

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 596 OF 2022
(ARISING FROM MISC. CAUSE NO. 151 OF 2022)
SAGE JEREMY WALLINGTON ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS

1. ATTORNEY GENERAL

**2. COMMISSIONER DIRECTORATE OF
IMMIGRATION AND CITIZENSHIP CONTROL ::::::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE BONIFACE WAMALA
RULING

Introduction

[1] This Application was brought by Chamber Summons under Sections 98 and 64(e) of the Civil Procedure Act and Order 41 rules 1 and 2 of the CPR seeking for orders that;

a) A temporary injunction doth issue restraining the Respondents, their servants, agents, workmen, representatives or any other person deriving authority from them from implementing the committee findings of investigations by the Assistant Commissioner, Inspection & Investigation, Directorate of Citizenship and Immigration Control, of deporting the Applicant or any other related decisions and actions until the hearing and determination of the main application for judicial review or further orders of the Court.

b) Costs of this application be provided for.

[2] The application is supported by an affidavit sworn by **Jeremy Sage Wallington**, the Applicant who stated that he is a British citizen aged 80 years, and has been married to a one Balimunsi Sage Catherine for over twenty years

living both in Uganda and the United Kingdom (UK). The Applicant states that he has instituted Miscellaneous Cause No. 151 of 2022 for judicial review against the decision to cancel his Dependent Visa DP0026343 by the 2nd Respondent on grounds that he was not given a fair hearing. He further states that he had intimated to his wife who is of Ugandan origin that he needed to apply for dual citizenship so that they could live happily in Uganda as a married couple but his wife instead applied for a dependent visa. The Applicant sold his home in England and invested the monies in several properties and investments including their matrimonial home in Uganda. To his shock and surprise, his wife lodged a request for cancellation of the Applicant's Dependent Visa without reasonable justification but with the intention of having the Applicant deported and depriving him of his properties in Uganda. The Applicant has petitioned court for divorce vide Divorce Cause No. 178 of 2022 at High Court Family Division which is pending hearing and wishes to stay and pursue the same and the subsequent processes. The Applicant also states that he is being unfairly targeted for deportation by the 2nd Respondent on application of his wife. He states that the Respondents' actions will cause irreparable injury to his right to pursue his cases in Uganda and would adversely affect his future and livelihood. He concluded that the balance of convenience lies in his favour as he stands to lose his lifetime investments and prime properties if he is deported.

[3] The Respondents opposed the application through an affidavit in reply deposed by **Twinomugisha Mugisha**, a State Attorney in the Chambers of the Attorney General, who stated that the application is incompetent, frivolous, misconceived and an abuse of court process. The deponent stated that there is no cause of action against the Respondents since the Applicant was issued with a special pass for three months on 1st August 2022 and was advised to apply for any other convenient facility upon expiry of the special pass which he has not done. He concluded that there is no prima facie case with a triable

issue that has been demonstrated by the Applicant for the grant of a temporary injunction.

Representation and Hearing

[4] At the hearing, the Applicant was represented by **Mr. Lubogo Andrew** from M/s Rwabwogo & Co. Advocates while the Respondents were represented by **Mr. Allan Mukama**, appearing on brief for **Mr. Sam Tusubira**, a State Attorney from the Chambers of the Attorney General. Counsel agreed that the hearing would proceed by way of written submissions. However, only counsel for the Applicant made and filed their submissions. I have considered the submissions in the determination of the matter before Court.

Issue for Determination by the Court

[5] One issue is up for determination by the Court, namely; **Whether the application discloses sufficient grounds for grant of an order of a temporary injunction?**

Submissions by Counsel for the Applicant

[6] Counsel for the Applicant relied on the case of *Kiyimba Kaggwa v Hajji Nasser Katende [1985] HCB 43* for the position of law on the conditions for grant of an order of a temporary injunction, namely, that there is a status quo that needs to be preserved; there is a prima facie case with a probability of success; the applicant is likely to suffer irreparable damage which would not be adequately compensated in damages; and in case the court is in doubt, the balance of convenience lies with the applicant. On the need to preserve the status quo, Counsel for the Applicant submitted that the Applicant has lived in Uganda for about 20 years with his current wife Balimunsi Ruth Sage. Counsel argued that if granted, the order of a temporary injunction will maintain the status quo pending the decision on the issues raised in the main cause on the merits.

[7] On the ground of existence of a prima facie case with a probability of success, Counsel submitted that the Applicant filed an application for judicial review against the Respondents' decision for being arbitrary and illegal which shows that there are serious issues to be investigated and the application would be rendered nugatory if the status quo changes. On the ground of irreparable damage likely to ensue if the temporary injunction is not granted, Counsel for the Applicant submitted that no figure can compensate the Applicant in damages, owing to the fact that he has been living and residing in Uganda for over twenty years. Regarding the ground on the balance of convenience, Counsel submitted that the Applicant would suffer much more harm than the Respondent if the order is not granted. Counsel urged the Court to find that the balance of convenience is in favor of the Applicant.

Determination by the Court

[8] The position of the law is that grant of a temporary injunction is an exercise of judicial discretion for purposes of maintaining the status quo until the questions to be investigated in the main suit are tried on the merits and disposed of finally. The principles for grant of an order of a temporary injunction were well laid down in the case of *Kiyimba Kaggwa v Hajji Abdul Nasser Katende* [1985] HCB 43, citing with approval the decision in *Giella v Cassman Brown & Co. Ltd* [1973] 1 EA 358, as follows;

“The conditions for the grant of an interlocutory injunction are ... first, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience.”

[9] In the present case, the decision being challenged by the Applicant in the main cause had allegedly directed the deportation of the Applicant. The status quo is that the Applicant is still living in Uganda. It is, therefore, necessary in my view to preserve such status quo to enable the Applicant pursue his right to a fair hearing. Regarding the condition as to whether a prima facie case exists as to warrant issuance of an order for a temporary injunction, the position of the law is that the requirement to establish a prima facie case with a probability of success is no more than that the court must be satisfied that the claim is not frivolous or vexatious. In other words, the court should be satisfied that there are serious questions to be tried. In *Robert Kavuma v Hotel International*, SCCA No. 8 of 1990, the Court stated that the applicant is required, at this stage of trial, to show a prima facie case and a probability of success but not success. The applicant has to satisfy the court that there is merit in the case not that he/she will succeed. On the case before me, the grounds in the main cause as highlighted in the affidavit in support of the application raise allegations that require investigation by the Court and a determination on the merits. I find sufficient ground to believe that the application discloses existence of a prima facie case with a likelihood of success of the main cause on the merits.

[10] On the ground of irreparable injury or damage likely to be suffered by the Applicant upon refusal to grant the application, the law is that irreparable injury means that the injury or damage must be substantial or material; one that cannot be adequately atoned for in damages. See: *Tonny Wasswa v Joseph Kakooza* [1987] HCB 79. In this case, it was argued by Counsel for the Applicant that the Applicant having lived and invested in Uganda for over 20 years, no amount of money would compensate him for the injury he stands to suffer. The Applicant has shown in his affidavit that he has been married to his wife, Balimunsi Ruth Sage, for the last 20 years and they have been living both

in Uganda and the United Kingdom. The Applicant sold his house in the United Kingdom so as to settle in Uganda. He has since filed a petition for divorce against his wife which is pending before the Court. In light of these facts, I would agree with the Applicant that if the order of a temporary injunction does not issue and he gets deported, his right to a fair hearing will be violated. Further, the Applicant would stand to lose his investments in Uganda and his livelihood. In my view, these are not losses that can easily be atoned by way of damages. I therefore find that the Applicant has satisfied the Court that he will suffer irreparable injury if the application is not granted.

[11] On the ground of balance of convenience, the applicant has to show that refusal to grant the order of a temporary injunction would be to his greater detriment than it would be to the respondent. In law, the balance of convenience lies more on the part of one who will suffer more if the respondent is not restrained over the conduct complained of in the suit. In the present case, I am of the considered view that the balance of convenience would lay in favour of the Applicant who would be deprived of the opportunity to pursue his rights before the courts in Uganda in the event that the order sought for is not granted.

[12] In light of the above findings, therefore, the Applicant has satisfied the Court on a balance of probabilities that he is entitled to the grant of an order of a temporary injunction. The application accordingly succeeds and is allowed with orders that;

- a) An order of a temporary injunction doth issue restraining the Respondents, their servants, agents, representatives or any other person deriving authority from them, from implementing the committee findings of investigations by the Assistant Commissioner, Inspection & Investigation, Directorate of Citizenship and Immigration Control, of deporting the

Applicant or any other related decisions and actions, until the determination of the main cause vide Miscellaneous Cause No. 151 of 2022.

b) The costs of the application shall abide the outcome of the main cause.

It is so ordered.

Dated, signed and delivered by email this 13th day of February, 2024.

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long, sweeping horizontal stroke extending to the right.

Boniface Wamala

JUDGE