THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO.422 OF 2021

(ARISING FROM MISC CAUSE NO. 166 OF 2021)

CHRIST ALIVE GLORIOUS MINISTRIES INTERNATIONAL (CAGMI)---------- APPLICANT

VERSUS

NATIONAL BUREAU FOR NON-GOVERNMENTAL ORGANISATIONS---------- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application by way of Chambers summons against the respondent under Section 14 of the Judicature Act cap 13, Section 64(c) of the Civil Procedure Act and Order 41 r 1, & 9 of the Civil Procedure Rules, for orders that;

a) A temporary injunction doth issue restraining the respondent and/or, its agents- The Chief Administrative Officer (CAO) of Kapchorwa from implementing the impugned decision entailed in a letter/Notice Ref: ADM/NGOB/42/40/74 DATED 5TH May, 2021 until the disposal of the main suit.

b) Costs of the application be provided for.

The grounds in support of this application are set out in the affidavit of Tom Soyekwo Godwin-General Overseer and Swilikey Henry Arap Ali- Deputy General Overseer of the applicant.

1. That the applicant is a Non-Governmental Organisation registered on 10th January, 2008 as Company Limited by Guarantee at URSB in 2008 and National Bureau for Non-Government Organisations in 2010. The applicant has over 5,000 members cutting across Sebei sub-region, Bugisu Sub-region, Karamoja Sub-region and Teso sub-region.
2. That the respondent acting through its Executive Director Mr. Okello Stephen in a letter/Notice Ref; ADM/NGOB/42/20/74 dated 5th May 2021 indefinitely cancelled the certificate of Registration issued to the applicant on allegations that;
    a) Donors supported operations of the applicant through Hope Africa International with their flagship project being in the education sector in which they constructed a school known as Testimony in Kapchorwa and sponsored several children in school, whereas not.
    b) The school programme was under the leadership pf Tom Godwin Soyekwo who is the president of the then Applicant-CAGMI then.
    c) In the course of partnership, complaints of irregularities in the operations of CAGMI emerged and following the complaint dated 24th March, 2014 the respondent carried out a wide ranging investigations (without involvement of the applicant) into issues brought to its attention which revealed among others irreconcilable differences with the applicant with two factions claiming to be in charge of the organisation, operating illegally given that its permit of operation expired and organisation has not been validated in order to update its status and, as a member Organisation, there have been gross violations and disregard of the organisation's memorandum and Articles and other governing documents..
    d) Based on the findings from investigations, on 16th day of July, 2020, the respondent through its Executive Authority issued a letter/notice to the applicant 'to show cause why its Certificate of Registration should not be

cancelled' however, the respondent –NGO Bureau only received a response from a faction and not from the other faction.

3. That the applicant was neither served with any of the alleged complaints nor letter dated 16th July 2020 by the respondent nor made aware of the same, never heard or afforded an opportunity to be heard on the allegations before arriving at the decision of cancelling the Certificate of Registration.

4. The respondent and its agents the Chief Administrative Officer of Kapchorwa are determined to and are in the process of executing the directive of the Respondent, which shall have adverse effect of the applicant its many projects within the region.

In opposition to this Application the Respondent through the Principal Legal Officer and Secretary of the National Bureau for Non-Governmental Organisations in the Ministry of Internal Affairs who filed affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The respondent is mandated to register, regulate, monitor, inspect and coordinate all NGO activities in the country.

2. That the applicant was first registered as an NGO with a permit to operate under File No. S 5914/6147 and their mandate is to carry out activities in the fields of preaching the gospel, support Government programmes by establishing social services among others.

3. That the applicant certificate was registered on 9th July 2010 for a period of 60 months and permit expired on 8th July 2015 and the same has never been renewed.

4. That on 24th March 2014, the Respondent received a complaint from Hope Africa International alleging irregularities in the operations of the applicant NGO. Hope Africa International is an organisation from USA representing

Sister Community and Vast Churches in Oregon, USA who were historical donors and had an initial relationship with Christ Alive Glorious Ministries.

5. That Hope International Africa supported operations of applicant-CAGMI with their flagship project being the education sector in which they constructed a school known as Testimony in Kapchorwa and sponsored several children in the school.

6. That on 6th March 2020, the NGO Bureau received another complaint from a faction of the pastors of CAGMI complaining on the illegal registration of an amended constitution of the organisation.

7. That on 24th June 2020, the Executive Director of the respondent received a letter from Mpeirwe and Co. Advocates acting on behalf of M/s Hope Africa International attaching complaints against the applicant and requesting the Respondent to engage the applicant.

8. That on 15th July 2020, the Executive Director wrote to the applicant to show why the certificate of Registration should not be cancelled since the permit of operation is expired and the organisation has not been updated.

9. That in a letter dated 12th August 2020, four of the seven members of Central Management Committee of the applicant responded to the letter to show cause why the applicant should not be cancelled.

10. That on 5th May 2021, the Executive Director of the Respondent wrote to the Chief Administrative Officer, the Chairperson District Monitoring Committee of Kapchorwa District Local Government cancelling the applicant permit to operate as an NGO.

11. That the status quo of the applicant is non-existent as an NGO under the laws of Uganda.

In the interest of time the respective counsel were directed to file submissions which I have considered. The applicant was represented by *Mr. Illukor Emmanuel and Mr. Ben Ikilai* whereas the respondent was represented *Ms Nabasa Charity*.

The applicant's counsel submitted that there are three conditions that must be satisfied by the Applicant before a temporary injunction can be granted that is; - The applicant must show a prima facie case with a probability of success, that the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages and if the court is in doubt, it would decide an application on the balance of convenience.

The legal principle upon which Court exercises its discretion to grant a temporary injunction in all actions pending determination of the main suit is now well settled as seen in the wealth of authorities which were cited.

The applicant's counsel submitted that the applicant has a pending application high likelihood of success challenging the legality of the respondent decision to cancel the certificate of registration of the applicant.

The applicant further contended that the respondent in a letter to Chief Administrative Officer has directed as follows;-

> ***"……The purpose of this therefore is to inform you that in light of the above gross issues, the certificate of registration of CAGMI is hereby cancelled and its existence as an organization recognised by the NGO Bureau ceases with immediate effect. As chairperson of the District New monitoring committee, you are requested to take immediate action on the organization in conjunction with other relevant government agencies to ensure that all the activities and operations of CAGMI are closed"***

Further evidence is adduced in ***Paragraph 4 of Tom Soyekwo Godwin's*** supplementary Affidavit in support of chamber summons which shows that the C.A.O summoned the committee on 15th June 2021 for a meeting on 16th June 2021 to among others discuss the implementation of the Respondent's decision against the Applicant.

Thus the Applicant's establishments like churches, Schools among others are still operating awaiting the implementation of the said impugned letter which can happen at any time since the Presidential directive is not law to stop the Respondent and its agent the C.A.O from implimenting and enforcing the said letter.

On balance of convenience it was the applicant's case that the applicant and the public at large will suffer more or will be more inconvenienced without the grant of the injunction. It will affect the applicant's property and cripple their projects which are for the benefit of the local community and it would make it impossible to continue operating pending the determination of their rights and this damage would be atoned for by way of damages.

The respondent's counsel in her submission has also cited several authorities on temporary injunctions as submitted by the applicant counsel. The respondent contended that the applicant has not shown that there is a prima facie case since what they intended to quash is not existent. The respondent also submitted that there is no irreparable injury to the applicant since they can still operate as a company limited by guarantee.

Analysis

The law on granting an Order of temporary injunction is set out in ***section 64(c) of the Civil Procedure Act*** which provides as follows;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed-

(a) …..
(b) ……
(c) grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property is attached and sold.

This court summarized the power of court in an application for temporary injunctions *in* ***Joweria Mukalazi vs Bank of Uganda High Court Misc. Application No. 399 of 2021*** as follows;-

"The Courts power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of a temporary injunction being an equitable remedy, it is in discretion of the Court and such discretion must be exercised in favour of the Applicant only if court is satisfied that; unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the applicant. The court grants such relief ex debitio justitiae, i.e to meet the ends of justice. The court must keep in mind the principles of Justice and fair play and should exercise the discretion only if the ends of justice require it."

In applications for a temporary injunction, the Applicant is required to show that there must be a prima facie case with a probability of success of the pending suit.

The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. **(See American Cynamide vs Ethicon [1975] ALL ER 504).**

A *prima facie* case with a probability of success is no more than that the Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried as was noted in **Victor Construction Works Ltd vs Uganda National Roads Authority HCMA NO. 601 OF 2010**.

As to whether the suit establishes a *prima facie* case with probability of success, case law is to the effect that though the Applicant has to satisfy Court that there is merit in the case, it does not mean that one should succeed. It means there should be a triable issue, that is, an issue which raises a *prima facie* case for adjudication.

Before deciding to grant or to deny a temporary injunction, it's important to consider if there is a prima facie case , according to *Lord Diplock* in ***American Cyanamid Co. v Ethicon Ltd [1975] AC 396 [407—408],*** the applicant must first satisfy court that his claim discloses a serious issue to be tried. The applicant in the affidavit in support is challenging the process leading to the cancellation of their Certificate of registration contending that they were not heard. This therefore

raises a serious issue of contention of whether it was done in accordance with the set procedures under the law.

The applicant must set out a prima facie case in support of the right claimed by him. The must equally be satisfied that there is a *bonafide* dispute raised by the applicant, that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him.

The burden is on the applicant to satisfy the court by leading evidence or otherwise that he has a *prima facie* case in his favour. But a *prima facie case* should not be confused with a case proved to the hilt. It is no part of the Court's function at this stage to try and resolve the conflict neither of evidence nor to decide complicated questions of fact and law which call for detailed arguments and mature considerations.

It is after a *prima facie case* is made out that the court will proceed to consider other factors.

This application raises serious issue to be tried in the main cause and or a prima facie case.

The other cardinal consideration is whether in fact the Applicant would suffer irreparable injury or damage by the refusal to grant the Application. If the answer is in the affirmative, then Court ought to grant the order. See: **Giella Versus Cassman Brown & Co. [1973] E.A 358**. By irreparable injury it does not mean that there must not be physical possibility of repairing the injury, but it means that the injury or damage must be substantial or material one that is; one that cannot be adequately atoned for in damages.

The applicant has set out facts to show that they are likely to suffer irreparable injury if the operations of the organisations are suspended and this affects the several schools and churches which are likely to be jeopardized in their operations which are for the benefit of an entire community of innocent beneficiaries. On the

above principle, the instructive words of **Lord Diplock** in the case of **American Cynamide vs Ethicon [1975] 1ALL E.R. 504**. He states;

> *"The governing principle is that the court should first consider whether if the Plaintiff were to succeed at the trial in establishing his right to a Permanent Injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the Defendant's continuing to do what was sought to be enjoined between the time of the Application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no Interlocutory Injunction should normally be granted…"*

In ***Commodity Trading Industries v Uganda Maize Trading Industries [2001 -2005] HCB 119***, it was held that this depends on the remedy sought. If damages would not be sufficient to adequately atone the injury, an injunction ought not to be refused.

The nature of loss or injury will affect a wider public and the same cannot be atoned for in damages and disruptions in the churches and schools will affect believers and parents and children using the said facilities which damage can never be quantified to any specific damage and definitely it cannot be atoned for in any amount of money by way of compensation.

The damage to the applicant's indirect beneficiaries will be material and substantial and no amount of compensation can atone it. The nature of damage or injury that is likely to be suffered is non-pecuniary and cannot be quantified.

It is trite law that if the Court is in doubt on any of the above principles, it will decide the application on the balance of convenience. The term balance of convenience literally means that if the risk of doing an injustice is going to make the Applicant suffer then probably the balance of convenience is favorable to him/her and the Court would most likely be inclined to grant to him/her the application for a Temporary Injunction.

In the case of **Victor Construction Works Ltd Versus Uganda National Roads Authority HMA NO. 601 OF 2010.** The High Court while citing the decision in **J. K. SENTONGO versus SHELL (U) LTD [1995] 111 KLR 1;** by Justice Lugayizi observed that if the Applicant fails to establish a *prima facie* case with likelihood of success, irreparable injury and need to preserve the status-quo, then he/she must show that the balance of convenience was in his favour.

The balance of convenience simply means that the applicant has to show that failure to grant the temporary injunction is to his greater detriment. In ***Kiyimba Kaggwa v Haji A.N Katende [1985] HCB 43*** court held that the balance of convenience lies more on the one who will suffer more if the respondent is not restrained in the activities complained of in the suit.

The applicant counsel has already submitted that the applicant will suffer irreparable harm. The applicant and several church faithfuls and parents and children in the schools will suffer more in the service delivery due to the suspension of the Certificate of registration. The balance of convenience tilts in their favour.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of property without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed by a person who approaches the court.

The court's power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of temporary injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the plaintiff or applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the plaintiff/applicant. The court grants such relief *ex debitio justitiae*, i.e to meet the ends of justice. See ***Section 64 of the Civil Procedure Act***.

In the result for the reasons stated herein above this application succeeds and is allowed with costs in the cause.

It is so ordered.

SSEKAANA MUSA
JUDGE
30th/07/2021