

UGANDA / JUDGMENT

# Excellent Assorted Manufacturers Limited v National Environment Management Authority (Miscellaneous Application 666 of 2024) [2025] UGHCCD 7 (16 January 2025) [2025] UGHCCD 7

## COURT

HC: Civil Division (Uganda)

## BEFORE

Boniface Wamala, J

## CASE / FILE NUMBER

Miscellaneous Application 666 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL  
DIVISION) MISCELLANEOUS APPLICATION NO. 666 OF 2024 (ARISING FROM  
MISCELLANEOUS CAUSE NO. 130 OF 2024) EXCELLENT ASSORTED  
MANUFACTURERS LTD ::::::::::::::: APPLICANT VERSUS

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY  
(NEMA) ::::::::::::::: RESPONDENT

**BEFORE: HON. JUSTICE BONIFACE WAMALA**

## RULING

## Introduction

[1] This application was brought by Chamber Summons under Section 38 of the Judicature Act, Section 98 of the Civil Procedure Act, and Order 41 rules 1, 7 and 9 of the CPR seeking for orders that;

- a) A temporary injunction doth issue restraining the respondent, its enforcement team, officials, agents and or persons acting under its authority from implementing the decision and orders contained in the Environmental Restoration Order **dated 19th June 2024**, addressed to Mahindi Grain Millers C/o Kisakye Philip, the applicant's tenant on part of the property, requiring it to vacate and demolish all the structures on land comprised in Busiro Block 333 Plot 978 and land known as Busiro Block 333 Plot 2652 formerly Plot1506 and requiring it to restore the same within 21 days, until the final disposal of the application for

judicial review.

- b) A temporary injunction doth issue restraining the respondent, its enforcement team, officials, agents and or persons acting under its authority from evicting the applicant and or its tenant and demolishing its property and developments or any part of the factory premises on land

comprised in and known as Busiro Block 333 Plot 978 and land known as Busiro Block 333 Plot 2652 formerly Plot1506 on grounds that they were erected without the respondent's approval, until the final disposal of the application for judicial review.

- c) The costs of the application be paid by the respondent.

- [2] The grounds of the application are contained in the affidavit in support of the application deposited by **Ephraim Ntaganda**, the managing director of the applicant. Briefly, the grounds are that the applicant is aggrieved with the decision and orders of the respondent contained in the **Environmental Restoration Order dated 19th June 2024** addressed to M/s Mahindi Grain Millers C/o Kisakye Philip, the applicant's tenant requiring them to; stop any further dumping in the wetland, remove all materials dumped, demolish all the structures on the land, vacate the property and restore the part of the wetland degraded to as near as possible its original state. The deponent stated that the addressee of the said impugned order is a tenant on part of the applicant's buildings on land comprised in Busiro Block 333 Plot 978 and land known as Busiro Block 333 Plot 2652 hitherto Plot 1506 on which the structures, the subject of demolition as per the respondent's order, are situate. He further stated that contrary to the allegations in the impugned Environmental Restoration Order issued by the respondent, the applicant developed the land with structures, now the subject of demolition, with the knowledge and approval of the respondent following the approval of the applicant's Environmental Impact Assessment (EIA) report. Consequently, the respondent issued a Certificate of Approval of the EIA on 17th May 2013 for factory upgrade.
- [3] The deponent further averred that he has since filed an application for judicial review which is pending determination before this Court challenging the procedure and the manner in which the impugned order was issued and seeking court's orders to quash the same. He further averred that the said application has merit and a high likelihood of success. He also averred that the respondent has already earmarked the applicant's buildings for demolition and erected signs on the buildings for that purpose. He stated that the impugned order requires the applicant and or its tenant to comply therewith, within a period of 21 days and that the applicant and or its tenant has a right to appeal the said order within the same 21 days from 20th June 2024. On 25th June 2024, the applicant served a letter on the respondent seeking and requesting the respondent to review the said order, recall it and stay its implementation. He stated that there has been massive demolition of properties within the same area by the respondent and its agents on similar grounds and the applicant having not received any response from the respondent staying the execution of its orders exposes the applicant's properties to imminent danger of demolition. He concluded that the applicant

will not only lose its property, factory premises and buildings, but will be deprived of the right to be heard by the court in the application for judicial review; the basis of the said application being the current status of the property developed with the knowledge and approval of the respondent.

- [4] The respondent opposed the application through an affidavit in reply deposed by **Emmanuel Busobozi**, the respondent's Principal Environment Officer (Water and Wetlands Resources). He stated that the respondent is the principal agency in Uganda mandated to regulate, monitor, supervise and coordinate all activities relating to the environment. The respondent may issue an environmental restoration order to any person whose activities cause or are likely to cause pollution or which are deleterious to human health or the environment, and that such order may require the person on whom it is served to restore the land to its full ecological and ecosystem functions, remove or alleviate any damage to land or environment or to the amenities of the area within 21 days, among other orders. In April and June 2024, the respondent mapped and profiled the encroachment, found extensive degradation and damage to the system and served Environmental Restoration Orders on all encroachers to stop the damage and restore the respective areas damaged.
- [5] The deponent further averred that the respondent instructed him and a team of other inspectors to inspect the applicant's Mahindi Grain Millers facilities and found that the applicant had a certificate of approval for 5 years which expired in 2018 and has not been renewed, that the applicant was not complying with the conditions of the approval and no environmental audit has been conducted as required. It was further found that the applicant and Mahindi Grain Millers were conducting activities which do not have authorization; that the facilities generate effluent which is untreated before discharge and directly channeled to the wetland; that the applicant has degraded the wetland by backfilling and stock piling of sand which is interfering with hydrology and suppressing the aquatic vegetation; and that the applicant is disposing solid hazardous waste into the wetland contrary to the law. The deponent further stated that the actions of the respondent were governed by the relevant laws, that all due process was followed to issue the environmental notices and orders and that an injunction against the respondent or its agents will cause irreversible effects on the environment, derail enforcement and monitoring process and aid the applicant in further causing harm to human health which cannot be compensated in damages.

## Representation and Hearing

- [6] At the hearing, the applicant was represented by **Mr. Joseph Kyazze** and **Ms. Natukunda Jackline** from M/s Magna Advocates while the respondent was represented by **Ms. Naigaga Sarah** and **Mr. Muhindo James** from the Legal Department of the respondent. The hearing proceeded by way of written submissions which were duly filed by both counsel. I have adopted and considered the submissions in the determination of the matter before Court.

## Issue for Determination by the Court

- [7] One issue is up for determination by the Court namely; \*Whether the applicant has raised sufficient grounds for the grant of an order of a temporary injunction in the terms sought?\*

## Consideration by the Court

- [8] The position of the law is that grant of a temporary injunction is an exercise of judicial discretion for purposes of maintaining the status quo until the questions to be investigated in the main suit are tried on the merits and finally determined. The principles for grant of a temporary injunction were laid down in the case of \*Kiyimba Kaggwa v Hajji Abdul Nasser Katende [1985] HCB 43,\* citing with approval the decision in \*Giella v Cassman Brown & Co. Ltd [1973] 1 EA 358\*, as follows;

"\*The conditions for the grant of an interlocutory injunction are .... first, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."\*

- [9] On the case before me, both Counsel addressed the Court in line with the above cited principles. I will deal with each of the principles respectively.

### **\*Existence of a status quo to be preserved.\***

## Submissions by Counsel for the Applicant

- [10] Counsel for the applicant submitted that the purpose of a temporary injunction is to maintain the status quo of the subject matter of the dispute pending the final determination of the suit in order to prevent the ends of justice from being defeated. Counsel relied on the case of \*Baligasiima v Kiiza & \*Others, HC Misc. Application No. 1495 of 2016\*. Counsel submitted that the status quo of the property as clearly set out in the application and the affidavit in support is that the said land is developed with structures which were constructed with the approval of the respondent and the applicant has been, for over 10 years, and is still in possession of the suit property, without any damage and or detriment to the respondent. Counsel further submitted that Mahindi Grain Millers C/o Kisakye Phillip on whom the environmental order for demolition was served is a tenant of the applicant on part of the land/developments on the land. Counsel stated that the applicant at the time of filing this application had not yet acted on the said order and the respondent had not implemented the impugned order by demolishing or restoring the land; which is the status quo that is prevailing and was preserved by the interim order issued by the Court issued on 4th July 2024.

- [11] Counsel further submitted that the status quo sought to be maintained is not intended to paralyze the activities of the respondent in so far as wetlands protection is concerned but rather to halt the implementation of the order issued by the respondent intended to demolish the applicant's structures which were erected pursuant to approval of the respondent. Counsel stated that the applicant sought approval for the developments on the suit land from the respondent on account of the then Section 43 of the Land Act (now 44) which required the owner of any land to manage or utilize land in accordance with, inter alia, the National Environment Act. Counsel prayed that the Court finds that the prevailing status quo set out herein above is one capable of being maintained by an order of a temporary injunction and be pleased to maintain the same.

### **Submissions by Counsel for the Respondent**

- [12] It was submitted by Counsel for the respondent that the state of affairs is that the applicant has since 2018 been conducting activities illegally including erecting structures without authorization and causing degradation to the environment. Counsel stated that the prevailing state of affairs is a damaged environment and continuous risk of harm to human health and the functionality of the wetland system. Counsel disputed the applicant's contention that the structures were part of the approved structures under the certificate of approval and argued that the activities of Mahindi Grain Millers were not included in the certificate of approval. Counsel argued that the status quo that could be preserved was the status quo that existed before the illegal acts were done. Counsel concluded that an injunction to refrain the respondent from prevailing over the applicant will cripple the respondent in enforcing the law as mandated.

### **Determination by the Court**

- [13] As above stated, the main purpose of a temporary injunction is to preserve the status quo pending disposal of the main suit. The term status quo simply denotes the existing state of affairs before or at a given particular time. In line with the purpose of preservation of the existing state of affairs, an order of injunction is intended to prevent the ends of justice in a matter from being defeated. See: *\*Daniel Mukwaya v Administrator General, HCCS No. 630 of 1993\** and *\*Erisa Rainbow Musoke v Ahamada Kezala [1987] HCB 81.\**
- [14] On the case before me, the applicant is challenging the Environmental Restoration Order dated 19th June 2024 addressed to the applicant's tenant requiring it to; stop any further dumping in the wetland, remove all materials dumped, demolish all the structures on the land, vacate the property and restore the part of the wetland degraded to as near as possible its original state. According to the evidence on record, the status quo is that the applicant is the registered owner of the subject property and the developments thereon allegedly with the approval of the respondent. The applicant has adduced documentary evidence to that effect.

[15] In my considered view, where an allegation of dumping offensive materials into a wetland was proved, the Court would not exercise discretion to restrain an order intended to stop such dumping activities. There are however two compelling factors in the present case. One is that it is a triable issue as to whether the applicant is involved in offensive dumping into the wet land. The second is that the impugned environmental restoration order seeks to effect demolition of structures that were erected on the land allegedly with the consent and approval of the respondent. Given that state of affairs and the fact that the impugned restoration order has not yet been implemented, it is in my view necessary and just to preserve the prevailing status quo so as to enable the applicant pursue their right to a fair hearing and determination of their action on the merits. The applicant has therefore satisfied the Court on the need for preservation of the existing status quo.

**\*Existence of a prima facie case with a probability of success.\***

### **Submissions by Counsel for the Applicant**

[16] Counsel submitted that the position of the law is that all the applicant needs to show is that there exists a genuine triable issue in the main suit pending between the parties and that the court must be satisfied that the dispute presented in the head suit is not a sham, is not frivolous or vexatious but is a genuine dispute and the applicant has a probability of succeeding in the main suit. Counsel relied on the case of *\*Imelda Gertrude Basudde v Tereza Mwewulize HCMA No. 402 of 2003\**. Counsel submitted that the applicant herein has presented a main application for judicial review which challenges the procedure and the manner in which the impugned restoration order aimed at depriving the applicant of its constitutionally guaranteed rights was issued. Counsel further submitted that the applicant has ably demonstrated that there are serious questions that require investigation and trial by the Court. Counsel for the applicant emphasized that the applicant is not in any way challenging the respondent's power, authority or mandate under the National Environment Act but questions the application of those powers in disregard of the

applicant's non-derogable right to a fair hearing. Counsel prayed that the Court finds that the applicant has clearly made out a prima facie case in judicial review, warranting the grant of an order for a temporary injunction.

### **Submissions by Counsel for the Respondent**

[17] Counsel for the respondent relied on the case of *\*American Cynamid v Ethicon Ltd (1975) 1 ALLER 504\** to the effect that the principle of a prima facie case requires that the court is satisfied that the claim is not frivolous or vexatious and that there is a serious question of law and fact to be tried. Counsel submitted that the applicant's case has no likelihood of success. Counsel argued that it will occasion a miscarriage of justice if an injunction is issued to preserve operations of a project whose certificate of approval expired in 2018 and has not been extended or renewed. Counsel also stated that the applicant had not conducted

an environmental audit as required under the framework. Counsel further submitted that the person subject of the restoration order was Mahindi Grain Millers and not the applicant and the latter has neither proved its relationship with Mahindi Grain Millers nor made it part of the court proceedings. Counsel prayed to the Court to find that the applicant has failed to demonstrate existence of a prima facie case warranting the grant of an order of a temporary injunction.

### Determination by the Court

- [18] A prima facie case with a probability of success is no more than that the court must be satisfied that the claim is not frivolous or vexatious. In other words, that there are serious questions to be tried. In *\*Robert Kavuma v Hotel International SCCA No. 8 of 1990, Wambuzi CJ\** as he then was, was emphatic and stated that the applicant is required at this stage of trial, to show a prima facie case and a probability of success but not success. The applicant has to satisfy the court that there is merit in the case not that he/she will succeed.
- [19] On the present facts, the main cause for judicial review challenges the manner in which the impugned restoration order was issued without the applicant being heard despite having approvals from the respondent to construct the developments on the land that were ordered to be demolished. The cause raises allegations of violation of property rights whose merits cannot be assessed and determined at this stage and would require investigation and determination by the court in the main cause. In the circumstances, I find that the applicant has satisfied the Court on a balance of probabilities that the action in the main cause discloses a prima facie case with a probability of success; sufficient for this Court to grant an order of a temporary injunction.

*\*Whether the applicant is likely to suffer irreparable injury if the application is not granted.\**

### Submissions by Counsel for the Applicant

- [20] It was submitted by Counsel for the applicant that the imminent danger facing the applicant lies in the fact that the respondent has, by their decision contained in the impugned Environmental Restoration Order dated 19th June 2024, confirmed their intentions to demolish the applicant's structures on the subject property. In the said order, the respondent indicates that if the applicant does not demolish its structures, the respondent would go ahead to do so, at the applicant's cost. Counsel stated that the imminent danger was exacerbated by the respondent's actions of acting upon the impugned order by earmarking the applicant's structures for demolition. The threat is further manifested by the massive demolition of buildings within the area in which the applicant's properties are situate.
- [21] Counsel cited the case of *\*Kiyimba Kaggwa v Hajj Nasser Katende (1985) HCB 43\** to the effect that irreparable injury is defined not to mean that there must be physical impossibility of repairing, but that the injury must be a substantial or material one, which cannot be

adequately compensated for in damages. Counsel submitted that the irreparable injury likely to be suffered is that if the applicant's buildings are demolished and the applicant is ejected from its land to which it possesses valid titles, reversal of the same, should the application for judicial review succeed, would be most difficult and the remedies sought in the main cause would be nugatory. Counsel argued that contrary to the applicant's high likelihood of suffering irreparable loss, the respondent has not demonstrated in its affidavit in reply that it will suffer any such damage if the enforcement of its order is halted in respect of the suit property. Counsel further argued that the respondent casually states that the injunction against it will cause irreversible effects to the environment, derail enforcement and monitoring process, and aid the applicant to keep causing harm to human health which cannot be compensated in damages yet there is no proof of such harm likely to occur or any harm or irreparable damage which has been caused by the applicant for over 10 years that the applicant has been in possession and use of its property. Counsel concluded that the facts and circumstances disclose that the applicant stands to suffer irreparable injury and prayed that the Court be pleased to find as such.

### Submissions by Counsel for the Respondent

- [22] Counsel for the respondent submitted that there was no and there would be no irreparable damage to the applicant as to require issuance of an order of a temporary injunction. Counsel stated that in *\*Kisakye Suzan v Ameu Zadok Olokos & Another*, HCMA No. 0142 of 2022\*, the court defined irreparable injury to mean an injury that cannot be compensated by damages. Counsel reasoned that the likely injury alleged by the applicant should be evaluated against the on-going environmental harm and damage being caused to the sensitive ecosystem arising from the applicant's activities. Counsel submitted that contrary to the estimated loss and damage claimed by the applicant, the loss and damage of degradation of the wet land system and its functionality is irreparable and extends to all persons living in Uganda. Counsel invited the Court to note that if the applicant is allowed to continue with its activities, the actions will continue polluting the Lubigi wetland system which has affected its ability to regulate water flow, support aquatic life, compromise water quality, change water levels and contribute to flooding in the surrounding areas. Counsel prayed to the Court to find no possibility of suffering irreparable injury by the applicant.

### Determination by the Court

- [23] In law, irreparable injury means that the injury or damage must be a substantial or material one that cannot be adequately atoned for in damages. See: *\*Kiyimba Kaggwa v Hajj Nasser Katende (supra)\** and *\*Tonny Wasswa v Joseph Kakooza [1987] HCB 79\**. As I indicated when dealing with the question of the existing status quo, it is a triable issue as to whether the applicant was involved in offensive dumping into the wet land. It is also critical that the impugned environmental restoration order was intended to effect demolition of structures that were erected on the land allegedly with the consent and approval of respondent. The main action challenges the procedure and manner in which the impugned restoration order

was arrived at by the respondent in contravention of their right to a fair hearing and in disregard of their property rights. In my view, if the respondent is let to proceed, particularly with the order of demolition, should the applicant emerge successful in the main suit, the injury suffered by the applicant would be irreparable. This condition is, therefore, satisfied by the applicant.

**\*The position on the balance of convenience.\***

**Submissions by Counsel for the Applicant**

[24] Counsel for the applicant submitted that the balance of convenience is only considered where the court is in doubt as to the first 2 conditions. Counsel argued that it is not necessary to consider the balance of convenience except for purposes of determining how extensive the ambit of the restraint imposed should be. Counsel stated that applicant has ably demonstrated and satisfied the conditions precedent for the grant of the order of a temporary injunction. However, even if the court was to consider this condition, the applicant has ably demonstrated that it is likely to suffer much more loss/injury if the injunction is not granted, than the respondent, if the application is denied. Counsel further argued that the essence of an order of a temporary injunction is the protection of the legal rights pending litigation. Counsel stated that at this level, the court is not called upon to determine the legal rights of the parties but merely preserve the status quo until the determination of the application for judicial review. Counsel invited the Court to find that the applicant has made out a case for the grant of an order of a temporary injunction and prayed that the orders sought be granted.

**Submissions by Counsel for the Respondent**

[25] Counsel for the respondent submitted that the restoration order issued by the respondent is statutory and intended to aid execution of a statutory mandate. Counsel stated that the suspension of the order by the interim order of 4th July 2024 already exposed all Ugandans to the grave impacts of degradation caused by the unregulated conduct of the applicant and has potential to undermine the intentions and statutory authority of the respondent under the National Environment Act. Counsel further stated that the applicant should not be allowed to disguise illegal activities under a claim of interference with the enjoyment of a constitutional right to property. Counsel invited the Court to find that the balance of convenience lies in sustaining the orders imposed by the respondent as the status quo and prayed that the Court rules in favour of the respondent, dismiss the application with costs to the respondent, the applicant is ordered to discontinue the degradation activities and to restore the degraded area to the satisfaction of the respondent.

## Determination by the Court

[26] Under the established principles for grant of an order of a temporary injunction, if the court is in doubt on any of the above considered principles, then it would determine the application on the balance of convenience. To establish that the balance of convenience lies in their favour, an applicant has to show that the refusal to grant the order of a temporary injunction will occasion greater detriment to him than it would to the respondent. In law, the balance of convenience lies more in favour of the person who will suffer more if the respondent is not restrained in the activities complained of in the main suit. On the case before me, if I were to be in doubt on any of the above considered aspects, I would find that the balance of convenience would tilt in favour of the applicant whose main application for judicial review could be rendered nugatory and who stood to be unlawfully deprived of his property if the order of a temporary injunction was not granted. The applicant has, therefore, satisfied the Court on this ground as well.

## Decision of the Court

[27] In light of the above findings, therefore, the applicant has satisfied the Court on a balance of probabilities that there are sufficient grounds that warrant the grant of an order for a temporary injunction. The application is accordingly allowed with orders that;

- a) An order of a temporary injunction doth issue restraining the respondent, its enforcement team, officials, agents and or persons acting under its authority from implementing the decision and orders contained in the Environmental Restoration Order dated 19th June 2024 addressed to Mahindi Grain Millers C/o Kisakye Philip, the applicant's tenant on part of the property, requiring it to vacate and demolish all the structures on land comprised in Busiro Block 333 Plot 978 and land known as Busiro Block 333 Plot 2652 formerly Plot 1506 and requiring it to restore the same within 21 days, until the final disposal of the application for judicial review.
- b) An order of a temporary injunction doth issue restraining the respondent, its enforcement team, officials, agents and or persons acting under its authority from evicting the applicant and or its tenant and demolishing its property and developments or any part of the factory premises on land comprised in and known as Busiro Block 333 Plot 978 and land known as Busiro Block 333 Plot 2652 formerly Plot 1506 on grounds that they were erected without the respondent's approval, until the final disposal of the application for judicial review.
- c) The costs of the application shall abide the outcome of the main cause.

It is so ordered.

\*Dated, signed and delivered by email this 16th day of January, 2025.\*

**Boniface Wamala JUDGE**

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