THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA AT NAKAWA.
MISC. APPLICATION No 390/2001.
(ARISING FROM H.C.C.S. NO.834/2000)

1. GREENWATCH
2. ADVOCATES COALITION FOR ==========APPLICANTS/PLAINTIFFS.
DEVELOPMENT & ENVIRONMENT}

VERSUS

GOLF COURSE HOLDINGS LTD. }==========RESPONDENT/DEFENDANTS

BEFORE: HIS LORDSHIP AKIIKI-KIIZA

RULING:

This is an application seeking for temporary injunction. It is taken out under the provisions of 0.37 p.1,7 and 9 of the civil Procedure Rules, and is supported by Kenneth Kakuru's affidavit.

The main prayer of the applicants are that;-

- An injunction is issued against the respondents, restraining them from developing plots 64-86, Yusuf Lule (Kitante Road)-Kampala until the main suit herein is heard and determined.

The grounds of the application as set out in the chamber summons are:

- That the applicants have filed a suit against the respondents/defendants and the same is pending hearing in this court.
- That the respondent/defendant is putting the suit property are destroying the environment and if this application is not granted, the environment shall suffer irreparable damage.
- That the respondent/defendant is putting the suit property are destroying the environment and if this application is not granted, the environment shall suffer irreparable damage.
- That the applicants have a strong case with great likelihood of success.

Further it is contented in the supporting affidavit that failure to grant the injunction would render the out come of the head suit nugatory.

The brief facts of the head suit are as follows. The defendants are owners of the suit piece of land on which they are constructing a Hotel. The plaintiffs are described as Non-Governmental organizations, whose main objectives are policy research and advocacy for protection of the environment and environmental rights in Uganda.

The plaintiffs are claiming that the construction of the Hotel on the suit land is threatening the environment and that it contravenes the law, as it is on the wetland and green areas. The defendants are therefore seeking to stop construction and protect, conserve the environment and uphold the environmental law.

Both learned counsel made lengthy submissions for and against the grant of the temporary injunction. Before I tackle the main issue in this application, some reference was made about the number of plaintiffs in this case. The plain talks of 1st and 2nd plaintiffs, as both are non-Governmental organizations. They say they are bringing the action under S. 72 of NEMA statute. Under the interpretation decree, a person includes inter-alia, an association or body of persons corporate or incorporates. Hence in my view, they have the necessary locus standi in bringing this suit.

However, the plaint is clearly signed by the 1st plaintiff, Greenwatch, only! The second plaintiff never signed the plaint at all. My learned predecessor in this case, Lady Justice Anne Magezi, considered this matter. I will only refer to those sections of her ruling (H.C.C. MIS. Application No. 1004/2000) which concerned the application for a temporary injunction.

It is my view that in order for the application before Lady Justice Magezi, to have succeeded, the party who signed the pleadings must have confirmed with either O. Ir. 8 (1) or O. 1r 12(2) of the CPR.

In the application before Justice Magezi, the second plaintiff or his representative swore the affidavit in support of the application for a temporary injunction. The learned judge, rightly in my view, threw out the application, as the person who had purported to swear the application was a stranger to the head suit, as he never signed the plaint, despite the fact that he purported to be or purported to represent the second plaintiff.

The plaint in its present form has only one plaintiff, i.e., Greenwatch is not suing in representative capacity, and hence it is the only party suing the defendant.
(See the case of S***onko and Oros.Versus Haruna and Anor [1971]. EA 443 and Johnson Versus Moss [1969]*** *EA. 654, and a recent case of this Court of* ***Zabuloni Munoka and Oros. Versus Bukemba Estates Ltd.*** H.C.C.S. 432/87, unreported.)

This is in accordance with O.1 r. 8 (1) of the civil procedure rules. On the other hand, if Greenwatch was representing both plaintiffs, then Advocates Coalition for Development and Environment, (ACODE) must give a written authority to that effect. This is in conformity with 0.1-r.12 (2) of the Civil Procedure Rules.
(See the case of ***S.K Mubiru & Anor.Versus G.W. Byensiba*** [1985] HCB 106***, and Zabuloni Munoka & Oros Versus Bekemba Estates Ltd.*** H.C.C.S. NO. 432/87 unreported).

It appears Greenwatch has no such written authority from ACODE, and as this is neither a representative action, a representative of ACODE could not have deponed an affidavit in support of the application filed by Greenwatch.

However the position in the instant case is different from that before Lady Justice Magezi in H.C.C. Misc. Application No. 1004/2000. This application is filled by Greenwatch. The affidavit in support of the application is deponed by a representative of Greenwatch. Therefore in my opinion, Greenwatch has a right to be heard and is not affected by the non-existing of the second applicant.

I will now turn to the merits or otherwise of the instant application. Circumstances in matters like that before me differ from case to case. Each case therefore is to be decided upon its own facts given the prevailing circumstances at the time of lodging/hearing the application.

It is however now settled that while granting or refusing to grant a temporary injunction, court has to consider the following: -

There must be a pending head suit. The application of this nature must be inter-parties.
That there is a serious question to be tried in the head suit and that the applicant has a prima facie case where by there is a probability of being entitled to the relief sought in that suit.
The applicant might otherwise suffer irreparable damage, which would not be adequately compensated by way of damage.
If the court is on doubt on the above, court will decide the application on the balance of convenience (See the following cases: R***obert Kavuma Versus Hotel International, Supreme Court, Civil Appeal No. 8/90, unreported, and L.D. Cotton International Versus African Farmers Associates B. V. and Anor.*** [1996] HCB. 57.

The first requirement is compiled with. There is H.C.C.S. NO.834/2000. This application is inter-parties and each party has filed their pleadings. The next question is whether there is a serious question to be tried in the head suit and the likelihood of success. There is need for the applicants in their affidavit in support of the application to specifically state that the question to be tried during the trial is serious and that prima facie they are likely to succeed. (See the case of ***Nitco Ltd, Versus Hope Nyakairu*** [1992-93] HCB. 135) Per Karokora J, as he then was. In the instant case, the applicants' affidavit is silent on the likelihood of success of their claim at the trial, though the chamber summons alludes to it.

Secondly the respondents through their affidavit in reply, state that they are the owners of the suit land, comprised in plots 6-86-Yusufu Lule Road this not challenged by the applicants in their adrift in support of the application. It was held in the case of ***David Bakirirahakye Vs. A.G. & 7 Oros.*** H.C.C.S. NO. MMB 14/90 (MBARARA REGISTRY) per Karokora J, as he then was, that granting an interim (temporary injunction) to restrain a respondent from using the land to which he has a certificate of title, which in law is conclusive evidence of ownership, when no fraud has been proved, would be tantamount to contravening the provisions of S. 184 of R.T.A. I entirely agree with the learned judge. This is more so in this case, where the applicants/plaintiffs are not claiming any proprietary interest at all, in the plot on which the construction is taking place.

Their interest is stated to be in public of nature. I am aware that the NEMA statute gives them the right to sue but in my view this does not diminish the fact that the suit property belongs to the respondents and in absence of proved fraud their title is impeachable!

The respondents in the affidavit in reply contented that controlling Authority of Kampala City Council and the National Environment Management Authority which is the Regulatory Authority on matters concerning the environmental matters, have given a green light to the construction of the Hotel on the present site. In my view, both KCC & NEMA are public bodies, which we put in place to ensure that private developers, like the respondents, conform to

standards as laid down by law. This would be done by carrying out some investigations.

It appears in this case this was done and they gave a green light to the respondent to go ahead with the project. This in my view weighs heavily against the applicant's success in the head suit.

As to whether the applicants will suffer irreparable damage, which would not be adequately compensated by way of damages, I do not see how the applicants are likely to suffer any irreparable damage. As I have already said, they don't have any proprietary interest in the suit property. What they appear to be claiming is that, the respondents are using their property wrongly. That they should not use it for something else. They claim further that the construction of the hotel now going on is contrary to public interest, as the area is a wetland and a green area.

On the other hand, the respondents are maintaining that both the controlling authority (KCC) and the regulatory authority (NEMA) gave a go ahead after carrying out impact assessment. In my view, these public bodies are in place to ensure that the provisions of the NEMA statute are complied with and hence they take care of the public interest the applicants are claiming to protect.

It is in my view that there is no irreparable damage to be suffered by the applicants or for that matter the public whose interest they claim to represent. Even if the damage is caused, this could be put right under the provisions of the provisions of s. 68 of the NEMA statute.

This section provides for restoration. This restoration would be definitely at the respondents' expense. All in all I find that the applicants have failed to prove irreparable damage which can not be adequately compensated in damages.

After a careful considering of all the submissions of both learned counsel and perusal of the affidavits and after considering the law applicable, both statutory and case law, I am of a considered view the this application must fail. The respondents will have their taxed costs.

Signed

AKIIKI-KIIZA
JUDGE

20.10.01

Order:
The Register to read the ruling to the parties. The right of appeal should be explained. It is as of right no leave is required.

AKIIKI-KIIZA
JUDGE
20.07.01.