

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
MISC. APPLICATION NO 451/OF 2022
ARISING OUT OF MISCELLANEOUS CAUSE NO 169 OF 2022
IN THE MATTER OF AN APPLICATION FOR AN INTERIM
INJUNCTION
(UNDER S98 OF THE CIVIL PROCEDURE ACT AND O.50 RULE 3A (1),
(2) AND (3) (SIC) OF THE CIVIL PROCEDURE RULES 2019

BAGUMIRABINGI

JOSEPH

.....:APPLICANT

VERSUS

1. MAKERERE UNIVERSITY BUSINESS SCHOOL (MUBS),
2. JULIET KATEEGA, THE DEAN OF STUDENTS, MUBSMUBS,
3. DAAYA ASHIRAF, THE CHAIRPERSON OF THE ELECTORAL COMMISSION, MUBSMUBS, AND
4. ELDERD KYOMUHANGI-MANYINDO, THE SCHOOL REGISTRAR MUBS:.....: RESPONDENTS

BEFORE: HON. JUSTICE DR. DOUGLAS SINGIZA KAREKONA

RULING

1 Introduction

The framework and policy guide for judicial review for administrative bodies is anchored in the constitutional principle of legality. This principle requires that all legal persons including educational institutions follow due process in arriving at decisions such that they are legally sound and less oppressive. Educational institutions are considered a breeding ground for our democracy, and Courts of

law should pick particular interest to ensure that young learners are supported to love and cherish the ideal of representation in their formative stages of life.

1.1 Applicant's Case

The applicant Bagumirabingi Joseph filed this application by way of notice of motion against Makerere University Business School (MUBS), Juliet Kateega, the Dean of Students, MUBS, Daaya Ashiraf, the Chairperson of the Electoral Commission, MUBS and Elderd Kyomuhangi-Manyindo, the School Registrar MUBS.

The Applicant seeks both an interim injunction and in alternative a mandatory injunction restraining the Respondents from conducting the Guild Presidential Elections. In the alternative the motion seeks to cancel the Guild Presidential Elections results in the event that the elections are conducted by the time the application is heard. The instant application arises from the main application for judicial review which is pending determination before Court.

The motion is hinged on five grounds. Court's appreciation of the grounds of the application is that the applicant desires to challenge a collective decision of the Respondents which denied him the right to be nominated for the position of Guild President. That the elections will be conducted on the 23rd August 2022. That if the reliefs sought are not granted the main application for judicial review will be rendered moot. That the application has high chances of success, and that if the present application is not granted, the Applicant will suffer in a way that even compensation in damages cannot remedy his injuries.

The application is supported by the affidavit deposed to by the Applicant which covers a number of areas. Briefly, the Applicant states that he was first registered as a student of Bachelor of Governance and Leadership at MUBS in 2019. That

he sought to be nominated as a Guild Presidential candidate for the forth coming student Guild elections scheduled for the 23rd August 2022. That the Respondents declined to nominate him on account that he is not a registered student. That the Applicant believes that he is a duly registered student of MUBS for the second year's, semester II academic year 2021/22 albeit the fact that he was on a "self-induced stay put in semester I academic year 2021/2022".

That the Applicant was dissatisfied with the decision of the Chairperson Electoral Commission of MUBS and petitioned the Dean of students of MUBS who declined to receive and consider his grievance hence the application for judicial review. That the collective decision of the Respondents was not backed by law and was therefore irrational, beyond the Respondent's scope and legal authority, and in contravention of the provisions of Regulation 3 of the MUBS Students Regulations, Article 79 of the MUBS Students Guild Constitution and Rule B of the MUBS Electoral Rules and Regulations. That the application ought to succeed first on account of the Applicant being a duly registered student of MUBS, and secondly that the decision of the Respondents to declare that he was not a duly registered student is not backed by the law.

The Applicant further averred that since his application for judicial review had not been fixed yet the elections are around the corner, it may turn out to be for academic purposes if the reliefs sought for are not granted. That the injury he may subsequently suffer may not be mitigated by way of compensation in damages because he is a second-year student with no other opportunity to contest for MUBS Guild elections. That should the elections go on before the grant of the prayers sought, then mandatory injunctive orders canceling the electoral outcomes of the Guild elections should be considered.

1.2 Respondent's Case

In reply to the application, Mr Elderd Kymohangi-Manyindo the School Registrar deponed an affidavit. He raised a preliminary objection to the effect that the application is bad in law, an abuse of process, has not merit and therefore should be struck off.

The basis for these objections are that first, the Applicant has not exhausted all remedies that are provided for under Article 85(3) & (4) of the MUBS students guild constitution 2013. Secondly that MUBS could only be sued through its governing council, and that the prayers sought for are not supported by the existing legal framework. That the MUBS' electoral road map made provision for the closure date the nominations for the students' guild Presidential candidates as 9th August 2022 at 2.00pm. That following the pre-requisite qualifications of the MUBS students Guild candidates as outlined in section 40 (ii)&(iii) of the MUBS Guidelines of Operations¹, the Applicant was not a registered student as at the time of closure of nominations since he had not paid school fees as required by Article 79(1) of the MUBS Student Guild Constitution.

Further, that the Applicant received an invoice to pay school fees on the 9th August 2022 at 12:30Pm, and paid the school fees on the same day at 2.48pm 18 minutes after the closure of the nominations. That the Applicant was registered on the 12th August 2022, 3 days after the nomination. The deponent reiterates that what the Applicant ought to have done was to petition the office of the Chairperson of the MUBS Council (and not the Dean of students) 3 days after the elections (supported by at least 200 members of the guild assembly) challenging the electoral outcomes.²

¹ While the legal status guidelines remain doctrinal to the educational institutions, such guidelines offer a good starting point in protecting the good order and discipline in any organization. Guidelines are akin to operational manual of a car engine.

² See Art. 85(3) &(4) of the MUBS students guild constitution.

Both parties made oral arguments in court which have assisted Court in arriving at its decision. Given the available space and timelines, it is not out of disrespect that I have not considered all the submissions by either party's counsel.

2 Decision of Court

The instant application is for an interim injunction arising from the main application for judicial review. While the parties have addressed Court on the merits of the judicial review application to the extent that it touches the instant application for an interim relief, this court will steer clear of the main suit and restrict itself to the instant application.

The court notes the two preliminary objections raised by the Respondents relating to exhaustion of local remedies and suing the proper party. The court considers that the basis of the first objection is Rule 7A(1(b)) of the Judicature (Judicial Review) (Amendment) Rules, 2019 which enjoins the court in considering an application for judicial review to satisfy itself that the aggrieved person has exhausted the existing remedies available within the public body or under the law.

It is clear that the first objection is one that may properly be brought in the substantive application for judicial review, and not in the instant application for an interim relief. Similarly for the second objection, the court notes that the Applicant is *dominae letis* and may sue any party against whom he may sustain a cause of action for interim relief in an application of this nature. The court therefore holds that while both objections may properly be raised in the main application for judicial review, they are misconceived in the instant application, and are accordingly dismissed.

The principles governing an application of this nature are well settled (*Hwan sung industries Ltd V Tajdin Hussein & 2 Ors* Civil Application No. 19 of 2008) that: (1) That there is a pending main application that could be rendered nugatory if the interim order is not granted; and (2) That there is an imminent threat to do an act complained of.

Moreover, the grant of an injunction is an equitable remedy that is discretionary in nature³, which discretion the court is enjoined to exercise judiciously to meet the ends of justice of every case.

This court notes that while the Applicant filed Misc. Cause No. 169 of 2022 as the main application for judicial review, there is no application for a temporary injunction filed on the court record. Instead, the Applicant filed the instant Misc. Application No. 451 of 2022 for an interim injunction arising from the Misc. Cause. As such, there is no main application pending before the court and this application ought to collapse. In any case, the court would exercise its discretionary powers against granting the reliefs sought since the outcome of the guild elections can be challenged, and it would be unduly burdensome to stop the elections. Accordingly, the application is without merit and it must fail. It is hereby dismissed. Costs shall be in the cause.

Douglas Singiza Karekona

AG. JUDGE

23/08/2022

³ *Yahaya Kariisa vs Attorney General & Another*, S.C.C.A.No.7 of 1994 [1997] HCB 29.