

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC. APPEAL NO. 37 OF 2021**

**(Arising from Misc. App. No. 565 of 2021)**

**(Arising from Civil Suit No. 217 of 2021)**

**FRANK MALINGUMU GASHUMBA :::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**DEBORAH AMANYA :::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an appeal to set aside the order made by the Deputy Registrar in his ruling in Misc. App no. 565 of 2021 restraining the appellant from making any publications against the respondent in form or forum.

The respondent instituted Civil Suit No. 217 of 2021 claiming that the appellant had defamed her in a demand notice of intention to sue of 4/6/2021 which the Appellant had written to the plaintiff and copied to other 4 offices including the Minister of Internal Affairs and Permanent Secretary, Ministry of Internal Affairs.

The respondent also claimed in the plaint that while hosted by Ibra K. Mukasa on the extra digest show called Mugabonsonga, the appellant defamed her by accusing her of being sectarian and incompetent.

The appellant filed a Written Statement of Defence to the suit contending that the publications were true in fact and substance and were not defamatory of the respondent.

The respondent filed Mis. App. No. 564 for temporary injunction and 565 for an interim order of injunction to restrain the appellant from further defaming her until the hearing and final disposal of the main suit.

The appellant opposed the application and swore that what was published was true in fact and substance and that the appellant would prove the truth of the publications in court.

The learned Deputy Registrar heard the application for an interim order of injunction interparty and granted an interim order restraining the appellant from any further publication of any materials about the respondent in any form and on any forum until the main application is disposed of. The appellant was aggrieved by this decision hence this appeal on the following grounds;

- (a) The interim order granted by the Deputy Registrar was illegal/unconstitutional and unfair.
- (b) The respondent did not satisfy the conditions for the grant of an interim order of injunction.

The respondent opposed this appeal stating that it was incompetent whose clear intention was to cause this court in allowing the appeal to permit him to continue to hound, harass, blackmail, and intimidate the respondent on what he alleged were other good faith topics in the event she became president and should be dismissed with costs.

*Counsel Maxim Mutabingwa* appeared for the appellant and *Counsel Simon Tendo Kabenge* for the respondent. The parties filed submissions that were considered by this court.

***Ground 1: The interim order granted by the Deputy Registrar was illegal/ unconstitutional and unfair***

The appellant contended that the learned Deputy Registrar erred in law and fact when he granted an interim order of injunction restraining the appellant from the publication of any material about the applicant in any form and forum which was unjust, unfair, and illegal. He stated in his affidavit that the applicant's (now respondent) application and affidavit did not disclose sufficient grounds for the grant of an injunction which facts were disregarded by the learned Deputy Registrar.

Counsel for the appellant submitted that no person can be stopped from publishing any materials about another person in any form unless it is prohibited by law. That there were materials that were allowed by the law and others that were not allowed by law to be published but the Deputy Registrar's order was very broad and covered all materials which the law allows to be published about a person.

Counsel argued that the order contravened Article 29 of the Constitution which guaranteed the freedom of speech as well as Section 3 (a) and (b) of the Press and Journalist Act.

He concluded that it would have been in order for the Deputy Registrar to order the appellant not to publish any defamatory material against the respondent but the Registrar went beyond the confines of the law and issued an illegal and unconstitutional order which had not even been sought by the respondent in the application because the respondent, in her application for an interim order, had sought an order to restrain the appellant from further defaming the respondent.

In response, counsel for the respondent submitted that Article 29(1) was not absolute and could be limited under Article 43(1) of the same constitution which provides; "...In the enjoyment of the rights and

freedoms prescribed in this Chapter, no person shall prejudice the fundamental rights or other human rights and freedoms of others\_or the public interest..." Counsel argued that the appellant had violated the respondent's rights under Articles 21, 24 and 27 of the Constitution. That the respondent was being attacked on grounds of not being a munyarwanda which violated Article 21, was called a pig that was breastfed hatred for banyarwanda which was cruel degrading treatment prohibited under Article 24, and lastly that the appellant's actions exposed the respondent's parents which violated Article 27 on the right to privacy.

Counsel argued that the learned deputy registrar considered Article 29 and established there were worthy circumstances to limit it by ruling that applicant had established the continued danger of continued publication of the matters complained of. That there was equally no proof that any restraint until the disposal of the main application would affect the respondent's freedom of speech.

Counsel further argued that Section 3 of the Press and Journalist Act prohibited publications that improperly infringed on the privacy of an individual or contained false information. That the appellant's statements, in this case, could not be said to be true.

Counsel concluded that the court had powers to issue all orders especially to enforce legal and equitable claims and to avoid a multiplicity of proceedings that would happened was the applicant given a free hand.

That it was clear that the respondent would be greatly prejudiced if the applicant was allowed to publish material about her and she would be battling him in court and yet exposed to potential further defamation.

Counsel prayed that this ground therefore fails.

## *Analysis*

I have perused the ruling and order given in the interim order issued on 10<sup>th</sup> September 2021 and it is given in the following terms;

**“An interim is issued against the respondent restraining him from any further publication of any materials about the applicant in any form and on any forum until the main application is disposed of”**

I agree with the appellant’s counsel that the order granted is too wide and broad and indeed it differs to an extent from what the respondent had sought in her application. The term *‘publication of any material about the applicant’* is too restrictive and literally gags the applicant from ever talking about the respondent even if the talk is not defamatory. In my view this would violate the appellant’s freedom of speech and expression.

The respondent had sought from the court the following order;

*An Interim injunction doth issue against the respondent, restraining and staying him or his agents, representatives, assignees, successors in title, employees from further defaming, abusing, threatening, intimidating, blackmailing, committing further injury against the applicant until the determination of the main suit.*

The court was at liberty to grant any such order as it deemed fit and necessary in the circumstances of the case. This court on appeal should make an appropriate order in order to meet the ends of justice. The right of the plaintiff to be protected has to be weighed against the corresponding need of the defendant to also be protected against injury resulting to him having been prevented from exercising his own legal right if the uncertainty were resolved in his favour at the trial.

The interim order granted by the Learned Deputy Registrar is amended as follows;

**“An interim is issued against the respondent restraining him from any further publication of any defamatory materials about the applicant in any form and on any forum until the main application is disposed of”**

This ground of appeal succeeds

*Ground 2: The learned Deputy Registrar erred in granting an interim order of an injunction in a matter of defamation which the respondent had not satisfied the conditions for grant of such an injunction*

The appellant reiterated their submissions in Misc. app no. 565 of 2021 to the learned deputy registrar that counsel submitted were strong and yet allegedly disregarded by the registrar and an interim injunction order was granted.

The deputy registrar in his ruling **at page 10, paragraph, paragraph 4 line 10 from the top when stated:**

*“it has to be understood that at this stage this Court does not have interrogate whether the alleged publication is defamatory or not. Lest it makes conclusions without allowing adducing evidence. Therefore I will not delve into that”.*

Counsel argued that this was a big blunder of the law since the learned registrar was required by law to delve into what the registrar refused to delve into. Counsel submitted that the respondent was also required to prove that there was no case of privilege that could be set up but the appellant had pleaded qualified privilege in his Written Statement Defence.

Lastly, counsel submitted that the Deputy Registrar erred when he ruled that in an application for an interim order in a case of defamation, he was only concerned with whether there is an application for temporary injunction.

Counsel submitted that this was totally wrong because an interim order of injunction was an interlocutory injunction. Counsel cited the case of **Bonard vs Perryman**. Counsel argued that the Registrar failed to differentiate between an application for an interlocutory injunction in general matters like land and an interlocutory injunction in matters of defamation.

Counsel concluded that the conditions for the grant of an interim injunction as stated in **Bonard vs Perryman** were not proved and therefore the learned registrar erred in granting the interim order of injunction to the respondent.

Counsel prayed that the appeal be allowed with costs and the order of the Deputy Registrar be set aside

Counsel for the respondent also reiterated their submissions to the learned deputy registrar stating that counsel for the appellant had not raised anything new in these submissions.

Counsel noted that the Registrar considered the peculiarity of granting Interim orders of injunction from paragraph 3 of page 6 to paragraph 4 of page 8 of his but especially at page 8 paragraph 3 when he relied on the case of *Cheserem vs Immaculate Services & 4 Ors [2000] EA 371 and African Gold Refinery vs Enough Projects & Anor HCMA 93 of 2019* to reach the conclusion that there was evidence that the applicant threatened and intended to repeat the words complained of and continue harassing the respondent and that the other consideration of **Kiyimba Kaggwa** applied together with the special law relating to the grant of injunctions in defamation cases.

Counsel concluded that this appeal was incompetent for being filed out of time but was also an attempt by the appellant to get out and have a free hand at blackmailing and maligning the respondent and befuddle this

court with further suits that the respondent would surely file. Counsel prayed that the same be dismissed with costs.

### *Analysis*

In an application for interim order or injunction, the Learned Deputy Registrar is only concerned with pending application or matter before the court. It would be premature and erroneous in my view for the Deputy Registrar to engage in evaluating affidavit evidence to determine the merits of the suit which matter will be handled by the Judge.

It would have been an error of law for the Learned Deputy registrar to make finding which would have been prejudicial to the entire suit. An interim injunction is intended to regulate the position of the parties pending the trial and determination of the issue between them, whilst avoiding a decision on such issues which could only be resolved at the trial.

The purpose of an application for interlocutory injunction is to keep parties in an action in status quo, in which they were before the judgment or act complained of. The applicant for interim injunction is not at that stage required to make out a prima facie case before he can be granted an interlocutory injunction.

In an application for interlocutory injunction, the court has to be satisfied that the applicant's case is not frivolous or vexatious and that there is a serious issue or question to be tried. The applicant has unfettered duty to satisfy the court that it is an equitable remedy which is at the discretion of the court to grant. The applicant therefore her unfettered duty to satisfy the court that in the special circumstance of her case, she is entled on the facts presented by her, to the relief. *See Kiyimba Kaggwa v Hajj Abdul Noor Katende [1985] HCB 43*



The award of an injunctive order is discretionary. The exercise of judicial discretion shall not be interfered with by an appellate court unless it is shown that the trial court exercised its discretion wrongly and arbitrarily. It is immaterial that the appellate court would have exercised the discretion differently. In other words, an appellate court does not as a matter of practice readily intervenes in matters concerning the exercise of discretion by a trial court merely because it would have otherwise exercised it.

The learned Deputy Registrar was right not to make any pronouncements which would have had the effect on the main suit. In determination of an interlocutory application pending the trial of substantive case, care should be taken not to make pronouncements which may prejudice the trial of the claims filed and still pending before the court. To do would prejudge the matter in respect of which evidence is yet to be led. *See Globe Fishing Industries Ltd v Coker (1990) 7 NWLR (pt 162) 265*

This ground of appeal fails.

The respondent raised a preliminary point of law on limitation of appeal. According to evidence on record it would appear that the appeal was filed out of time. The argument of counsel for the appellant that they had not received the record of proceedings is devoid of merit.

The 7 days period begins to run immediately after the ruling is delivered. However, in the interest of justice, this court has exercised its discretion and inherent powers to extend the time or enlarge the time under section 96 of the Civil Procedure Act and determine the appeal on merit.

This appeal partly succeeds. Each party shall bear its costs.

*Ssekaana Musa*

*Judge*

*31<sup>st</sup> March 2023*