

**Niwagaba & 4ors v The owners of  
condominium  
plan no. 0026 & 0029 (Miscellaneous  
Application  
No. 336 of 2013) [2013] UGHCCD 95 (16 July 2013)**  
[2013] UGHCCD 95

## COURT

HC: Civil Division (Uganda)

## CASE / FILE NUMBER

Miscellaneous Application No. 336 of 2013

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA - NAKAWA CIRCUIT

Miscellaneous Application No. 336 of 2013)

(Arising from Miscellaneous Application No. 226 of 2013)

(Arising from Civil Appeal No. 053 of 2013)

(Arising from Miscellaneous Application No. 21 of 2013)

(Arising out of Miscellaneous Application No. 589 of 2009)

(Itself arising from Civil Suit No. 0287 of 2009)

- 1. Arthur Niwagaba**
- 2. Vida Tinzaara**
- 3. Leon Maiku**
- 4. Joseph Turyahikayo**
- 5. Rose Timbigamba :::::::::::::::::::::::::::::: APPLICANTS**

VERSUS

## The Owners of Condominium Plan

**Nos. 0026 and 0029 ::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**Before: Hon. Lady Justice Elizabeth Ibanda Nahamya**

**RULING**

This is an Application brought under Article 50 of the Constitution, Ss. 48 (1) (d) Judicature Act & 98 of the Civil Procedure Act; 050, r1 Civil Procedure Rules. The said Application is supported by an Affidavit deponed by Rose Tibigambwa (5th Applicant) and is dated 15th July 2013.

The main reason for the Application is for a Certificate of Urgency to be issued to enable Court sit and entertain Miscellaneous Application No. 324 of 2013. The major ground stated in the Notice of Motion is that “the status quo will have drastically changed after Court vacation in that if the Application filed by the Applicants/Defendants is not expeditiously heard in Court Vacation, the Applicants/Defendants will suffer irreparable damage.

During the hearing of this Application, Counsel Opwonya referred me to the already filed Application for Interim Order (Miscellaneous Application No. 324 of 2013), particularly paragraph 3 of the supporting Affidavit thereof which is on the mother file. He stated that the Plaintiffs want to destroy some shops which Defendants had occupied for long.

Ideally, as per Article 50 of the Constitution of Uganda, a citizen is entitled to redress and any person aggrieved by any decision of Court may Appeal to the appropriate Court. The Applicant/Defendants have already filed a Civil Appeal No. 053 of 2013 which awaits to be heard, but is yet to be scheduled for hearing. S. 98 Civil Procedure Act refers to the inherent Powers of Court to make Orders that are necessary for the ends for justice. Pursuant to rule 3 of the Judicature (Court Vacation) Rules the Court Vacation runs from 15th July to 15th August. This means that only criminal matters shall be heard and Civil business which “in the opinion of the presiding Judge, shall be of an urgent nature” I have considered the submission of Mr. Opwonya and read the Affidavit of Rose Timbigamba. I have also seen an Eviction Order dated 12th July 2013 in which the Plaintiffs have notified the Defendants to give vacant possession to the Plaintiff who is the Decree Holder. Considering also the fact that Counsel Opwonya has shown Court the second Applications, namely one for an Interim Order and the other for stay of execution. The Applications numbered Miscellaneous Application No. 324 (for Interim Order) and Miscellaneous Application No. 226 for an Order that execution be stayed pending Appeal which I have perused and do confirm their existence. The Affidavits in support do allude to the fact that the Applicants have been threatened with eviction. I did not, however find any evidence of demolition as Counsel Opwonya submitted, which in my view would be tantamount to giving evidence for the Bar. Nonetheless, a pending eviction exists and if carried out can, in my opinion, drastically change the Status quo so as to affect the pending Appeal.

I am convinced that this is a good reason and befitting matter for the issuance of a Certificate of Urgency.

I hereby **GRANT** the Applicant’s prayer and **ISSUE A CERTIFICATE OF URGENCY** to enable this Court to entertain the matter during Court Vacation.

Signed:.....

**Hon. Lady Justice Elizabeth Ibanda Nahamya**

**J U D G E**

16th July 2013

**Present:**

**Counsel for the Applicants/Defendants:** Dalton Opwonya

**Fourth Applicant –** Joseph Turyahikayo

**Court Clerk:** Olivia Nassuna

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