

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO.094 OF 2024
(ARISING FROM MISCELLANEOUS CAUSE NO.0023 OF 2024)

BRIAN KIRIMA----- APPLICANT

VERSUS

UGANDA LAW SOCIETY----- RESPONDENT

BEFORE: HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of chambers summons against the respondent under Section 38 of the Judicature Act cap 13 and Order 41 r 1, & 9 of the Civil Procedure Rules, for orders that;

- a) A temporary injunction doth issue against the respondent, restraining it from calling, convening and arranging an extra ordinary meeting on requisition of member's petition until the final determination of the main application.
- b) Costs of the application be provided by the respondent.

The grounds in support of this application are set out briefly in the notice of motion and in the affidavit of Brian Kirima which briefly states;

1. That the applicant filed an application for judicial review against the respondent seeking orders that a declaration that the respondent's action of issuing notices and calling members of the respondent for an extra-ordinary general meeting on requisition of members' to discuss on matters that are unlawful and outside the mandate is illegal.

2. That the main application has likelihood of success as the petitions upon which the respondent has based to call for the extra ordinary general meeting have objectives that are not within the law.
3. That the applicant will suffer irreparable loss which unquantifiable in damages as convening such meeting could lead to passing resolution that are not only illegal and outrageous but absurd bringing disrepute and embarrassment to the respondent of which he will suffer as a member.
4. That the balance of convenience favours the applicant as the respondent will not suffer as it could still convene the Annual General Meeting and could still perform its duties under the Act until the final determination of the application for judicial review.
5. That the balance of convenience favours the applicant as this application will save the respondent from entertaining all forms of petition by any 15 members and this could have the effect of burdening the respondent with organising meetings with a multiplicity of petition with lawful objective.
6. That it is interest of justice and to all members of Uganda Law Society for this application to be granted save the respondent from being bombarded with endless petitions whose objects do not meet the threshold under the law and are against the constitutional order.

In opposition to this Application the Respondent through Atukunda Isaac-The Secretary of the Respondent filed an affidavit in reply wherein they vehemently opposed the grant of the orders being sought briefly stating that;

1. The Uganda Law Society Act allows any 15 members of the respondent to requisition a general meeting by written notice signed by them, specifying the object of the proposed meeting and deposited with the Secretary of the Society, Consequent to which the Council is required to convene a general meeting of the Society.

2. That on 12th January, 2024, the respondent received a petition from its members requesting an Extra Ordinary General Meeting. The Petition was signed by 17 members.
3. That section 3(c) of the Uganda Law Society Act mandates the respondent to represent, protect and assist members of the legal profession in Uganda as regards conditions of practice and otherwise. Based on that, the respondent was satisfied that the petitioners had met the requirements under the ULS Act that warrant convening of an Extraordinary General Meeting.
4. That the respondent's intended extraordinary general meeting will only discuss and pass resolutions which are within the respondent's mandate as provided under the ULS Act.
5. That the matter raised in the petition for the EGM are matters concerning Rule of Law which the respondent has mandate to discuss and make resolutions on.
6. That the respondent is fulfilling its statutory mandate in convening the EGM which is made mandatory for the respondent once the members satisfy the statutory requirement. The respondent has accordingly, issued a notice of an extraordinary general meeting scheduled for 06th February, 2024 between 2:00 pm and 3:00pm.

In the interest of time the respective counsel was allowed to make brief oral submissions and i have considered the respective submissions. The respondent was represented by *Mr. Isaac Newton Kyagaba (Treasurer-ULS) and Godwin Matsiko (Head Litigation-ULS)* whereas the applicant was represented by *Mr. Munanura Gibson*

The granting of a temporary injunction is an exercise of judicial discretion as was discussed in the case of ***Equator International Distributors Ltd v Beiersdorf East Africa Ltd & Others Misc. Application No.1127 Of 2014***. Discretionary powers are

to be exercised judiciously as was noted in the case of ***Yahaya Kariisa vs Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29.***

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-

(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.....

For a temporary injunction to be granted, court is guided by the following as was noted in the case of ***Shiv Construction vs Endesha Enterprises Ltd Civil Appeal No.34 of 1992***

1. The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;
2. The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the *status quo* not maintained; and
3. The balance of convenience is in the favour of the Application.

It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his/her legal right is invaded as was discussed in the case of ***Titus Tayebwa vs Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009.***

The applicant contends that the respondent is committing an illegality contrary to Uganda Law Society Act by convening a meeting to discuss matters which are illegal

or unlawful or outside the main objectives of the society. The meeting that is being sought will make resolutions which are intended to embarrass the judiciary and the same would bring it into disrepute.

Before deciding to grant or to deny a temporary injunction, it's important to consider if there is a prima facie case , according to *Lord Diplock* in ***American Cyanamid Co. v Ethicon Ltd [1975] AC 396 [407—408]***, the applicant must first satisfy court that his claim discloses a serious issue to be tried. The applicant has satisfied this court that there is a prima facie case or serious questions to be investigated or interrogated to determine the legality of the proposed agenda of meeting as proposed by petitioners who have set out several areas of concern which in their view should be a subject of discussion at the Extraordinary general meeting.

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.

This application raises serious issue to be tried in the main cause and or a prima facie case.

The court should always be willing to extend its hand to protect a citizen who is being wronged or whose rights are being violated or when there are illegalities which are about to be committed against the law. The applicant believes the convening of the meeting by petition is intended to commit illegalities which ought to be stopped in order to uphold the rule of law. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed by a person who approaches the court.

The court's power to grant a temporary injunction is extraordinary in nature and it can be exercised cautiously and with circumspection. A party is not entitled to this relief as a matter of right or course. Grant of temporary injunction being equitable remedy, it is in discretion of the court and such discretion must be exercised in favour of the applicant only if the court is satisfied that, unless the respondent is restrained by an order of injunction, irreparable loss or damage will be caused to the applicant. The court grants such relief *ex debito justitiae*, i.e to meet the ends of justice. See **Section 64 of the Civil Procedure Act**.

An injunction is pre-eminently a discretionary remedy, and the applicant cannot claim it as a matter of right, but the court has to exercise its discretion judicially. It is more of an equitable than a legal remedy. The court grants the relief according to legal principles and *ex debito justitiae*. The court must keep in mind the principles of justice and fair play and should exercise its discretion only if the ends of justice require it.

It has also been shown by the applicant that the balance of convenience of convenience lies in maintaining the status quo and the balance of convenience cannot be ignored in such an application which alludes to breach of law or passing of illegal resolutions which will occasion an irreparable damage or injury. Such damage or injury cannot be atoned for or compensated in damages. The respondent counsel had argued that the court should pick out what would be illegal and allow the members proceed on matters which are not illegal. This court should not determine the case but rather seek to interrogate the alleged illegalities likely to be committed. The court may pick out the possible illegal areas of discussion at the determination of the main cause and not at this stage.

In the result for the reasons stated herein above this application succeeds and is allowed and the costs shall be in the cause. The order granted is in the following terms;

A temporary injunction issues against the respondent, restraining it from calling, convening and arranging an extra ordinary general meeting on requisition of member's petition until the final determination of the main application (cause).

It is so ordered.

SSEKAANA MUSA
JUDGE
05th February 2024