

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO 11 OF 2024
(Arising out of Fort Portal High Court Civil Suit No. 12 of 2024)

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RUSTIC EXPEDITIONS LTD=====APPLICANT

VERSUS

10 **UGANDA WILDLIFE AUTHORITY=====RESPONDENTS**

BEFORE HON. JUSTICE DAVID S.L. MAKUMBI

Applicant represented by Wetaka, Bukenya and Kizito Advocates

15 Respondent represented by Legal Unit – Uganda Wildlife Authority

RULING

20 This is a ruling on an application brought under the provisions of Section 98 of the Civil Procedure Act, Section 38 of the Judicature Act and Order 41 Rules 2 and 9 of the Civil Procedure Rules seeking orders as follows.

- 1) A temporary injunction doth issue refraining the Respondent and its agents from conducting the procurement of investment proposals for the grant of concessions for the refurbishment and operation of the Bwenda Guest House at Katwe in the Queen Elizabeth National Park until determination of Fort Portal High Court Civil Suit No. 12 of 2024.
- 2) A temporary injunction doth issue restraining the Respondents and its agents from any acts or omissions designed to induce the Applicant into breaches of contract(s) and/or interference with the Applicant’s business relations.
- 3) The costs of this application be provided for.

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BACKGROUND:

35 The Applicant's grounds in this matter in summary are that on 24th October 2023, the Applicant sought a grant of Letter of No Objection from Kasese District Local Government (hereinafter referred to as KDLG) for purposes of tourism development of Bwenda Guest House into a high-end lodge to the tune of One Million Five Hundred Thousand United States Dollars (USD 1.5M).

40 On 20th December 2023 KDLG responded granting No Objection to the proposed development. Both the request and grant were copied to the Respondent. However, despite the Respondent being aware of the Applicant's intentions as per the foregoing communications the Respondent went ahead to invite bids in December 2023 for the development and operation of tourist facilities in Queen Elizabeth Conservation area and to refurbish and operate
45 Bwenda Guest House near Katwe within Queen Elizabeth National Park.

The Applicant contends that the Respondent's actions despite notice of the Applicant's intentions risks contractual liability and reputational damage to the Applicant as the Applicant had already taken tremendous strides to raise the capital for the development.

50 The Applicant further contends that if the injunction is not granted it will render the main suit nugatory and it will suffer irreparable commercial and reputational damage and that the balance of convenience is in favour of the Applicant as the bid invitation is still open.

55 The Applicant also submitted in its arguments that it has a prima facie case with probability of success.

For its part the Respondent contends that the application is misconceived as KDLG has no legal mandate to sanction and approve developments within wildlife protected areas and that furthermore the Applicant responded to the invitation for bids and did in fact submit a bid.

60 The Respondent also contends that the Applicant has no cause of action against the Respondent in Civil Suit No. 12 of 2024 and that the suit is frivolous and vexatious.

The Respondents averred that it is not bound in any contractual obligation with the Applicant concerning the development and refurbishment of Bwenda Guest House and that a temporary injunction in this matter would only serve to bar the Respondent from executing a statutory mandate of sustainably managing wildlife.

ANALYSIS:

The main issue here is whether or not in the circumstances the Applicant is entitled to a temporary injunction restraining the Respondent from continuing the process of receipt of bids for the refurbishment and development of Bwenda Guest House and from any acts or omissions likely to adversely affect the Applicant's business relations concerning the same.

The law regarding the grant of temporary injunctions is well settled. In the Supreme Court Case of **Shiv Construction Ltd v Endesha Enterprises Ltd - Civil Appeal No. 34 of 1992**, the late Supreme Court Justice H.G. Platt drawing reference from the case of **Gielila v Casman Brown (1973) E.A 358** as the locus classicus in Uganda and East Africa, reiterated the guidance of the Court of Appeal for East Africa which would guide the courts in such a matter. 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. It is also a matter of concern to the court whether a valid contract has been made.

Drawing from the decision above I shall first address the question of whether there is a prima facie case with a probability of success. In this regard I observe that the Respondent argues that KDLG has no legal mandate regarding the development and refurbishment of Bwenda Guest House and that as such the Applicant has no cause of action against the respondent in the intended main suit. For its part the Applicant argues that KDLG's grant of No Objection to the Applicant's proposal was based upon the fact that KDLG has authority over Bwenda Guest House. The Applicant did not adduce any evidence in this regard though.

Concerning the legal mandate of the Respondent in this matter, I have had the benefit of looking at the Uganda Wildlife Authority Act. Section 6(1) thereof

provides for the functions of the Respondent in paragraphs (a) and (g) as follows.

100 “(a) To ensure the sustainable management of wildlife conservation areas.

...

(g) In consultation with other lead agencies, to control develop or licence the development of tourist facilities in wildlife protected areas.”

105 On the basis of the foregoing provision of the law and the Respondent’s contention that Bwenda Guest House is situated within Queen Elizabeth National Park, I find no plausible basis upon which to conclude that a there exists a *prima facie* case on the part of the Applicant against the Respondent. The law clearly establishes the Respondent as the controlling authority when it
110 comes to development of tourist facilities in wildlife protected areas.

I also have in mind Paragraph 5 of the Affidavit in Rejoinder deponed by Antony Natif on 21st February 2024 wherein the Applicant admits to having submitted an investment proposal in response to the Respondent’s call for bids in this matter. The reasons for having submitted the proposal do not make
115 sense to me. This is because for all intents and purposes the main basis upon which an injunction is sought from this court in this matter is on the grounds that the Applicant intends to bring a suit ostensibly on the grounds that KDLG and not the Respondent has authority over Bwenda Guest House. By submitting a bid, the Applicant is in essence demonstrating uncertainty about
120 whether KDLG does in fact have authority over Bwenda Guest House.

However, notwithstanding the actions of the Applicant in submitting a proposal to the Respondent, the fact remains that based upon the provisions of Section 6(1) of the Uganda Wildlife Authority Act and the absence of any
125 *prima facie* evidence in contradiction of the same, it is my view that the Applicant has not made out a *prima facie* case warranting the grant of an injunction in this matter.

RESOLUTION:

To the extent that there is no *prima facie* case apparent to me in this application I find that the application fails for lack of sufficient grounds. I find

130 no need to get into the rest of the grounds for temporary injunction as this
ground alone resolves the entire matter.

ORDER:

This application is accordingly dismissed with costs to the Respondent.

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David S.L. Makumbi

JUDGE

07/03/2024

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