

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. APPLICATION No. 70 of 2018
(ARISING FROM MISC. CAUSE NO. 23 OF 2018)**

**BRIDGE INTERNATIONAL
ACADEMIES (K) LTD**

.....

APPLICANT

VERSUS

ATTORNEY GENERAL

.....

RESPONDENT

RULING

1. The Applicant seeks an injunctive order against the decision of the Permanent Secretary of the Ministry of Education and Sports (herein after the Ministry) declaring that the Applicant schools are not authorized to operate and that costs of the application be provided for.
2. The Applicant is jointly represented by Mr. Isaac Walukagga and Mr. Gerald Batanda and the Respondent is represented by Mr. Phillip Mwaka from the Attorney General's Chambers. The Attorney General is sued in his representative capacity under section 10 of the Government Proceedings Act for the actions of the Permanent Secretary of the Ministry.
3. The application is supported by the affidavits of Mr. Morrison Rwakakamba, the Applicant's Country Director and opposed through the affidavit of Mr. Alex Kakooza, the Permanent Secretary of the Ministry.
4. Briefly the grounds of this application are that the Applicant's schools are under an immediate threat of closure yet the Permanent Secretary of the Ministry is yet to consider the applications lodged by the Applicant for licences for its various schools, the Applicant has a prima facie case with a likelihood of success and the Applicant and other stake holders are likely to suffer irreparable injury that cannot be atoned by way of damages. The Applicant also argued that the balance of convenience tilts in its favor and prayed that the application is allowed with costs.

5. In reply Mr. Kakooza averred that the Applicant established numerous schools in Uganda without duly obtaining licences or complying with the requirements of the requisite laws. In addition he averred that the Applicant does not have pending licence applications with the Ministry as their applications were earlier duly considered by the Ministry, found wanting and rejected. Further that he wrote a letter to the Applicant on 6th February 2018 reaffirming this Ministry's decision and the Applicant's officials refused to pick it. Mr. Kakooza also averred that the Applicant's remedy lies in meeting the licensing requirements under the Education (Pre-Primary, Primary and Post- Primary) Act, 2008 (herein after the Act). The Respondent prayed that the application is dismissed with costs.
6. The guiding principles in determining whether to grant an injunction are: a) that there is a prima facie case with high chances of success; b) that the Applicant will suffer irreparable loss if the injunction is not granted; c) if (a) and (b) are not easily established then the determination is on a balance of convenience.
7. I have carefully looked at the pleadings and considered the arguments and submissions of both parties. A lot of the arguments presented by both the Applicant and the Respondent will be considered substantively as part of the determination of the judicial review application and not at this stage. Section 31 of the Act lists the requirements for establishing a private school¹. Section 32(1)² of the Act provides that permission to operate a new school shall be

¹(1) Any person, community or organization desirous of establishing a private education institution shall apply to the Permanent Secretary, chief administrative officer or town clerk, to be approved as a suitable person, community or organization to establish a private education institution and the applicant shall be of good repute with the necessary funds to manage the type of institution proposed to be established and shall in that application seek advice and approval of the Ministry responsible for education, district or urban council, as the case may be, in respect of the following matters— (a) whether the proposed school forms or will form part of the education development plan prepared or approved by the committee responsible for education for a given area; and (b) whether the proposed school meets or will meet the educational needs of the country or area, as the case may be.

given in the first instance, in the form of a licence to operate a provisionally classified school for two school years. Subsection (2) provides that a school shall be licensed and registered

(2) An application for establishing a private school by the prospective school owner shall be supported by at least three persons of high integrity and good standing in the area of the applicant where the education institution is to be established.

(3) Before the application is approved, the prospective school owner shall be required to fulfill the following— (a) have the building plans, lease offers, agreements and land titles for the proposed new school or for extension or alterations to some existing building, as the case may be, approved by the district education committees; (b) have the completed buildings inspected and approved by the appropriate authorities; (c) undertake to engage a head teacher who, in the opinion of the Permanent Secretary, chief administrative officer or town clerk, is suitable for the type of School he intends to establish; (d) satisfy the Permanent Secretary, chief administrative officer or town clerk, that the teachers to be engaged in the education institution are eligible to teach in the type of school he or she intends to establish and the facilities for it are adequate for the school it purports to be; (e) ensure that the physical, health and moral welfare of the pupils are or will be adequately provided for; (f) undertake that the school will not refuse admission to any pupil on any discriminatory grounds; (g) ensure that school environment is conducive for pupils with special needs; (h) in case of registering a school, show evidence of land ownership; and (i) satisfy the Permanent Secretary, chief administrative officer or town clerk, that the terms and conditions of service of employment for teaching and non-teaching staff are adequate.

(4) For the purpose of this section, buildings in semi-permanent Material shall be acceptable as suitable if they are approved by the appropriate authorities.

²(1) Permission to operate a new school shall be given in the first instance, in the form of a licence to operate a provisionally classified school for two years.

under a specific location and name. Section 40 of the Act provides for offences relating to private schools³.

8. In this case it appears that the Applicant schools mushroomed in Uganda without any consultation or authorization from the Ministry. After the Ministry discovering them, the Applicant schools started negotiating or engaging with the Ministry for the issue of a licence. Any negotiations, talks and/or memorandum of understanding regarding the award of a licence in issue for the Applicant should have preceded the establishment and/or operation of the Applicant schools.

9. The Responsibilities of the different stake holders in education and training are outlined in Section 5⁴ of the Act. Subsection 4 in particular stipulates that "the responsibility of government in private education institutions shall be to ensure that private education

³ A person who – (a) establishes or maintains a school which is not classified and registered in accordance with the provisions of this Act; (c) commits an offence and shall be liable on first conviction to a fine not exceeding twenty currency points and on second or subsequent conviction, to a term of imprisonment not exceeding twelve months.

⁴ Clause (1) provides that Government through its relevant agencies shall be responsible for – (a) the provision of learning and instructional materials structural development and teachers welfare; (b) setting policy for all matters concerning education and training; (c) setting and maintaining the national goals and broad aims of education; (d) providing and controlling the national curriculum; (e) evaluating academic standards through continuous assessment and national examinations; (f) registering and licensing of teachers; (g) recruiting, deployment and promotion of both teaching and non teaching staff; (h) determining the language and medium of instruction; (i) encouraging the development for a national language; (j) ensuring equitable distribution of education institutions; (k) regulating, establishing, and registering of Educational institutions; (l) management, monitoring, supervising and disciplining of staff and students; (m) ensuring supervision of performance in both public and schools; and (n) development of management policies for all Government and Government aided schools and private schools.

institutions conform to the rules and regulations governing the provision of education services in Uganda.” The Applicant made this difficult for government by establishing its schools without submitting itself to scrutiny by the Ministry.

10. While negotiations between the Applicant and the Ministry have gone on for a while, it is clear that the Applicant schools are operating illegally because they have no provisional or other licence as stipulated under section 32. This is a plain illegality that pales the Applicant’s chances of success in the main judicial review application. The parents and the children in the Applicant schools acquiesced in an illegality and it becomes so hard to protect them under the law.
11. The Applicant conduct of coming to Uganda at pleasure, starts schools all over the country without any registration with any conformity to relevant government department speaks to a high level of reckless disregard of national institutions set up to ensure qualitative education in the country.
12. Parents in the Applicant schools can’t be comfortable with the status quo of their children studying in the Applicant schools while they have to register in other schools for national examinations because the Applicant’s schools are not registered. This conundrum is wrong. That their children pass exams does not make it right.
13. The Applicant has also failed to demonstrate to my satisfaction that it would suffer irreparable loss if the injunction was not granted. I take the view that as a government entity the Respondent has the capacity to atone the Applicant in damages and costs for any loss in the event the Applicant won the judicial review application.
14. Having determined the two steps I have no obligation to consider the balance of convenience. However even the balance of convenience can not favor the Applicant who in the first place set out to operate schools in Uganda illegally without submitting to the statutory supervision of government and now seeks court’s protection from government’s action to reign it in. The Applicant is not coming with clean hands and cannot be protected. Accordingly based on the

above I decline to grant the injunctive order sought. This application is dismissed. To avoid acrimony between the Applicant and the Respondent each party shall bear its costs.

I so order

A handwritten signature in black ink, appearing to be 'LYDIA MUGAMBE', written over a horizontal line.

LYDIA MUGAMBE

JUDGE

16th MARCH 2018