

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION**

MISCELLANEOUS APPLICATION NO. 007 OF 2021

[Arising from Misc. Application No. 201 of 2020]

[Arising from Appeal No. 69 of 2020]

[Arising from Misc. Application No. 23 of 2020]

[Arising from Civil Suit No. 25 of 2020]

ELIAS NUWAGABA APPLICANT

VERSUS

MAKERERE UNIVERSITY RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application under Section 98 of the Civil Procedure Act, Sections 33 of the Judicature Act and Order 52, Rule 1,2, & 3 Civil Procedure Rules for orders that;

1. An Order staying execution of the judgment and decree in miscellaneous application No. 201 of 2020 be issued pending hearing and determination of the Appeal.

2. Costs of this application be provided for

The applicant in *Miscellaneous Application No. 201 of 2020* which was heard and the same was dismissed by this court on the 15th day of December 2020, the applicant has filed a Notice of Appeal seeking to appeal to the Court of Appeal against the decision of this court in which the respondent's staff tribunal's decision was upheld; in which it was directed that the applicant to be tried afresh after deciding that the dismissal had been done without a fair hearing, contrary to the rules of natural justice.

The grounds of the application were that;

1. The applicant had a suit in this honourable court against the respondent which was dismissed with costs.
2. Aggrieved by the high court decisions, applicant has filed a Notice of appeal to the court of Appeal and the Appeal is pending.
3. The process of executing the High Court decree in MA. 201 of 2020 is already underway and will be prejudicial to me as it will most likely be completed before the Appeal is heard by the Court of Appeal.
4. The appeal is by form of retrial which was stayed by order of this court on 14th July 2020 and will be completed before the Appeal is disposed of.
5. The execution will not only render the appeal nugatory but the applicant shall as a result suffer irreparable damage.
6. The application has been brought without undue delay.
7. The application for stay will be rendered nugatory if execution is allowed to proceed.
8. It is fair and just that this application be granted.

The respondent replied to the Applicants affidavit through Yusuf Kiranda the Makerere University Directorate of Legal Affairs and Secretary to the appointment Board of the respondent agrees that the applicant appealed against the decision of the appointments board dismissing him from the university employment, to the Staff Appeals Tribunal.

That the tribunal allowed the applicant's appeal in part, set aside his dismissal and ordered that the applicant be subjected to fresh disciplinary proceedings, in accordance to the rules of natural justice. In that regard the appointments board duly served the applicant with a charge sheet and required him to file a defence, with an option to engage counsel of choice to represent him.

The applicant filed his defence to the charges against him, which set the stage for his hearing, issuing him a hearing notice for the 11th day of March 2020 at 9:00 a.m. On receipt of the said hearing notice the applicant instituted High court Misc. App. No. 124 of 2020 Elias Nuwagaba v. Makerere University seeking an injunction to restrain the respondent's appointment Board from conducting fresh disciplinary proceedings against him and that the said suit was to be heard on the 10th March 2020 a day before the disciplinary hearing.

The Appointment's Board immediately after the ruling of this court issued the applicant with notice to make submissions in a bid to ensure that the applicant is accorded a fair hearing. The applicant from that time of 11th March 2020 was accorded a fair hearing, full disclosure of all documents against him, cross examination of witnesses against him, legal representation and presentation of his witnesses. The proceedings were only awaiting for a ruling which the applicant seeks to stay, for no plausible reason.

The Applicant was represented by *Mr. Henry Rwaganika* and the Respondent represented by *Mr. Hudson Musoke*.

Analysis

According to Miscellaneous application No. 201 of 2020, the applicant failed to demonstrate that the decision arrived at by the Makerere University Staff Tribunal was tainted with illegality, irrationality or procedural impropriety and this court's findings was that the tribunal

acted well within its powers in arriving at its decision in an appeal by the applicant against the respondents Appointment Board.

The applicant has thus applied for stay of execution;

The *Black's Law Dictionary free online Legal dictionary 2nd Ed* has defined stay of execution "as the hold that is put on the carryout of an order or judgment of a court or the act of arresting a judicial proceeding by the order of a court"

The authorities provided by both the applicants' and respondent's counsel summarize the principles to be considered before allowing an application for stay of execution in ordinary cases and not necessarily cases of judicial review. In case of *Lawrence Musiitwa Kyazze vs. Eunice Busingye SCCA No. 18 of 1990[1992] IV KALR 55* it was held that an application for stay of execution pending appeal is designed to preserve the subject matter in dispute so that the right of the appellant who is exercising his/her undoubted rights of appeal are safeguarded and the appeal if successful, is not rendered nugatory.

The appeal which is the subject of this application is against the decision (ruling) of High Court. The peculiarity of this application is that, it is an appeal arising out of a judicial review matter (by way of an Appeal from the University Staff Tribunal decision to High Court) where the court must exercise extreme circumspection in staying orders against abuse of power or actions found to be illegal, irrational or procedurally improper since the stay would mean a continued illegality or perpetuating wrongful exercise of power or legitimizing abuse of authority until the appeal is determined after about 4 or 5 years at the bare minimum and thus technically defeating the orders of court. *See Uganda Development Bank & Another v Tumuhimbise Hellen Hannah High Court Miscellaneous Application No.292 of 2021*

In the present case, the applicant obtained an injunction to stay the proceedings before the Appointments Board Disciplinary Committee in the following terms; "This court issues a temporary injunction restraining the

respondent's Appointment Board from conducting the disciplinary proceedings until the determination of this application"

By the time the court issued the said injunction to stay proceedings, the applicant had already been subjected to the disciplinary proceeding hearing: *The applicant from that time of 11th March 2020 was accorded a fair hearing, full disclosure of all documents against him, cross examination of witnesses against him, legal representation and presentation of his witnesses.* The matter was only awaiting a ruling of the Disciplinary Committee.

This court found no merit in the main cause where the applicant was seeking to overturn the decision of Makerere University Staff Tribunal dated 16th April 2019 *'allowing the appeal in part and directing the Appointment' Board to conduct a fresh disciplinary hearing against the appellant. Any further delay in continuing to restrain the Appointments Board from taking a disciplinary decision against the applicant'* through an application for stay would be an abuse of court process. The respondent have decided to comply with the orders of the University Staff Tribunal but the applicant wants to maintain the status quo of there being no disciplinary proceedings in accordance with principles of natural justice and to extend his litigation through the appellate process without being subjected to disciplinary proceedings.

It should also be noted that this court did not give any orders that would warrant a stay of execution except an order for costs. The respondent has not filed any bill of costs which would be a direct resultant order made by this court that would be executed in satisfaction of the ruling of this court. The general rule is that courts should not order a stay where there is no evidence of any application for execution of the decree. (*See Orient Bank Ltd vs. Zaabwe & others M/A No. 19 of 2007*)

There must be a balancing act in ensuring that the orders of court in judicial review are not rendered nugatory, the same way the applicants (appellants) have argued that the appeal should not be rendered nugatory.

Whereas the prospects of any success at appeal are speculative, the ruling made by the court has already found no merit in the main application. The orders of the University Staff Tribunal must be protected from unnecessary protracted appeal procedures in order to ensure the rule of law flourishes. The court must assess the relative risks of injustice in not staying execution of the orders granted by court as against putting right what was done wrongly or maintain status quo which is premised on abuse of authority or misinterpretation or misapplication of the law. See *Uganda Development Bank & Another v Tumuhimbise Hellen Hannah High Court Miscellaneous Application No.292 of 2021*

I agree with counsel for the respondent that the application lacks merit and is wastage of courts time, intended to protect the applicant from facing disciplinary proceedings for any 'alleged' wrongdoing.

This application is therefore dismissed with costs.

I so order

SSEKAANA MUSA

JUDGE

21st June 2021