

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 0308 OF 2014

5 **OMUHEREZA RWAKABOYO 119 &**
OTHERS.....APPLICANTS

VERSUS

NATIONAL FORESTRY AUTHORITY
RESPONDENTS

10 **CORAM:**

HON. MR. JUSTICE KENNETH KAKURU, JA
SINGLE JUSTICE

RULING

15 This is an application for a temporary injunction seeking to restrain the respondents, their agents or anybody claiming authority from them from entering and trespassing on the suit land until the determination of Civil Appeal No. 162 of 2014 which is said to be pending in this court.

20 The application is brought under **Rule 43 (1)** and **Rule 6 (2) (b)** of the Rule of this court.

The grounds for the application are set out in the notice of motion as follows;-

a) **There is a pending appeal in this court.**

b) **If this application is not granted the appeal will be rendered nugatory and the respondent will suffer substantive and irreparable damage.**

5 c) **That the appeal has over whelming chance of success**

d) **That it is just and equitable that this application be granted.**

The application is supported by the affidavit of the 1st applicant.

10 The respondent filed an affidavit in reply deponed to by one Kwesiga Joseph who is stated to be a legal officer of the respondent. He denies the allegations set out in the affidavit in support of the application.

15 At the hearing of this application the applicants were represented by **Mr. Emmanuel Wamimbi** while the respondent was represented by **Ms. Ruth Kisakye** and **Mr. Joseph Kwesiga**.

20 Mr. Wamimbi for the applicants submitted that the order issued by Hon. Justice Batema, J on 25th July 2014 from which Court of Appeal Civil Appeal No. 162 of 2014 herein arises changed the *status quo* in respect of the suit land. That as a result of that order all the applicants whether or not they were protected by the earlier court orders are now liable to eviction.

He submitted that the said order was prejudicial to his clients and their families as it effectively determined the rights of the parties before the hearing and the determination of the main suit.

5 He submitted that the applicants did not violate the earlier court order, that on the contrary it was the respondent who violated them, and that one Peter Egesse an employee or agent of the respondent was found to be in contempt of court in 2012, and was ordered by court to pay costs for contempt.

10 Learned counsel submitted further that the balance of convenience favours the applicants and that if this application is not granted the lives of the applicants are likely to be tempered with. That the applicants are subsistence agriculturalists whose lives depend on the land. That, if this order is not granted they are likely to be inconvenienced.

15 He cited the case of ***Dr. Ahmed Kisule versus Greenland Bank(in liquidation) (Supreme Court Civil Application No. 12 of 2008)***.

He prayed that this court be pleased to allow the application.

20 Ms. Kisakye learned counsel for the respondent opposed the application. She submitted that the appeal was incompetent the notice of appeal having been filed 6 days out of the time allowed by the law. That the appeal did not have any likelihood of success. The applicants have not proved that if this application is not granted they will suffer irreparable loss and injury.

That the balance of convenience favours the respondent as the applicants are likely to cause irreparable damage to the natural forest reserve if this application is granted.

5 Learned counsel submitted further that the applicants violated the order of injunction issued by the High Court which required both parties to maintain the *status quo* as at 4th September 2009 when the interim order of injunction was issued.

10 That when the learned Judge visited the *locus in quo* in 2014, he found that the applicants had opened fresh gardens in the middle of the forest reserve in complete violation of the court orders that existed at the time.

She asked this court to dismiss the application.

I have carefully listened to the submissions of both counsel. I have read the record before me and the authorities cited.

15 The applicants' notice of appeal upon which this application is premised was lodged at the High Court on 14th August 2014.

The notice of appeal clearly states that the applicants intend to appeal against a decision of Hon. Mr. Justice Batema, J dated 25th July 2014.

20 In this regard Rule 76 of the Rules of this Court stipulates as follows;-

“76 (1) Any person who desires to appeal to the court shall give notice in writing which shall be lodged in duplicate with the Registrar of the High Court.

5 ***(2) Every notice under subrule (1) of this rule shall subject to the 83 and 95 of these Rules, be lodged within Fourteen days after the date of the decision against which it is desired to appeal.”***

10 The decision against which the applicant desire to appeal from is dated 25th July 2014. The notice of appeal therefore ought to have been lodged in the High Court on or before 8th August 2014. It was lodged in Court on 14th August 2014, well out of time. The notice of appeal is therefore incompetent and ought to be struck out.

15 However, taking into account the checkered history of this case, and the peculiar issues it raises, I am inclined to invoke the provisions of **Rule 42(2)** of the rules of this court to grant a consequential extension of time within which the notice of appeal ought to have been filed.

20 Rule 42 provides as follows;-

42(1) “Order of hearing applications.

Whenever an application may be made either in the court or in the High Court, it shall be made first in the High Court.

5 (2) ***Notwithstanding subrule (1) of this rule, in any civil or criminal matter, the court may, on application or of its own motion, give leave to appeal and grant a consequential extension of time for doing any act as the justice of the case requires, or entertain an application under rule 6(2) (b) of these Rules, in order to safeguard the right of appeal, notwithstanding the fact that no application for that purpose has first been made to the High court.***
10
15 ***(Emphasis added).***

On this court's own motion I now grant a consequential order extending the time within which the notice of appeal ought to have been filed. I therefore proceed to determine this application
20 as if the notice of appeal had been lodged in time.

The applicants in their notice of motion stated that they have filed Civil Appeal No. 0162 of 2014- Omuhereza Rwakaboyo and 119 Others versus National Forestry Authority, in this court.

I have ascertained from the civil registry of this court that no such appeal exists. Court of Appeal ***Civil Appeal No. 162 of 2014 is Jomayi Property Consultants versus Andrew Maviiri.*** It was filed in this court on 6th October 2014.

- 5 Therefore there is no pending appeal in this court as alleged by the applicants in their notice of motion.

There is only a notice of appeal, which has only been regularized by the order of this court set out above.

- 10 Be that as it may, a notice of appeal is sufficient for the purpose of this application under **Rule 6 (2) b** of the Rules of this Court which stipulates that this court may;-

6 (2) b ...in any civil proceedings where a notice of appeal has been lodged in accordance with Rule 76 of the rules.....”

- 15 I find that the orders sought in this application are more or less the same as those the applicant intends to seek in the appeal itself, namely staying or setting aside the order of Justice Batema J issued on 25th July 2014.

- 20 I am hesitant to grant an order whose effect is to grant the relief sought in the intended appeal.

The applicants are seeking an injunction against the respondents, the very injunction lifted by Hon. Justice Batema J. If this order is

granted it would have the effect of reversing the decision of the High Court without hearing the parties on that decision.

Be that as it may, the applicants have not established that if this application is not granted they will suffer irreparable loss and
5 damage. Irreparable loss is one that cannot be atoned by damages. It is a fact conceded by the applicants' counsel that any loss or damage that may result is compensatable by damages.

The applicants have not established that the intended appeal has any likelihood of success. I have not been able to ascertain any
10 triable issues in the said intended appeal. The affidavit in support of this application does not even mention that the appeal has any likelihood of success.

I would hesitate to delve into the facts giving rise to this application as doing so may draw me into issues to be determined
15 in the appeal itself.

Suffice it to say, I find the balance of convenience to be in favour of the respondent. The applicants may be compensated for any damages or loss resulting from the order of the learned Judge. On
20 the other hand the damage to the Natural Forest reserve is likely to be irreparable and irreversible.

I find no merit in this application.

It is hereby dismissed with costs.

Dated at Kampala this 14th day of October 2014.

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HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL

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