

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC APPLICATION 611 OF 2012

(Arising from Misc appeal No. 70 of 2012)

CALEB ALAKA ::: APPLICANT

VERSUS

VINCENT JJAKO AKAWUWO KIGOZI

THE LAW COUNCIL ::: RESPONDENT

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

RULING

This application is brought under Article 40(2) of the 1995 Constitution, section 18 (1) of the Advocates Amendment Act, 2002, section 98 of the Civil Procedure Act, Cap 71; Order 52 rules 1 and 2 of the Civil Procedure Rules; and section 14 of the Judicature Act, Cap 13 seeking orders of court in the interim to restrain the respondent from executing, implementing or effecting the orders of LCD No.69 of 2011 especially the order of suspension of the applicant from legal practice till the hearing and disposal of the main application for stay of execution.

The application also seeks the orders of court that the applicant be allowed to continue his legal profession without any hindrance, interference or bar from the respondents till the disposal of the main application.

The application is supported by the affidavit of the applicant filed on 20.12.2012 and a further supplementary affidavit of 10.01.2013. The gist of the application is that the respondents are in the process of executing the orders of the ruling passed on

14.12.2012 and that the applicant has filed an appeal which will be rendered nugatory if the interim order is not granted.

The applicant avers that the appeal has high chances of success because he was not given an opportunity to be heard.

The 2nd respondent filed an affidavit in reply opposing the application deposed by Ms Margaret Apiny, Ag. Secretary to the Law Council, Ministry of Justice and Constitutional Affairs as follows;

1. That the Disciplinary Committee of the law Council conducted a hearing vide LCD No.69of 2011: Vincent Jjako Akawuwo versus Caleb Alaka and a decision was delivered on 14.12.2012 wherein the applicant was suspended
2. That on 18.12.2012 Ms. Margaret Apiny communicated the finding of the committee to the applicant and attached a copy of the said ruling arising out of the disciplinary hearing; the applicant acknowledged receipt of the same on the 19.12.2012
3. That she communicated to the Chief Registrar of the Courts of Judicature requiring him to effect the decision of the Disciplinary Committee of the 2nd respondent suspending the applicant.
4. That on 19.12.2012, the Chief Registrar of the Courts of Judicature notified all concerned judicial officers (i.e. Hon. Justices of the Supreme Court, court of Appeal and High Court; the Registrars and all the Magistrates of the applicant's suspension.
5. That the Chief Registrar has since effected the order of the applicant's suspension

Paragraph 8 thereof states that execution has since been overtaken by events while paragraph 9 states that the applicant has not demonstrated that he will suffer irreparable loss that cannot be atoned by the award of damages and that this is not a proper case in which this honourable court can grant the orders sought in the motion.

The applicant was represented by Mr. Rashid Babu assisted with Mr. Muyizzi and Mr. Galisonga while the 1st respondent was represented by Mr. Edward Muguluma and the 2nd respondent was represented by Gerald Batanda from the Attorney General's Chambers and Mr. Bageya Motooka Aaron from Law Council. The parties made oral submissions.

Mr. Babu submitted that under section 20 of the Advocates Amendment Act 2002, it is provided that where an advocate has been suspended by the disciplinary committee, the committee shall notify the Registrar of its decision and the Law Council shall;

- a) Cause the decision of the committee to be published in the gazette and also in a Newspaper circulating in the whole of Uganda
- b) cause the Registrar of the High Court to be notified of the decision
- c) Cause all chief Magistrates to be notified of the decision

It was his submission that execution has not taken place because the Law Council/ 2nd respondent has not gazetted the decision neither has it published the decision in any Newspaper having circulation in Uganda. The law does not provide for partial execution, all the requirements must be fulfilled.

Black's Law Dictionary 6th Edition, pg 1375 interprets 'shall' as used in statutes and contracts to mean the mandatory or demanding obligation that something to be done should be done as it is.

Additionally, with regard to execution not being done, the same dictionary at page 586 defines execution to mean the carrying out of some act or course of conduct to its completion in fulfilment or perfection of anything for it to be a valid execution. Since the Law Council has not gazetted the decision or published it in a newspaper

circulating in Uganda, execution has not been done so it cannot have been over taken by events. He invited court to grant the application.

On the other hand Mr. Batanda counsel for the 2nd respondent objected to the application in its entirety. He contended that the application is bad in law as it purports to arise out of an appeal where as not. Order 43 r.1 of the CPR provides that appeals shall be commenced by a memorandum. This is in regard to the appeals to the High Court. Under the Advocates (Amendment) Act No.27 of 2002, Section 18 amends Section 21 of the principal Act. In essence the provision stipulates the manner in which an appeal against orders of the disciplinary committee as supposed to be by a memorandum of the appeal. He thus contended that since there is no memorandum, this application cannot arise. This argument is supported by paragraph 4 of the applicant's affidavit where the applicant purports to attach a notice of appeal which does not unfortunately commence an appeal. This is an illegality which should not be condoned by court. He invited court to dismiss the application with costs.

It was his contention that an affidavit in reply filed by Margaret Apiny clearly stated in paragraph 8 that execution had already commenced. The applicant was notified of the outcome of the committee's ruling and Chief Registrar was notified of the same who in turn notified all the judicial officers of the suspension. Mr. Batanda contended that execution had thus commenced as section 20 (b) and (c) have been fully complied with. He submitted that the principle of law concerning execution is whether substantial loss would arise from not granting the prayers applied. He contended that the applicant has not in any way demonstrated that he will suffer irreparable loss that cannot be atoned by an award of damages.

In regard to the applicant's prayer that he should be allowed to continue to practice his legal profession without any hindrance, interference or bar from the respondents till

disposal of the main application, Mr. Batanda contended that the court is meant to maintain the status quo and not reverse what has already been done. In essence, he maintained that the application be dismissed.

In reply, Mr. Galisonga contended that for the purposes of stay of execution, lodging a notice of appeal is sufficient. He sought to rely on the authority of **Alcon International LTD V Kasirye Byaruhanga & Co. Advocates (1996) HCB 61** which he contended was in pari materia with the circumstances of the instant case. He thus submitted that it is not in dispute that a notice of appeal has been filed in this court and a number has been allocated and what is before this court is an application for stay of execution.

When the application was set down for hearing, Mr. Batanda for the respondent raised a preliminary objection as to propriety of the instant application. He contended that there is no appeal pending before court as the applicant did not file a memorandum of appeal but merely filed a notice of appeal which in itself does not commence an appeal.

I wish to resolve this issue before I delve into the merits of the application. Unlike appeals under the Civil Procedure Act and the Rules (CPR) which are commenced by a memorandum of appeal, the appeals under the Advocates (amendment) Act are instituted by a notice of appeal and later on a memorandum of appeal is filed. Order 43 (1) of the CPR is distinguishable from section 18 of the Advocates (Amendment) Act i.e.

- (1) ***Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.***

- (2) *The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.*

Section 18 of the Advocates Act provides;

Section 21 of the principal Act is amended by substituting for subsections (1) and (2), the following new subsections-

21(1) any party aggrieved by any order of the Disciplinary Committee made under section 19 of this Act may, within fourteen days after the receipt by that party of the notice to be given to that party under section 20 of this Act, appeal against the order to the High Court by giving notice of appeal to the Registrar and shall file with the Registrar a memorandum of appeal within thirty days after the giving by that party of the notice of appeal.

The applicant has filed a notice of appeal dated 18.12.2012 in accordance with the above provision. Although a memorandum of appeal has not been filed yet, the applicant is still within time to file the same. The applicant through M/s Lubega Babu & Co. Advocates has filed a letter addressed to the Secretary Law Council requesting for a record of proceedings and the ruling to enable him frame the grounds of appeal. This application is rightly before this court as there is an appeal pending determination contrary to what Mr. Batanda contended.

After establishing that the notice of appeal is duly before this court, it is trite to note that for an interim order of stay, it is enough that there is a pending application and that there is a serious threat of execution before the hearing of the substantive

application. (**Hwang Sung industries v Tojdin Hussein & 2 others Civil Application No. 19 of 2008**). It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay. The respondent in the instant case has already notified the Chief registrar and the Chief Magistrates of the ruling of the Disciplinary Committee and the only thing that has not been complied with is section 20(a) of the Advocates (amendment) Act i.e. cause the decision of the committee to be published in the gazette and also in the Newspaper circulating in the whole country.

The applicant seeks an interim order to stay execution basing on the premise that the respondent has not complied with all the requirements of execution under the Advocates Act.

I have had a careful analysis of the said provision and I concur that the use of the word 'shall' therein is not merely directory but mandatory. It is very important that words used must be construed so as to ascertain the meaning for purposes of implementation.

When construing the meaning of 'shall' according to Black's Law Dictionary (supra), it seems clear to me that the intention of the draftsman was to have all the requirements complied with. It is on this premise that I find that execution is not yet complete as it is not disputed by either party that section 20(a) has not been fully complied with.

Suffice to note that this court has inherent power to make any order as may be necessary for achieving the ends of justice or prevent the abuse of it. The applicant in the instant case is an advocate who derives his income from his profession; he has filed an appeal before this court. It is however unfortunate that at the time of this ruling, the memorandum of appeal has not been filed and the grounds of the appeal are thus unknown. At this stage it is necessary to avoid rendering the pending substantive

application nugatory. In the result, using the discretion vested in this court I am inclined to grant the interim order of stay of execution so as to determine the main application and the appeal.

This Court puts one major factor into consideration. If the applicant was to serve any period of his suspension and the appeal was decided in his favour the loss he would incur is irreversible while if he lost the appeal he would still serve his punishment without any loss to the respondent.

In the circumstances the interim orders sought herein are granted. The costs of the application shall abide the outcome of the appeal.

Eldad Mwangusya

J U D G E

21.01.2013