

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. APPLICATION NO. 0194 OF 2015
(ARISING FROM CIVIL SUIT NO. 101 OF 2015)

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- 1. EMMANUEL MBONYE**
2. SSEKIKUBO
MUBARAK:.....APPELLAN
TS

10

VERSUS

- 1. JAMES KUNOBWA KEZAALA**
(Mukono District Speaker)
2. MUKONO DISTRICT COUNCIL
3. MUKONO DISTRICT LOCAL
GOV'T:.....RESPONDENTS

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BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under the provisions of Order 41
Rules 2 & 9 of the Civil Procedure Rules, Section 33 of the
Judicature Act and Section 98 of the Civil Procedure Act.

It seeks orders that:

- a) A Temporary Injunction issues against the Respondents,
Agents, officials or staff from implementing, acting or in

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any way giving effect to the Mukono District Budget for financial year 2015/2016, pending and/or until the main suit challenging its legality is heard and disposed of.

b) Costs of the Application.

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The grounds are laid out in the Application and the affidavits of the first Applicant – Emmanuel Mbonye (both in support and Rejoinder).

10 In summary, the Applicants have filed a suit challenging the legality of, and the process of passing the District Budget for 2015/16. The said budget has not been implemented and it is the said implementation the Applicants are seeking to arrest/restrain.

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The Respondents filed an affidavit in Reply in which they argue that the status quo prevailing is that the Budget was approved and hence restraining its operationalization would be to change the status quo.

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The said affidavit claims the Applicants do not establish the conditions for the grant of Temporary Injunctions. I need not reproduce the details of the said affidavits as they are on record and will be referred to in this Ruling.

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At the hearing of this Application, two issues came to the fore front that need to be disposed of before handling the merits of the matter.

5 1. It was submitted that the Application was wrongly
brought under Order 41 Rule 2 of the Civil Procedure
Rules as the said provision only deals with breach of
contracts. Further, it was argued that Sections 98 of
10 the Civil Procedure Act and Section 33 of the Judicature
Act are not applicable to this Application. Further that
there is no injury complained of in the pleadings of the
Applicants other than a claim for Declaratory Orders, a
Permanent Injunction and Damages.

15 Regarding Section 33 of the Judicature Act that it only
deals with final remedies and not Interlocutory
Applications and that Section 98 of the Civil Procedure
Act only deals with the Courts discretion in stopping
abuse of Court process.

20 To the above submissions, the Applicants argued that
the points of law raised are not fatal and do not oust
jurisdiction of the High Court in this matter.

Considering the above arguments, it is clear that the jurisdiction of the High Court in this matter is being challenged.

5 Order 41 (2) of the Civil Procedure Rules provides for Injunctions to restrain breach of **contract or other injury of any kind, whether compensation is claimed or not.**

10 The claim that injury is not pleaded in the Plaint when the legality of the Budget and the process are being challenged is to say the least a selective understanding of the law.

15 The same applies to the provisions of the Judicature Act, Section 33 and Section 98 of the Civil Procedure Act.

20 This Court is vested with wide powers and discretion to ensure that the ends of justice are met. The provisions of law above provide that wide discretion.

25 2. The other issue is the position that there is no status quo to preserve (according to the Respondents) since the Budget has already been passed. It is argued that

the purpose of an injunction is to preserve the status quo.

5 That since the budget has already been passed, any order granted by the Court would have the effect of changing the status quo now that the Budget has been passed.

10 The Applicants on the other hand argue that they are challenging the legality of the Budget and integrity of the process used to pass the said Budget. That it has not been implemented and it is the implementation that is sought to be arrested and therefore that is the status quo.

15 Both Counsel cited no authorities to support their positions.

A look at the pleadings reveals that the Plaintiffs' claim the Budget was in contravention of the law, irregular and therefore null and void.

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One of the prayers (d) is for an order stopping implementation of the said Budget.

It appears the Budget has as yet to be implemented. Both
25 Counsel should have had a look at **Constitutional Petition**

3/2014 (Supreme Court) Theodre Sekikubo and 4 others Vrs. Kamba and 3 others. In that matter, the Applicants among others sought a Temporary Injunction to:

- 5 i) To restrain the Hon. Speaker and the Hon. The Deputy Speaker of Parliament from implementing the decision of the Constitutional Court, stopping the first four Applicants from continuing to sit in Parliament and
- 10 ii) To restrain the Electoral Commission from conducting Elections in each of the constituencies of the 1st, 2nd, 3rd and 4th Applicants.

After hearing the submissions by both parties, the Supreme Court granted **an injunction restraining the Speaker of Parliament, the Deputy Speaker as well as the Electoral Commission from implementing the orders of the Constitutional Court until the determination of the appeal.**

20 It is to be remembered that the four Applicants had been ordered to cease being members of Parliament by the Constitutional Court.

The Injunction was to restrain or arrest the implementation
25 of that order by the Constitutional Court.

The instant case is in similar circumstances. It is the implementation of the decisions of the District Council that is being challenged.

- 5 On the authority above, this Court is therefore competent to handle the Application seeking to arrest/restrain the implementation of the decisions of the District Council.

10 Going to the merits of the Application, it is submitted for the Applicants that the meeting of the Council held on 28/5/2015 was in contravention of Rule 13 (1) (iv) of the Standard Rules of Procedure for Local Councils 2014.

15 That the Applicants are Councillors who including 13 others represent about 8 sub-counties and they objected to the passing of the Budget.

20 That implementing the Budget which was illegally passed will have grave consequences and will cause irreparable injury since the people represented will not have had their interests considered effectively. That the head suit raises issues of **illegality** which as a matter of law overrides all matters of pleading. Ref: **Makula International Vrs. Cardinal Nsubuga (1982) HCB 11**, which is the leading

case on illegalities. That Courts of law will not sanction illegality.

That the Budget had not yet been implemented is a fact.

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It is also submitted that the only damage the District can incur can be atoned for in damages if the case is decided in favour of the Respondents.

10 It is also submitted for the Applicants that the balance of convenience favours the Applicants as the Council should not be allowed to operate illegally. It is submitted further that the Applicants were not given a chance to consult their Constituents as is required by law, the notice of the meeting
15 having been served on the same day of the meeting when the budget was illegally passed.

The Respondents' Counsel Mr. Nsubuga Kenneth has cited the case of **Kiyemba Kagwa Vrs. Katende (1985) HCB**
20 as setting down the principles Courts consider in granting Temporary Injunctions namely:

- i) A Temporary Injunction should preserve the status quo.
- ii) There has to be a prima facie case with probability of
25 success.

- iii) The Applicant must be able to prove irreparable injury which cannot be atoned for in damages and
- iv) That if in doubt, then the Court will decide on a balance of convenience.

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It is submitted that the above principles have not been met. That the status quo is that the Budget was approved by a majority of 17/13. The same was forwarded to the Central Government for Incorporation.

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On prima facie case, it is submitted that the Notice of 45 days was not complied with as required by the law (Section 2 Civil procedure, Misc. Provisions Act).

15 The above would make the head suit incompetent. Under Regulation 13 Local Government Regulations (Schedule 3) the 1st Respondent cannot be sued in his capacity as Speaker. Further that the Applicants were party to the meeting of 28/5/2015 and even voted.

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It was also submitted that the Speaker acted under Regulation 12 to call an Emergency Meeting on recommendation by the Executive. The said Executive (Chairperson) wrote to the Speaker to call the Council

25 Meeting.

On the aspect of irreparable damage, it was submitted that the Applicants failed to prove the irreparable damage they are likely to suffer. That on the other hand, it is the
5 Respondents who would suffer a 20% penalty if the Budget is not passed in time.

On balance of convenience it was submitted that it is the whole population of Mukono District as well as the public
10 employees who would suffer the consequences of the Injunction.

Mr. Jacob Osillo for the Applicants made a rejoinder that the Respondents dwelt on the merits of the head suit e.g. the
15 content of the Budget and its passing. Further that this Application should not be defeated on technicalities which are not even fatal. That the case of **Kabandize & 20 others Vrs. KCCA** has dealt with the issue of Statutory Notice and that what was served on the Respondents was an
20 Ordinary Notice of Intention to Sue.

Courts attention was also drawn to the letter of the Chairperson of 23/5/2015 annexed to the Affidavit in reply that the said day was a Saturday.

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I have considered the submissions by both Counsel. I have already dealt with the issue of status quo at the beginning and cited the authority of **Sekikubo and others Vrs. Kamba & others**. I have held that what is at issue is the
5 implementation of the budget that is sought to be restrained.

Regarding the authority of **Kiyemba Kagwa Vrs. Katende (supra)** cited by Mr. Nsubuga, yes, that is largely the
10 position regarding the granting of Temporary Injunctions. The Courts have however gone further to hold that all the Applicants need to prove is that there are triable issues that require the Court to investigate. Reference is made to the case of: **Mukasa Mbidde & Margaret Zziwa Vrs. East
15 African Legislative Assembly**.

I have looked at the pleadings in the head suit to decide whether there are issues of law and fact that have been raised in the head suit that call for proper investigation and
20 adjudication by Court.

The Applicants are challenging the **legality** of the Budget that was passed on the 28/5/2015 and the **integrity** of the process that was used to pass the said Budget.

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If it is found that the process was irregular and or illegal, it would render the decisions there in null and void and not enforceable. The only redeeming factor would be that if the meeting was irregularly convened then it would only be
5 salvaged possibly by a subsequent meeting ratifying the decisions arrived at. These are issues that can only be investigated and resolved by a trial with evidence adduced by both parties.

10 In the pleadings I considered the Plaintiff and Annexures thereto.

The letter of the Chairperson to the Speaker of 23/5/2015 was alluded to by both Counsel. (It is true 23/5/2015 was a
15 Saturday).

Annexure "B1" to the said Plaintiff is a letter/Invitation to the District Council Meeting written by the Clerk to Council on instructions of the Speaker. The said Speaker was in the
20 Chairperson's letter of 23/5/2015 (Saturday) instructed to call an emergency meeting of Council. The letter by the Clerk to Council carrying out the Speaker's instructions is dated 22/5/2015 (Friday) one day earlier than the instructions of the Chairperson's instructions to the Speaker
25 who also instructed the Clerk to Council.

Annexure “B2” is similar instruction/invitation in the same wording by the Clerk to Council.

- 5 The 2 letters raise issues of credibility of the whole process of convening the Emergency Meeting.

What is more intriguing is that both letters bear endorsements by the recipients. All the said endorsements
10 without exception indicate that the said invitation was received on 28/5/2015 from between 12 noon to 1.25pm. The same endorsements are also observed on Annexure “C1” the Budget that was to be discussed on that same day. The endorsements show that it was also served on the same
15 day.

If the above anomalies are true then it appears the head suit raises very serious matters for consideration and investigation only resolved by trial. The authority of
20 **Makula International Vrs. Cardinal Nsubuga (supra)** would come into play. The legality of the Budget and the required processes would be brought into question.

I accordingly find that the Application raises issues of prima
25 facie case as well as very serious triable issues.

The other considerations as to irreparable injury and balance of convenience would fade in view of a questionable, illegal or void Budget that would not be enforced if found to have
5 been illegally passed.

I accordingly find that the Applicants have made out a case justifying the grant of a Temporary Injunction. It is granted in the terms outlined in the Chamber Summons and will be in
10 force for the duration of the head suit. Costs will abide by the outcome of the head suit.

Godfrey Namundi

15 **JUDGE**

14/7/2015

14/7/2015:

Nsubuga Kenneth for Respondents

Counsel for Applicants absent

1st Respondent present

5 2nd Respondent represented by Katamba

3rd Respondent represented by Lukoya

Court: Ruling delivered.

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Godfrey Namundi

JUDGE

14/7/2015

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