

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**MISC CIVIL APPLICATION NO. 14 OF 2015**

**[ARISING FROM COURT OF APPEAL CIVIL APPEAL NO.15 OF 2013]**

10           *(Appeal from the Judgment of the Court of Appela of Ugnda at Kampala, Before A.S Nshimye, Kenneth Kakuru and Geoffrey Kiryabwire, JJA dated 14<sup>th</sup> May 2015)*

**HON. MICHEAL MABIKKE ::: APPLICANT**

**VERSUS**

**THE LAW DEVELOPMENT CENTRE::: RESPONDENT**

15           **(Coram: Kisaakye, Mwangusya, Opio-Aweri, Mwendha, Tibatemwa-Ekirikubinza, JJSC)**

**RULING OF THE COURT**

This is an application for stay of execution. It is brought under Section 4, 6(1), 7, 8(1), 33,38 of the Judicature Act, Section 98 of the CPA  
20 and Articles 26,28,40(2),42,44,45,50 of the Constitution, the Judicature (Judicial Review) Rules , 2009 and Rules 2(2), 6(2)(b), 42(1),(2),43,50(2)b and 72 of The Judicature (Supreme Court) Rules  
Directions seeking for the following orders:

- 25           **1. That execution and orders of the Judgment of the Court of Appeal of Uganda at Kampala, Delivered by the Honorable Justices A.S.Nshimye, Kenneth Kakuru and Geoffrey Kiryabwire, JJA dated 14<sup>th</sup> May 2015 allowing the Respondent's committee appointed to review the recommendations of The Report of The**



5 Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 pursuant to the Judgment of the High Court and the Court of Appeal be stayed pending the hearing and final disposal of an Appeal to be filed in the Supreme Court of Uganda against the said Judgments.

10 2. That an injunction and stay of proceedings does issue to restrain the Respondent's committee appointed to review the recommendations of The Report of The Forensic Audit of the Bar Course Examination for the period 2004/2005 to 2010/2011 pursuant to the Judgment of the High Court and the Court of  
15 Appeal from proceedings with its work to implement the said judgments pending the hearing and final disposal of an Appeal to be filed in the Supreme Court of Uganda against the said judgments.

3. Costs of the application be provided for.

20 **Background to the application.**

The applicant together with other students were awarded Post Graduate Diplomas in Legal Practice by the respondent. In due course however, there were complaints and allegations of  
25 examination malpractices concerning academic years 2004/2005 to 2010/2011. On receipt of these complaints and allegations, the respondent's management appointed an Audit committee to carry out a forensic audit of the examinations covering the said period.

The committee produced an audit report indicating examination  
30 malpractices concerning the Post Graduate Bar Course



5 examinations over the said period. After considering the Report, management set up a committee to conduct a detailed inquiry into specific cases of suspected examination malpractices and to review the recommendations of the Forensic Audit Committee Report in connection with possible examination malpractices.

10 In 2013, the applicant and others filed application in the High Court for Judicial Review seeking a number of reliefs among which were an order of certiorari to quash the report of the Forensic Audit of the Bar course Examination for the period 2004/ 2005 to 2010/2011 and an order of prohibition and injunction to stop the committee set up  
15 by management from conducting a detailed inquiry into possible mal-practices and reviewing the recommendations of the Forensic Audit Committee. The High Court declined to grant the orders for which the applicants prayed. They then appealed to the Court of Appeal which dismissed their appeal. Dissatisfied, Mr. Mabikke, the  
20 applicant, lodged a notice of appeal, an interim application and a substantive application which is the subject of this ruling.

### **Grounds of the Application.**

The grounds of the application as set out in the application are that:

1. That the applicant/ appellant being dissatisfied with the  
25 judgment of the Court of Appeal on the 14<sup>th</sup> May 2015 have filed a Notice of Appeal and have written and served a letter requesting for a certified copy of the proceedings of the Court of Appeal in order to prepare and file a record and Memorandum of Appeal in an appeal in the Supreme Court.



5 2. That there is imminent danger that the respondent may  
commence proceedings to implement the orders and the  
judgment of The Court of Appeal allowing The Respondent's  
committee appointed to review the recommendations  
pursuant to the Judgment of the High Court and the Court of  
10 Appeal while the intended appeal in the Supreme Court is still  
pending.

15 3. That it is in the interest of justice that the application for stay of  
execution, be granted pending the final disposal of the  
appeal.

20 4. That if an order for stay of execution, injunction and  
proceedings is not granted, the applicant / appellant will suffer  
irreparable damages as their intended Appeal in this court shall  
be rendered nugatory.

5. That it is just and equitable that it is granted to preserve the  
status quo and the applicant's right to appeal.

The application was supported by an affidavit sworn by the  
25 applicant, **MR. MICHEAL MABIKKE** and the grounds therein are quite  
similar to the grounds raised in the application. He however added  
that he was not granted a fair hearing when he appeared before  
the Committee nor did the committee follow any rules of natural  
justice. That he filed an application to this court to introduce new  
30 and additional evidence vide Miscellaneous Application No. 16 of  
2015 which evidence shall improve the likelihood of success of the



5 Appeal that is pending before this court. He also stated that the respondent is functus officio and is bared by the principle of estoppel that having awarded a diploma to the applicant, cannot withdraw the same from him.

The application was opposed by the affidavit of **FRANK NIGEL**  
10 **OTHEMBI**, the Director of the respondent Institution.

He briefly stated that this application should not be granted because upon this court's dismissal of the application for Interim stay of execution, the applicant abandoned this application of main stay and appeared with his counsel, Mr. Charles Semuyaba before the  
15 committee which committee heard the applicant, their submissions and then recommended that the Diploma in Legal Practice be cancelled. That even if the applicant were to pursue the intended appeal, the outcome of the appeal would not reverse the fate that befell the applicant which was cancellation of his diploma. He  
20 further stated that the applicant cannot approbate and at the same time reprobate the proceedings of the Committee. That the application by the applicant's voluntary actions has been overtaken by events and that there is no longer anything to stay. He also stated that the orders sought by the applicant would not in the  
25 circumstances of the case serve the interests of justice, fairness or equity.

### **SUBMISSIONS**

At the hearing, the applicant was represented by **Mr. Semuyaba Justin** while the respondent was represented by **Mr. Tibaijuka**  
30 **Charles**.



5 Both parties filed written submissions.

### **Applicant's submissions**

Counsel for the applicant submitted that the applicant has a prima facie case before this court with a high probability of success. He stated that the applicant is challenging the illegality, lack of  
10 jurisdiction, procedural impropriety, bias, bad faith, non-observance of the rules of natural justice and fundamental freedoms and unconstitutionality of the decision making process. He relied on the cases of **Anena Cyramid vs Ethian [1925] ALLER 504, Robert Kavuma vs Ms Hotel International SCCA No. 08 of 1990.**

15 He further submitted that a Notice of Appeal to this court had been duly filed on record as required for such an application to be sufficient. He relied on the case of **Hon Theodre Sekikubo & Ors vs Attorney General & Anor, Constitutional Application No. 06 of 2013** wherein this court emphasised that in such application, the  
20 applicant has to prove to this court that there is a pending appeal before it by filing a Notice of Appeal on court record.

He argued that the proceedings of the committee did not give a fair hearing contrary to the principles of Natural Justice as enunciated in the cases of **King vs Electricity Commissioners [1924] 1 KB 171 and**  
25 **Nester Byamugisha , Akampulira vs LDC.**

It was counsel's contention that the applicant shall suffer irreparable loss which cannot be accounted for in terms of damages as his name will be struck off the Roll of Advocates.



5 He concluded by praying this court to find that the balance of convenience is in favor of the applicant and grant this application pending the disposal of the appeal before this court.

**Respondent's submissions:**

10 The respondent's counsel submitted that there was no executable order made by the lower courts. Further that the appeal has no likelihood of success. That the Pamela Committee report was not dealt with by the lower courts and therefore cannot be considered in the said appeal.

15 Counsel further argued that there is no irreparable loss that would be occasioned against the applicant if this application is not granted.

Counsel for the respondent prayed this court to dismiss the application.

**Court's considerations:**

20 Before we consider the merits of the application it is our observation that counsel for the applicant cited too many legal provisions most of which were not relevant to this application. It does not serve any purpose for lawyers to cite irrelevant provisions of laws. For instance we do not see the relevance of citing the provisions of the  
25 Judicature Act and Article 26, 40 (2), 44 and 45 of the Constitution.

Be that as it may, it is trite that the grant of stay of execution by this court is discretionary. This court has in numerous cases laid down the conditions prerequisite to sustain a grant for stay of execution. They are as follows:



- 5 1. The applicant must establish that his appeal has likelihood of success; or a prima facie case of his right of appeal.
2. That the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if stay is not granted.
3. If 1-2 above have not been established, court must consider  
10 where the balance of convenience lies.
4. Applicant should establish that the application was instituted without delay.

**See; Miriam Kuteesa vs Edith Nantumbwe Misc Application No. 22 of 2014, Kazoora vs Rukuba , Civil Application No. 4 of 1991, 15 Sheikh Muhamed Kisuule vs Greenland Bank (in liquidation) Civil application No. 07 of 2010, Akankawasa Damian vs Uganda, Constitutional Application No. 709 of 2011.**

It is not in contention that the applicant filed a Notice of Appeal  
20 on record and that the application was filed without delay. What remain to be decided are: whether there is a prima facie case with likelihood of success, whether the applicant shall suffer irreparable loss and where the balance of convenience lies.

25 It was the contention of the applicant that the intended appeal to this Court has a likelihood of success since it involves issues of fair hearing, natural justice and procedural improprieties of administrative bodies. On the other hand, the respondent stated that there is no way the appeal can be sustained on a report  
30 which was never part of the court process in the courts below.



5 For court to determine whether the appeal has a likelihood of success, the court has to look at the judgments of the lower courts to see the reasons why the suit or appeal went against the applicant/ intending appellant. This was the point in the case of **J.W.R Kazoora vs M.L.S. Rukuba, Civil Application No. 49 of 1991**. In  
10 that case the court noted as follows;

**“Nevertheless we should have a sight of that judgment and know at least the reasons why the suit went against rather than in favor of the applicant. Were we to be unaware of why the High Court decided a particular case as it did, then we should find ourselves  
15 in a position of having to grant every application for a stay pending Appeal. This in turn would encourage frivolous appeals merely to delay the satisfaction of the judgment.....”**

In the instant case, the High Court allowed the suit in part. The issues for determination was primarily whether the Audit Committee and  
20 the Kania Committee were properly constituted and whether Audit Committee afforded the applicant a right to a fair hearing. The High Court observed that the Kania Committee was indeed not properly constituted. It ordered that the respondent institution was to legally constitute another investigative committee to tackle all the issues  
25 that had been raised in the suit.

In the Court of Appeal, the appeal was decided on only two issues which were whether the Kania Committee was duly constituted and whether the committee observed the rules of natural justice. The appeal was dismissed for lack of merit on the ground that the Kania  
30 Committee was to accord the appellant a hearing however the



5 applicant pre maturely challenged it and in the result occasioned unnecessary delay into the inquiry of the issues raised by the applicant.

The court agreed with the High Court that the Committee was a mere fact finding committee and that the respondent must legally  
10 constitute another committee which would carry out investigations and accord the applicant a fair hearing. From the above observations, it is evident that the lower courts did not pass any orders that affected the applicant or caused him irreparable damage. The loss he claims to have faced was the cancellation of  
15 his Diploma and striking his name off the Roll of advocates. This was an issue not addressed by the lower courts and therefore staying execution of the judgment of the court of Appeal could not prevent the cancellation of the Applicant's Diploma.

It is on record that the respondent institute constituted a committee  
20 as proposed by the lower courts known as the Management Sub Committee investigating Allegations of Examination Mal-practices at The Law Development Centre Between 2004 and 2011 (The Dr. Pamela Committee) to carry out thorough investigations on the alleged malpractices in the institute. Page 44 of the Report of the Dr.  
25 Pamela Committee reflects that the applicant was invited and he indeed appeared before the Committee with his counsel Mr. Semuyaba. While there, he had a chance of being heard and being involved in the proceedings before the committee. The committee then resolved the matter and concluded that the applicant's marks  
30 in both commercial Transactions and Criminal Proceedings did not



5 reach the required pass marks and that the marks reflecting on the mark sheet had been concocted. The committee further concluded that the applicant had not passed the Bar Course and therefore cancelled his Diploma in Legal practice.

10 It is important to note that the hearing before the committee was done after the applicant had filed this application. This application was initially made by two persons (the applicant and a one Fred Mukasa Mbidde). However the latter withdrew his application because after appearing before the Dr. Pamela Committee, he was  
15 given another chance of resitting the examination in contention to which he passed and was granted a diploma. This was the same point that the applicant presented his case before the Dr. Pamela Committee only for the committee to cancel his diploma. We are inclined to agree with the respondent's submission that the  
20 applicant had abandoned this application and only bounced back to this application because things did not go his way. In effect, having subjected himself to the proceedings of the Dr. Pamela committee barred the applicant from pursuing this application.

25 Further, the applicant in his submissions relies heavily on the Dr. Pamela Committee Report and its proceedings which were not the subject of adjudication by both lower courts and the application for introducing the same as new evidence was denied by this Court.

30 We also observe that the application has been overtaken by events when the applicant subjected himself to proceedings a result of



5 which had his Diploma cancelled. A grant of this application would indeed stay nothing of essence and the law cannot be seen to operate in a vacuum. Therefore, the appeal has no likelihood of success and this dismissal shall not render the appeal nugatory.

This application is hereby dismissed.

10 Dated at Kampala this.....day of.....2020.

  
15 **Hon. Justice Dr. Esther Kisaakye, JSC**

  
20 **Hon. Justice Eldad Mwangusya, JSC**

  
25 **Hon. Justice Opio-Aweri, JSC**

  
**Hon. Justice Faith Mwendha, JSC**

  
30 **Hon. Justice Prof. Lillian Tibatemwa-Ekirikubinza, JSC**