

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[COMMERCIAL DIVISION]

HCT-00-CC-MA-0284 -2005

[Arising from HCT-00-CC-CS-286-2005]

1.SEDRACH MWIJAKUBI  
2.MUKITALE ASIIMWE  
3.JOSHUA BYANGIRE  
4.FENAKANSI BYABESIZA  
5.SOLOMON KIIZA

APPLICANT

Versus

BRITISH AMERICAN TOBACCO UGANDA LTD

RESPONDENT

**BEFORE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The applicants bring this application under Section 33 of the Judicature Act, Sections 98 and 64 of the Civil Procedure Act and Order 48 Rules 1 and 3 of the Civil Procedure Rules, seeking an order to issue against the respondent, its agents and servants restraining them from purchasing the applicants' unbought tobacco until court assesses and determines the average and fair price to be paid by the respondent, and that provision be made for costs of this application. The application is supported by two affidavits sworn by the applicant no.1
2. The respondent opposed this application and filed two affidavits, sworn by Dr. Glenn Stocks and Albert Byamugisha.
3. The applicants are contract farmers with the respondent, growing tobacco. They have brought the head suit on their own behalf and on behalf of 2838 farmers seeking compensation for unpaid tobacco at an average and fair price determined by court. The grievances of the applicants giving rise to this application are set out in paragraphs 4 to

11 of the applicant no.1's affidavit in support of this application and I shall set them out in full.

“4. That on Saturday 2<sup>nd</sup> April 2005, the Respondent issued statements on Bunyoro Broadcasting Service, Liberty Broadcasting Services and Radio Hoima in the Local Lunyoro language indicating that it would unilaterally purchase the Applicants' tobacco on 6<sup>th</sup> April 2005 at its discretionary price. This statement has also been reported in the attached Monitor Newspaper of 5<sup>th</sup> April 2005 as annexure “B”.

5. The Radio release further indicated that all tobacco should be transported from the villages and market sheds to the Respondent's Kibati Go—downs in Hoima where it would be bought on a non-consensual price.

6. In fact the Respondent staff and casual workers have started clearing and preparing the several market sheds in readiness to have the Tobacco transported to the said Kibati Go-downs.

7. The applicant Tobacco farmers who are mostly poor and illiterate peasants prone to exploitation are now intimidated by the Respondent's ill-intentioned actions tailored to deny them a fair price determined by Court.

8. The Applicants' tobacco which has been lying in the unprotected market sheds is now perished and wasted that the Respondent can not actually grade it to determine its actual price and therefore attempts to buy the perished and wasted tobacco will deny the Applicants value for their crop.

9. That the planned action of the Respondent is in bad faith and is intended to undermine inter alia the Applicants suit and Court's investigation and assessment of an average and fair price for the benefit of the Applicants.

10. That the Respondent as an adverse party to the suit in which several orders are sought against it, can not independently impartially and fairly determine a fair price in interests other than its own considering that the matter is now a subject of litigation.

11. That the Applicants will suffer a substantial pecuniary loss in their claim against the Respondent unless they are protected and the price at which their tobacco is to be compensated is independently and fairly determined by Court.”

4. In reply to this affidavit Dr. Glenn Stock swore an affidavit that denied ill motivation on the part of the respondent. The respondent had suspended purchase of tobacco from Bunyoro or parts of it due to the poor quality and foreign matter presence in the tobacco. Following representations made to Parliament by Bunyoro Tobacco Farmers Association, the respondent made an offer to purchase tobacco at a fair market price, write of 50% of the loans to the farmers, and contribute to transport costs for the tobacco to buying centres.
5. The relevant Parliamentary Committee reviewed the positions of both sides and endorsed the offer of the respondent who went ahead to make arrangements to purchase the tobacco, until an interim order of this court, ordered him not to purchase the tobacco. It is the contention of the Respondent that

“the interim order denies, and the order applied for would deny the respondent contracted farmers who are neither real plaintiffs in the suit nor the plaintiffs in

it from enjoying the benefits derived from a petition which was filed on their behalf by their association.” (See Paragraph 2 (c) of Dr. Glenn Stock’s affidavit.)

6. The Applicant No.1, in his affidavit in rejoinder, stated that he was the chairman of Bunyoro Tobacco Farmers Association, who had in fact made the petition to parliament. He denied that there was any agreement reached between the association and the respondent. It is contended for the Applicant that the respondent is proceeding unilaterally in spite of this suit.
7. Mr Fred Muwema, learned counsel for the applicants, submitted that the tobacco grown by the applicants is now perished and totally wasted. It is not possible for the respondent to grade this tobacco and determine its actual price. He submitted that the applicants will suffer substantial loss unless the rate at which they are compensated is determined by this court. He submitted that buying tobacco is now contrary to Tobacco (Control and Marketing) Act, as it is outside the buying season that has to be gazetted by statutory instrument.
8. Dr. Byamugisha, learned counsel for the respondents, made it clear that the respondents have no intention of purchasing wasted and perished tobacco, but only good tobacco. If the applicants have wasted tobacco, they need have no fear that it will be bought by the respondent. Dr. Byamugisha attacked bringing this application under Section 33 of the Judicature Act, Sections 64 and 98 of the Civil Procedure Act, which, he stated, are not applicable at all, in the circumstances. He submitted that there are statutory provisions which provide specifically for interlocutory or temporary injunctions, which the applicant could have proceeded under, but did not do so, since the circumstances of the applicants’ case did not meet the criteria set by those provisions. He prayed that this application be dismissed.
9. I have looked at Section 33 of the Judicature Act, and I am at a loss as to how it can be the basis for this application. Section 33 is a general provision dealing with remedies as provided by the law. It states,

“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act, or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be

completely and finally determined and all multiplicities of legal proceedings concerning any of the those matters avoided.”

10. It is not shown by the applicants how the order sought would prevent a multiplicity of proceedings, or if not granted, would give rise to a multiplicity of proceedings between the parties, leaving unresolved issues for further contest. An injunction is not one of the final remedies sought in this case so that if an interlocutory order is not made at this stage, the final remedy that the applicants would be entitled too at the conclusion of proceedings would be in jeopardy, and this action would have been in vain
11. Section 64 of the Civil Procedure Act is not remotely helpful to the applicants’ case. It states in part,

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed—

(a)	(b)	(c)
	grant a	grant a
	temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property be attached and sold;”	temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property be attached and sold;”
12. As was rightly pointed out by Dr. Byamugisha the operative phrase here is “if it is so prescribed”. This section comes into play, inter alia, only in cases where it is already provided for in the law for the grant of some relief such as the grant of a temporary injunction. This provision offers no comfort to the applicants. It cannot form the legal basis for bringing the present proceedings. In any case the applicants have not established factually how the ends of justice are likely to be defeated by the conduct of the respondent complained of.
13. The applicants have also based their application on Section 98 of the Civil Procedure Act, which gives recognition to the inherent jurisdiction of courts to “make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.” I do not find that the applicants have in any way made out a case for this court to resort to its inherent powers in the circumstances of this case.
14. It appears to me, if the contention of the applicants, that the tobacco in their possession is wasted and perished, is accepted, then this wasted and perished tobacco, cannot be purchased. The applicants have brought an action for compensation against the respondents in respect of this tobacco. The logical thing to do is for the applicants to proceed and prove their claim for compensation of what appears to be a total loss rather than seek interlocutory orders restraining the respondent purporting to buy what is worthless.

15. The applicants have not shown that the respondent is compelling the applicants to accept its offer. The applicants can choose to have nothing to do with the respondents until and after this case is finalised. This should be their choice, and not imposed by court. Or indeed other tobacco farmers who have contracted with the respondents should not be constrained from dealing with the respondents should they choose to. In any case the applicants have no tobacco to sell to the respondents as their tobacco has perished and wasted.
16. The order sought does not intend to preserve evidence. It is intended to constrain the respondent from relating to its contracted farmers. I do not see how the failure to grant the order, would cause any or substantial loss to the applicants. This is not explained in the affidavits of the applicants or in the address of counsel for the applicants. It is not enough just to claim substantial loss without more. In any case even if one assumes that the conduct of the respondent will inflict substantial loss on the applicants, is this enough for a temporary injunction to issue in the circumstances? I think not.
17. The applicants must find a legal basis for their application. Presently there is no such basis for this application. It is dismissed with costs.

Dated at Kampala this 4<sup>th</sup> day of May 2004

FMS Egonda-Ntende  
Judge