THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION 296 OF 2001

ARISING OUT OF HCCS 476 OF 1995

SEBUNYA LULE

MARIA KAGUSUURU…… APPLICANTS
MEMBERS OF THE ASSOCIATION OF CHARTERED
SECRETARIES AND ADMINISTRATORS OF UGANDA

VERSUS

THE ATTORNEY GENERAL
THE INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS OF UGANDA} ……RESPONDENTS
GEORGE EGADU
BEN OKELLO LUWUM

BEFORE: THE HON. JUSTICE LUGAYIZI

RULING

This ruling arose out of an application for a temporary injunction, which was made by the applicants by way of Chamber Summons under Order 37 rules 2 and, 9 of the CPR. The application was accompanied by two affidavits, which were sworn by Mr. Simon Peter Kalenzi. It sought orders to restrain the 2nd, 3rd and 4th respondents from holding an Annual General Meeting of the 2 respondent until final determination of the head suit and costs. When the respondents were served with the application, the 4th respondent swore an affidavit opposing it. However, before court goes into the substance of the application, it is useful to know its

background which is briefly as follows. Whereas accordingly, the Statute of 1992 (statute No. 12 of 1992) was enacted it, among other things, established an Institute of Certified Public Accountants of Uganda. It further provided for the requisition and control of accountants and also paved the way for the applicants to enroll as members of that Institute so that they may practice accountancy lawfully in Uganda. That state of affairs was, however, short lived. In 1994 the Minister of Finance, under Statutory Instrument No. 258 of 1994, amended the Fifth Schedule to the Accountants Statute by deleting the Minister of Finance, under Statutory Instrument No. 258 of 1994, amended the Fifth Schedule to the Accountants Statute by deleting the Association of Chartered Secretaries and Administrators of Uganda from the list of institutes whose members qualified to enroll and to practice accountancy in Uganda lawfully. That aggrieved the applicants. They therefore filed the head suit. Later on, Government conceded that Statutory Instrument No. 258 of 1994 was invalid; and therefore Government had no choice but to revoke it. It did so, by way of Statutory Instrument No.47 of 1999. Following that event, Court entered judgment in favour of the applicants in respect of the first issue of the head suit, which was whether or not Statutory Instrument No.258 of 1994 was valid? However, that did not end the head suit. There was another hot issue that remained unresolved. It was whether the Council of the Institute of Certified Public Accountants of Uganda was lawfully constituted? Subsequently, Court heard a number of witnesses in respect of that issue, but before it exhausted them, the 2nd, 3rd and 4th respondents organised to hold an Annual General Meeting of the **2nd** respondent on June 2001. The applicants fearing that the above respondents could make policy decisions that may prejudice their interests during that meeting applied for an ex pane interim order to restrain them from holding the Annual General Meeting of the 2nd respondent on 1st June 2001. Court granted that order and the said meeting did not take place. However, the applicants presently continue to fear that the 2nd, 3rd and 4th respondents will once again organize an Annual General Meeting of the 2nd respondent. The main reason for that fear is that they are not sure whether their interests will not be jeopardised during that meeting where they will not be represented. They did not wish to leave matters to chance. That is why they made the application, which is the subject of this ruling.

At the time of hearing the application, Messrs G. S. Lule (S.C.) and Sebugenyi represented the applicants; and Professor Sempebwa represented the 2nd, 3rd and 4th respondents. Although both

sides were agreed on the principles governing the grant of a temporary injunction, they were not of the same mind on whether or not the application should be granted.

It is now settled law that before an applicant is granted a temporary injunction, he has to prove the following things,

1. That the purpose of the temporary injunction is to preserve the Status quo until the head suit is finally determined. **(See Noor Mohammed Janmohamed v Kassamali Virji (1953) 20 EACA 80.)**

2. That the applicant has a prima facie case, which has a probability of success. **(See Giella v Cassman Brown & Co. Ltd (1973) E. A. 358)**

3. That if the temporary injunction is not granted, the applicant would suffer irreparable injury, which cannot be atoned by damages. **(See Noor Mohammed Janmohamed v Kassamali Virji (supra).**

4. If, Court remains in doubt after considering the above three requirements of the law, it decides the application on the balance of convenience. (See E. A. Industries **v Traffords (1972) E. A. 420.)**

Court will now consider the above requirements of the law in turn, in relation to the evidence before it and the submissions of counsel.

With regard to the first requirement, Mr. Lule submitted that the status quo is that Statutory Instrument No. 258 of 1994 that had earlier on denied the applicants professional recognition under the Accountants Statute and the right to practice as accountants was revoked by Statutory Instrument No. 47 of 1999. Consequently, the applicants are 'now entitled to practice accountancy as members of the Institute (ICPAU). In addition to that, Court entered judgment in the applicant's favour in the head suit in respect of whether or not Statutory Instrument No 258 is illegal. However, the 2nd, 3rd and 4th respondents have refused to accept the above state of things. In fact, they are likely to try to hold an Annual General Meeting, any time, during which matters of policy affecting the applicants' interests could be resolved in their absence with a view to

changing the status quo. That is why the applicants need a temporary injunction to restrain the 2nd, 3rd and 4th respondents from holding an Annual General Meeting until the head suit is disposed of.

On the contrary, Professor Sempebwa submitted that the status quo is that the 2nd respondent is in existence and the 3rd and 4th respondents are its council members who have been transacting its statutory business which includes holding Annual General Meetings. He further submitted that the 3rd and 4 respondents have not done anything that might raise suspicion that if they held an Annual General Meeting, they might decide on matters that are likely to jeopardize the applicants' interests under the Accountants Statute. Professor Sempebwa finally submitted that the truth of the matter is that the applicants are not presently seeking relief to maintain the status quo. They are simply trying to obtain one of the final prayers under the plaint prematurely. He pointed out that the law does not permit the granting of a temporary injunction if its purpose is simply a disguised way of enabling the applicant to obtain the final prayers under the head suit. He cited the case of **Noor Mohamed Jan Mohamed v Kassarnali Virji Madhani** (supra) in support of that submission. He therefore pointed out that on that ground alone the application would completely fail.

In Court's opinion the, status quo is made up of a combination of facts found in submissions of counsel for both sides and more. Those facts are as follows. It is an undisputed fact that Statutory Instrument No. 47 of 1999 revoked the earlier Instrument that barred the applicants from practicing accountancy under the Accountants Statute. As a result, the applicants are now free to practice accountancy under the said Statute. It is also a fact that there is presently, a judgment under the head suit, which is in the applicants' favour. That judgment is to the effect that Statutory Instrument No. 258 of 1994, which had earlier on barred the applicants from practicing accountancy under the Accountants Statute, is illegal. That aside, it is also a fact that the 3rd and 4th respondents are officials of the Council of the 2nd respondent and have been carrying out its statutory functions that include organising its meetings. It is a fact too, that the applicants are still challenging, under the head suit, the legality of the 3rd and 4th respondents' appointment to the Council of the 2nd respondent; and that part of the head suit remains unresolved. In Court's opinion, that is the status quo. The vexed question now is whether or not

the application, which is the subject of this ruling is for the purpose of maintaining the status quo until the head suit is disposed of. Indeed, the applicants have shown that they are seeking to restrain the 2nd, 3rd and 4th respondents from holding an Annual General Meeting until the head suit is disposed of. However, it is a fact that the members of the Council of the 2nd respondent have over time transacted business such as the holding of Annual General Meetings. Indeed, as earlier on pointed out, such matters are part and parcel of the status quo. For that reason, it follows that when the applicants seek to restrain the 2nd, 3rd and 4th respondents from holding an Annual General Meeting, they are endeavouring to change the status quo. Consequently, the purpose of the temporary injunction cannot be to maintain the status quo. In Court's view, that should dispose of this matter. However in order to put to rest every aspect of contention in this matter, court will also examine the rest of the legal requirements.

With regard to the second requirement, Mr. Lule submitted that the sum total of the evidence that the applicants led under Mr. Kalenzi's two affidavits clearly shows that the applicants have a prima facie case, under the head suit, which has a probability of success. Professor Sempebwa disagreed with that position. He submitted that the applicants led, absolutely, no evidence in respect of that area of the application.

As Court earlier on pointed out, the remainder of the head suit is about whether the 3rd and 4th respondents were lawfully constituted as members of the Council of the 2nd respondent. However, Court thinks that it would be almost interfering with the merits of the head suit if Court was to decide on whether the applicants have a prima facie case with the probability of success. All the same, the truth of the matter is that the applicants did not lead any evidence on that aspect of the application. Consequently; they failed to prove the second requirement.

With regard to the third requirement, Mr. Lule submitted that the 2nd, 3rd and 4th respondents should be restrained from holding an Annual General Meeting. He pointed out that if that is not done, they are likely to continue to refuse to recognize the applicants as full members of the 2nd respondent. That means that the applicants would have no voting rights at the Annual General Meeting and cannot influence any policy of the 2nd respondent or, hold any position on the Council of the 2 respondent. For those reasons, Mr. Lule submitted that if a temporary injunction is not granted to the applicants they would suffer irreparable injury in their various accountancy

practices, which damages cannot atone. On the contrary, Professor Sempebwa submitted that an Annual General Meeting of the 2 respondent is a statutory requirement; and the agenda showing the business that is expected to be transacted during that meeting is very clear. It is the usual business and does not include anything that would injure the applicants' present interests in their practice of accountancy. He further pointed out that although the applicants have not yet applied for membership of the 2' respondent, Mr. Ben Luwum, in his affidavit, has deposed that they are practicing accountancy; and none of the officials of the Council of the 2nd respondent has molested them at any given time. For those reasons, Professor Sempebwa concluded that the applicants have not proved that they will suffer irreparable injury, which damages cannot atone if the temporary injunction is not granted to them.

First of all, before endeavouring to decide whether or not the applicants proved that they would suffer irreparable injury, which damages cannot atone if the temporary injunction is not granted. Court wishes to say this. At the commencement of the accountants statute "full membership" to the 2nd respondent was available on application to the Interim Council, by a member of any of the institutes, which were then, specified in the Fifth Schedule to the Accountants Statute. However, that was not supposed to be a permanent state of affairs. It was a transitional measure. It was meant to be effective only from the commencement of the said Statute until the time the Council of the 2nd respondent prescribed "the qualifying examination and the societies equivalent to the Institute". There is evidence on record to prove that the 2nd respondent and the members of the Council of the 2nd respondent have been transacting official business that included the holding of a number of Annual General Meetings. It is therefore very unlikely that the affairs of the 2nd respondent are still where they started in 1992 and have not gone beyond the transitional stage. For that reason, it is not far-fetched to conclude that presently sections 6 and 7 govern membership of the 2nd respondent (fill or associate) and not section 51 of the Accountants Statute as the applicants would wish Court to believe, Therefore, Court doubts whether is correct to say that when the Association of Chartered Secretaries and Administrators of Uganda was restored to the Fifth Schedule to the Statute by Statutory Instrument No.47 of 1999, its members simply returned to their original status.

Be that as it may, the uncontested agenda of the business to be transacted by the anticipated Annual General Meeting of the 2nd respondent is as follows,

1. To receive and adopt the Report of the Council and the Financial Statements for the year ended 31 December 2000.

2. To elect seven members of Council.

3. To re-appoint as auditor, Mr. Muhaise-Bikalemesa John, Certified Public Accountant of Uganda.

SPECIAL BUSINESS

4. To transact any other business competently tabled."

In Court's opinion, the agenda is clearly about the usual business that is ordinarily transacted during such Annual General Meetings. It would be unreasonable to say that if that agenda is followed in the anticipated Annual General Meeting, it will result in irreparable injury to the applicants, which damages cannot atone. In fact, that would be sheer speculation or reading into the agenda what does not appear on its face. This is particularly so, when one realises that the applicants have been freely practicing accountant and the respondent have not attempted to stop them from doing so since the applicants filed the head suit. For those reasons, Court is of the opinion that the applicants failed to prove that if they are not granted a temporary injunction to stop the anticipated Annual General Meeting, they will suffer irreparable injury, which damages cannot atone.

That takes us to the last requirement. With regard to it, Mr. Lule submitted that the balance of convenience lies in favour of granting a temporary injunction to the applicants. That is so, because the 3rd and 4th respondents are illegally working as members of the Council of the 2nd respondent and whatever they officially do, simply perpetuates illegalities. That process of illegalities must be stopped by the grant of a temporary injunction to the applicants. On the contrary, Professor Sempebwa submitted that the balance of convenience lies in favour of refusing to grant a temporary injunction to the applicants because if Court did otherwise, it would throw the 2 respondent and the entire profession of accountants in a state of disarray. For example, the 2nd respondent's financial state would remain unknown, there would be no policy for the profession to follow for the coming year and other business, such as setting examinations

for students, which the Council for the 2nd respondent routinely engages in will not be attended to.

Whether or not the 3rd and 4th respondents lawfully hold office as members of the Council of the 2nd respondent is a matter that is yet to be tried. Therefore, Court cannot reach any conclusions, one way or the other, on that matter now. However, Court entirely agrees with Professor Sempebwa that if the 2nd, 3rd and 4th respondents are restrained from holding an Annual General Meeting of the 2nd respondent, the consequences of such action will be catastrophic to the 2nd respondent and the entire profession as a whole. Indeed, some of the vital activities of the 2nd respondent would cease and its finances would be in jeopardy. Of course, these would be very negative developments in the affairs of the profession. Such things should not be allowed to happen. In the circumstances, Court is of the opinion that the balance of convenience lies in favour of not granting the temporary injunction, which is hereby refused. In any case, an Annual General Meeting of the 2' respondent is a matter of law**. (See; item 1 (1) of the First Schedule to the Accountants Statute.)** It must be held, otherwise there would be a breach of the law.

All in all, the application has failed; and it is hereby dismissed with costs.

E.S. LUGAYIZI
JUDGE
22/06/2001