



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HIGH COURT MISCELLANEOUS APPLICATION 323 OF 2023
(ARISING FROM CIVIL SUIT NO 97 OF 2023)

TWESIGYE RICHARD ----- APPLICANT

VERSUS

1. RUBAARE TOWN COUNCIL
2. NTUNGAMO DISTRICT LOCAL GOVERNMENT ----- RESPONDENTS

Before: Hon. Justice Nshimye Allan Paul. M.


RULING

BACKGROUND

The applicant filed an application against the respondents brought by way of chamber summons under **SECTION 98 OF THE CIVIL PROCEDURE ACT, ORDER 41 CIVIL PROCEDURE RULES** and enabling laws, seeking a temporary injunction restraining the respondents from forcing/ evicting the applicant from the office of Rubaare Town council, Ntungamo district as a senior Assistant Account until final disposal of the Main suit.

The grounds of the application are that;

1. The applicant has a prima facie case with a high chance of success.
2. The applicant shall suffer irreparable damage which cannot be compensated for in damages if the application is not granted.
3. That the applicant has a main suit pending before this honorable court and the applicant if not granted will render the main suit nugatory.
4. The balance of convenience favors the applicant.
5. Costs of the application


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PLAINTIFFS SUBMISSIONS

The applicant avers that he is a Senior Assistant Accountant of Rubaare Town council , in Ntungamo District. That he had just been deployed there for 6 months and during the course of his employment in that is period, he discovered that one of the bank accounts was not handed over to him, yet money was being withdrawn from it without his knowledge, yet it belongs to Rubaare Town council.

That he is a whistleblower of the corrupt tendencies involving the Chief Administrative Officer of the 2nd respondent that are now being investigated. he contended that instead of protecting him as required in **SECTION 9 OF THE WHISTLE BLOWERS PROTECTION ACT 2010** the Chief Administrative Officer of the 2nd respondent acted in bad faith and maliciously caused the transfer of the applicant in order to cover up the evidence to defeat the purpose of the investigation. He prayed that the court grant a temporary injunction arguing that he fulfills the conditions in **KIYIMBA KAGGWA VS. HAJJI ABDUL NASSER KATENDE (1985) HCB 43.**

RESPONDENTS SUBMISSIONS

The respondents opposed the applications, and their submissions were filed by the Attorney General's office. It was argued that the applicant of the application is against the wrong party, and in support of their point they referred court to section 6 of the Local government. They then prayed that the application be dismissed with costs.

They also argued that the application is premature since the applicant as a public officer has a remedy of appeal against his transfer to the public service commission under **REGULATION 11,12 AND 13 OF THE PUBLIC SERVICE COMMISSION REGULATIONS 2009.** That instead of lodging an appeal against the transfer he has gone to court to paralyze the activities of the respondents. They added that the transfers did not only apply to him, and a substantive person transferred to the post he held has already taken place, hence the application is overtaken by events, making it moot and an abuse of court process.

Lastly the respondents submitted that the application does not fulfill the conditions for grant of a temporary injunction as stated in **KIYIMBA KAGGWA VS. HAJJI ABDUL NASSER KATENDE (1985) HCB 43.** They then prayed that the application be dismissed with costs.

DETERMINATION

The facts that are admitted by both the applicant and respondents as can be deduced from the evidence on court record show that

1. The applicant is a public servant at the position of a Senior Assistant Accountant (**see paragraph 1 of the affidavit in support and paragraph 4 of the affidavit in reply**)
2. The applicant was on 10/7/2023 transferred from Rubaare Town council to Ihunga subcounty with effect from 15/7/2023 in his substantive position as a Senior Assistant Accountant (**see paragraph 4 of the affidavit in support and paragraph 7 of the affidavit in reply**)

The grounds of this application are similar to the conditions for the grant of temporary injunctions set out in **KIYIMBA KAGGWA VS. HAJJI ABDUL NASSER KATENDE(1985) 43**, where the court stated that;

1. Firstly, that the applicant must show a prima facie case with a probability of success.
2. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for in damages.
3. Thirdly, if the court is in doubt, it would decide an application on a balance of convenience.

I will now first discuss the 1st ground of the application that is linked to the first condition, which is to determine whether the applicant has a prima facie case with a probability of success.

The applicant filed a plaint in the High Court on 27.07.2023 vide HCT-05-CV-CS no 97 of 2023 wherein he states his claim in paragraph 3 that;

"The plaintiffs claim against the defendants (respondents) herein is for cancellation of illegal unreasonable and malicious transfer, general damage, permanent injunction, certiorari, costs and interests"

In evaluating whether the applicant has a prima facie case with a probability of success, we shall keep in mind the claim in the plaint because it the basis of the cause of action against the respondents in the main suit.

The law in **SECTION 64 OF THE LOCAL GOVERNMENT ACT** , stipulates that The Chief Administrative Officer shall be the head of the public service in the district, his or her duties include to supervise, monitor and coordinate the activities of the district and lower council's employees and departments and ensure accountability and transparency in the management and delivery of the council's services (**see section 64(2)(c) of the Local Government Act.**). In carrying out the functions of the Chief Administrative Officer, the office bearer, must apply the relevant laws that include The Uganda Public Service Standing Orders (2021 edition), among others.

The applicant is a public officer in a local government (**see section 2 of the affidavit in support**), which means that he is subject to the supervision of the Chief Administrative officer, who is legally authorized to transfer any public officer under his or her supervision as is stipulated in **SECTION F, PART (F-C), ITEM 2 OF THE UGANDA PUBLIC SERVICE STANDING ORDERS (2021 EDITION)**

SECTION A, PART (A-M), ITEM 3 OF THE PUBLIC SERVICE STANDING ORDERS 2021 provides for Movement of Personnel within the Public Service - General provisions 3. States that "*A public officer may be deployed from one Ministry or Department to another or from one department or from one sub-county or school to another within the same Local Government*". I therefore find that the Chief Administrative officer has the mandate as per his job description to transfer the applicant within the same local government as he did on 10/7/2023, transferring the applicant from Rubaare Town council to Ihunga subcounty with effect from 15/7/2023 in his substantive position as a Senior Assistant Accountant (**see paragraph 4 of the affidavit in support and paragraph 7 of the affidavit in reply**)

I will now consider the applicant's argument, that he is a whistleblower of the corrupt tendencies involving the Chief Administrative Officer of the 2nd respondent that are now being investigated (**see Paragraph 6 of the affidavit in rejoinder**). I will also consider his contention that instead of protecting him as required in **SECTION 9 OF THE WHISTLE BLOWERS PROTECTION ACT 2010** the Chief Administrative Officer of the 2nd respondent acted in bad faith and maliciously caused the transfer of the applicant in order to cover up the evidence to defeat the purpose of the investigation (**see Paragraph 7 of the affidavit in rejoinder**).

I have already found that the Chief Administrative Officer may transfer any public officer under his or her supervision, therefore the question at hand is whether the transfer of the applicant, who is a self-proclaimed whistleblower was wrong and in bad faith as he alleged. The law in **SECTION 9 OF THE WHISTLE BLOWERS PROTECTION ACT** 2010 stipulates that;

“9. Protection from victimisation

(1) A person shall not be subjected to any victimisation by his or her employer or by any other person on account, or partly on account, of having made a protected disclosure.

(2) A whistleblower shall be considered victimised on account of making a protected disclosure where—

(a) the whistleblower being an employee is—

(i) dismissed; (ii) suspended; (iii) denied promotion; (iv) demoted; (v) made redundant; (vi) harrassed; (vii) intimidated; (viii) threatened with any of the matters set out in (i) to (vii); (ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee; or

(b) not being an employee, the whistleblower is subjected to discrimination or intimidation by a person or an establishment affected by the disclosure.

(3) A whistleblower who honestly and reasonably believes that he or she has been victimised as a result of his or her disclosure may make a complaint to either the Inspectorate of Government or the Uganda Human Rights Commission for redress.

(4) Notwithstanding subsection (3) a whistleblower may seek redress for victimisation by bringing a civil action in a court of law.

(5) A complaint made under subsection (3) shall contain the following particulars—

(a) the name, description and address of the whistleblower;

(b) the name, description and address of the whistleblower’s employer or any other person who the whistleblower claims has victimised him or her; and

(c) the specific acts complained of as constituting victimisation.

(6) A whistleblower shall not be considered victimised if the person against whom the complaint of victimisation is directed—

(a) has the right in law to take the action complained of;

(b) the action is demonstrably unrelated to the disclosure made.

I appreciate that whistleblowers are vital in the fight against corruption, and as such ought to be protected. In the case at hand the applicant claims to be a whistleblower of a matter now under investigation (**see Paragraph 6 & 7 of the affidavit in rejoinder**).

5 My understanding is to the effect that once he reported the corruption to the agency investigating the same, it meant that the agency now has legal capacity to carry out the investigation in such a manner that does not require the applicant to “protect” the evidence by staying in the office being investigated.

10 Having whistle blown, the focus in the alleged corrupt tendencies shifts to the investigating agency to carry out its mandate of investigation without interference from anyone including the whistle bower. I am therefore of the opinion that since investigations commenced as claimed by the applicant (**see Paragraph 7 of the affidavit in rejoinder**), the applicant’s role in the whistle blown matter reduces to
15 that of a potential witness not a controller of the office being investigated. Therefore, this application must be considered within the frame work of the applicant’s job as a public servant that pledged to serve anywhere versus the mandate of the Chief Administrative Officer who is authorized by law to transfer staff under his supervision.

20 I am mindful of Section 9 of the Whistle Blowers Protection Act 2010 bars victimization of a whistle bower, but I will state that I have perused the evidence on court record and I don’t find the transfer of the applicant on 10/7/2023 from Rubaare Town council to Ihunga subcounty with effect from 15/7/2023 in his substantive position as a Senior Assistant Accountant to amount to victimization. I am fortified in this thinking by the
25 fact that the applicant was not the only one that was transferred, several other officers were affected (see annexure D of the affidavit in reply). Lastly the law in **SECTION 9(6)a OF THE WHISTLE BLOWERS PROTECTION ACT 2010** states that

30 *“A whistleblower shall not be considered victimised if the person against whom the complaint of victimisation is directed— (a) **has the right in law to take the action complained of**”*

I have already discussed above that the law and more especially The Uganda Public Service Standing Orders (2021 edition), authorizes the Chief Administrative Officer to
35 transfer the applicant within the local government as he did. The law in the Whistle Blowers Protection Act does not regard acts permitted by law as to amount to victimization, as is stated in **SECTION 9(6)a OF THE WHISTLE BLOWERS PROTECTION**

ACT 2010. I find that transfer of the applicant along with other public servants at his rank in a reshuffle within the district does not amount to victimization.

The findings above made by this court based on the law, therefore cast doubt on the probability of success of the main suit, a key condition the applicant ought to prove in order to be considered for a temporary injunction.

I will now consider the two other conditions that ought to be considered in an application for grant of a temporary injunction. These are, whether the applicant will suffer irreparable injury which would not adequately be compensated for in damages and the other is that if the court is in doubt, it would decide an application on a balance of convenience.

The applicant is seeking an order restraining the **respondents from forcing/ evicting the applicant from the office** of Rubaare Town council, Ntungamo district as a **senior Assistant Account** until final disposal of the main suit (see order as stated in chamber summons). The order sought is basically intended to keep applicant in a particular office within the public service. I have read the affidavit evidence on court record and do not find sufficient evidence to prove that he will suffer irreparable injury that cannot be compensated, given that he is a public servant whose service is subject to possible transfer to different stations as provided in **SECTION A, PART (A-M), ITEM 3 AND SECTION F, PART (F-C), ITEM 2 OF THE PUBLIC SERVICE STANDING ORDERS (2021 EDITION)**.

I find that the balance of convenience does not favor the grant of a temporary injunction that would have the effect of personalizing an office or freezing the operation of public service.

I therefore find that the applicant has not advanced sufficient evidence to prove the conditions necessary for the grant of a temporary injunction in his favor. In conclusion, I order that.

1. The application for a temporary injunction is dismissed.
2. No order as to costs is made.

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NSHIMYE ALLAN PAUL M.

JUDGE

30.10.2023