



[2] The grounds of the application are set out in the Notice of Motion and in an affidavit sworn in support of the application by **James Okori**, the Applicant's head of investigations. Briefly, the grounds are that the Government of Uganda through certain presidential directives, cabinet resolutions, agreements, contracts and statutory instruments has purportedly engaged a Russian company called Joint Stock Company Global Security to execute a compulsory digital surveillance of all motor vehicles, motor cycles and other vessels in Uganda using an electronically activated device to be affixed to the motor vehicle at the owners' cost to enable government to gather data including location information without the owner's or user's knowledge. The Applicant states that although the stated purpose of the surveillance is to help government investigate criminals, parliament and the people were not consulted before it was launched and there are no clear safe guards for protecting the privacy and data of people without connection to criminality and the technology may be used for unauthorized purposes.

[3] The Applicant further states that the contracted company lacks the technical and financial capacity to execute a lawful surveillance programme and is neither registered nor certified by Uganda Registration Services Bureau and National Information Technology Authority Uganda to conduct IT business in Uganda. It is also stated that the government breached established Public Procurement Regulations and its obligations to carry out due diligence and neither was a data impact assessment or survey pertaining to global best practices undertaken. As such, the implementation of the programme is in breach of the Respondent's obligations to respect, uphold and promote the rights to privacy, dignity, good governance and equality of opportunities. The Applicant concludes that the Respondent's functions will not be crippled if the order of a temporary injunction is issued and the balance of convenience favors the Applicant. On the other hand, if the temporary injunction is not granted,

the main suit will be rendered nugatory and irreparable harm will be occasioned to the public trust in Uganda's judiciary.

[4] The Respondent opposed this application through an affidavit in reply affirmed by **Haji Kakande Yunus**, the Secretary, Office of the President, who stated that upon the background of shocking gruesome crimes and deteriorating security in Uganda, the President of the Republic of Uganda proposed solution of a digital monitoring system and identified a Russian Company, M/s Joint Stock Company Global Security, as a potential service provider of a digital monitoring system. He stated that due diligence was conducted by a technical committee which concluded that the company had the capacity to undertake the project. A Memorandum of Understanding was executed with the company on 22<sup>nd</sup> March 2019 to carry out a feasibility study for an Intelligent Transport Monitoring System (ITMS) and an agreement was executed on 23<sup>rd</sup> July 2021 for the provision of a digital monitoring and tracking system.

[5] The deponent stated that the law permits collection of data for national security, prevention, detection and investigation of an offence or breach of the law and the data collected shall be subject to data collection principles. He further stated that although the financial model has not yet been approved, it was not mandatory for a foreign company intending to do business in Uganda to register with URSB. He also stated that the agreement in issue is not governed by procurement laws and that the implementation is not a breach of the right to privacy as it will not be used to trail ordinary law abiding citizens but only serve to aid law enforcement in case of commission of a criminal offence and, as such, the derogation of the right to privacy is demonstrably justifiable under the law.

[6] The Applicant filed an affidavit in rejoinder whose contents I have also taken into consideration.

### **Representation and Hearing**

[7] At the hearing, the Applicant was represented by **Mr. Stanley Oketcho** while the Respondent was represented by **Mr. Martin Mwambustya** and **Mr. Atwine Geoffrey**. The parties agreed that the hearing proceeds by way of written submissions which were duly filed by both counsel and have been considered while determining this matter.

### **Issues for Determination by the Court**

[8] One issue is up for determination by the Court namely;

**Whether the Applicant has satisfied the conditions for grant of an order of a temporary injunction?**

### **Submissions by Counsel for the Applicant**

[9] Counsel for the Applicant relied on the case of ***Kiyimba Kaggwa v Hajji Katende (1986) HCB 43*** for the position of law on the conditions for grant of an order of a temporary injunction, namely, that there is a status quo that needs to be preserved; there is a prima facie case with a probability of success; the applicant is likely to suffer irreparable damage which would not be adequately compensated in damages; and in case the court is in doubt, the balance of convenience lies with the applicant. On the need to preserve the status quo, it was submitted by Counsel for the Applicant that there is a status quo to be preserved on the basis that the Respondent's novel Intelligent Transport Monitoring System (ITMS) is not prescribed by law, that the financial model has not been approved, the Russian company is yet to be registered with the National Information Technology Authority Uganda (NITA-U) as well as the Uganda Registration Services Bureau. Counsel further stated that there is no statutory instrument and road map for rolling out the ITMS, no vehicles or

vessels have been subjected to it yet and that the implementation has not progressed beyond the signing of the agreement. Counsel also stated that the system is limited to Uganda while non-existent in neighboring countries whose motor vehicles are guaranteed free movement in Uganda. Counsel urged the Court to find that there is a meaningful status quo to be protected pending the disposal of MC No. 225 of 2021.

[10] On the ground of existence of a prima facie case with a probability of success, Counsel for the Applicant submitted that the issues in the main suit include whether the digital monitoring of motor vehicles and motorcycles on public streets using the novel ITMS in its current form infringes or threatens the fundamental rights and freedoms guaranteed under Articles 21(1), 24, 27, 38, 40(2), 43, 44(a) and 45 and whether the selection of the Russian Company M/s Joint Stock Company Global Security as the exclusive provider of the novel ITMS was done in compliance with the Public Private Partnership Act. Counsel stated that at this stage, the law requires the Court not to delve into the merits of the issues arising in the main cause and urged the Court to find that there is a triable issue in the main case that is serious and not frivolous.

[11] On the ground of irreparable damage likely to ensue if the temporary injunction is not granted, Counsel for the Applicant submitted that fundamental human rights and freedoms are inherent, inalienable and not granted by the State. Further, they are sacrosanct, priceless and must be jealously safe guarded by the courts from even the threat of alleged interference, infringement or encroachment during litigation. Counsel relied on the decision in **Ananias Tumukunde vs AG, Constitutional Application No. 3 of 2009**. Counsel submitted that the novel ITMS threatens fundamental rights to privacy, dignity, good governance and equal access to economic opportunities as well as the right to a fair hearing. Counsel argued that irreparable damage will ensue if the ITMS is not temporarily halted as the

Applicant as a public spirited litigant would irreparably agonize over her apparent inability to prevent a possible breach of the Constitution and other laws of Uganda. Counsel concluded that should there be any doubt on the part of the Court, the Court should find that the balance of convenience tilts in favour of halting the novel ITMS.

### **Submissions by Counsel for the Respondent**

[12] In reply, Counsel for the Respondent submitted that the status quo has been irretrievably changed. Counsel stated that the Government has already executed a binding agreement with M/s Joint Stock Company Global Security and carried out a feasibility study for implementation purposes. Counsel stated that the financial model, registration with NITA-U and URSB, a public notice and a road map for rolling out the project are pre-mature procedural matters that will be addressed in due course of the project. Counsel argued that since this is an application for enforcement of human rights, such matters are best suited to be addressed in an application for judicial review.

[13] On the ground for existence of a prima facie case, Counsel for the Respondent submitted that the main cause from which the instant application emanates is premature and incompetent and cannot raise any serious issues for determination by the Court. Counsel also argued that the Applicant's submissions have veered off into the merits of the application. Counsel argued that the implementation of the ITMS is authorized and is based on a legitimate purpose. Counsel argued that any limitation it may occasion on the right to privacy is demonstrably justifiable in a free and democratic society as provided for under Article 43 of the Constitution. Counsel concluded that the main Cause is misconceived and does not raise a prima facie case with a probability of success.

[14] As to whether the Applicant stands to suffer irreparable harm, it was submitted by Counsel for the Respondent that the Applicant has not demonstrated the injury they are likely to suffer if the ITMS is implemented which cannot be atoned for in damages. Counsel argued that to the contrary, it is the Respondent that is likely to suffer irreparable harm if the injunction is granted as it would prevent the Respondent from carrying out the necessary procedures to ensure implementation of the ITMS. Counsel also argued that the Respondent has already entered into agreements with the contractor which agreements create legally binding obligations on the Government of Uganda. Halting the implementation is likely to cause serious financial hemorrhage to the Government that the Applicant cannot atone for in form of damages. Counsel concluded that in case of doubt, the balance of convenience tilts heavily in the Respondent's favour.

#### **Determination by the Court**

[15] The law is that grant of a temporary injunction is an exercise of judicial discretion for purposes of maintaining the status quo until the question(s) to be investigated in the main suit is/are tried on the merits and disposed of finally. The principles for grant of a temporary injunction were well laid down in the case of *Kiyimba Kaggwa v Hajji Abdul Nasser Katende (1986) HCB 43* citing with approval the decision in *Giella vs. Cassman Brown & Co Ltd [1973] 1 EA 358*, as follows:

***“The conditions for the grant of an interlocutory injunction are ... first, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory 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. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”***

[16] On the case before me, there is evidence that the planned Intelligent Transport Monitoring System (ITMS) has not been implemented and, as such, there would be a status quo that would require preservation. A question, however, arises as to whether there is actual need for preservation of such a status quo in the circumstances of the present case. This question, in my view, is intertwined with the questions as to whether a prima facie case exists as to warrant issuance of an order of a temporary injunction; and secondly, whether irreparable injury will arise if the order is not issued. I will therefore deal with these three aspects concurrently in the particular circumstances of this case.

[17] The main cause before the Court is based on fears of alleged infringement to fundamental human rights and freedoms of privacy, human dignity, equal treatment under the law, among others. The justification by the Respondent for introducing the ITMS is for purpose of safeguarding national security and curbing crime which is a central responsibility of the Government. It is therefore clear to me that the dispute in the main suit is to be based on the balancing of rights and obligations. The Court will have to examine the evidence to establish whether any alleged limitations to the enjoyment of the named rights and freedoms occasioned by the planned ITMS are reasonable and demonstrably justifiable in a free and democratic society. That being the case, I do not think that this is a case in which at the end, the parties expect the Court to give a “Yes” or “No” answer. Let me explain. I do not expect that after hearing evidence, the Court is likely to totally prohibit the Government from undertaking any transport monitoring system. What the Court is likely to do is to give directions that ensure that whatever monitoring system is put in place does not unreasonably interfere with the fundamental human rights and freedoms of the persons concerned. Equally, I do not expect the Court to give a go ahead to the implementation of the ITMS in the form proposed if evidence is adduced showing that the same occasions or is likely to occasion an unjust interference to the rights and dignity of persons in Uganda.



[18] For the above reasons, the case raised by the Applicant cannot be and is not one that is likely to lead to a total prohibition of the planned establishment of an ITMS system. In view of my finding in the immediately foregoing paragraph, if that was the intention of the Applicant in bringing the main cause, then I would find that no prima facie has been established by the Applicant with a possibility of success. On the other hand, if the case by the Applicant is for avoidance of any unreasonable limitation on the fundamental human rights and freedoms of persons in Uganda, then I would find a serious case that requires investigation by the Court. However, such would not be a case that requires issuance of an order of a temporary injunction before the issues in the main cause can be investigated. In my view, whether an injunction issues or not would not diminish the need to investigate whether the limitations occasioned by the ITMS are reasonable and demonstrably justifiable in a free and democratic society. In the event that the Court finds the limitation offensive to the law, the Court would be in position to declare the system or such parts of it as offensive to the named rights and freedoms and the Court will then give appropriate remedies.

[19] In the circumstances, the Applicant has not established that it is imperative that the Court issues an order of a temporary injunction if their dispute is to be justly investigated. The dispute can be investigated and appropriate remedies granted whether the ITMS is implemented before disposal of the main cause or not. As such, no need for preservation of the status quo has been established. Similarly, the Applicant has not established a prima facie case that warrants the grant of an order of a temporary injunction pending the hearing of the main cause. Thirdly, no irreparable injury can be established in those circumstances. It also becomes unnecessary to dwell on the ground of balance of convenience.

[20] In light of the above findings, therefore, the application is devoid of merit and is accordingly dismissed with costs to the Respondent.

It is so ordered.

***Dated, signed and delivered by email this 7<sup>th</sup> day of February, 2023.***

A handwritten signature in blue ink, appearing to read 'Boniface Wamala', with a long horizontal flourish extending to the right.

**Boniface Wamala**  
**JUDGE**