THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA CRIMINAL APPLICATION NO.896/96

(Arising from LCD/52/94)

JOHN KAGGWA ..... APPLICANT/RESPONDENT

VERSUS

J.B.M. BALIKUDDEMBE .....

RESPONDENT/COMPLAINAMT

BEFORE THE HONOURABLE AG. JUDGE J. SEBUTINDE

RULING

This is an application for stay of execution of sentence pending the determination of an appeal against the decision and order of the Disciplinary Committee of the Law Council in LCD/52/94 made on 18/07/97. The application is by motion under sections 16 and 41 (2) of the Judicature Stature, 1996 (Statute No.13 of 1996) and Order 48 Rule 1 of the Civil Procedure Rules (S.I. No.65-3); as is supported by the affidavit of Susan Lugalambi, Counsel for the Applicant.

Briefly the background to this application is that the Applicant appeared before the Disciplinary Committee of the Law Council in LCD/52/94, and was on the 11/07/97 found guilty of “conduct unbecoming of an advocate" contrary to section 73(1)(k) of the Advocates Act, 1970 (Act 22 of 1970) and Regulation 30(1) of the Advocates (Professional Conduct) Regulations 1977 (S.I. No.79 of 1977). He was on the 18/07/97 sentenced to six months'

suspension from practising as an advocate with effect from the date of sentence, and ordered to pay the costs of the disciplinary proceedings.
On 13/10/97 the Applicant instituted High Court Criminal Appeal No.104 of 1997 against the decision and sentence of the Disciplinary Committee and on the 08/10/97 filed this application for stay of execution of sentence pending the determination of the appeal. The Law Council was not served with notice of this application. At the hearing of the application, the Respondent expressed no serious objections to this application.

The grounds of this application are that:-.

> "(i) the Applicant has instituted Appeal No.104 of 1997 against the decision and sentence of the Disciplinary Committee in LCD/52/94.
>
> (ii) The appeal has good chances of success and the result thereof will be rendered nugatory if execution of sentence is not stayed.
>
> iii) the Applicant is likely to suffer irreparable damage if he is forced to serve his sentence prior to the hearing of the appeal; and
>
> (iv) the application has been made without undue delay."

Having perused the record and carefully considered the submissions of Counsel for the Applicant, I will determine the following issues:-

> (i) whether this application is properly before court.
>
> (ii) Whether the Applicant is entitled to the remedies prayed for.

I shall begin with the first issue. When the Applicant first applied for a stay of execution of sentence, he did so by way of a Civil Application No.793 of

1997 but when that application came before this court on 01/10/97, Counsel withdrew it realizing that the proceedings both in LCD/52/94 and Criminal Appeal No.104 of 1997 are criminal in nature and that therefore the application for stay of execution of sentence ought to be a criminal proceedings. Subsequently on 8/10/97 the Applicant instituted Criminal Application No.896 of 1997 under the provisions of sections 16 and 41(2) of the Judicature Statute, 1996 and of Order 48 Rule 1 of the Civil Procedure Rules. In his submissions Counsel for the Applicant was of the view that this application is not criminal in nature and that since no specific procedure is prescribed for it under the Advocates Act, 1970, this court should “adopt a procedure justifiable in the circumstances" under section 41(2) of the Judicature Statute, 1996. He likened the proceedings in this application to those under section 333(2) of the Criminal Procedure Code (Cap.107) and prayed court to grant an equitable remedy to the Applicant in the circumstances. Regarding the criteria for the grant of this application, Counsel also cited those criteria applied in a Civil Application for a stay of execution of a decree pending appeal under Order 39 Rule 4 of the Civil Procedure Rules and prayed court to apply the same criteria the determination of this application.

It seems to me that Counsel quite obviously was not sure of the nature neither of this application nor of the procedure by which to bring it before court. That is why in his submissions he relied on the provisions of the Criminal Procedure Code on the one hand and of the Civil Procedure Rules on the other.

In my view the provisions relating to the discipline of advocates are clearly and comprehensively laid out in the Advocates Act 1970.

Firstly, according to section 13(2) of the Advocates Act, 1970, once an advocate's right to practice has been suspended pursuant to an order of the Disciplinary Committee, the period of suspension is deemed to start running

"forthwith" or "immediately" and the advocate concerned is supposed to return his practicing certificate to the Chief Registrar immediately, who in turn retains it for as long as the period of suspension is in force. In the instant case therefore Mr. Kaggwa's suspension came into effect on the 18/07/97 and I presume that he handed over his practicing certificate to the Ag. Chief Registrar on that day in compliance with section 13(2) of the Advocates Act, 1970. Consequently, at the date of filing of this application, namely 8/10/97, Mr. Kaggwa had served approximately two months and 21 days of his six month suspension.

Furthermore, section 21(3) of the Advocates Act,1970 clearly stipulates what becomes of the period of suspension pending the determination of the appeal against the Disciplinary Committee's decision. The section provides:-

> "21(3) pending an appeal under the provisions of subsection (1) of this section, if the Disciplinary Committee has ordered the Applicant advocate's name to be struck off from the Roil or has suspended his right to practise, such advocate shall not be entitled to practice except in the case where his right to practice has been suspended and the period of suspension lapses before the hearing of the appeal; in which event he shall be entitled to practice after the period of suspension has expired".

According to the above provision, once the Disciplinary Committee of the Law Council has made a lawful order suspending an advocate from practice, the sentence is deemed to commence forthwith and no court other than an appellate court of competent jurisdiction (i.e. a bench of 3 Judges of the High Court) may interfere with that order or sentence. Consequently, since Mr. Kaggwa's right to practise was suspended for six months (w.e.f. 18/07/97) he can only resume practice after the 17/01/98 unless his appeal is heard and determined earlier, in his favour. In my view, if the Legislature had intended to empower this court to stay the period of suspension pending the

determination of the appeal, the Legislature would have expressly provided so, I find that the contrary is true. It is no wonder therefore that Counsel could not find legal provisions under which to bring this application, because the Advocates Act does not permit the interference with a lawful order of the Disciplinary Committee save in the circumstances I have outlined above.

Regarding the first issue I find that the Applicant's application is misconceived and improperly before court and that this court has no power to entertain it under the Advocates Act, 1970.

My findings regarding the first issues dispose of the second issue. This court in my view has no power to grant a stay of execution of sentence, which sentence Mr. Kaggwa has already served a substantial part of.

I dismiss the application with costs.

J. Sebutinde

JUDGE
22/10/97

Delivered at 9.30 a.m. before:
Byenkya: for the Applicant.
Respondent: unrepresented.

J. Sebutinde

AG. JUDGE
22/10/97