

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
MISC. APPLICATION NO. 50 OF 2023
(Arising from HCCS No. 40 of 2023)

1.PRINCE SAMUEL NYAIKA 2.PRINCE SAMUEL HARRISON GAFABUSA KINTU 3.PRINCE GAFABUSA BONEFASI MAHEMBE 4.PRINCESS TABITHA MPANJA 5.PRINCESS ALICE BIFERAMUNDA BAGAYA 6.PRINCESS GAFABUSA ABWOOLI (KABAHANDE) 7.PRINCESS KABAHANIKA JOAN 8.PRINCE JOHN KABALEGA 9.PRINCE JASI KISORO RONALD 10.PRINCE KWEEZI WILSON BIFERAMUNDA 11.PRINCESS ATUGONZA S. MONICA 12.PRINCE KARUBANGA EDWARDS	} ::::: APPLICANTS
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VERSUS

1.OWEK. MUGENYI FRED RUCUNYA (OKWIRI) 2.OWEK. DR.F.A KALIISA KABAGAMBE (OMUJWARANKONDO) 3.HON. BETTY AMONG	} ::::: RESPONDENTS
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Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- [1] This is an application brought under O.41 rr.2 & 7, O.42 r.1(1) (c) & (d) CPR, S.98 CPA, S.33 of the Judicature Act & Article 126(2) (e) of the Constitution for a temporary injunction against the Defendants jointly and or severally restraining, preventing, prohibiting, forbidding and stopping them from appointing Regents to take over and rule in place of Rukirabasaija Agutamba Omukama of Bunyoro Kingdom, His

Highness Dr. Solomon Iguru Gafabusa pending the hearing and the determination of the main suit.

[2] The Application is supported by the affidavits of the 2nd, 6th, 7th, 8th, 9th, & 11th Applicants which set out the grounds of the Application, briefly as follows:

1. That there is a main suit pending between the Applicants and the Respondents, the subject matter of which relates to the following reliefs, among others;
 - a) A declaration that the Respondents jointly and or severally or their agents, proxies or successors in title have no or any legal, lawful traditional or cultural mandate, power and authority to appoint and install Regents to take over and rule in place of Rukirabasaija Agutamba Omukama Bunyoro Kitara Kingdom, **Dr. Solomon Iguru Gafabusa**;
 - b) That while the Omukama is still alive, any appointment and installation of Regents to take over and rule in place of the reigning **R.A. Omukama** of Bunyoro Kitara Kingdom amounts to a coup against the Omukama as it is against the culture, customs and traditions of Bunyoro Kitara Kingdom.
2. That the Applicants have in the pending suit a prima facie case with a high probability of success;
 - a) That the Omukama is currently in a health condition culturally described as “*ENSAASI*”, but that notwithstanding, he remains the traditional and cultural leader of Bunyoro Kitara Kingdom and head of such institution of cultural and traditional leader as established by the Constitution and the Institution of the Traditional or Cultural Leaders Act and that, all other organs established by the Omukama are still functional

and operational including the **Royal Commission whereat the 2nd Respondent is a member and the office of Okwiri headed by the 1st Respondent.**

b) That in their bid to dethrone the Omukama, the Respondents have authored “The principles of the proposed Regency in respect of Omukama of Bunyoro Kitara Kingdom” as their purported Constitution and manifesto to justify their coup against the Omukama and thereafter install themselves and their proxies, agents as Regents of the Omukama. That they are in advanced stages of working with the 3rd Respondent to gazette the Regents.

3. That the Applicant shall suffer irreparable loss that cannot easily be atoned for by way of damages since there is imminent danger of violating the Constitution by the Respondents making a coup against the Omukama and as a result, that the main suit would be rendered nugatory.

4. That on the balance of convenience, it is in favour of maintaining the status quo of the rule of **Rukirabasaija Agutamba, His Highness Dr. Solomon Iguru Gafabusa**, the Omukama of Bunyoro Kitara Kingdom as the traditional cultural leader.

[3] In opposition of the application, the 1st Respondent **Owek. Mugenyi Fred Rucunya, Okwiri** (head of the Royal clan, the Babiito of Bunyoro Kitara and the 2nd Respondent, **Dr. F.A. Kaliisa Kabagambe, Omujwerakondo** and chairperson of ‘Akakurato K’obunanu’ (the Royal Commission) deposed briefly as follows:

a) That the purpose of the proposed appointment of the regents (*Abasagatirizi*) is to support the Omukama with

his administrative duties during the period of '*Ensaasi*' and not to replace the Omukama as alleged.

- b) That the culture and tradition of the institution of the traditional and cultural leader of Bunyoro Kitara allows for the appointment of regents to support R.A Omukama and not to replace him.
- c) That disputes within traditional and cultural institutions, or within communities are first handled and/or resolved in accordance with traditions, customs and norms pertaining to the respective community, which issues would include the vacuum created by R.A Omukama's '*Ensaasi*'.

[4] Counsel for the Respondents, **Mr. Mwasame Nicholas** raised an objection to the effect that this court is not clothed with jurisdiction to grant the Application being sought. That the remedy for the Applicants lie under tradition by virtue of **S.16 of the Institution of Traditional or Cultural Leaders Act**. He relied on the authority of **Rwamasaka Nkonge Prosper Vs James Magala and Kabaka of the Kingdom of Buganda, HCMC No.65 of 2015 & 87 of 2016 (consolidated)**, (authority not provided). That jurisdiction is a creature of statute and therefore, that the hands of this court were tied. That the Applicants therefore lack locus to bring the main suit and the present Application. Relying on the authority of **Kateregga Vs Commissioner Land Registration** (citation not provided), counsel for the Respondents concluded that this Application is premature and incompetent and that as a result, it should be dismissed with costs.

[5] In reply **Mr. Muhamed Mbabazi** for the Applicants submitted that **Regency** is not traditional but a concept. That Regency for a reigning King is unheard of and very unfamiliar and therefore,

that despite the arbitration clause under **S.16 of the Institution of Traditional or Cultural Leaders Act**, the court has residual power to grant preservative orders.

- [6] As a starting point, **S.16 of the Institution of Traditional or Cultural Leaders Act, 2011** provides thus:

“(1) Any conflict or dispute within the traditional or cultural institution within the community shall be handled by a council of elders or clan leaders or a representative body chosen and approved by the community, in accordance with the tradition, customs, and norms of dispute or conflict resolution pertaining to that community.

(2) Where the community fails to resolve the conflict or dispute in accordance with subsection (1) the matter shall be referred to the court.

(3) For the avoidance of doubt, the conflict or dispute referred to in subsection (1) is a conflict or dispute relating to –

- a) Whether or not a community should have a traditional or cultural leader;*
- b) Who should be the traditional and cultural leader of the community or area of Uganda; or*
- c) Whether or not the proper procedure for installation of a traditional or cultural leader has been followed.”*

- [7] The **Section** above appears to me to be an exclusive provision for enthronement of traditional leaders and nothing more. In the instant case, the issue is whether there can be a rule by Regency when **R.A H.H Dr. Solomon Iguru Gafabusa, the Omukama of Bunyoro** is still alive though in a state of ‘Ensaasi’ (sick). Whereas this court has not been provided with any provision in the laws of Uganda or traditions or culture of the Banyoro that provides for rule by Regency, according to the Respondents, culture and tradition of the institution of the

traditional and cultural leader of Bunyoro Kitara allows for the appointment of Regents (Abasagatirizi) to support the Omukama who is incapable of discharging his royal functions because of his health condition of '*Ensaasi*' and thus the necessity to appoint Regents to assist him in his administrative duties. The provision for the establishment of a Regency is known to be either on account of the minority of the Monarch or of the absolute incapacity of the Monarch to discharge the Royal functions, See **UK Regent Acts 1937 - 1953** which are still presently in force in the UK.

- [8] As can be clearly seen from the above, as counsel for the Applicant rightly submitted, "Regency" is a concept referring to the office, jurisdiction, or control of a Regent or body of Regents exercising the ruling power during the minority absence or disability of the sovereign, See **Synonyms for Regency on Thesaurus. Com.** Rule by Regency therefore is not an arbitrable item or matter under **S.16(3) of the Institution of Traditional or Cultural Leader Act** since in this case the Omukama is still alive and reigning as the King of Bunyoro Kitara Kingdom though under the health condition of '*Ensaasi*'. In this case however, there is no evidence that there has been a declaration of R.A Omukama of Bunyoro Kitara's incapacity to discharge his royal functions.
- [9] In the premises, I find that **S.16 of the Institution of Traditional or Cultural Leaders Act** does not oust the jurisdiction of this court in this matter and therefore the Applicant has locus to institute the main suit. Therefore, neither this Application nor the main suit are immaturity before court.

[10] As regards the merits of the Application, upon internalizing the pleadings in this Application, I find the following as not disputed;

a) The Applicants are descendants of **Omukama Kabalega** and members of the Royal family of the late **Sir Tito Gafabusa Winyi** as either son or daughter or grandchild and therefore have vested legitimate interests in the Bunyoro Kitara Kingdom affairs.

b) That the **R.A H.H Dr. Solomon Iguru Gafabusa Omukama** of Bunyoro Kitara Kingdom is the gazetted traditional and cultural leader and despite his current health condition of 'Ensaasi' under the Bunyoro Kitara cultural norms, the **Omukama** cannot be substituted and/or succeeded when still alive.

[11] In this case, whereas the Applicants complain that the Respondents intend to dethrone the R.A Omukama by appointment of Regents, the Respondents do not deny their intention to appoint the Regents but contend that the appointment of Regents is for the support of the Omukama in his administrative duties during the period of 'Ensaasi' (call it incapacity). In brief, the Respondents are not denying the fact that they are in the process to appoint the Regents as per the document 'Draft Principles of the Proposed Regency' (annexture 'A' to the affidavits in support of the Application).

[12] The main suit seeks among others, ***"A declaration that the Respondents jointly and or severally or their agents, proxies or successors in title have no or any legal, lawful, traditional or cultural mandate, power and authority to appoint and install Regents..."***

- [13] In my view, denial of the Applicants' sought injunction order and the process of appointment of Regency gets concluded, it shall render the main suit nugatory for its central issue is rule by Regency. The main suit is therefore neither vexatious nor frivolous because the Applicants have demonstrated that it has a high likelihood of success because of the very contentious triable issue of whether there can be a rule by Regency under the present circumstances of Bunyoro Kitara Kingdom.
- [14] If the Application is not granted, I agree, that the Applicants who are members of the Royal family shall suffer irreparable loss that cannot be atoned for by way of damages given the fact that the agenda by the Respondents proposing the appointment of Regents is doubted by the royal family for according to them, it is shrouded in mystery. That the claim that the appointment of Regents is for purposes of 'assisting' the Omukama in his administrative duties during his period of '*Ensaasi*', is a mere cloak for dethronement of the Omukama. Therefore, if the appointment of Regents leads to the dethronement of the Omukama as per the Applicants' fears, then such loss cannot be atoned by way of damages. The balance of convenience is also in favour of maintaining the status quo of the rule of **R.A H.H Dr. Solomon Iguru Gafabusa** as the King of Bunyoro Kitara Kingdom.
- [15] In the result, I am inclined to grant the Application in the terms of the Chamber summons but with no orders as to costs since payment of the costs may still come from the coffers of the Kingdom.

Dated at Hoima this 20th day of December, 2023.

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Byaruhanga Jesse Rukyema
JUDGE