

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPLICATION NO. 56 OF 2023**  
*(ARISING FROM HCMA NO.532 OF 2021)*  
*(ARISING FROM HCMC 225 OF 2021)*

**LEGAL BRAINS TRUST (LBT) LTD:::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**ATTORNEY GENERAL:::::::::::::::::::::::::::::::::RESPONDENT**

**CORAM: HON. MR. JUSTICE OSCAR JOHN KIHICA, JA**

*(SINGLE JUSTICE)*

**RULING OF COURT**

This application is brought under Sections 10, 11, 12(1) and 33 of the Judicature Act and Rules 2 (2) and 6(2)(b),44(1) of the Judicature (Court of Appeal Rules) Directions seeking for orders that;

- a) a temporary injunction doth issue restraining the Respondent and its agents or servants or any other person or authority from implementing the intelligent Transport Monitoring System (ITMS) or any programme of compulsory digital surveillance of all motor vehicles in Uganda pending the disposal of an appeal from HCMA 532 of 2021 or until further orders of this Honorable Court; and
- b) costs for this appeal *(sic)* be provided for.

## **Background**

The Applicant filed Miscellaneous Cause No. 225 of 2021 in the High Court (Civil Division) on 28<sup>th</sup> July 2021 seeking for a declaration that the presidential directives, cabinet resolutions, advice/approval by the Attorney General, agreements, contracts, statutory instruments and other documents by whatever name called, through which government of Uganda purportedly engaged or otherwise authorized a Russian Company called JOINT STOCK COMPANY GLOBAL SECURITY or any other person or authority to execute a programme of compulsory digital surveillance of all motor vehicles, motorcycles and other vessels in Uganda, violate or threaten to violate a bundle of fundamental rights and freedoms protected by Articles 21(1), 24, 27, 38, 40(2), 43, 44(a) and 45 of the Constitution and are illegal and further sought an injunction restraining the Respondent and its servants or agents or any other authority from enforcing the same.

The Applicant also filed an application for a temporary injunction order vide Miscellaneous Application No. 532 of 2021 seeking the same orders against the Respondent, which application was dismissed on 7<sup>th</sup> February 2023. The Applicant filed a Notice of Appeal on the same day and filed an appeal vide Court of Appeal Civil Appeal No. 88 of 2023. The Applicant also filed this application for a temporary injunction pending the hearing of the appeal in this court.

The grounds upon which this application is premised are stated in the Notice of Motion and more specifically set out in the affidavit of **MS. ISABELLA NAKIYONGA** on the 17<sup>th</sup> of February 2023 and are briefly that: -

- 1. The High Court has, after inordinate delay, injudiciously denied the Applicant the remedy of a temporary injunction sought vide HCMA 532 of 2021.*
- 2. The effect of the interlocutory decision of the learned judge complained of is that it gives the Respondent a green light to implement the novel **Intelligent Transport Monitoring System (ITMSA)** notwithstanding the following*

*legitimate complaints raised against its commencement in the current format vide **HCMC 225 of 2021** which is pending determination in the lower court.*

- 3. The Applicant has promptly filed a notice of appeal.*
- 4. That the appeal raises substantial questions of law particularly regarding the correct test for a temporary injunction and the application of trite principles such as prima facie case and irreparable loss of injury in a situation of threatened violation fundamental human rights and freedoms;*
- 5. If the temporary injunction hereby sought is not granted, the Respondent threatens and intends to materially change the status quo by implementing a manifestly intrusive and chilling programme of compulsory digital surveillance of all motor vehicles, motorcycles and other vessels in Uganda, despite the pendency of High Court Miscellaneous Cause No. 225 of 2021 in which issues are raised concerning the legality of the impugned programme in its current format;*
- 6. The balance of convenience favors the Applicant who seeks a rights-based inquiry that will prevent the interested violation of fundamental rights to privacy, dignity, good governance and equality of opportunities and secure respect for human rights and the rule of law by the Respondent in the performance of its constitutional and statutory obligations.*
- 7. That if this Application is not granted, the appeal will be rendered nugatory and hence a serious miscarriage of justice.*

The Respondent filed an affidavit in reply deposed by **Haji Kakande Yunus** filed on the 24<sup>th</sup> of March 2023, opposing the application. The grounds for opposition, as set out in the affidavit in reply, can be summarised as follows;



1. **THAT** I have been advised by Attorneys in the Attorney General's Chambers that this application does not disclose any prima facie case against the Respondent and the Applicant's appeal does not raise a prima facie case.
2. **THAT** I know that this application does not disclose any grounds for the grant of a temporary injunction.
3. **THAT** I know that the Applicant previously applied for a temporary injunction vide HCMA No. 532 of 2021 in the High Court, which was heard on merits and in a ruling delivered on 7<sup>th</sup> February 2023, the application was dismissed by the High Court for being devoid of merit.
4. **THAT** I know that in the past and present, Uganda has witnessed a series of a shocking and gruesome crimes committed by criminals moving by motor vehicles and motorcycles.
5. **THAT** in 2018. I know that H.E the President raised concerns about the deteriorating security situation in the Country and proposed digital monitoring of all motor vehicles and motorcycles as one of the solutions.
6. **THAT** I know that Government of Uganda identified M/S Joint Stock Company Global Security, a Russian company to provide a digital monitoring and tracking system for motor vehicles and motorcycles.
7. **THAT** I know that on 22<sup>nd</sup> March 2019, the Government of Uganda and M/s Joint Stock Company Global Security executed a Memorandum of Understanding to carry out a feasibility study for an intelligent Transport Monitoring System("ITMS").

8. **THAT** I know that on 23rd July 2021 an agreement was executed between the Government of Uganda and M/s Joint Stock Company Global Security for provision of digital monitoring and tracking system of motor vehicles and motorcycles in Uganda through a real time control and monitoring center.
9. **THAT** I know the ITMS is primarily a security system whose objective is to quickly and accurately map all vehicles and motorcycles in particular should a crime occur.
10. **THAT** I know that implementation of the ITMS is in its final stages with productions and issuance of the new vehicle registration plates slated to commence with government vehicles and motorcycles.
11. **THAT** I know that the Ministry of Works has already issued new registration plate regulations that provide for an inbuilt sensor embedded in a registration plate to be synchronized with an electronic device installed in the motor vehicle.
12. **THAT** I know that the balance of convenience is in the favour of the Respondent who has a constitutional duty to protect all its citizens and to prevent and detect crime.

### **Representation**

At the hearing of this application, **Stanely Oketcho, Pius Katumba** and **Roger Mugabi** appeared for the Applicant, while the Respondent was represented by **Allan Mukama**.

Both parties filed written submissions which I have put into consideration in determining this application.

For a temporary injunction to be granted, court is guided by certain principles which were laid out in the case of **Shiv Construction V Endesha Enterprises Ltd S.C. Civil Appeal No. 34 of 1992** where it was held that;

***“The Applicant must show a prima facie case with a probability of success. An injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury, which could not be compensated in damages. When the court is in doubt it will decide the application on the balance of convenience.”***

Thus, the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of. The conditions for the grant of a temporary injunction are;

1. Firstly, that, the Applicant must show a prima facie case with a probability of success.
2. Secondly, such injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
3. Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

An order for a Temporary Injunction is granted so as to prevent the ends of justice from being defeated.

#### **1. *Prima facie* case with likelihood of success**

In the grounds as set out in the Notice of Motion, include the assertion that the appeal rises substantial question of law particularly regarding the correct test for a temporary injunction.

The Applicant’s affidavit in support of the application however, does not attach the Memorandum of Appeal. Nonetheless reference is made to possible grounds of appeal in paragraph 13 of the Applicant’s affidavit in support of the application deponed by Isabella Nakiyonga. Paragraph 13 states as follows;



***“13. THAT I have been advised by the Applicant’s lawyers, Centre for Legal Aid, whose advice I verily believe to be true and correct that-***

- a) The learned Judge erred in law by applying the wrong test for determining an application for a temporary injunction in a situation of threatened violations;***
- b) The learned Judge erred in law by ignoring binding precedent on the correct test for determining an application for a temporary injunction relating to threatened infringement of human rights;***
- c) The learned Judge erred in law and fact in finding that the Applicant had not established a prima facie case that warrants a grant of an order of a temporary injunction pending the hearing of the main cause;***
- d) The learned Judge erred in law and fact in holding that no irreparable loss could be established in the circumstances and in finding that it was unnecessary to dwell on the balance of convenience.***
- e) The learned Judge erred in law and fact in holding that there no need for preservation of the status quo had been established;***
- f) The learned Judge erred in law and fact when he failed to properly evaluate the evidence on record and came to the wrong conclusion that it was not imperative and/or an appropriate remedy to issue an order of temporary injunction of the main dispute were to be justly investigated.***
- g) The learned trial Judge breached the Applicant’s right under Article 28(1) for speedy determination of HCMA 532 of 2021 when he delivered his ruling after 529 days without explanation and without form assurances and appropriate case management directives to ensure that HCMC 225 of 2021 would also nor suffer inordinate delay;”***

Although the affidavit in support of the application does not contain any statement therein averring that the Applicant's appeal has a likelihood of success, the Applicant in paragraph 13 of the affidavit in support lays out the questions that are to be determined on appeal.

In the case of **Osman Kassim Vs Century Bottling Company Ltd Civil Appeal 34 of 2019**, the Supreme Court of Uganda stated thus;

***“ It is trite that in order to succeed on this ground, the Applicant must, apart from filing the Notice of Appeal, place before Court Material that goes beyond a mere statement that the appeal has a likelihood of success.....the Applicant did not find it necessary to attach to his affidavit in support of the application a draft Memorandum of Appeal to indicate the proposed grounds of appeal....the important questions are not even mentioned in his affidavits so as to give court an idea about the possible ground of his intended appeal. We are in the circumstances unable to establish likelihood of success in the absence of evidence”***

Since the Applicant has set out the important questions to be inquired into on appeal, I find that the Applicant has established a prima facie case on appeal.

## **2. Irreparable damage**

The second consideration is whether the Applicant will suffer ***irreparable damage or that the appeal will be rendered nugatory if the injunction is not granted.***

The pending appeal, arises out of a public interest action which is still pending in the High Court. What is sought, is to stop the implementation of a public policy which the Applicant herein alleges will infringe on the fundamental right of the citizens of Uganda. The Respondent, as I understand it, argues that the policy has been necessitated by the rise in criminal activities which ought to be curbed so as to ensure safety of the citizenry. I find difficulty in appreciating the argument for irreparable loss in the context of the matter that is being litigated



in the High Court. The current status quo is that the policy is yet to be implemented. If it were to be implemented, what loss would the applicant suffer? This question has not, in my view, been satisfactorily answered.

**Black's Law Dictionary, 9<sup>th</sup> Edition at page 447** defined "irreparable damage" to mean;

***"damages that cannot be easily ascertained because there is no fixed pecuniary standard measurement"***

In my understanding, the Applicant has to show that the damage bound to be suffered is such that it cannot be undone. No amount of monetary recompense can restore the injured party to the position he or she was before the damage was visited on the individual.

In the instant case, the Applicant has not demonstrated the injury they are likely to suffer if the ITMS is implemented. I am inclined to agree with the Respondent's counsel submission that the implementation of the Intelligent Transport Monitoring System will only require persons who own cars to obtain new number plates that are embedded with digital tracking capacities. The inconvenience likely to be suffered as a result of this move can be sufficiently atoned for in damages since all people who will acquire the new number plates will pay a specific sum of money which is ascertained and can be receipted. In the event that the need arises, the same can be reimbursed to all persons who will have incurred the expense.

In the case of **American Cynamide vs Ethicon [1975] 1 ALL E.R. 504** it was held;

***"The governing principle is that the court should first consider whether if the Plaintiff were to succeed at the trial in establishing his right to a Permanent Injunction he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the Defendant's continuing to do what was***

***sought to be enjoined between the time of the Application and the time of the trial.***

Applying the above principals of irreparable damage, I am therefore unable to find that the Applicant will suffer irreparable damage.

### **3. Balance of Convenience**

The concept of balance of convenience was expounded in **Jayndrakumar Devehand Devani Vs. Haridas Vallabhdas Bhadresa & Anor, Civil Appeal No. 21 of 1971** where the Court of East Africa observed *inter alia* that:

***"Where any doubt exists as to the plaintiff's right, or if his right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff."***

In essence, balance of convenience lies more on the one who will suffer more if the Respondent is not restrained in the activities complained of in the appeal. In the circumstances of the matter before me, the pending appeal seeks to overturn the decision of the High Court which refused to grant the order of a temporary injunction.

If I were to grant this application it would amount to determining the appeal. The Respondent would therefore suffer an injustice if the orders in this application would in effect determine the pending appeal. The balance of convenience therefore tips in favour of the Respondent.



Given the findings above, I find no merit in the application and order as follows;

1. The application is dismissed.
2. The costs of this application shall abide the outcome of the appeal.

I so order

Dated this .....<sup>26<sup>th</sup></sup>.....day of .....<sup>June</sup>.....2023.

.....  
OSCAR JOHN KIHKA  
**JUSTICE OF APPEAL**