

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MUBENDE**  
**MISCELLANEOUS APPLICATION NO.071 OF 2024**  
**(Arising from Civil Suit No.23 of 2024)**

**SAMALIE KASOMA**

**PLAINTIFF**

**VERSUS**

- 1. MUBENDE MUNICIPAL COUNCIL**
- 2. KYENDA TOWN COUNCIL**
- 3. LWAMWENGE JOHN**

**RESPONDENTS**

**BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI**

**RULING**

The Applicant filed Civil Suit No.23 of 2024 against the Respondents for inter alia a declaration that the Respondents' action of constructing a road through her land is illegal and amounts to trespass, an order for recovery of the suit land, a permanent injunction, General damages and other reliefs.

The present application was filed by Chamber Summons with a supporting affidavit for orders that :-

1. A temporary injunction is issued restraining the Respondents, their agents and servants from constructing a road, alienating the suit land, evicting the applicant, clearing of her gardens, cutting trees and/or do anything on her land pending the disposal of Civil Suit No.23 of 2024.
2. Costs of the Application to be provided for.

The grounds of the application which are also restated in the affidavit in support are that the Applicant is by virtue of her being a beneficiary and



an Administrator of the estate of late Charles Kyeyune registered on the certificate of title for land comprised in Buwekula Block 335 Plot 36, land at Bugalya in Mubende District.

The Respondents and their agents have embarked on constructing a road through her land and in the process massively cutting trees and food crops which actions shall alter the status quo before the main suit is heard and concluded.

That the balance of convenience is in her favour and it is in the interest of justice that a temporary injunction is granted to restrain the Respondents from further destruction pending disposal of the main suit.

The Applicant attached to the supporting affidavit a number of photographs showing the activities indulged in by the Respondents' servants/agents.

**Representation.**

M/S Ojulong Law Chambers & Advocates represent the Applicant while Mr. Mark Muwonge of the Attorney General's Chambers appeared for the Respondents.

**Decision.**

On 26<sup>th</sup> March 2024 the counsel appeared in court for the hearing of the Application. It was argued for the Applicant that no Affidavit in Reply had been filed for the Respondents implying that the application was not contested by the Respondents.

Counsel submitted that proof of service on the Respondents was contained in the Affidavit sworn by Buhanga Robert and Mivule Israel duly filed. The court was urged to allow the application on account of its not being contested.





Counsel for the Respondent argued in rebuttal that service had been effected on his clients on 21<sup>st</sup> March 2024 yet the hearing had been fixed for 23<sup>rd</sup> March 2024 in effecting denying them time to prepare for the hearing of the application.

Counsel sought for directions to file an Affidavit in Reply and submissions which was granted by the court. The Respondents were directed to serve an Affidavit in Reply with submissions on or before 3<sup>rd</sup> April 2024. Any rejoinder was to be filed by Counsel for the Applicant on 8<sup>th</sup> April 2024 and the court was to deliver its ruling on 15<sup>th</sup> April 2024.

An interim order issued by the Registrar of the court was extended to the 15<sup>th</sup> April 2024. The Registrar was directed to visit the locus and submit to court a report on the activities attributed to the Respondents.

As at the 4<sup>th</sup> April 2024 the Respondents had not filed any Affidavit opposing the application. The presumption is that they do not oppose the Application. It is also trite that under **Order 17 rule 4** of the Civil Procedure Rules the court can proceed to conclude any matter in which the parties have not moved their cases within the time allocated to them for performing any necessary act.

**Faustino Ntambara V Jack Kityo. HC Misc.Application No.1082 of 2019; Kiiza Augustine V Katusabe Vincent.[2018]UGGCLD 25.**

The Application bears merit. I find this to be a proper case for the grant of a temporary injunction restraining the Respondents and/or their agents/servants from carrying out any further construction of a road on the Applicants land. This includes cutting trees or any crops on her land until Civil Suit No.23 of 2024 is finally disposed of by the court.

I so order.

I find comfort in the decision from the fact that there is a pending suit pending disposal in this court. The report by the Court Registrar also



reflects that the Respondent's actions point to wanton destruction of rare flora and fauna which cannot be atoned for in damages. The balance of convenience also tilts in favour of the Applicant. Costs shall be in the cause.



Moses Kazibwe Kawumi

Judge

8<sup>th</sup> April 2024