

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO.410 OF 2020
(ARISING FROM MISC.CAUSE NO. 186 OF 2020)**

**ISABIRYE CHARLES.....: APPLICANT
VERSUS**

- 1. ALEX KAKOOZA**
- 2. MINISTRY OF EDUCATION AND SPORTS**
- 3. ATTORNEY GENERAL.....:RESPONDENTS**

BEFORE: HON JUSTICE MUSA SSEKAANA

RULING

This is an application for an Interim Order to have the applicant's Interdiction lifted pending the hearing of his miscellaneous Application pending before this court.

The applicant filed the main application (cause) seeking orders that An Order of certiorari issues against the respondents to quash the decision to interdict and later request the applicant to submit a defense after the interdiction before according him a hearing. The applicant also sought an order of Mandamus, Declaration and Injunction.

The application was supported by an affidavit sworn by the applicant Isabirye Charles whereas the respondents filed an affidavit in reply sworn by Alex Kakooza who is also the Permanent Secretary Ministry of Education and Sports. The parties also filed written submissions.

The 1st respondent as a Permanent Secretary issued an interdiction and a travel ban against the applicant and he is not supposed to travel out of the country without any express permission.

The applicant is challenging the interdiction and now in this application the travel ban. The court advised the applicant to seek the said permission in order to follow the procedures of obtaining the said permission. At the time of writing this ruling the applicant's request for travel has not been responded too and thus the need to determine the application.

The applicant applied for Master's degree of Science in Exercise Physiology at Loughborough University in United Kingdom. The Applicant was admitted for the said course and was also awarded a Chevening Scholarship for the academic year 2020/2021.

The applicant's course is due to begin on 24th September 2020 and it is for duration of one year ending September 2021.

In consideration of whether or not to grant an Interim order, court will be guided by the three major principles as discussed in *Kiyimba Kaggwa vs Haji Abdu Nasser Katende [1985] HCB 43*.

In that case Odoki J (as he then was) held that;

The granting of a temporary injunction is an exercise of Judicial Discretion and the purpose of the granting-It is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed of.

- 1. The conditions for the grant of an injunction are first 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 appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.*
- 3. Thirdly if the court is in doubt, it will decline an application on the balance of convenience.*

In the instant application, the applicant filed a main cause challenging the interdiction and in his view it raises serious questions of law and fact that need to be determined at trial by this court. The applicant in his affidavit

states he has been interdicted and banned from travelling outside the country without any express permission from the concerned authority.

These facts stated need to be determined at trial by this court therefore fulfilling the condition of existence of a prima facie case.

The 1st respondent in his affidavit in reply contends that; *the applicant intends to travel in September, a quick trial would be the appropriate remedy so as not to occasion condoning an illegality. All persons on interdiction would apply for a study leave and circumvent the lawful legal process*".

This court when granting interim orders should not devolve much in to issues raised in the main suit at this stage. The parties should caution themselves not to discuss the merits of the main suit but rather focus on the merits of the application before court at this stage.

The applicant applied for study way back 2019 before the commission of the alleged wrongs that have led to his interdiction and was duly recommended for the said course of study by the Commissioner, Physical Education and Sports. He was admitted before the interdiction and has been awarded a Chevening scholarship for one year.

The travel ban or refusal to grant him permission would be a greater injustice to him and the argument of the Permanent Secretary that an expeditious hearing would be the solution is too mechanical and impractical in the circumstances of the case.

The permission to travel will not in any way stop the investigation of the conduct of the applicant and the applicant will still be answerable for his actions and does not in any way amount to condoning an illegality as stated in his affidavit in reply.

As court of justice, we are aware that an Interdiction is a disciplinary process and indeed it can result either in finding no merit or merit and later a decision will be taken either to reinstate or dismiss.

This court in the exercise of its discretion ought to avoid any absurdity in application of the law since the damage the applicant will suffer if not found guilty and after missing out on this opportunity will be irreparable and no amount of damages would atone for it. The scholarship award is made to the country although the applicant is the direct beneficiary. This means that the country would equally have lost out on this scholarship meant for the country for year 2020/2021.

Loss suffered as a result of stopping the applicant will be an infringement of a constitutional right and cannot be properly atoned for through compensatory damages.

On the balance of convenience, the 1st respondent in the affidavit in reply justifies the interdiction since there is an alleged forgery of documents. This court would not be swayed by the argument to the contrary; the commission of any offence can be tried in any court of law even after twenty years. The period of one year to enable the applicant travel to study the Master of Science in Exercise Physiology would not be detrimental to the respondent after all investigations are still ongoing.

The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicant suffer then probably the balance of convenience is favourable to him and the court would most likely be inclined to grant him the order to travel and pursue his postgraduate studies in the United Kingdom. In this case, the balance of convenience is in favor of the applicant whose travel to pursue further studies has been restrained and is likely to suffer greater loss due to the travel ban and yet the respondents have nothing to suffer apart from a delayed trial of the applicant.

It is a well settled preposition of the law that an interim order can be granted only if the applicant will suffer irreparable injury or loss keeping in view the strength of the parties case.

The court has considered the balance of convenience and the likely damage or loss to the applicant in allowing the applicant to travel and pursue his studies.

In the circumstances, I am satisfied that an Interim Order should issue allowing the applicant to travel for his postgraduate studies in the United Kingdom for a period of one year commencing 24th September 2020 until October, 2021. The interdiction is not lifted since it would greatly change the status quo to the detriment of the respondent.

I so Order

Ssekaana Musa

Judge

28th August 2020