

which may be fatal from the factory to make the neighbors uneasy or ill. In paragraph 15 and 16 of his affidavit the respondent avers that he does not operate the factory at night, the factory operates from 8.00a.m to 6.00p.m and that the factory machine operates for only one week within every three months, this operates only four weeks in a given year.

In his submission counsel for the applicants submitted that if orders were granted in line with the averments in the respondents affidavit in reply, that would meet the status quo as started by the respondent and would reduce the suffering complained of by the applicants. Counsel therefore prayed for an order for an order for temporary injunction to issue restraining the respondent from operating his factory outside the hours of 8.00 a.m. -11.00p.m, restraining him from operating the factory on Sundays so that he operates only six days a week from Monday to Saturday and requiring the respondent to comply with the averments in paragraph 16 of the affidavit in reply that he operates the factory one week in three months and four weeks in one year.

At this stage proof of facts on which the main suit is based is not required.

The main purpose for a temporary injunction is to preserve the status quo pending the disposal of the main suit. See *Noormohamed Jammohanod vs. Kassamali Virji Madhain (1953) EACA 8*.

The applicants have been prompted to institute this application by the conduct of the Respondent as deponed to in the affidavit in support of this application wherein in paragraph 4 it is stated: -

4: "That since the suit was instituted he has installed bigger machinery increased the time of production and the factory emits more pollution than ever before"

In his affidavit in reply the respondent stated: -

15: "That I do not operate the factory at night. The factory operates from 8.00a.m. to 6.00p.m.

16: That I operate the factory for only one week and after one week I spend about three months without switching on the factory because the materials processed are packed and sold off within about three months. That means in one year I operate the machine for only about four weeks".

The law is that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted. See *Massa vs. Achen [1978] HCB 297*.

The above averments in the respondents affidavit in reply are neither denied nor rebutted. In fact as, already pointed out above, the applicants will be satisfied if the status quo as stated by the respondent in paragraph 15 and 16 of the affidavit in reply is preserved. In the circumstances without going into further details of the merits and demerits of the application I hereby make the following orders: -

1. Pending the final disposal of H.C.C.S No.482 of 2001 the manufacturing and processing of curry powder at the respondents factory at Lutunda Zone, Kanyanya must be maintained at the status quo as stated by the Respondent in his affidavit in reply, that is to say: -

- (i) the machinery at the factory must be operated between the hours from 8.00 a.m. to 6.00p.m.
- (ii) the machinery at the factory must be operated for only one week within a continued period of three months.

2. The order as to costs in the main suit shall bind the costs for this application.

I so order.

SGD: LAMECK. N. MUKASA

AG. JUDGE

28/04/03

Mr. Kenneth Kakuru - counsel for the applicants/ plaintiffs

Mr. Lutakome - counsel for the respondent/ defendant

