

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISCELLANEOUS CAUSE NO. 143 OF 2021

GEORGE DAVID WAKANYIRA ::: APPLICANT

VERSUS

- 1. INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF UGANDA**
- 2. FREDRICK KIBEDI**
- 3. DOREEN RUTH MUTEBE**
- 4. HARRIET NABUUFU KIWANUKA**
- 5. EDNA ISIMBWA RUGUMAYO**
- 6. CONSTANT MAYENDE OTHIENO**
- 7. AUDITOR GENERAL OF UGANDA**
- 8. ACCOUNTANT GENERAL OF UGANDA**
- 9. DERRICK NKAJJA**
- 10. DIRECTOR STANDARDS AND REGULATIONS ICPAU :: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicant brought Miscellaneous Cause No. 143 of 2021 against the Respondents by way of judicial review under Article 40(2), 50(1)&(2) of the Constitution; Sections 33, 36, 38 & 39 of the Judicature Act Cap 13 and Rules 3(1)(a), 5 and 6 of the Judicature (Judicial Review) Rules 2009 seeking several prerogative orders of Certiorari, Prohibition and Mandamus plus general and exemplary damages.

[2] When the matter came up before the Court for preliminary steps, Counsel for the 7th Respondent intimated to Court that there was a letter on record by the 1st Respondent indicating that there are two pending constitutional petitions in the Constitutional Court relating to the same issue that is before this Court. Counsel for the parties were given time to study the constitutional petitions and address the Court on their effect on the present application. Counsel failed to agree on the issue and it was agreed that the same be formally argued before the Court for determination as to whether the hearing of this application ought to be stayed pending the hearing and determination of the said constitutional petitions. Counsel for the parties were given time to make and file written submissions. Counsel for the Applicant addressed the Court by way of letter dated 7th October 2022 and filed in court on 10th October 2022. Counsel for the Respondents filed written submissions on 22nd November 2022.

Representation and Hearing

[3] At the hearing, the Applicant was represented by **Ms. Natukunda Julian** and **Mr. Musitwa Paul** while the 1st to 12th Respondents (excluding the 7th Respondent) were represented by **Ms. Genevieve Akello** and the 7th Respondent was represented by **Mr. Okello Oryem Alfred** and **Mr. Davis Ngonde**.

Issue for Determination by the Court

[4] One issue is up for determination by the Court, namely;

Whether Miscellaneous Cause No. 143 of 2021 (consolidated with M.C No. 231 of 2021) should be stayed pending the determination of Constitutional Petitions No. 2 of 2020 and No. 33 of 2021?

Submissions by Counsel for the Respondents

[5] It was submitted by Counsel for the Respondents that the applications before this Court be stayed on account that the pending constitutional petitions are similar as they all relate to the legality of the requirement for members of ACCA (Foreign Accountancy Qualifications) to sit and pass additional examinations conducted by ICPAU in order to be admitted as members of ICPAU. According to Counsel, that is the same legal question in the matters before this Court. Counsel submitted that the continued hearing of the applications by this Court could potentially result into a decision that conflicts with the decision of the Constitutional Court. Counsel cited the case of ***Hassan Bassajabalaba & Anor v AG Constitutional Petition No. 12 of 2013*** to the effect that subordinate courts are inclined to stay proceedings pending the determination of a matter pending before the Constitutional Court with a bearing on the same question. Counsel prayed that this Court finds it fit and proper to stay proceedings in the present cases pending the determination of the petitions in the Constitutional Court as no prejudice will be occasioned to the Applicants since the trial before this Court has not yet commenced.

Submission by Counsel for the Applicant

[6] For the Applicant, it was stated by Counsel that Constitutional Petition No. 2 of 2020 challenges the constitutionality of Section 5(3)(b) of the Accountants Act regarding the Council making provisions relating to Accounting Societies whose membership is of equivalent status to the 1st Respondent. Counsel stated that the constitutional petition has nothing to do with the cases before this Court since the latter cases are challenging an entity created illegally by the 1st Respondent called Foreign Accountancy Qualifications. Counsel further stated that Constitutional Petition No. 33 of 2021 is challenging the assertion by the 1st Respondent that section 12(s) of the Accountants Act 2013 grants the 1st Respondent parliamentary powers to amend any provision of the

Accountants Act. The applications before this Court are judicial review applications raising the challenge mentioned above and in addition challenges the refusal by the 1st Respondent to implement Statutory Instrument No. 47 of 1999 that was retained by Section 56(b) of the Accountants Act 2013. Counsel prayed to Court to disregard the request by the Respondents and proceed to hear the applications on their merits.

Determination by the Court

[7] The position of the law is that where a party to proceedings before a trial court petitions the Constitutional Court for the determination of some questions related to the proceedings before the trial court, the decision as to whether the trial court should stay its proceedings is not automatic but is left to the discretion of either the trial court or the Constitutional Court. See: ***Geofrey Kazinda v Attorney General, Constitutional Petition Application No. 50 of 2012***. On the matter before me, therefore, the Court has to be satisfied that it is necessary to stay the present proceedings pending the determination of the named constitutional petitions by the Constitutional Court.

[8] On 29th September 2023, before writing this Ruling, it was drawn to my attention that **Constitutional Petition No. 002 of 2020: Atabua Letia Shamil vs Attorney General** had been determined by the Constitutional Court. Upon perusal of the decision of the Constitutional Court dated 22nd September 2023, the petition was dismissed for failure to disclose a question for constitutional interpretation. This therefore settles the matter as far as Constitutional Petition No. 002 of 2020 is concerned.

[9] Regarding **Constitutional Petition No. 33 of 2021: Sarah Anena vs ICPAU & 2 Ors**, the petitioner seeks a declaration and orders that Section 12 (s) of the Accountants Act 2013 does not grant the governing council of the

institute parliamentary powers to redraft membership eligibility criteria under the Accountants Act into Foreign Accountancy Qualifications. Perusal of the petition, a copy of which is attached to a letter from the Respondents' advocates dated 6th December 2021, reveals that the questions raised in the petition involve violation of the petitioner's rights to practice her profession and a challenge towards illegal exercise of power by the institute (the 1st Respondent herein). I do not find anything that requires constitutional interpretation and one that would have a bearing on the determination of the matters before this Court. Under judicial review, this Court has power to determine questions regarding illegal or ultra vires exercise of power by a public body. There is no reason, therefore, as to why **Miscellaneous Causes No. 143 of 2021** and **No. 231 of 2021** should be stayed.

[10] In the circumstances, the request by Counsel for the Respondents to stay proceedings in the above stated matters is not made out and is rejected. The costs shall be in the cause. Let the consolidated causes be fixed for hearing.

It is so ordered.

Dated, signed and delivered by email this 13th day of October, 2023.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

Boniface Wamala
JUDGE