

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 489 OF 2020
(ARISING FROM MISCELLANEOUS CAUSE NO. 231 OF 2020)**

LT. GEN. (RTD) HENRY TUMUKUNDE..... APPLICANT

VERSUS

- 1. ATTORNEY GENERAL**
2. GRACE AKULLORESPONDENTS

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application by way of Chambers summons against the respondent under Section 17 Human Rights Enforcement Act, 2019 and Order 41 r 2(1) & 9 of the Civil Procedure Rules, for orders that;

1. ***AN ORDER OF TEMPORARY INJUNCTION*** does issue restraining the respondents, their servants, agents or any other person acting under or with them, from arresting, detaining and or otherwise violating the applicant's rights; (right to personal liberty, right to freedom of expression, thought, conscience and belief, the right to equality and freedom of expression and right to participate in the affairs of Government in accordance with the law) until the determination of the main Miscellaneous Cause.
2. The costs of this application abide the outcome of the main cause.

The grounds in support of this application are set out in the affidavit of Lt. Gen.(Rtd) Henry Tumukunde dated 27th August 2020 which briefly states;

1. That the applicant is a male adult aged 61 years, a resident of Kololo in Kampala City and a retired UPDF soldier, having retired in 2015.

2. That the applicant is a Presidential Aspirant for the forthcoming General Elections, 2021 and has accordingly submitted his notification to the Electoral Commission and picked nomination forms and is in the process of commencing country-wide Consultations in preparations for the elections seeking signatures from atleast $\frac{3}{4}$ of the Districts in Uganda.
3. That on 17 / 8/2020, while at Njeru in Kayunga District, the applicant was arrested and detained by Uganda Police Force for about 8 hours.
4. That the applicant received criminal summons through his lawyer Wameli Anthony on his behalf from a police officer from Criminal Investigations Division offices at Kibuli which summons was signed by the 2nd respondent.
5. That in the said summons, it was claimed by the 2nd respondent that he had held meetings with Army veterans discussing issues related to politics. It was not indicated whether he is summoned as a suspect or a witness. A copy of the said summons was copied to the Chief of Defence Forces of the UPDF.
6. That the applicant's lawyer-Kagoro Friday Roberts attended a meeting at the respondent's office to establish the reason for the summons and in whose attendance was Brigadier General Damulira Christopher of the Army Court Martial, Col Moses Wandera of Army Court Martial and Lt. Col Mugisha a prosecutor in the Army Court Martial.
7. That the applicant is a civilian who is not subject to or connected to the UPDF or Military. There are several individual politicians and political groups or organisations that have engaged veterans in their political activities but none of them has been summoned by the 2nd respondent or Uganda Police Force.

8. That the National Resistance Movement Organisation, the ruling political party, has organs that provide for and involve veterans in its political activities and this is provided for its Constitution.
9. That the summons dated 17/08/2020 issued by the 2nd respondent summoning the applicant to the Criminal Investigations Division offices is not acceptable or demonstrably justified in a free and democratic society and therefore an infringement and /threat to his rights guaranteed under the 1995 Constitution.

In opposition to this Application the Respondent through AIGP Grace Akullo filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The 2nd respondent received numerous intelligence reports that the applicant was engaging and meeting Army veterans at both his office and residence in Kololo and discussing ways in which to disrupt the ongoing electoral process in Uganda.
2. The 2nd respondent directed that a general inquiry file under CIDHQTRS GEF: 787/2020 be opened to comprehensively look into these matters. The applicant was later summoned for an interview and record his statement at the Criminal Investigations Directorate in Kibuli on 19th August 2020 at 1400hours.
3. That on 19th August 2020, the applicant's lawyer-Friday Roberts Kagoro appeared for the meeting without the applicant and informed the 2nd respondent and her team that the Applicant cannot appear as summoned since he was unwell and secondly, he was getting ready for a court appearance the following day. The lawyer did undertake to make sure that his client avails himself for the interview on 25th August 2020 at 0900hours.
4. That on 25th August 2020, the applicant's lawyers led by Friday Roberts Kagoro and Anthony Wameli went to Criminal Investigations Directorate

headquarters at Kibuli at 9;00Hours without the Applicant and served a letter informing them that they take exception to the Police Summons and have informed the Chairperson of the Electoral Commission of the disruption of their client's consultative programs by Uganda Police.

5. That the actions of the 2nd respondent and Uganda Police are in line with the 1995 Constitution and Uganda Police Act and it is not a breach of his Constitutional rights to personal liberty, freedom of expression, thought conscience and belief, equality and freedom from expression, right to participate in the affairs of Government and freedom of association.

In the interest of time the court allowed the parties to make brief submissions within 15 minutes which the applicants counsel declined. The court proceeded to have this application determined without any submissions. The applicant was represented by *Mr Wameli Anthony and Mr Turyamusiima Geoffrey* whereas the respondent was represented by *Kallemera George (Commissioner), Richard Adrole (Principal State Attorney) and Mark Muwonge (State Attorney)*.

Whether a temporary Injunction should issue against the respondents?

The applicant contends in his application and supporting affidavit that he will suffer irreparable loss/injury unless an order restraining the respondents is issued.

In addition, the applicant contends that the balance of convenience is in favour of granting a temporary injunction against the respondents or their servants/agents.

It is in the interest of justice that a temporary injunction does issue against the respondents, their servants and or agents or persons working under or with them from violating or threatening applicant's rights until the hearing and determination of the main cause.

The respondents in their affidavit in reply contend that the applicant has no prima facie case with any probability of success as the Uganda Police Force is carrying out its constitutional mandate in accordance with the law.

The actions of the 2nd respondent are in line with the 1995 Constitution and the Uganda Police Act and that the applicant is seeking to halt investigations into these serious matters.

Analysis

The law on granting an Order of temporary injunction is set out in ***section 64(c) of the Civil Procedure Act*** which provides as follows;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed-

(a)

(b)

(c) grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property is attached and sold.

Order 41 rule 2 of Civil Procedure Rules provides that in any suit for restraining the defendant from committing a breach of any contract or other injury of any kind.....apply to court for a temporary injunction to restrain the defendant from committing the breach of contract or any injury complained of.....

The grant of a temporary injunction against public authorities or entities are treated with caution and circumspection.

Normally injunctions must not be granted against the public authorities or respondent's executing public utilities or implementation of government projects. Public interest is one of the paramount and relevant considerations in either granting or refusing to grant a temporary injunction.

Therefore Courts of law should be loath or slow to grant injunction when a public project for the beneficial interest of the public at large is sought to be delayed or prevented by an order of injunction, damage from such injunction would cause the public at large as well as to a Government is a paramount factor to be considered. Between the conflicting interests, interest of the public at large and the interest of a few individuals, the interest of the public at large must prevail over the interest of a few individuals.

In the present case, the applicant wants to stop the Uganda Police Force and the 2nd respondent from doing what the Constitution enjoins them to do under Article 212 of the Constitution. The Uganda Police Force exercises the powers conferred by the Constitution in public interest to protect life and property, preserve law and order and prevent and detect crime.

The sum effect of the injunction sought by the applicant is to stop the Uganda Police Force from; Investigating crime or detect crime. This is one of the core functions of the Uganda Police Force granted by the Constitution and this injunction sought affects the greater public interest that is protected by the Uganda Police Force. The court must in exercise of its powers and discretion to grant a temporary injunction be reasonable, judicious and act on sound legal principles.

The applicant must set out a *prima facie* case in support of the right claimed by him. The court must equally be satisfied that there is a *bonafide* dispute raised by the applicant, that there is an arguable case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him.

The burden is on the applicant to satisfy the court by leading evidence or otherwise that he has a *prima facie* case in his favour. But a *prima facie case* should not be confused with a case proved to the hilt. It is no part of the Court's function at this stage to try and resolve the conflict neither of evidence nor to decide complicated questions of fact and law which call for detailed arguments and mature considerations.

It is after a *prima facie case* is made out that the court will proceed to consider other factors.

The applicant's case as set out in the affidavit in support which is the basis of setting out a *prima facie case* are set out in paragraphs 10 & 11 as hereunder;

"10. That in the said summons, it is claimed by the 2nd respondent that 'I have held meetings with army veterans discussing issues related to politics'

3. *That in the said summons, no offence was stated and it was not shown whether iam being summoned as a suspect or a witness.*

The applicant has not availed any evidence to support his case for a temporary injunction. He has only stated that he does not know why he is summoned and that he is a civilian who is not subject to or connected to the UPDF or military law whatsoever.

The applicant has suppressed material facts and left this court in limbo so as to know, understand and appreciate his case. The sum effect is that he has failed to make out a prima facie case that would have moved court to exercise its discretion to grant a temporary injunction.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of property without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed or threatened to be committed by a person who approaches the court. See ***ACP Bakaleke Siraj v Attorney General High Court Miscellaneous Application No. 551 of 2018***

The court's power should be exercised judicially and in public interest, no injunction causing administrative inconvenience or resulting in public mischief should be granted.

The courts should be reluctant to restrain the public body (like Uganda Police Force) from doing what the law allows it to do. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold under the Constitution of Uganda.

The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation or the functions of the public body. See ***Alcohol Association of Uganda & 39 Others v AG and URA High Court Miscellaneous Application No. 744 of 2019; R v Secretary of State for Transport ex.p Factortame Ltd [1990] 2 AC 85.***

In the result for the reasons stated herein above this application fails and is hereby dismissed with costs.

It is so ordered.

This ruling is delivered by email and whatsApp.

SSEKAANA MUSA

JUDGE

14th/09/2020