

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

**MISC APPLICATION NO. 0474 OF 2016
ARISING FROM CIVIL REVISION NO. 305 OF 2016**

**RITA NDAGIRE KYADONDO
NAKYEKOLEDDE:.....APPLICANT**

VERSUS

**KAMPALA CAPITAL CITY
AUTHORITY:.....RESPONDENT**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant filed this application seeking for an injunction against the Respondent.

The Respondent filed an affidavit in reply rebutting the application.

For an application for a temporary injunction to succeed, the Applicant has to prove that;

- 1. He has a prima facie case with a probability of success.*
- 2. Applicant will suffer irreparable injury which would not be adequately compensated by an award of damages.*
- 3. That the status quo would not be altered and the balance of convenience is in the favour of the Applicant.*

See; **In Kiyimba Kagwa versus Katende (1985) HCB 43**. From the pleadings as filed and all the affidavits filed in this application by each party, I do find as follows:

1. **Prima facie case:**

The Applicant must show that there is a substantive suit with triable issues, which have a possibility of being decided in his/her favour. This position is espoused in **Daniel Mukwaya versus Administrator General. HCCS NO. 630/1993(unreported)**.

I do find that the Applicants have filed Civil Suit No. 305/2015. The same is still pending. From the plaint and the WSD, as filed, it is clear that there are triable issues between these parties. The suit is not *vexatious or frivolous*. This requirement is therefore proved.

2. **Irreparable injury**

This is considered to determine if at the end of the trial, it is possible to remedy the mischief complained about by the Applicant by an award of damages. See **American Cynamid versus Ethicon Limited [1975] AC 396**.

I have examined the plaint and the WSD, and I have also looked at the pleadings before me. I have noted that the matter (suitland) includes a school, which is threatened by the activities of both parties. It is not clear who demolished it. However, there is evidence suggestive of a possibility of erasing it to put up a market. All these activities would cause irreparable damage.

The school and its mandate cannot, if erased, be replaced by an award of damages. I do therefore find that irreparable damage would occur. This ground is proved.

Balance of Convenience

This means that if the risk of doing an injustice is going to make the Applicants suffer then, the balance is in their favour. See; **Gapco U Ltd**.

versus Kawesa Badru HCMA NO. 259/2013 (unreported). This ties in well, with the need to maintain the *status quo*. In **Legal Brains Trust Ltd. versus AG.(HCMA 638/2014)**, it was held that;

‘the purpose of tilting the balance in favour of a party is to preserve the status quo’.

Therefore in this case, there is need to preserve the *status quo* so that the subject matter is not rendered a nullity. This is the reason I find that there is need to protect the school children so that their school operates normally until the suit is disposed of.

I find that the balance tilts in favour of the Applicant.

All in all, I find that the Applicant has satisfied the grounds for this grant. The application is granted in terms as prayed. The application is granted.

Costs in the cause.

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Henry I. Kawesa

J U D G E

02/11/2017

02/11/2017:

Kibirango Erasto for the Plaintiff.

Plaintiff by lawful Attorney Maweje - having revoked powers given to Muwonge Patrick.

Respondent by Jackline Atugonza.

Kibirango: application is for ruling.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in the presence of the above parties.

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Henry I. Kawesa

JUDGE

02/11/2017