

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APP. NO. 741 OF 2018**

HELLENAR’S RESTAURANT & BAR LTD :::::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. THE PARLIAMENTARY COMMISSION**
- 2. THE CLERK TO PARLIAMNET**
- 3. THE PUBLIC PROCUREMENT AND
DISPOSAL OF PUBLIC ASSETS AUTHORITY**
- 4. ATTORNEY GENERAL :::::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. The Applicants filed Misc. cause 309 of 2018 as well as Misc. application 741 of 2018 arising from Misc. cause 329 of 2018. In Misc. application 741, the Applicant sought i) an order extending time within which Misc Cause 309 of 2018, the judicial review application can be heard and ii) an order for a temporary injunction to issue restraining and/or prohibiting the 1st and 2nd Respondents from altering or causing the alteration in the status quo with regard to the operation of the Members’ restaurant and bar at Parliament House until final disposal of the application for judicial review that is before Court.

2. At the beginning of the hearing of Misc application 741 of 2018 and in the presence of all Counsel for the parties, I directed and all consented that we proceed with the hearing of the extension of time application first, then I can give a date for the temporary injunction application. This was to avoid the confusion that would arise from dealing with the two parts of the application in a convoluted manner.
3. After hearing the extension of time part, I issued an interim injunction and adjourned the hearing of the temporary injunction application to 11 January 2019. It is therefore unacceptable for any Counsel to raise objection saying there's no application for temporary injunction before Court or that the Applicant needed to file such application only after the extension of time was allowed on 10 December 2018. I made no such directives and Counsel had no reason to embark on a frolic of their own so requiring such new filing.
4. For clarity, while I chose to handle the extension of time part of Misc. application 741 first, there was no bar for the Applicant to file both for extension of time and the temporary injunction. I also did not dismiss the temporary injunction application. In all events, given the urgency required in dealing with judicial reviews by their nature, it is not an illegality or irregularity that goes to the root for the Applicant to file both applications as one and I see no demonstrable prejudice to any of the parties by such filing.
5. In these circumstances, it is defeatist and unnecessary for the Respondents to raise preliminary objections saying there's no temporary injunction application. I therefore dismiss the same roundly.
6. Considering the Applicant has sued the individual institutions concerned, I find it unnecessary for the Applicant to also cushion itself by suing the Attorney General in the circumstances of this case. I therefore concur with the Attorney General and hereby strike the Attorney General off as the 4th Respondent.

7. I will now turn to the temporary injunction application. For a temporary injunction to succeed, the applicant must demonstrate that he has a *prima facie* case with high chances of success and that if the injunction is not allowed, he would suffer irreparable loss. If in doubt of these two, then the Court makes a determination based on a balance of convenience.
8. It is not so clear to me if the Applicant has a prima facie case with high chances of success at this stage, especially considering that his contract expired and even if the judicial review succeeded, he doesn't have an automatic right of retaining the contract. On the other hand, the Applicant failed to demonstrate that it would suffer irreparable loss if the injunction was not granted. I am more inclined to believe that as a business entity, the Applicant can be atoned in damages by the Respondents if it won the judicial review application.
9. I will therefore make a determination based on a balance of convenience. In all honesty, it is not only the Applicant who can provide the restaurant services in issue at Parliament. While on the one hand, the Applicant seeks to retain its contract of service which however has expired, it has fallen out of favor with the Respondents who make the determination of who gets the contract. On the other hand, the Respondents have contracted another party to provide the restaurant services.
10. The temporary injunction may result in the procured party suing the Respondents for breach of contract and result in unnecessary loss of public funds. Also, considering the Applicant's contract had already been extended for almost a year beyond the official contract it had, the balance of convenience in the circumstances of this case falls on the side of the Respondents ensuring the smooth operation of the restaurant at Parliament through the provision of the services by a contractor of their choice, the rest of the issues that may arise can be determined at the judicial review determination. Based on all the above, the temporary injunction application is denied.

11. To avoid acrimony between the Respondents and the Applicant, each party shall bear its own costs.

I so order.

LYDIA MUGAMBE.
JUDGE.
15 JANUARY 2019.