

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO.659 OF 2021**  
**(ARISING FROM MISCELLANEOUS CAUSE NO.251 OF 2021)**

1. **ISAIAH KALANZI**  
2. **RICHARD NSUBUGA----- APPLICANTS**

**VERSUS**

1. **ATTORNEY GENERAL**  
2. **DAVID MPAMBARA**  
3. **TAWU BUMALI ----- RESPONDENTS**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application was brought by way of Chamber Summons against the respondents under Section 33 and 38 of the Judicature Act Cap 13 and Section 98 & 64 (c) of the Civil Procedure Act and Order 41 r 2 & 9 of the Civil Procedure Rules, for orders that;

1. A Temporary Injunction be issued against the respondents from carrying any further criminal investigations and intended criminal prosecutions of the applicants vide ***CID HQ 075/2020 ISAIAH KALANZI & ANOTHER*** for the alleged forgery of Letters of Administration to the Estate of the Late Sepiriya Rosiko Kadumukasa vide Admin. Cause No. 434 of 2001 and the alleged absence of Instructions to the 2<sup>nd</sup> Applicant to Institute HCCS No. 440 of 2013 and Civil Appeal No. 288 of 2016 until the disposal of the application for the disposal of the main suit vide Misc. Cause No. 251 of 2021 also pending in this Honourable court.
  
2. Costs of the application be provided for.

The grounds in support of this application are set out in the Notice of Motion and the affidavit of Isaiah Kalanzi and Richard Nsubuga 22<sup>nd</sup> September 2021 which briefly states;

1. The 1<sup>st</sup> applicant is client of the 2<sup>nd</sup> applicant who is an advocate of the High Court and courts of Judicature.
2. That the applicants filed a main suit vide Misc. Cause No. 251 of 2021 which is yet to be fixed for hearing, seeking to challenge the impugned criminal investigations against the applicants.
3. That in the meantime, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are continuing with the impugned criminal investigations against the applicants whose validity is yet to be determined by this Honourable Court. The 1<sup>st</sup> Applicant was given Police Bond for which he is required to report every two weeks to Kibuli Police Station for the bond to be extended.
4. That continued investigations by the Respondents have led the applicants to suffer double jeopardy of parallel investigations as the allegations the applicant's rights are likely to be infringed by Uganda police which are the subject of criminal investigations by the respondents are also the subject of adjudication in the court of Appeal, High Court and the Law Council.
5. That the main suit raises triable issues that require the Court's adjudication and has high probability of success. The Orders sought are intended not to render the main application nugatory.
6. That the balance of convenience is in favour of the applicants and respondents will not be prejudiced on the issuance of Orders sought in this application since the allegations against the applicants which are a subject of criminal investigations are already before the Law Council and the Court of Appeal for determination.

In opposition to this Application the Respondent through D/ASP Tawu Bumali- currently employed as the Acting Commissioner for Economic Crimes and Financial Intelligence in the Criminal Investigations Directorate filed an affidavit in reply wherein he opposed the grant of the interim order being sought briefly stating that;

1. The police is investigating a complaint by Rosemary Joyce Wanyana Wasswa of alleged forgery and uttering false documents vide CID HQTRS GEF: 075/2020. She contended that her signature was forged on different documents and uttered in the Court of Appeal of Uganda with an intention to defraud her of her father's Estate.
2. That the complaint alleged that Rosemary Joyce Wasswa aged 90 years the biological daughter of the late Sepiriya Rosiko Kaddu Mukasa, discovered that there was a pending case in the Court of Appeal under Civil Appeal No. 228 of 2016 in which some documents had been presented by Isaiah Kalanzi and Nsubuga Richard purportedly signed by her, to which she objected and petitioned the Registrar of court of Appeal of Uganda and the Deputy Registrar High Court of Uganda Land Division, denying Isaiah Kalanzi was co-Administrator of the Estate of the late Rosiko Kaddu Mukasa. She also filed a complaint with the Law Council against the 2<sup>nd</sup> Applicant as counsel for the 1<sup>st</sup> Applicant.
3. The matter was investigated and the file was submitted to DPP( Director Public Prosecutions) who advised that police records statements from Isaiah Kalanzi and Richard Nsubuga as suspects, since they were the ones who uttered and sought to rely on the questioned documents. Statements were taken and recorded from the two suspects.
4. The findings of our investigations show that there are two letters of Administration in respect of the Estate of the late Sepiriya Rosiko KAddu Mukasa.

5. It is suspected that Isaiah Kalanzi and Nsubuga Richard are the ones who forged the signature on the documents which were tendered in the court of Appeal to pronounce itself on the rightful owners of the property.
6. The file is currently with DPP for legal guidance and the above actions of the Police in investigating alleged forgery and uttering of false documents was and is still being lawfully undertaken in accordance with the constitutional mandate of Uganda Police under Article 212 of the Constitution.

The parties filed written submissions which this court has ably considered in the determination of this application.

The applicant was represented by *Ms Monica Namuli* whereas the respondents were represented by *Ms Patricial Mutesi* Principal State Attorney.

***Whether a temporary Injunction should issue against the respondent?***

The applicant's counsel submitted that the applicant seeks a temporary injunction in order to prevent the end of justice from being defeated and further to restrain the respondents from committing any further injury complained of to the applicants.

The applicants grievance at hand is that they are suffering parallel investigations in the civil court and now criminal prosecution. The matters which are subject to ongoing criminal investigations against the applicants are already before the Law Council, the High Court and the Court of Appeal for determination.

The 2<sup>nd</sup> applicant contends that the ongoing criminal investigations by the respondents is sub-judice and offends the rule against precedents from Higher Courts being that the same matters which are the subject of criminal investigations are currently under adjudication by Law council and also Court of Appeal which is superior court and whose decision will be binding on all lower courts.

That it is an abuse of the legal system by the respondents to investigate the same matters that are currently being adjudicated on by other courts. The respondents in carrying out the said investigations are criminalizing civil matters that are supposed to be handled by civil courts.

The respondent's counsel submitted that the main cause and this application are both premised on criminal investigations and intended criminal prosecution of the applicants for alleged forgery of letters of administration. There is no double jeopardy as the applicants have submitted.

The respondent further submitted that the application is misconceived because the mandate of the Uganda Police and the DPP is distinct from the jurisdiction of civil courts in hearing civil suits. Specifically in determining the civil review Application No. 43 of 2020, the Court of Appeal has no jurisdiction to determine allegations of criminality which are the subject of criminal investigations.

There is a clear distinction between criminal investigations and criminal prosecution by the DPP, and proceedings in civil suits. There is no legal bar stopping the police and or the DPP from investigating or prosecuting any suspected criminal offences, on the basis of existence of related civil proceedings in a related matter.

### ***Analysis***

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-

(a) .....

(b) .....

(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.....

The applicant's counsel has cited several authorities for the grant of temporary injunction and indeed this court agrees with the said authorities but it should be noted that temporary injunctions against public authorities or entities are treated with caution and circumspection.

The main question for this court establish is whether in such circumstances the interim injunction can still be justified. See ***Regent Oil Co Ltd v JT Leavesley (Lichfield) Ltd [1966] 1 WLR 1210.***

The granting of a temporary injunction or Interim 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 applicants seem to argue that they will suffer double jeopardy if the matters are investigated or prosecuted for forging and uttering false documents. I agree with counsel for the respondent that there is no bar to criminal prosecution or investigation if the matter also raises civil liability. The argument of counsel for the applicants that the respondents are criminalising civil matters is baseless and totally devoid of merit. In ***Agenda v Uganda HCT CR-CM 003 of 2011*** Mukasa J held that “...*The civil proceedings are individualistic in nature while criminal proceedings are public in nature. Administrative policy therefore gives priority to the public interest in law enforcement.*” See also ***Esso Standard Ltd v Mike Nabudere HCCS No. 594 of 1990***

Normally injunctions must not be granted against the public authorities or respondent's executing public utilities or implementation of government projects.

Public interest is one of the paramount and relevant considerations in either granting or refusing to grant a temporary injunction.

The Courts should be slow in granting injunction against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals. Public interest is one of the paramount and relevant considerations for granting or refusing to grant or discharge of an interim injunction. See ***Uganda National Bureau of Standards vs Ren Publishers Ltd & Multiplex Limited HCMA No. 635 of 2019***

The courts should be reluctant to restrain the public body from doing what the law allows it to do. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold.

The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation. See ***R v Secretary of State for Transport ex.p Factortame Ltd [1990] 2 AC 85.***

In the present case, the applicant wants to stop the Office of Directorate of Public Prosecutions and Uganda Police from doing what the Constitution enjoins them to do under Article 120(3) & 212 of the Constitution. The DPP and Uganda Police exercise the powers conferred by the Constitution in public interest, interest of the administration of Justice and the need to prevent abuse of legal process.

The sum effect of the injunction sought by the applicant is to stop the ODPP from; directing the police to investigate any information of a criminal nature or instituting criminal proceedings against him. This is one of the core functions of the DPP granted by the Constitution and this injunction sought affects the greater public interest that is protected by the Office of Directorate of Public Prosecutions and Uganda Police. The court must in exercise of its powers and discretion to grant a temporary injunction be reasonable, judicious and act on sound legal principles.

The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed

to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good. ***Alcohol Industry Association of Uganda & others v AG & URA High Court Miscellaneous Application No. 744 of 2019***

The applicants like all others persons have a duty under the Constitution to be law abiding and the Director of Public Prosecutions & Uganda Police have every right and duty to investigate any person suspected of committing a crime apart from the President who is immune from civil and criminal proceedings during his term of office under Article 98 of the Constitution.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of his rights without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed or criminality by a person who approaches the court.

The court's power can be exercised judicially and in public interest, no injunction causing administrative inconvenience or resulting in public mischief should be granted.

In the result for the reasons stated herein above this application fails and is hereby dismissed with costs.

It is so ordered.

***SSEKAANA MUSA***  
***JUDGE***  
***10<sup>th</sup> December 2021***