

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**MISCELLANEOUS APPLICATION NO. 900 OF 2021**  
**(ARISING FROM MISCELLANEOUS APPLICATION NO.29 OF**  
**2021)**  
**AND PETITION CAUSE NO.2 OF 2021**

**SAMUEL N KAMAU.....APPLICANT**

**VERSUS**

- 1. AMIR HAMZA**
- 2. KARUGU MACHARIA**
- 3. KENETH BARIGYE**
- 4. GIZAT WORKU KEBEDE.....RESPONDENTS**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an Application brought under S.98 Civil Procedure Act, Order 44 rules 1 &2 Civil Procedure Rules seeking for;

1. Leave to be granted to the Applicant to appeal the ruling and orders of Hon. Justice Ssekaana Musa dismissing the Applicant's application for a temporary injunction.
2. Stay of the Malicious disciplinary hearing against the applicant fixed on 24<sup>th</sup> December 2021.
3. Costs of the Application be provided for.

The grounds upon which the application is based are contained in the Affidavit of the applicant's Advocate Mr. Masiga Colline as follows;

- a) That on the 10<sup>th</sup> day of December 2021, this Honourable Court delivered a ruling dismissing the application for a Temporary Injunction seeking to maintain status quo in the AFCA until determination of Co. Petition Cause No. 2 of 2021.
- b) That the Applicant has valid grounds of appeal against the said ruling which merit judicial consideration.
- c) That the trial judge erred in fact and law when he disregarded the rights of the Applicant without a fair hearing by classifying him as a person who has filed a derivative suit to frustrate the Co. and not as an oppressed contributor of AFCA.
- d) That the learned trial Judge condemned the applicant unheard by forming his mind about the applicant.
- e) That the learned trial Judge erred in fact and law when he held that the applicant did not adduce cogent evidence on the court record to show that there is a bonafide dispute.
- f) That the learned trial judge erred in law and fact when held that the Applicant has the burden of proving a prima facie case by leading evidence which amounted to determining the entire case without a fair hearing.
- g) That since the applicant intends to appeal the above stated ruling and has filed this Application there is need to stay the impugned disciplinary hearing.

The Respondents opposed the Application through the Affidavit in reply deponed by Kafeero Alexander, the Respondent's counsel.

The Respondents vehemently in opposition stated that the Applicant was accorded a fair hearing basing on the fact that the Applicant filed Misc App No. 30 of 2021 on 18<sup>th</sup> January 2021 seeking for an interim order preventing the Respondents and their agents from controlling the affairs of the Company which order was granted that further the orders sought through this application have since been overtaken by events since the disciplinary hearing against the applicant has since taken place and the applicant had written to the respondents through email demanding for his dues and informing them that he had since moved on and is working with another company.

### **Representation**

*James Ngarieke* appeared for the Applicant and *Sseninde Saad* appeared for the Respondent.

This court directed the parties to file written submissions which were duly filed and have been considered by this court in the determination of this application.

### **ISSUES**

1. *Whether the order sought for leave to appeal and stay of the disciplinary hearing be granted?*
2. *What remedies are available to the parties?*

### **DETERMINATION**

Counsel for the Applicant submitted that it is trite law as stated in the case of *Sango Bay Estate Vs Dresdner Bank & Attorney General [1971] EA 17* that the principle upon which an application for leave to appeal may be granted is that where prima facie there grounds of appeal which merit serious judicial consideration and whether the grant of leave to appeal is necessary to protect the applicant's right of appeal and attaining the ends of Justice in instant case. Counsel submitted that the injunction sought through MA No. 29 of 2021 was filed to ensure that the ends of justice are not frustrated that the main suit is heard on its merits and the main suit is not rendered nugatory.

Counsel further submitted relying on the case of *Herbert Sekandi t/a Land Order Developers vs Crane Bank Ltd MA No.044/2007* on whether there are grounds of appeal that all the grounds of appeal are detailed in the affidavit in support of the application and went ahead to outline them and submitted that the grounds are to the effect that the ruling in the application disposes off the main petition without parties being heard or their evidence being subjected to cross examination.

Counsel for the Respondent vehemently submitted in opposition to the application and relied on the case of *Herbert Sekandi t/a Land Order Developers vs Crane Bank Ltd (supra)* that an application for leave to appeal to the court of appeal must show that the application for leave to appeal before substantial questions of law to be decided by the appellant court and that the intended appellant has a bonafide and arguable case on appeal.

On whether there are sufficient grounds that merit serious judicial consideration in order to grant leave to appeal, counsel for the respondent submitted that the powers exercised by this court in determining the application whose ruling and orders are being appealed against were discretionary powers as enjoyed by Order 41 rule 1 &2 CPR and for this application to succeed, the applicants need to satisfy court that there are matters of law and fact that deserve to be addressed by the appellant court which include showing how this court misdirected itself in the exercise of its discretion and as a result arrived at a wrong decision.

Counsel further submitted that the applicant failed to show how the intended appeal merits serious judicial consideration since the exercise of the Board of Director's powers to call for the applicant's disciplinary hearing was done in accordance with the company's articles and was as a result of the operations of the Audit exercise which was carried out, that culminated into a report that was availed to him well in time to prepare a defence. Counsel further submitted that the application does not bare grounds of appeal that warrant serious judicial consideration.

## **ANALYSIS**

Applications for leave to appeal are governed by **Order 44 rule 2 of the Civil Procedure Rules.**

### **Order 44 rule 2**

*“An appeal under these rules shall not lie from any order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.”*

This application seeks leave to appeal against the orders of this Honourable Court in Misc App No. 29 of 2021 which was an application for a temporary injunction against the Board of Directors of AFCA which had called the Applicant to a disciplinary hearing.

In the case of **Sango Bay Estate vs Dresdner Bank and Attorney General [1971] EA 17** it was held that;

*“leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration.....and the grant of leave to appeal is necessary to protect the applicant’s right of appeal and for attaining the ends of justice in the instant case.”*

It is the duty of the Applicant to prove their case and show this Honourable Court that the Application fulfils the grounds as laid out in Sango Bay (supra).

The first consideration is that there must be sufficient grounds of appeal which merit serious judicial consideration. In this present application the applicant contends that it was erroneous by this court to decline to grant a temporary injunction against the respondents on grounds that the applicant was not given a fair hearing that is, the applicant was not heard and allowed to bring evidence.

The said application was also followed by an application for an interim order which was granted to the applicant.

The applicant's justification for grant of leave is on the ground that the applicant adduced evidence to support a prima facie case which evidence he claims was not considered by this court and further that the court misguided itself when it concluded that the respondents as Directors of AFAC represented the mind of the company and that whatever was done by the respondents was in their duty as directors.

This Court notes that the applicant made written submissions in reference to the application for a Temporary injunction which submissions were relied on to make the decision and further the affairs of the company were being handled in accordance with the Company's articles to wit the Articles of Association required one to first be sanctioned to a disciplinary meeting in cases of poor financial management and the applicant having been summoned to the said meeting upon being given an audit report was entirely internal management of the company's affairs which this Court cannot interfere with. From the grounds of appeal raised by the applicant, non raises a substantial question of law where the point raised is one of general principle decided for the first time. See *Matayo Okum vs Francisco Amundhe & Others [1979] HCB 229*.

The issues raised by the applicant are basically internal management issues of the company that can be resolved without court and there is a peripheral of court decisions in regard to internal dispute resolution of company matters. See *Irene Kulabako vs Moringa Limited & 2 others Co. cause no. 21 of 2009*.

I therefore find that the applicant has failed to show that there are sufficient grounds which merit serious judicial consideration.

The applicant contends that despite the existence of an interim order, the respondents perpetrated numerous contemptuous and heinous acts that

climaxed with the respondents summarily dismissing the applicant. However, it is also submitted that the application for the temporary injunction has been over taken by events.

This court takes note that the applicant, as evidenced in annexure "J" of the respondent's affidavit in reply, has submitted his handover report and has since found a new job.

The applicant's counsel submitted that the respondents have not yet paid out the applicant's employment benefits and that not hearing the Petition would cause injustice to the Applicant.

I rather find this argument insufficient for the above issue can be resolved through other legal avenues besides through company petitions so as to meet the ends of justice. Enforcing employment remedies through this Court would amount to an abuse of Court see *Asimwe Francis vs Tumwongyeirwe Aflod Misc App No. 103 of 2011*

In the result, for the reasons stated above this application is dismissed with costs to the respondents.

I so order.

**SSEKAANA MUSA**  
**JUDGE**  
**31<sup>st</sup> October 2022**