

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

MISCELLANEOUS APPLICATION NO 278 OF 2006

OGWAPIT CUTHBERTAPPLICANT

VERSUS

BOARD OF GOVERNORS KIBULI S. S.....RESPONDENT

31st August 2006.

BEFORE HON. JUSTICE GIDEON TINYINONDI:

RULING:

In this Chamber Summons (ex parte) application, the Applicant sought for orders:

- “1. Applicant be granted leave to apply for an order of certiorari and prohibition.
2. That the Applicant be allowed to live in the school house till the disposal of the application.
3. That costs for this application be provided for”.

The grounds of the application were: -

- “1. That the Respondent unlawfully and illegally interdicted the Applicant from his appointment as teacher of the respondent school.
2. That the Applicant was not given any hearing let alone a fair hearing.
3. That the Applicant was evicted from the school house he occupied while still on interdiction contrary to the teaching/civil service regulations.

4. That it is just and equitable that leave be granted to apply for an order of certiorari.

The application was accompanied by an affidavit. It reads:

“I, **MR. OGWAPIT CUTHBERT** of C/O Kasozi, Omongole & Co. Advocates 2nd floor Greenland Towers P. O. Box 28511 Kampala do solemnly swear and state as follows: -

1. **THAT** I am a male adult of sound mind and the applicant in this matter and swear this affidavit in that capacity and state as follows: -
2. **THAT** I was employed by the Respondents and deployed at Kibuli S. S. as a Senior Secondary teacher in 1990 and confirmed appointed as a teacher Grade III on the 11th day of April 2002 and was promoted as Grade V teacher. Copies of appointment letters are hereto annexed and marked “A₁” and “A₂”.
3. **THAT** on the 3rd day of August 2004, the applicant was appointed on promotion as Education Officer by the Teaching Service Commission and a copy of the said letter is hereto attached and marked “B”.
4. **THAT** on the 7th day of November 2002 I was appointed to serve on the school’s Board of Governors and a letter of appointment is hereto attached and marked “C”.
5. **THAT** on the 10th day of May 2004 I was transferred to MM College Wairaka, however on the 20th day of May 2004 the transfer to MM College Wairaka was reversed and the Headmaster of Kibuli S. S. was accordingly informed of the same. A copy of a reversal letter attached and marked annexure “D”.
6. **THAT** on the 12th day of February 2005 my two sons Ogowapit Moses and Odeke Deogratiuous were dismissed from the boarding section with immediate effect because of my purported unethical conduct.
7. **THAT** on the 24th day of February 2005, I appealed against the dismissal and exclusion of the two said sons from the boarding section and requested that I should bear the consequences of my alleged unethical conduct but my labours were futile. A copy of the appeal is hereto annexed and marked “E”.

8. **THAT** on the 16th day of February 2005 I lodged an objection to the PTA/Board disciplinary committee which was scheduled for the 17th of February 2005 on grounds that the head teacher had not given me the opportunity to be heard and the decision was based on hearsay, exaggeration and emotion. And that some of the people that were invited to the meeting were not members of the Board of Governors disciplinary committee. A copy of objection is hereto annexed and marked “F”.
9. **THAT** on the 23rd of February 2005, I was served with a notice that due to my alleged failure to appear before the disciplinary committee that the said disciplinary committee had resolved to present my case to the board of Governors plenary for disciplinary measures. A copy of notice is hereto annexed and marked “G”.
10. **THAT** the said disciplinary committee was not properly constituted as required by the Rules and Regulations and as such the findings of the said disciplinary committee were null and void.
11. **THAT** on the 17th day of March 2005, I was interdicted by the Ministry on behalf of the respondent, however upon the presentation of my defence to the interdiction, the said interdiction was lifted on the 9th day of September 2005. A copy of a letter lifting the interdiction is hereto attached and marked “H”.
12. **THAT** on the 18th day of March 2005 the 1st Respondent withdrew the school timetable and property from me. A copy of letter withdrawing is hereto annexed and marked “I”.
13. **THAT** upon reversal of interdiction the Headmaster Mr. Matovu attempted to transfer me to Kiira College but I opposed it on genuine grounds. Copies of transfer letter and my response are hereto annexed and “J₁” and “J₂” respectively.
14. **THAT** however, on one occasion, I found one of the students beating my son, and as master on duty and father, I intervened and disciplined the said student.

15. **THAT** the Board of Governors on wrong advise from the Headmaster Mr. Matovu then purportedly took disciplinary measures against me without authority of law to do so and I informed them about their lack of powers as per the Teaching Service/Civil Service Rules and Regulations.
16. **THAT** I was aggrieved by this and took the matter of assault to police to Kabalagala Police Station.
17. **THAT** the Ministry of Education then interdicted me on the 21st March 2006 without a hearing. A copy of interdiction letter is hereto annexed and marked “K”.
18. **THAT** I responded to the said second interdiction on the 6th of April 2006 giving my defence. A copy of my response is hereto annexed and marked “L”.
19. **THAT** I was then surprised with an eviction order arising from Nakawa Magistrates Court on 6th April 2004 while I am only on interdiction and not terminated. Copies of eviction and decree are hereto attached and marked “M₁” and “M₂”.
20. **THAT** I have never been served with any court proceedings prior to the eviction order.
21. **THAT** my property is currently left lying in the compound of the said premises exposed to rain, wind, thieves and other hazardous factors some of which is lost and/or destroyed. Copies of photos showing the same are hereto annexed and marked “N₁ - N₅”.
22. **THAT** I have no where to sleep or go with the family while still on interdiction by the Government of Uganda.
23. **THAT** my interdiction is not a termination of my services in the Teaching Service/Civil Service in Uganda.
24. **THAT** by law I am still entitled to live with my family and property in the said house till the Civil Service terminates my services.

25. **THAT** the actions of the Head teacher, Board of Governors and the school have caused a lot of suffering as my family has nowhere to live in Kampala.
26. **THAT** I intend to apply for an order of certiorari to quash the decision of the respondent to interdict me.
27. **THAT** it is just and equitable that this application is allowed and the respondent resettled in the school house.
28. **THAT** I swear this affidavit in support of the application for leave to apply for prerogative orders of certiorari and prohibition.
29. **THAT** whatever I have stated hereinabove is true and correct to the best of my knowledge and belief.”

The application flouted Rule 3 (2) of the LAW REFORM (MISCELLANEOUS PROVISIONS) (RULES OF COURT) RULES. Which is mandatory by omitting to accompany it with a Statement. I would strike out this Chamber Summons application on this ground.

Furthermore, perusal of application shows the Respondent to be “BOARD OF GOVERNORS KIBULI S.S.S.” Perusal of ground one and paragraphs 17 and 26 show that the party which interdicted the Applicant was the Permanent Secretary, Ministry of Education and Sports.

At the ex parte hearing Counsel for the Applicant labored to explain that the proper Respondent in this application was the Board of Governors, Kibuli S. S. S. He explained that this was on account of Rule 2 of the Teaching Service Commission Rules of 1994 which in, Counsel’s words, put the Permanent Secretary Ministry of Education and Sports as a responsible officer in as far as taking any action regulating the activities of the teachers in the Civil Service of Uganda. Counsel contended that the Permanent Secretary, Ministry of Education and Sports in his capacity of responsible officer, was moved by the Respondents to interdict the Applicant. Counsel further contended that in interdicting the Applicant the Respondents did not afford the Applicant a hearing in accordance with the Rules.

I perused the said Rules. Rule 2 reads:

“In these Regulations, unless the context otherwise requires:

“responsible officer” means:

- (c) in relation to teachers employed,
- (iv) as teachers in Senior Secondaryinstitution run under the Ministry responsible for education, the Commissioner for Education.”

Rule 12 reads: -

- “1. Where a responsible officer considers that the public interest requires that a teacher should cease to perform the functions of his office, he may interdict the teacher from the performance of these functions

Thus, contrary to the Applicant’s Counsel’s submission I find the “responsible officer” to be the Commissioner for Education.

My finding of the facts are that:

- (a). there was no evidence documentary or otherwise that the Respondent explicitly asked the Permanent Secretary, Ministry of Education and Sports to interdict the Applicant.
- (b). the Permanent Secretary, Ministry of Education and Sports was the party which interdicted the Applicant. (See paragraph 17 of the affidavit, in support).

My holdings are: -

- (i) the Chamber Summons application is defective on account of not being accompanied by the statement required by the law.
- (ii) the Respondents did not in fact interdict the Applicant, let alone hold proceedings to this end.

As such the Respondents are the wrong party to the Chamber Summons application.

The application stands dismissed.

Gideon Tinyinondi

JUDGE

31/08/2006.

31/08/2006:

Ms. S. Atingu holding brief for Mr. Omongole for the Applicant.

Ms. Kauma, Court Clerk.

COURT:

Ruling read in open court.

Gideon Tinyinondi

JUDGE

31/08/2006.