THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)

5 **MISCELLEANOUS APPLICATION NO. 2511 of 2016**

(ARISING FROM MISC. APPLICATION NO. 2510 OF 2016)
(ALL ARISING FROM MISC. CAUSE NO. 160 OF 2016)

10

BRIDGE INTERNATIONAL ACADEMY (K) LTD ………… APPLICANT

VERSUS

15 **ATTORNEY GENERAL ……………………………………RESPONDENT**

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

20

By this application made under S.98 CPA, S.33 Judicature Act and 0.52 rr 1 and 3 C.P.R, the Applicant sought orders of this court staying execution of the orders in Miscellenous Cause No. 160 of 2016, dismissing the Applicant's application for Judicial review and allowing the Respondent to close the Applicant's academies, pending the disposal of the Applicant's Appeal
25 or further orders of court.

Costs of the Applicant were also applied for.

The Application is supported by the affidavit of Matsiko Godwin Muhwezi, Advocate, which
30 was read and relied upon at the hearing.

The grounds of the application are briefly set out in the motion. They are:-

I) The Applicant filed an application for judicial review challenging the Respondent's
35 decision to close its academies without interalia according it a hearing.

II) Dissatisfied with the ruling and orders of court, the Applicant filed a notice to Appeal and requested for proceedings.

III) The ruling and orders dismissing the application essentially permit the Respondent to close the Applicants' academies.

IV) The Respondent has commenced execution of the said orders against the Applicant.

5

V) If execution ensues the Applicant's Appeal shall be rendered nugatory.

VI) The Applicant is willing to deposit security for due performance of the orders made in favor of the Respondent.

10

VII) The Applicant shall suffer irreparable loss in event the execution is not stayed.

VIII) The application has been made without undue delay on the part of the Applicant and

15 IX) It is in the interests of justice that the application is granted.

The Respondent filed an affidavit in reply on 14.11.16 contending interalia that the application has been over taken by events as all necessary steps had been taken to ensure closure of the Applicant's academies.

20

All necessary Government Officers had been directed by the Permanent Secretary, Ministry of Education to ensure that the Applicant ceases operations in all areas where the schools were.

The Inspector General of Police had also been requested to avail police personnel to ensure

25 closure of the Applicants academies.

Regional Police Commanders were directed by the Inspector General of Police (IGP) on 11.11.16 to implement the directives of the Ministry of Education. That the Academies are not open anymore and the deponent participated in the closure as directed by the Ministry of

30 Education.

Further that the Applicant had not in any way demonstrated that they will suffer irreparable loss that cannot be atoned for by award of damages and court should therefore not grant the orders sought.

35

It was applied that the application be dismissed.

When the application was called for hearing on 08.12.16, Counsel for the Respondent was absent.

40

Since there was no doubt that the application had been served on the Respondent and no reason had been advanced for failure to attend court, court allowed hearing to proceed exparte.

Counsel for the Applicant went through the provisions of the law under which the application was made and the grounds thereof referring to the supporting affidavit of the Applicant paragraphs 1-11.

He insisted that the schools are still open and the status remains as before the application for Judicial Review.

It was submitted that the position of the law in cases of stay of execution is well stated:-

1) The Applicant has to demonstrate that notice of Appeal had been filed.

2) There is a status quo to be maintained and

3) Willingness to deposit security for due performance.

The case of **Eteker Ejalu vs. International Credit Bank CA CA 01/99** was relied upon for the holding that ***"once an Applicant shows that they have filed a notice of appeal and there is willingness to deposit security for due performance in a case of a monetary decree, then they are entitled to stay pending disposal of the appeal."***

Counsel then asserted that the application before court meets the test above and the right of appeal should be protected. That the schools are still operational and that is the status quo that should be maintained.

There is an interim order staying execution an indication that the schools are still open.

He prayed that the application be allowed and a stay of execution granted pending the disposal of the appeal. Costs, he stated, should abide the outcome of the Appeal.

The matter was then adjourned for ruling to be delivered on notice. However, before ruling could be delivered, Counsel for the Respondent applied to be allowed to reply to the application. This was done on the 15.12.16.

Counsel for the Respondent conceded to the Applicant / Respondent being heard and court accordingly directed that the Respondent be availed proceedings in the main application to enable Counsel for the Respondent to reply to the application.

It was agreed that costs abide the outcome of this application.

Counsel for the Respondent was further allowed to put in written submissions in reply by the end of the day 16.12.16, and serve Counsel for the Applicant.

5 Counsel for the Applicant agreed to make rejoinder by 21.12.16 and serve Counsel for the Respondent.

Parties were urged to maintain the status quo until the ruling was delivered.

10 It was submitted for the Respondent that by the time the exparte interim order for stay was issued by the Registrar of the Execution Division, the schools of the Applicant were already closed.

That the Applicant in blantant disregard of the order and the law reopened the schools. On that ground alone, Counsel prayed that the interim order be vacated and the appeal heard on merit.

15

Further that while the Applicant seeks stay of execution on the ground that the Appeal shall be rendered nugatory, it was found in the main application that the Applicant had no license to operate the schools and neither were they registered by the Ministry of Education and Sports.

20 Counsel cited the case of **Gashumba Maniraguha vs. Sam Mkundiye SCCA 24/2015** which set out the conditions that must be satisfied in order for a stay of execution to be granted. These are:-

I) The likelihood of success or a prima facie case of right to appeal.

25 II) That the Applicant will suffer irreparable damage or that the appeal will be rendered nugatory if stay is not granted.

III) Or the court must consider where the balance of convenience lies.

30 IV) That the application was filed without delay.

Counsel for the Respondent stated that the Appeal of the Applicant could not succeed as no evidence to that effect was adduced. Coupled with the fact that the Applicant had failed to get license which is a requirement of the law.

35

Further that, the Applicant had not adduced any evidence to show that they will suffer irreparable damage or that the appeal would be rendered nugatory. The Appeal can be heard and determined appropriately without an order of stay of execution.

However that, if court finds that the Applicant has satisfied the two grounds, it should look at the balance of convenience. That by issuing a stay of execution, it will be tantamomt to allowing all the 63 academies of the Applicant to continue operating outside the law, that is, without licenses. Meaning that their curriculum cannot be looked at and their teaching staff cannot be evaluated.

5

Court was prayed to take Judicial notice of the fact that the schools have broken off for holidays and a new academic year is about to begin.

The Respondent argues that it would be the best time for the Applicant to regularize their legal
10 status with the Regulator instead of risking the future of pupils by allowing the Applicant to continue operating without licenses.

The Applicant in rejoinder briefly went through the background to the application. It was emphasized that the application for judicial review of the order to close the schools for alleged failure to meet basic requirements and minimum standards was dismissed on the ground that the
15 Applicant had not been heard.

The Applicant has since then filed a notice to Appeal and requested for proceedings to enable them file an appeal and hence this application for staying execution of the decree and orders of closure.

20

Counsel reiterated the earlier submissions in respect of the law governing stay of execution set out in the case of **Gashumba Maniraguha vs. Sam Mkundiye (Supra)**

It was then argued that the Respondents contention that the schools have already been closed is
25 false as the two affidavits for the Respondent are contradictory as to the prevailing situation regarding the schools. In one of the affidavits, it is claimed that the schools were forcefully opened and the other one contends that the schools are closed. – See affidavits of Abdallah Mutazindwa and George Karemera paragraphs 10 and 11 respectively.

30 Counsel asserted that there was no possibility that all 63 academies could have been forcefully opened if they had been closed as alleged. But that the truth is that the schools were open at the time the interim order was issued and they are still open – paragraph 12 of Mukiibi's affidavit. That therefore the orders sought have not been overtaken by events and are still relevant.

35 Further that the intended appeal has high chances of success as the Applicants were never given a hearing before the decision to close the academies was made, contrary to Judge's finding that they were heard. And that the letter of 04.08.16 relied upon by the Judge to arrive at her decision was authored after the impugned letter of closure by the Permanent Secretary.

There was otherwise no evidence that the Applicant was heard.

40

In determining **whether the Appeal had high chances of success**, the court has to bear in mind that, at this stage, it should not delve into matters meant for the consideration of the Court of Appeal. The case of **James Kunobwa Kezaala and 2 Others vs. Emmanuel Mbonye and Another C. Appl No. 205/2015** was cited in support.

Also that there is no doubt that the Applicant will suffer irreparable damage which cannot be atoned for by damages if the order for stay is not given. The students will be lost to other schools together with the teaching staff. Plus loss of goodwill and the opportunity to continue building its brand.

If execution ensues, it was also argued, the appeal will be rendered nugatory.

The claim that the schools are not licensed is diversionary as they have provisional licenses that are permitted by law.

Although on hold, the schools remain operational to enable the administration prepare for the next term, an indicator that the schools were still open at the time the application was argued.

Earlier prayers were reiterated.

I have given the submissions of both Counsel the best consideration I can in the circumstances.

It is true as agreed by all Counsel that ***"Court may exercise its discretionary powers in considering an application for granting a stay of execution."*** And that ***"an application for stay of execution has to establish any of the three circumstances already referred to in this ruling, to enable court grant an order of stay."***

The same circumstances were referred to in the case of **Magangu vs. National Bank of Commerce Ltd [2007] 2EA 285 (CAT).**

Bearing the above circumstances in mind, I find that I am more persuaded by the arguments of Counsel for the Applicant and accordingly find that the requirements for granting stay have been established.

There is a notice of appeal which is sufficient to start an appeal and proceedings have been applied for. It is contended that the Applicant was not heard before the order to close the academies was issued and hence they are not satisfied with the judge's ruling to the effect that they were heard and hence the appeal.

It would not be right at this stage to go into the merits of the intended appeal as this can only be properly done by the Court of Appeal. Suffice it to state that, the ***"right to a hearing is a***

fundamental right granted by the Constitution." The Applicant therefore deserves a chance to prosecute the appeal before the Court of Appeal for that issue to be finally determined.

The argument that the schools are already closed is not sustainable, otherwise the Respondent would not be requiring the Applicant to purportedly regularize its legal status with the Regulator. And as pointed out by the Applicant, the position of the Respondent as to the current status of the schools was contradicted by the deponents of the Respondent's affidavits. If the schools had been effectively closed as claimed, this would not have been the position of the Respondent.

Court is more persuaded by the argument that the schools have remained open despite the holiday break as the Applicant has to prepare for next term.

Refusal to issue the stay will indeed cause the Applicant substantial and irreparable injury for the reasons set out by Counsel for the Applicant.

The balance of convenience requires that the stay be granted pending the determination of the Appeal; more so as it is not disputed by the Respondent that the Applicant has provisional licenses.

The stay may give the Applicant time to regularize their legal status as pleaded by the Respondent in their submissions.

The application is allowed for all those reasons.

The Appeal should be filed and served on the Respondent within the time allowed by law.

And costs will abide the outcome of the Appeal

FLAVIA SENOGA ANGLIN
JUDGE
12.01.17