

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. 865 OF 2016

(ARISING FROM MISC. CAUSE NO. 259 OF 2016)

SARAH KULATA V ATTORNEY GENERAL

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicant through her advocates Kibedi & Co by notice of motion sought an order for a temporary injunction restraining the respondent's officers, agents and any person deriving authority from the respondent including the Public Service Commission and government agencies and officials from conducting parallel investigations and carrying out disciplinary action against the applicant in respect of claims and findings made against the applicant in the Report, Findings and Recommendations of UNRA Commission of Inquiry.

The applicant further seeks to restrain the respondent's officers from taking any action prejudicial to the applicant as the Commissioner land registration arising out of the contested UNRA Probe Report until the determination of the main application for judicial review .

The application is premised on several grounds in the notice of motion itself and affidavit in support.

The respondent was represented by Mr. Oburu senior state Attorney and filed an affidavit in reply in opposition to the motion.

Both counsel made oral submissions that I have carefully considered.

The applicant's case

It was the case for the applicant presented through her affidavit in support that she is the commissioner for land registration who appeared before Uganda National Road Authority (UNRA) Commission of Inquiry presided over by Hon. Lady Justice Catherine Bamugemereirwe JA and that the final report of the commission , among other things,

a) condemned her in breach of the principles of natural justice and

b)heaped all the wrongs , commissions, and omissions of actors in land registration on her.

Following this report, she received a letter from the line Minister addressed to the Minister of Public Service requiring him to halt promotions, including the applicant's.

On 3rd October 2016, she filed an application for judicial review after being granted extension of time to do so.

On 10.8.2016 disciplinary proceedings commenced against her when her permanent secretary communicated charges that had been preferred against her and required her to show cause why severe disciplinary action should not be recommended.

She responded to the permanent secretary and referenced the UNRA report.

On 13.10.2016, she was served with a letter of interdiction.

It was the applicant's case that the actions of the respondent's officials are intended to prejudice the fair trial of her application for judicial review and that these actions interfere with the judicial process in contravention of the sub judice rule.

The applicant avers that she has a likelihood of success in the main application for judicial review and will suffer irreparable damage if the UNRA report findings are implemented against her.

The respondent's case

The respondent's case presented through the affidavit in reply of Geoffrey Madette of Attorney General's chambers is that the findings and recommendations in the UNRA report do not amount to a decision amenable to judicial review and that the application for judicial review does not have high chances of success.

It was the respondent's case that the applicant was interdicted on 13.10.2013 in accordance with Public Service Standing Orders and that some of the charges are not based on the UNRA report. These other allegations include loss of public trust as indicated in a letter from the Inspector General of Government; titling land of the estate of late Kateregga Yusuf and failure to perform her supervisory role.

Furthermore, that the applicant will be at liberty to raise sub judice defence during the disciplinary hearing.

Resolution of the case

Within the context of judicial review, rule 9(1) of the Judicial review rules 2009 permits the grant of interlocutory orders. In permitting grant of interlocutory orders, Rule 9 of the Judicial review rules by implication includes temporary injunctions.

In Doreen Kalema v National Housing and Construction Corp, (1987) HCB 73 Okello J as he then was held that only a plaintiff who in the main suit has prayed for injunctive orders is entitled to apply for a temporary injunction.

The key point here is the property must be in dispute or the contract or right must also be in issue in the main suit for a plaintiff to seek a temporary injunction.

Worthy of note is that the applicant in the application for judicial review seeks orders restraining the respondent's officers from taking any action prejudicial to her based on the UNRA Report. Therefore, the application for temporary injunction is properly before the court.

I will now turn to other considerations for grant of a temporary injunction.

Both counsel were in agreement that considerations for grant of temporary injunctions in civil cases also apply to judicial review, namely,

- a) Likelihood of success in the main suit;
- b) Irreparable damage that cannot be atoned for in monetary terms
- c) Or balance of convenience if the other two do not apply to the given situation.

Consideration (a) does not apply in this case because there are triable issues to be resolved in the judicial review case and therefore I cannot make a determination at this stage on the applicant's likelihood of success.

Consideration (b) does not apply in this case where the applicant seeks to impeach findings and recommendations of a commission of Inquiry.

I will therefore consider the third consideration which is whether the balance of convenience favours grant of interim relief.

In examining the balance of convenience, I need to assess whether it is reasonable to preclude a disciplinary process premised in the Public Service Act and its regulations from running its full course or whether it is reasonable to allow the disciplinary process to continue in spite of a pending case premised on some of the misdeeds for which the applicant is being disciplined.

The charges preferred against the applicant in the letter from the permanent secretary dated 10.8.2016 are as follows:

1. Loss of public trust
2. Abuse of office
3. Failure to perform supervisory and managerial roles
4. Causing financial loss to government.

Some of these charges are based on findings in the UNRA report while some of the facts are outside that report. For instance some of the findings are contained in a letter by the IGG that raised the issue of 44 complaints filed with the IGG against the applicant. Other facts are that the applicant titled land of the estate of late Kateregga Yusuf.

This means I have to consider whether the disciplinary process authorized by statute and regulations should be brought to a halt because a dispute based on similar facts is before me.

Under the common law, *sub judice* simply means before the court.

The disciplinary process that has already commenced will continue although some of the facts are in issue before me as the applicant has a remedy in judicial review at the end of the disciplinary process. In **Lukwago v AG and others HCCM. 237 of 2013** (ulii), the High court declined to grant interim relief against the respondents who were investigating the applicant through a commission of inquiry. The High Court reasoned that the remedy of *certiorari* was available to the applicant at the end of the investigative process. This case is on all fours with the instant case and I rely on it.

From the foregoing analysis, the balance of convenience favours the refusal to grant a temporary injunction.

This application is accordingly dismissed with costs in the cause.

DATED AT KAMPALA THIS 4TH DAY OF NOVEMBER 2016.

HON. LADY JUSTICE H. WOLAYO