloo, Operations Secretary of the second respondent, was physically in Court. Though duly served with the hearing date, there was no one representing the first respondent. Court thus ordered the hearing to proceed in absence of any representative of the first respondent.

The application was supported by the affidavits of Simon **KASANGAKI**, a director of the first applicant and also husband **TO THE** second applicant who too also filed an affidavit in support of the application.

The second respondent, through their Company Secretary, **ONE** Patrick Anok, filed an affidavit in reply opposing the application, to **WHICH** the second applicant, still in support of the application, **FILED** an affidavit in rejoinder.

By way of background, both applicants are petitioners in Constitutional Petition Number 08 of 2015, the petition being against both respondents. The petition was lodged in the Constitutional Court on 10th March, 2015. Subsequent to the lodgment the petitioners, as applicants against both respondents, lodged in the Constitutional Court on 30th March, 2015, Constitutional Application Number 07 of 2015 for a temporary injunction order and also this Constitutional Application Number 08 of 2015 for the already stated interim orders.

The first applicant held and operated United States Dollar Currency Account Number 2201841616 with the second respondent, a commercial bank, that also employed the second applicant as a Corporate Banker, Senior Management level. The signatories to the said account number 2201841616 were the second applicant and one Simon Kasangaki, the husband of the second applicant. As to shareholding in the first applicant company, at the time material to this application, 80% of the shares were held by the second applicant and 20% by her son Cyrus Sendagire.

The second applicant, according to the second respondent, also held and operated a personal Account Number 5501852683 with the second respondent's branch in South Sudan.

On 5th November, 2014, the second respondent's Anti Money Laundering System detected transactions that indicated money laundering activities involving the stated two bank accounts held and operated with the second respondent by the first applicant and also by the second applicant.

The second respondent carried out preliminary **INVESTIGATIONS AND** these established, according to the second respondent, that **THE FIRST** applicant's stated account was being operated by the **SECOND** applicant and her husband Simon Kasangaki as the **SIGNATORIES TO** the same. Further, that the opening of the **TWO** stated **ACCOUNTS WAS** authorized by the second applicant, as employee **OF THE SECOND** respondent, without the second applicant following **THE SECOND RESPONDENT'S** core banking authorization process; and **ALSO WITHOUT** the Second applicant disclosing her interest in the said **ACCOUNTS TO** the management of the second respondent, as she was duty **BOUND** to do, according to the ethic policy of the second respondent.

There was also evidence of money laundering activities as regards the two accounts and that, by virtue of her employment, the second applicant ought to have detected them and taken action, but she had taken no action at all.

The second respondent, on the basis of the above, had frozen the two accounts in question and had also suspended from office the second applicant. All this was done to pave way for further investigations into the suspicious activities involving both the first and second applicants and everyone else involved.

The investigations were to be carried out by the second respondent's forensic team and by Financial Intelligence Authority, a Uganda Government State Statutory body set up under the Anti-Money Laundering Act, 2013. The second respondent had reported this matter of suspected money laundering to this statutory body.

It is also the stand of the second respondent that it afforded the second applicant the opportunity to be heard, but that the said applicant, who also was the controlling shareholder of the first applicant, declined, on a number of occasions, to attend the disciplinary committee, set up for that purpose.

The second respondent also contends that to issue the interim orders prayed for by the applicants will remove from the investigators the very subject matter particularly the money amounts on the accounts in question, which is the very subject being investigated to determine whether or not there was any money laundering in respect of the said bank accounts being investigated.

The applicants, on the other hand, contend through their Counsel Dr. Akampumuza, that the second respondent has no powers to freeze the applicants' accounts without, first having obtained a Court Order, or without first having afforded the applicants an opportunity to be heard.

In like measure, the second respondent had no such powers to suspend the second applicant from her employment without having first given a hearing to her. All this was contrary to the Constitution. Hence the lodging in the Constitutional Court by the applicants of Constitutional Petition number 08 of 2015 against the respondents to constitutionally challenge the said acts/omissions of the respondents.

It is also the contention of the applicants that whatever provisions of the Anti-Money Laundering Act, 2013, or the Regulations made thereunder, that purport to give the applicants powers to freeze the said two bank accounts and/or to suspend the second applicant from her employment, such provisions of the said Act are unconstitutional. Accordingly the Constitutional Court, through Constitutional Petition Number 08 of 2015 is being moved to declare the said provisions of the Anti-money laundering Act, 2013, to be unconstitutional.

In resolving this application, whether to allow or not to allow the same, the Court has to consider whether or not the applicants have established the existence of a prima facie case with a probability of success, particularly with what they seek to establish in Constitutional **Petition Number 08 of 2015**.

A perusal of Constitutional Petition Number 08 of 2015 clearly

shows that the petitioners, now the applicants, allege the acts or omissions complained of and cite the provisions of the Constitution which they allege have been contravened and pray for specific declarations. The reply to the petition also shows that there are

serious issues of constitutional interpretation that the Constitutional Court will have to deal with, particularly as regards, specific provisions of the Anti-Money Laundering Act, 2013 and the Regulations made thereunder,

I am accordingly satisfied, being guided by the cases of Attorney General v Major General Tinyefuza, Constitutional Appeal No. 1 of 1997(SC) and Ismail Serugo V Kampala City Council, Constitutional Appeal No. 2 of 1998(SC), that the applicants have, prima facie, shown that they have a case with some 170 probability of success.

The Interim Orders sought by the applicants are injunctive in nature. It is thus upon the applicants, to prove to this Court that, if the Interim Orders are not granted, each of the applicants is likely to suffer irreparable loss or injury which would not be adequately compensated for by an award of damages.

The principle is that it is the duty of a Court of law to prevent any infringement of the Constitution and not to allow the infringement to go on, on the pretext that the victim of the violation will be **compensated in damages: See: Humphrey Nzei vs. Bank of Uganda: Constitutional Application No. of 2013.(COA).**

However the facts of this application are rather different and unique, when it comes to applying the above principle. While it is no disputed that the applicants lodged in this Court a substantive application No. 07 of 2015 for a temporary injunction and also Constitutional Petition No. 08 of 2015 challenging the Constitutionality of some provisions of the Anti-money laundering Act, 2013. In this application, what was and is being done by the respondents is to carry out investigations with a view to establishing the innocence or otherwise of the applicants as regards suspected money laundering activities. However, the result of granting the Interim Orders prayed for would be, amongst other results, to remove from the scene, a way from the investigators the very subject matter of the investigations, namely the sums of money on the accounts in question, which amounts are alleged and/or suspected to be the proceeds of money laundering. The moment the freeze on the accounts is lifted, then the said amounts of money will be withdrawn and the investigations will be negatively

prejudiced. Similarly, reinstating the second applicant, a Senior Corporate Banker, to her position with the second respondent will also most likely prejudice the investigations given her seniority as an employee of the second respondent. To stop an investigation process that is aimed at establishing the innocence or guilt or otherwise of the applicants or anyone else, for that matter, would in the considered view of this Court, be, a grave constitutional lapse. Whatever is being suffered by the applicants, while the investigations are going on and before the Substantive application No. 07 of 2015 and/or Constitutional Petition Number 08 of 2015 is determined can be made good to the applicants through an award of damages for any loss or damage that may be suffered while the investigations are being carried out. This Court is accordingly disinclined to grant the prayed for Interim Orders, as the effect of granting them is likely to be the stifling of investigations to establish the innocence or otherwise of the applicants and/or any other persons that may be involved.

As to convenience, justice demands that where a matter is being investigated with a view to establishing the innocence or otherwise of those being investigated, then the investigations process should, in accordance with the law, be let to run its course. The one being investigated should not stifle the investigations, but rather he/she should do everything possible to show the investigators that he/she is innocent or otherwise of the allegations being levelled against him/her.

In the circumstances this applicants have made out a prima facie case to be granted the interim injunctive orders prayed for. Accordingly the application stands dismissed.

The Registrar of this Court and the respective parties and their Counsel are called upon to take the necessary steps to have the substantive **Constitutional Application No. 07 of 2015** and/or **Constitutional Petition No. 08 of 2015** fixed for hearing and disposed of. **As to costs, these are to abide the outcome of the substantive** Constitutional Application No. 07 of 2015 **and/or the** Constitutional Petition Number 08 of 2015.

It is so ordered.

Dated at Kampala this 2nd day of May 2016

JUSTICE REMMY KASULE

JUSTICE COURT OF APPEAL/CONSTITUTIONAL COURT

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