

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC. APPLICATION No. 230/2001
(ARISING FROM CIVIL SUIT No. 69/2001).**

SIRAJI WAISWA:.....:APPLICANT/PLAINTIFF

VERSUS

KAKIRA SUGAR WORKS LTD.:RESPONDENT/DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING

This is an application by Chamber Summons under 0.37 rr.2, 3 and 9 of the Civil Procedure Rules for a temporary injunction for orders:-

- (a) Restraining the respondents/defendant from acquiring Butamira reserve and uprooting the forest to establish a sugarcane plantation.
- (b) Restraining the respondent/defendant servants or agents from evicting, intimidating threatening or in anyway interrupting or destroying the applicant/plaintiff's and other residents use and occupation of Butamira Forest reserve until the disposal of the main suit or until further orders of this court.
- (c) Costs of the suit are provided for.

The grounds of the application appear in the affidavit of Siraji Waiswa, the applicant, and are briefly that:

- The applicant has on his own behalf and on behalf of other peasant farmers of Butamira Forest Reserve filed a suit against the respondent/defendant;
- The suit is as yet unheard but the respondent/defendant has diverse dates entered the disputed forest reserve and uprooted trees therein and routinely destroyed seed nurseries;
- The destruction of the suit property would render the suit nugatory and result in irreparable damage to the environment;
- The applicant has a strong case with great likelihood of success.

At the hearing of the application, Mr. Kenneth Kakuru for the applicant brought to the attention of this court a letter dated 19th July 1998. It is from the Commissioner of Forestry to the Managing Director Madhvani Group of Companies. In the letter, the Commissioner was informing the addressee that a degazetting schedule had been submitted to Solicitor General's office. In the same letter, the Managing Director was being authorized to use the entire Butamira Forest Reserve within the Group of Companies estate for any activities as the company deems fit. In another letter dated 3rd August 2000 from Ag. Commissioner for Forestry, Mr. Deo Byarugaba, the General Manager of the respondents/defendant company was being informed that he author's recent visit to the reserve had revealed that the company was uprooting the planted trees in preparation for growing sugarcane.

This, said the Commissioner, was a gross violation of the law governing Forests in Uganda. A

permit (No.3264) dated 28/7/1998 was accordingly cancelled. The manager was directed to remove all company property not later than 30/4/2000.

In an appropriate response to the above measures, the company's Senior Manager Corporate Affairs K.P. Eswar wrote to the Ag. Commissioner for Forestry proposing to make available to the Forest Department a total of 1247Ha of land in Uganda within a period of 6-12 months which piece of land would then be gazetted as a Forest reserve in exchange for Butamira forest, which could be degazetted and leased to Kakira Sugar Works for general purpose use. The last letter is also dated 9th May 2000 from the District Forestry Officer Jinja addressed to the Executive Director NEMA. The gist of the letter is that Butamira Forest Reserve (1257Ha) had been extensively uprooted by the Respondent/defendant Company in preparation for sugarcane growing. The Officer was calling for intervention of NEMA. In his address to court, Mr. Kakuru noted that the threat to destroy the environment was real and it requires urgent attention.

He down played Mr. K.P. Eswar's averments in his affidavit of 21/11/2001 in which the deponent States that the respondent ceased all its activities in June 2000, way before the institution of the main suit in July 2001 more than a year later. This was re-echoed by Mr. Taremwa, counsel for the respondent. Mr. Taremwa's point is that since the respondent ceased operations in the area in June 2000, it was not necessary to bring up the application and impliedly the main suit. In his opinion, the application was being brought in bad faith and is frivolous. In reply to this, Mr. Kakuru said that the applicant does not have to wait until the environment is destroyed and he starts complaining .Any court can seek court redress to prevent likely harm to the environment.

I listened very carefully to the addresses of both counsels for the parties also had a careful perusal of the documentary evidence especially the affidavit of Eswar. The conditions for grant of the temporary injunction have been re-echoed in a number of cases. They include:

1. ***GEILLA VS.GASMAN BROWN & CO.LTD (1973) E.A.358***
2. ***NOORMOHAMED JAN MOHAMED VS. KASSAMALI VIRJI MADHVANI (1953) 20 EACA 8.***

The purpose of a temporary injunction is to preserve matters in status quo until the matter to be investigated in the main suit is finally resolved. Three conditions must generally be satisfied before an injunction of this nature is granted.

1. The applicant must show a prima facie case with a probability of success in the main suit. The facts as I gather them from the application and the pleadings in the main suit show that there are some questions of environmental concerns and individual interests to be investigated in the main suit. To declare that the applicant has not shown a prima facie case with a probability of success in the main suit before the parties are heard would be to pre-judge issues. For now, I would hesitate to state that before the hearing of the main suit commences, the defendant is set to raise a preliminary point of law that the suit is prolix, frivolous and vexatious, pre-mature, bad in law and an abuse of court process. When that stage is reached, court will make an appropriate decision on the matter. As of now, there are equal chances of success or failure by either party.

2. A temporary injunction will not normally be granted unless the applicant might otherwise

suffer irreparable injury, which would not adequately be atoned for by an award of damages. This is a matter to do with the alleged destruction of the environments far as the individual interest is concerned, the damages would be appropriate. However, a matter to do with destruction of the environment would affect not only parties to this suit but also current generations to generations to come. Damages to the applicant alone would not remedy the injury to mankind as a whole. I would therefore find that the damage complained of is of a material nature, which would not adequately be compensated by an award of damages alone.

3. Where there is doubt, the court will decide an application on a balance of convenience.

The respondent's case is that since June 2000 the threat to the environment has ceased. My reading of the letter dated 19/4/2001 addressed to Principal Private Secretary to His Excellency the President by the Permanent Secretary, Ministry of Water, Lands and Environment shows that the debate on the matter still continues. The impression that since June 2000 the threat is no more is therefore misleading. To depend on the good will of one party to the conflict would, in my view, be deceptive. And since the respondent is ready to respect the status quo, I do not see what they validly stand to lose in the event that the status quo is enforced by court order. The applicant does not have to wait until his presumed rights are violated before he lodges an application for a temporary injunction. The balance of convenience is therefore in favor of the temporary injunction being granted.

For the reasons stated above, I would grant the remedy sought herein and order restraint on the part of the defendant from uprooting the forest to establish a sugarcane plantation during the pendency of the main suit. The defendant would be restrained from evicting, intimidating, threatening or in any way interrupting the status quo during the pendency of the main suit or until a lasting solution shall be provided by Government, whichever comes first. To avoid abuse of court process, the life span of this injunction shall be six months from date of this ruling, subject to renewal for a just cause.

Costs of this application shall be in the cause.

Signed

YOROKAMU BAMWINE

JUDGE

29/11/2001.