THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

MISCELLANEOUS APPLICATION NO. 139 OF 2010

Arising from Miscellaneous Cause No. 49 of 2010

IN THE MATTER OF SECTIONS 36 AND 38 OF THE JUDICATURE ACT

AND

IN THE MATTER OF THE DECISION BY THE MAKERERE UNIVERSITY GUILD ELECTORAL TRIBUNAL REGARDING THE ELECTORAL PROCESS FOR GUILD ELECTIONS 2010/2011

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND PREROGATIVE ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION AN INJUNCTION

1. JOHN TEIRA ::::::::::::::::::APPLICANTS

2. RUTO GRACE CHEROTICH

VERSUS

MAKERERE UNIVERSITY COUNCIL ::::::::::::::::::::RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING

This is an ex-parte application for an interim order restraining the respondent, whether by itself, its agents, officials or servants or otherwise whosoever they act, from conducting any form of Guild Election until disposal of ***HCMA No. 49 of 2010.***

The application is supported by the affidavits of the two applicants, John Teira and Ruto Grace Cherotich.

The application was placed before me yesterday towards 5.00 p.m. I directed that the respondent be served to avoid complaints of unfairness.

From the affidavit of service of Ibanda Richard, he was able to get to the University after 5.00 p.m. but most officers had left office for home. Nevertheless, he left copies of the application with the few staff who were still in office. There is of course an elaborate procedure for service of summons on an organization such as the respondent herein. From the affidavit, I'm unable to say that the person legally empowered to receive service on behalf of the respondent was actually served. Be that as it may, I would observe that grant of a temporary injunction is a matter within the discretion of court. The discretion must, however, be exercised judicially. Thus over the years the courts have evolved principles to consider while determining whether or not to grant a temporary injunction. For records purposes, the applicant must show:

i). that the aim of the application is to maintain the status quo until determination of the whole dispute;

ii). that there is a prima facie case with the probability of success;

iii). that the applicant would suffer irreparable injury which an award of damages would not adequately atone if the injunction is refused and later he turns out to be the successful party in the main suit; and

iv). that the balance of convenience is in his favour.

Firstly, as to whether the applicants have a prima facie case with a possibility of success, I'm aware that this is one of the considerations in a matter of this nature. However, there cannot be any hard and fast rule about this. I would think that any person dissatisfied with the status quo should essentially be presumed to have a genuine grievance which the

law can remedy, the idea being that equity will not suffer any wrong to be without a remedy. Any such person hopes to succeed though he may in the end be declared the loser.

A more realistic and fair test is, in my view, whether a case raises any serious triable issue. Since the respondent hasn't been able to file any reply to the application because of the short time at our disposal, court is unable to tell what defences it has to the accusations leveled against it. Be that as it is, the application raises complaints of alleged breach of rules of natural justice. Whether these complaints are sustainable or not is for another day.

The law is that whoever alleges must prove. The issue of the alleged breaches is set for determination in the main application now set for hearing on 21/04/2010. Going deep into it now may require commenting on the merits of the main application, which in my view is undesirable at this point in time. I wouldn't comment more on this point and I am inclined not to.

As regards status quo, learned counsel for the applicants, Mr. Ntende and Mr. Kandeebe, have indicated to court that the Guild Election Tribunal working on instructions of the respondent delivered a decision in which it ordered elections to be re-conducted in some Halls of residence. Applicants being dissatisfied have filed ***HCMA No. 49/2010.*** That in the absence of any order stopping the election process, the respondents may go ahead and conduct the elections on the basis of the impugned decision of the Tribunal. Hence the application for an order to preserve the status quo, where the status quo is that the declared Guild President keeps out of office pending determination of the application. It would appear to me that the prayer for stoppage of conduct of Guild Elections in the indicated Halls of Residence is well grounded. It is fair, just and expedient that the election process be put on hold pending determination of the application.

All in all, therefore, the greater interests of justice do warrant that the status quo be preserved till court decides otherwise. Accordingly, upon carefully addressing my mind

to the able submissions of both counsel, perusing the affidavits on record and reviewing the law on this point, I have come to the conclusion that the applicants have brought themselves within the scope of the law under which application for temporary orders are granted. The application for an interim order is allowed.

Costs shall be in the cause.

Yorokamu Bamwine
JUDGE
09/04/2010

09/04/2010
Mr. Ntende
Mr. Kandeebe for applicants
Applicants present

Court:
Ruling delivered.

Yorokamu Bamwine
JUDGE
09/04/2010