

5 THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANIOUS APPLICATION NO. 330 OF 2025
(ARISING FROM MISCELLANIOUS APPLICATION NO.329 OF 2025)
10 (ARISING FROM MISCELLANIOUS CAUSE NO. 118 OF 2025)

1. AKISO BENJAMIN
2. KIWUMULO PAUL
3. KAJUBI MAKTUM
4. KAYEMBA MUHAMMMED
15 5. MUGANZI ASAPH
6. OKELLO EMMANUEL
7. MORO ALFRED
8. MUGULUMA WAHAB
9. NAMANYA BASHAIJA .H
20 10. MUROZI ABEL
11. NANSENJA WINNIE
12. KIPTOO IAN CHEYWA
13. WASHITWAYA JOEL
25 14. AVAYE NICKSON
15. MWESIGWA TIMONTHY:.....:APPICANTS

VERSUS

KYAMBOGO UNIVERSITY:.....:RESPONDENT

RULING

BEFORE HON. JUSTICE COLLINS ACELLAM

Brief Introduction.

This is an Application brought by Notice of Motion under Section 37 of the Judicature Act. Cap. 16, Section 98 of the Civil Procedure Act Cap. 282, Order 50 (3A) CPR (Amendment) Rules, 2019 and all other enabling laws seeking orders.

- 35 1) *That an Interim Order doth issue restraining the Respondent and its servants, agents or other persons acting under its authority from enforcing the impugned decision of the Vice Chancellor contained in letters dated April 28,2025 suspending the Applicants from University pending disposal of Miscellaneous Application No. 329 of 2025.*
40 2) *That an interim order doth issue restraining the Respondent and its servants, agents or other persons acting under its authority from preventing the Applicants from accessing campus, attending lectures, sitting for tests, course works and/or examinations pending the disposal of the main Application for Judicial review.*
3) *That an Interim Order doth issue restraining the respondent and its servants, agents or other persons acting under its authority to prevent the Applicants from*

5 continuing to reside at their respective Halls and enjoying the services ordinarily provided to a resident student at the University pending the disposal of the main Application for Judicial review.

4) That an order dispensing service of this Application on the respondent owing to the urgency of the interim reliefs sought herein and the real threat of denying the Applications the opportunity to sit for the end of semester 2 examinations scheduled to start on May 6, 2025.

5) Costs of this Application to be provided for.

Grounds of the Application.

The grounds in support of the Application are contained in the Affidavit of AKISO BENJAMIN, the 1st Applicant herein, briefly.

1) That he is a first-year student pursuing a course leading to award of a Diploma in Sign Language and Interpretation and the current Guild President of the Respondent's Student's Guild having been elected on March 21, 2025.

2) That when he assumed office, he received numerous pleas from students regarding their inability to pay late registration fee and need to request the University Management to allow students who paid at least 70% tuition to be granted permission to sit for their end of semester examination.

3) That the vice chancellor ignored their request thus together with the Guild Speaker, they wrote to the student's body on April 22, 2025 inviting them for a General Assembly to discuss pertinent concerns regarding waiver of the late registration fee for semester II and to advocate for students who have paid at least 70% of their tuition to be permitted to sit for their end of semester examination.

4) That the Student's Guild is an autonomous body and has the powers under Articles 7, 8 and 9 of the Kyambogo University Guild Constitution to convene a general assembly for purpose of consulting and general welfare at the university.

5) That never has he ever received any written objection from the Vice Chancellor or any other university official about the occurrence of the said General Assembly.

6) That in the morning of April 23, 2025, he proceeded to the Student's Centre to address the General Assembly but as soon as they convened, he was shocked when officers of the Uganda Police led by the Respondent's Chief Security Officer started teargassing them, firing live bullets while beating up students who had peacefully assembled to participate in the event.

7) That he was never given an opportunity to dialogue with the University Management but was instead arrested, dragged to Kyambogo University Police and later detained at Jinja Road Police Station where he was jointly charged with the 12th, 13th, 14th and 15th Applicants and arraigned before Nakawa Chief Magistrates Court vide CRB Jinja Road 311/25 and remanded to Luzira Prisons.

8) That they were later released on bail and learnt that they were suspended for a period of one month. That they have filed an application for a temporary injunction and that there is an imminent threat of denying the applicants the opportunity to sit for their end of Semester 2 examinations, scheduled to start on May 6, 2025 unless an interim order of injunction is granted.

9) That unless the interim order of injunction is granted, the main Application for temporary injunction pending before this court will be rendered nugatory and the Applicants will suffer substantial loss.



5 **10) That the Respondent shall not be prejudiced in anyway if this Application is allowed since it can always commence its disciplinary processes against the Applicants once the Applications before this court has been disposed.**

Grounds in Opposition.

10 In opposition to the Application the Respondent filed the affidavit in reply deponed by **BRIDGET MUGUME**, the Dean of Students of the Respondent who briefly states.

- 15 1. *That the orders sought to wit full restoration of the Applicant's rights as students of the Respondent is essentially the same order sought in Misc. Cause No. 118 of 2025 and as such, the instant Application is barred in law since granting the orders sought herein will have the effect of determining the main cause without hearing.*
- 20 2. *That instant Application essentially seeks for interim mandatory injunctive orders without meeting the conditions of such relief, to wit proof of a very strong probability upon the facts that grave danger will accrue to the Applicants for the period of 25 days that the suspension will remain in force.*
- 25 3. *That granting the instant Application will prejudice the Respondent and will inflict greater harm to the Respondent as it will show that the management of the Respondent has no authority to prohibit disorderliness and misconduct that may affect the smooth running of the respondents' activities as the management has a responsibility to uphold academic standards and ensure a safe learning environment for all students.*
- 30 4. *That failure to grant the prayers by the Applicants in this Application will not adversely affect the Applicants because once their rights as students are restored after the suspension in issue, the Applicants will resume their studies and as well sit for the missed exams in line with the Respondent's Examination Policy.*
- 35 5. *That the Applicants were arrested for leading the rowdy strike that affected the learning of the Respondent and causing disorderliness in and outside campus hence their suspension pending disciplinary hearings that will be conducted.*
6. *That the flier headed "BLOODY MONDAY, NO TO SURCHARGE", "STUDENTS SUSPENDED MUST BE REINSTATED, STAND TO FIGHT", was issued inviting students to partake in a strike on 05th May 2025 but the said strike did not happen due to the fact that the ring leaders of the intended deleterious action, the Applicants herein have been in the meantime barred from accessing the Respondent's premises.*

Representation.

During the hearing, the Applicants were represented by **Chapter Four Uganda** whereas the Respondent was represented by **Kalenge, Bwanika, Kisubi & Advocates**.

40 I have listened to both parties and their lawyers, I have perused through all documents which I have considered in coming up with this decision.

45 The background to this application is that the Applicants were temporarily suspended from the Respondent University pending disciplinary proceedings. The temporary suspension was based on allegations that the applicants participated in acts that disrupted University activities on 23rd April, 2025 in breach of the University Students Regulations. The Applicants filed **Misc. Cause No. 118 of 2025** and **Misc. Application No. 329 of 2025** seeking for a temporary injunction against the suspension. This application in essence is seeking an interim order

5 against the enforcement of the decision suspending the applicants and barring them from accessing the university premises.

Issue

Whether the applicants' application meets the grounds for granting an interim order?

Determination of Court.

10 The position of the law on interim orders is that the order should only be granted subject to the well settled conditions, for a short time until a named day or further order of the court, pending determination of the main application. It is granted by a Judge exercising the Court's inherent powers under the Section 98 of the Civil Procedure Act to help the parties to preserve the status quo and then have the main issues between them determined by the Court under
15 the same Rules. This principle has been expounded by court in a number of decisions including *Crane Bank Ltd (In Receivership) versus Sudhir Ruparelia & Another, Supreme Court Civil Application No. 33 of 2020* and *Mohammed Mohamed Hamid versus Roko Construction Ltd, Supreme Court Miscellaneous Application No. 23 of 2017*.

The principles governing the grant of an interim order have been discussed by court in a
20 number of cases and one of them is *Souna Cosmetics Uganda LTD Vs. Commissioner Customs URA and Commissioner General URA, HCMA No. 424 of 2011*, the principles expounded by court in the case upon which an interim order can be granted include:

- i. ***There must be a pending substantive Application.***
- ii. ***The need to maintain the status quo.***
- 25 iii. ***The need to preserve the right of the applicant to be heard in the main application,***
- iv. ***The need to avert the occurrence of irreparable injury likely to be suffered by the applicant.***
- v. ***And in case of doubt as to who should be granted the order, the balance of convenience is resolved in favour of the person likely to suffer much if the order is***
30 ***not granted.***

I will consider the principles as highlighted in determining whether or not to grant this application.

1. There must be a pending substantive Application.

35 On record, there is Miscellaneous Application No. 329 for orders of Temporary Injunction pending before this court.

2. The need to maintain the status quo.

In their submission, counsel for the Applicants adopting the case of *Uganda National Student's Association versus Nkumba University* defined what Status quo to mean as the last, actual, peaceable and non-contested status that proceeded the pending controversy. That it
40 is not in contention that before the suspension, the Applicants were students of Kyambogo University and being a student comes along with the right to attend lectures, exams and so on. Counsel prays that court finds that there is a status quo to be preserved.

In response, counsel for the Respondent submits that the status quo is the actual state of affairs before the controversy which status quo in his opinion is the state of affairs that
45 proceeded the filing of the suit and that the status quo to be maintained in this case is that



5 prior to the filing of the suit, the main cause and the instant Application, the Applicants were temporarily suspended. The date of suspension was 28/4/2025 and the Applicants accepted the state of affair as per paragraph 33 of the Affidavit in support. Counsel concludes that it's not permissible for court to change the status quo.

10 In my understanding, literally '*status quo*' means the situation that currently exists", and simply means that parties cannot make an addition or alteration and held that construction, if any, was raised in... -*quo*' means that whatever position is existing on spot is to be maintained.

15 I am inclined to agree with counsel for the Respondent that the status quo prevailing, and the reason for the action by the applicants is their temporary suspension from the university on 28/4/2025. In my view this is the status quo that ought to be maintained by this court.

3. **The need to preserve the right of the applicant to be heard in the main application and the need to avert the occurrence of irreparable injury likely to be suffered by the applicant.**

20 Counsel for the Applicants submission is that in paragraph 26-29 of the affidavit is support the applicants aver that throughout the entire process of the suspension they were not accorded a fair hearing, neither were they given an opportunity to challenge the breach of their right to a fair hearing, a non derogable right and cannot be atoned or compensated in monetary terms. He further submitted that examinations for end of semester 2 commenced on 7th May, 2025 and that an exam missed will affect the normal progress of a student.

25 In response, counsel for the Respondent submitted that as per the formal communication the suspension of the Applicants is subject to a formal hearing before the Students Affairs and Welfare Committee. That regarding the exams that are due to commence and that missing the same affects normal progress, the university can still give them another exam.

30 I wish to take note of paragraph 8 of the Affidavit in reply of the Respondent where they state that the Applicant's rights as students will be restored after the suspension in issue and will as well resume their studies and sit for the missed exams in line with the Respondent's examination policy.

35 I must take note of the letter dated Monday, 28th April, 2025. The letter clearly states that ***"You are hereby suspended from Kyambogo University with immediate effect pending a formal hearing before the Students Affairs and Welfare Committee. The suspension shall run from 29th April to 31st May 2025."***

40 I must agree that the Respondent, as a public body is responsible for the education and discipline of all the students at the university. To do this they must maintain a peaceful and safe learning environment for all the students at the university. In my view, such an institution must be allowed a mandate to discipline or remove any student if he/she is found to conduct himself in a manner that is contrary to what is reasonably acceptable for a student in such an institution. In this case the institution exercised this power against the Applicants, and I believe the same was in the interest of ensuring a safe environment for the entire student community. I particularly take note of the fact that this is a temporary measure clearly
45 intended to accord the Applicants an opportunity to be heard. In light of the commitment by the Respondent to accord the Applicants an opportunity of being heard, I find the complaint relating to the violation of their non derogable right is not only premature but misconceived,



5 as the suspension itself was a necessary measure intended to pave way for them to be
accorded a hearing. To allow this application this court will set a bad precedent making
impossible for institutions like the Respondent to maintain law and order and ensure a
peaceful learning environment for the other students who have come to these institutions to
learn.

10 **4. Balance of convenience.**

Balance of convenience favors a person who is likely to be inconvenienced if the status quo is
altered and ought to be granted the order. In this regard, the court has to strike a balance
between the rights of the applicants and that of the Respondent and the other members of
the student community.

15 Counsel for the Applicant has submitted that granting this order will not in any way be
prejudicial to the university because management can always institute disciplinary
proceedings before the issues before court have been settled.

In response, counsel for the Respondent refers to paragraph 16-18 of the Affidavit in reply on
grounds that there is a likelihood of another strike as the cause of strike has not been
20 addressed yet and the return of the Applicants on university grounds would instigate further
actions on the students to strike and destabilize the peaceful academic environment.

I agree with the Respondent that as per Annexure A to the affidavit in reply, that there is still
an imminent threat that allowing the applicants to return to the university will most likely
result in a breach of peace at the institution at this time when the other students are
25 undertaking their examinations. Since the Applicant have been temporarily suspended, my
view is that the balance of convenience is in favour of maintaining this status quo to allow the
university to complete administering examinations to the rest of the students. The Applicants
will be accorded a hearing and as promised by the Respondent, special examinations will be
arranged for them at no extra cost.

30 It is my finding that this Application fails and is accordingly dismissed with no orders as to
Costs.

I so order.



35 **ACELLAM COLLINS**

JUDGE

8/5/2025