THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEOUS APPLICATION NO.638 OF 2014
(ARISING OUT OF MISCELLANEOUS CAUSE NO.54 OF 2014)

LEGAL BRAINS TRUST (LBT) LTD :::::::::::::::::: APPLICANTS

V E R S U S

1. **ATTORNEY GENERAL**
2. **NATIONAL COUNCIL OF SPORTS :::::::::::::: RESPONDENTS**

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

R U L I N G

This Ruling is in respect of an Application for a Temporary Injunction. The Applicant made the Application by way of Chamber Summons under Order 41 Rules 1, 2 and 9 of the Civil Procedure Rules S.I 71-1 and Section 98 of the Civil Procedure Act Cap 71. It seeks an order for a Temporary Injunction restraining the Respondents, their agents, servants, or any person from implementing or enforcing Regulations 3(1), 4(4), 20(1) and 20(2) of the National Council of Sports Regulations S. I. No. 38 of 2014 until the disposal of the Miscellaneous Cause No. 54 of 2014. It also seeks that costs of the Application be provided for.

The Application is supported by Affidavit deponed by Ms. **Enid Akampulira,** the Legal Officer of the Applicant dated 6th day of October, 2014, filed by Counsel Ssemakadde Isaac of Centre for Legal Aid.

The grounds upon which the Application is based are particularized in the Affidavit set out above but in brief are that;

1. The Applicant has filed Miscellaneous Cause No. 54 of 2014 for prerogative reliefs to prevent the implementation of the impugned Regulations because they are a result of illegal, irrational and unconstitutional decision and/or action on the part of the Minister responsible for Sports and the 2nd Respondent ;

2. There are over Fifty two (52) voluntary Sports Associations and Federations presently registered with, affiliated to and/or recognized by the Respondents as National Sports Association for the respective fields since the coming into force of the Principle Act in 1964 whose rights are directly affected by the impugned Regulations;

3. Unless the Respondents and their agents or servants are restrained from implementing the impugned Regulations, the operations and fundamental rights of National Sports Associations which are either unincorporated or incorporated under the Companies Act for the time being shall be irreparably affected to the detriment of the public interest;

4. It is urgent that the *status quo* be preserved by blocking the Respondents from effecting the impugned Regulations pending the resolution of the main suit;

5. The balance of convenience favors the National Sports Associations which are either unincorporated or incorporated under the Companies Act for the time being and the public for whose benefit the Applicant has filed the main suit because they stand to lose more if the Respondents are permitted to implement the impugned Regulations pending the resolution of the main suit;

6. In the interest of protecting the Constitution, it is just and expedient to allow this Application and grant the Applicants the Injunctive relief sought.

The Application was opposed by an Affidavit in Reply deponed to on the 16th day of October, 2014 by **Ms. Maureen Ijang**, a State Attorney in Attorney General's Chambers and filed by Counsel Richard Adrole, for the 1st Respondent. There was also an Affidavit in Reply dated 10th day of October, 2014 and sworn by **Mr. Jasper Aligaweesa,** the General

Secretary of the 2nd Respondent, which was filed by Counsel Julius Kavuma Kabenge and Mohammed Golooba of Messrs Kavuma Kabenge & Co. Advocates. The Applicant filed an **Affidavit in Rejoinder** on the 14th day of October, 2014. Both Counsel made oral submissions on the matter.

Background

Before I go into the merits of the Application, it is prudent to know its background. Briefly, it is alleged that the Respondents enacted a set of Regulations known as **Statutory Instrument No. 38 of 2014 the National Council of Sports Regulations.** The Applicant filed **Miscellaneous Cause No.54 of 2014** seeking prerogative reliefs to prevent the implementation of the enacted Regulations because they violate the provisions of the **National Council of Sports Act Cap 48, the Principal Act** in particular, **Sections 3 Clause 1, 3(2) and 10**. The Applicant further contends that the enacted Regulations also violate or threaten to violate the Constitutional rights of existing National Sports Associations. Articles 29(1) (e) of the Constitution of the Republic of Uganda on Freedom of Association; Article 21(1) on the right to equality from non discrimination; Article 26 (1) and (2) regarding the protection of property from compulsory deprivation and Article 45 of the same Constitution which relates to emerging rights that may not be explicitly listed in the Constitution of the Republic of Uganda 1995.

The law on Injunctions

An Injunction is a Court order requiring an individual to do or omit doing a specific action. It is an extraordinary remedy that Courts utilize in special cases where preservation of the *Status Quo* or taking some specific action is required in order to prevent possible injustice. They are issued early in a law suit to maintain the *Status Quo* by preventing a Defendant from becoming insolvent or to stop the Defendant from continuing his or her allegedly harmful actions. Choosing whether to grant Temporary Injunctive relief is a discretionary power of the Court. In the case of ***State v. Odell, 193 Wis.2d 333 (1995)***, Court stated that an Injunction is a prohibitive, equitable remedy issued or granted by a Court at suit of a Petitioner directed at a Respondent forbidding the Respondent from doing some act which the respondent is threatening or

attempting to commit or restraining a Respondent in continuance thereof, such act being unjust, inequitable or injurious to the Petitioner and not such as can be addressed by an action at law.

In deciding whether or not to grant an Injunction, Courts have been guided by the consideration that unless the Injunction is granted, the damage so occasioned is such that the Applicant would not be adequately compensated by an award of damages. Secondly, the Applicant must show that his case has a probability of success. Thirdly, if the Court is in doubt it will decide the Application on the balance of convenience. Fourthly, the Applicant must show or prove that the aim of the Temporary Injunction is to maintain the *Status Quo* until the determination of the whole dispute. See ***Robert Kavuma vs. M/s Hotel International, S.C.C.A. No. 8 of 1990; Kiyimba Kaggwa vs. Haji A.N. Katende [1985] HCB 43.***

Section 38 Judicature Act Cap 13 gives this Honourable Court power to grant Orders of a Temporary Injunction in all cases in which it appears to it to be just and convenient to do so to restrain any person from doing acts. The grant of a Temporary Injunction is invariably in the discretion of the Court.

The general considerations for the granting of a Temporary Injunction under **Order 41 r. 2 CPR** are that;

> *(1)* ***In any suit for restraining the Defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the Plaintiff may, at any time after the commencement of the suit, and either before or after Judgment, apply to the Court for a Temporary Injunction to restrain the Defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.***
>
> **(*2) The Court may, by order grant such Injunction on such terms as to an inquiry as to damages, the duration of the Injunction, keeping an account, giving security or otherwise, as the Court thinks fit.***

In ordinary situations, the principles governing the grant of a Temporary Injunction are well settled although each case must be considered upon its own peculiar facts. See ***American Cyanamid Co v Ethicon Ltd [1975] AC 396,*** Lord Diplock laid down guidelines for the grant of Temporary Injunctions that have been followed in Ugandan cases of ***Francis Babumba and 2 others Vs Erisa Bunjo, HCCS No. 697 of 1990*** and **Robert Kavuma Vs M/S Hotel International SCCA NO.8 of 1990.** These principles are that;

1. The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;
2. The Applicant would suffer irreparable injury which damages would not be capable of atoning if the Temporary Injunction is denied and the *Status Quo* not maintained; and
3. The balance of convenience is in the favour of the Applicant.

I now consider the issues as were put before me. That is;

1. Likelihood of success
2. Issue of *Status Quo*
3. Irreparable damages
4. Balance of convenience.

<u>Issue 1</u>

Whether there is a *Prima Facie* **case with a probability of success.**

In answering this question, the Applicant is required to show that there is a *Prima Facie* case with a probability of success of the pending suit. The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. ***(See American Cynamide versus Ethicon [1975] ALL ER 504).***

For there to exist a *prima facie* case with a probability of success, the Court must be satisfied that the claim is not frivolous or vexatious. In other words, that there is a serious question to be tried. In ***Robert Kavuma Vs M/S Hotel International SCCA NO.8 of 1990 [Supra], Wambuzi CJ*** (as

he then was) was emphatic and stated that the Applicant is required at this stage of trial, to show a *Prima Facie* case and a probability of success but not success.

Furthermore, in order to establish whether the suit establishes a *prima facie* case with probability of success, it is necessary to refer to case law which is to the effect that although the Applicant has to satisfy Court that there is merit in the case, it does not mean that one should succeed. It means there should be a triable issue, that is, an issue which raises a *prima facie* case for adjudication. ***See Kiyimba Kaggwa vs Abdu Nasser Katende [1985] HCB 43, Wanendeya V Norconsult [1987] HCB 89; Devon V Bhades [1972] EA 22.*** Also the Applicant must demonstrate that there are serious issues to be tried. See: ***Daniel Mukwaya v. Administrator General, H.C.C.S No. 630 of 1993 [1993] IV KALR I.*** If the Court is in doubt as to any of the above factors, the case ought to be decided after weighing doubts against certainties of the risks of doing injustice; also referred to as the "balance of convenience". See: ***Francome v. Mirror Group Newspapers [1984] IWLR 892.***

In support of this Application, Counsel Ssemakadde Isaac, for the Applicants, addressed this Court on Four (4) cardinal principles for the grant of a Temporary Injunction. That is;

1. There must be a *status quo* to be preserved;
2. There must be a *prima facie* case in the main cause Miscellaneous Cause 54 of 2014.
3. The Applicant will suffer irreparable harm in case the Injunction is not granted;
4. The balance of convenience in favor of the Applicant.

For a clear discussion of these principles, Counsel Ssemakadde invited the Court to acquaint itself with the recent decisions of the **Constitutional *Court in Gladys Nakibuule Kiseka versus the Attorney General Constitutional Application No.90 of 2013*** particularly pages 4 and 5, where it was held that ''*for the Applicant to succeed in this Application, she has to discharge the burden of proof and the balance of power and that she has a prima facie case to put before this Court that failure to grant her the orders prayed for will cause her to suffer irreparable damage and if the Court is in doubt as regards these two (2), then the Court has to determine the application on a balance of convenience.*

Status quo

Counsel S emakadde referred Court to paragraphs 8, 9, 10, 11 and 12 of the Affidavit of Enid Akampulira filed in Court on the 6th of October 2014. P**aragraph 8** of the Affidavit states that there are over 52 voluntary Sports Associations and federations presently registered with, affiliated to and or recognized by the Respondents as National Sports Associations for the respective fields and or disciplines since the coming into force of the Principle Act in 1964 whose rights are directly affected by the impugned Regulations. **Paragraph 9** thereof is to the effect that unless the Respondents and their agents are restrained from implementing the impugned Regulations, the operations and fundamental rights of National Sports Associations which are either unincorporated or incorporated under the Company's Act Cap 110 for the time being shall be irreparably affected to the detriment of the public interest.

In **paragraph 11** of her Affidavit in support of the Chamber Summon's, Ms. Enid Akampulira avers that the affected National Sports Associations have existing contractual rights, international affiliations, competitions, projects, programmes and other proprietary arrangements with third parties here in Uganda and abroad which are imperilled by the impugned regulations. She further contends in **paragraph 12** the Respondents have no reasonable justification or lawful excuse for adopting the Regulatory scheme which has the purpose of outlawing National Sports Associations which have hitherto enjoyed recognition by the government.

Counsel Ssemakadde made reference to **paragraph 6** of the Applicant's Affidavit in Rejoinder deponed to by Enid Akampulira filed in Court on the 14th October 2014. In **paragraph 6,** the Deponent states that in specific reply to **paragraphs 5, 6, 7(b) and 10 of the Affidavit in Reply of Mr. Jasper Aligawesa,** the Deponent avers that the 2nd Respondent's view of the *status quo* is plainly wrong and misconceived. The impugned Regulations explicitly target and recognize the existence of National Sports Associations which are either unincorporated or incorporated under the Company's Act for the time being. Ms. Enid Akampulira criticized **paragraph 5 of Mr. Jasper Aligawesa's Affidavit in Reply.** Mr. Jasper averred that there are no national Associations for the time being but 'animals' called voluntary amateur Sports Associations owned by individuals and working with the 2nd Respondent. According to Ms. Enid Akampulira, this is a fallacy because there would be no need for using the word "National Sports

Associations" in **Statutory Instrument No. 38 of 2014**. Ms. Enid Akampulira also contended that the law maker is aware of the *status quo* which is sought to be affected by the Regulatory scheme intended to be introduced by this instrument.

Secondly, the Deponent, Ms. Enid Akampulira in **paragraph 6** of her Affidavit states that the impugned Regulations do not and cannot purport to transform the affected National Sports Associations into public bodies as falsely contended by the 2nd Respondent. Ms. Enid invited this Court to review paragraph 6 of Mr. Jasper Aligawesa's Affidavit in Reply. Mr Aligawesa avers that the National Sports Associations has developed and attracted enhanced public interest hence, the need to make Regulations to create all inclusive National Associations which will run sports activities in trust for the people of Uganda other than voluntary amateur Sports Associations which were private and restrictive in nature.

The crux of the Applicant's case is that Government cannot transform private associations into public bodies. The Applicant contends that doing so is a clear expropriation of property and a clear example of excessiveness of power which is an illegal, irrational and unconstitutional purpose sought to be achieved. In reference to paragraph **6** of Ms. Enid Akampulira's Affidavit in Rejoinder, she states that the 2nd Respondent has adduced no evidence whatsoever that there has been an irreversible change in *status quo* so as to render the present Application null and void.

Counsel Ssemakadde, for the Applicants, further submitted that the Affidavit of service Court filed in Court on the 17th October 2014 indicates that the Respondents were duly served with an Interim Order of this Court issued on the 3rd October 2014 on the eve of the threatened ban deadline. The Order was served upon the Respondents jointly on the 6th of October 2014. It serves as a notice to the Respondents to prevent them from implementing the impugned Regulations. Counsel Ssemakadde submitted that this is the *status quo* that the Applicants wish to preserve pending the disposal of the main cause.

In his closing submissions, Ms. Ssemakadde referred to the Affidavit in Reply filed by Ms. Maureen Ijanga of the 1st Respondent, the Attorney General. The Applicants submitted that the

1st Respondent's Affidavit in Reply is silent on *status quo* because there is no particular paragraph dedicated to showing Court that the *status quo* has been irretrievably broken or changed as at the date of arguing the Application. Counsel Ssemakadde's submissions were that there is a worthwhile *status quo* to be protected by the injunction sought.

***Prima Facie* case**

The second test for the grant of a temporary injunction is that there must be a *prima facie* case in the main cause. Counsel Ssemakadde invited this Court to answer this test in the affirmative. He relied on the case of **Gladys Nakibuule** decision on page 5 where a *prima facie* case is stated to be made out on satisfying Court that there is a good and arguable claim to the right that the applicant seeks to protect. The Applicant has to show that there is a serious issue as opposed to one that is frivolous or vexatious to go to trial and that the Applicant has a probability of success. At this stage, the Applicant does not need to prove at this stage that he has a certainty of success. The Applicant must show by way of pleadings that the violation alleged and the effect of the violation.

Mr. Ssemakadde also referred to the leading case of ***Ananias Tumukunde versus Attorney General Constitutional Application No.03 of 2009 at page 11*** with regard to the principle that there is a *prima facie* case. The Court must be satisfied that the claim is not frivolous or vicious. There must be a serious case to be tried. On page 13, the Court concluded that the matter before it involved serious issues which can be adjudicated. In the Court's view, 'serious matters' were neither frivolous nor vexatious and for that reason the Applicant had shown a *prima facie* case with a probability of success.

It was Counsel Ssemakadde's submission that this Court should be guided on the standard of review which it must follow in deciding whether there is a *prima facie* case. I note that the duty of Court in resolving an Application of this nature at this stage of Court proceedings *is not to delve into nor to resolve conflicts of evidence on Affidavits but to consider the facts upon which*

either party may ultimately depend on. It is also not to decide difficult questions of law calling for detailed arguments and mature considerations. It is not an occasion for the Court to resolve that either party or both are clearly wrong or have no credible evidence all these must be left for consideration at the actual trial of the substantial cause. (Emphasis added)

In view of the above legal principles Mr. Ssemakadde referred this Court to **paragraph 7** of the Affidavit in Rejoinder the Applicant deponed to by Enid Akampulira filed in this Court on the 14th October where she states that the legality and the propriety of the impugned Regulations are weighty and justiceable matters to be decided in the main cause and for that reason it is just and convenient to grant the Temporary Injunction sought by the Applicant.

In opposition to this Application, Counsel Adrole, for the 1st Respondent, submitted that the Applicant does not have a *prima facie* case with a likelihood of success as the main application for Judicial Review is bad in law because it is barred by statute. Mr. Adrole acknowledged the fact that an Application has been filed by the Applicants *vide* **Miscellaneous Cause No.54 of 2014** for Prerogative Orders to invalidate and prevent the implementation of certain provisions of the **National Council of Sports Regulations under Statutory Instrument No.38 of 2014**.

Counsel Kavuma, for the 2nd Respondent, submitted that where the main suit is a nullity, all the subsidiary proceedings are a nullity. Mr. Kavuma submitted that the main suit doesn't exist, hence, the Application before Court for a Temporary Injunction is not competent. It was Counsel Kavuma's submission that this Honourable Court declares itself that it does not have jurisdiction to try Constitutional matters and direct the Applicants to file the suit in appropriate forum.

Counsel Golooba Muhammed, for the 2nd Respondent associated himself with the submissions of his fellow Counsel for the Respondents. Mr. Golooba submitted that as far as Judicial Review is concerned, the case in point is ***Kazibwe Joshua versus the Commissioner of Customs URA its Miscellaneous Application No.44 of 2007*** where the Learned Justice Kiryabwire held that *judicial review is concerned not with the decision but the decision making process. Essentially judicial review involves an assessment of the manner in which the decision is made* which is not

in issue here. Mr. Golooba contends that the Applicants are seeking Court's intervention in a matter that is not in a decision making process. The decision has already been passed. In addition, in the case of ***Tumwebaze versus Makerere University Council and 3 others Civil Application No.353 of 2005,*** Justice Kasule held that *prerogative orders look to the control of the exercise and abuse of power by those in public offices rather than at providing final determination of private rights which is done in normal civil suits.* In furtherance of his submissions, Mr. Golooba submitted that the Applicants are seeking the determination of rights by way of judicial review which is contrary to the already established principle of the Judiciary.

Counsel Golooba submitted that this Court does not have jurisdiction to entertain the main application. It cannot also have jurisdiction to grant a Temporary Injunction. Mr. Golooba further contended that the High Court does not have powers to restrain the implementation of the law and that one can only be a preserve of the Constitutional Court to grant temporary reliefs pending the interpretation of the Constitution. It was his submission that this Application is improperly before this Honourable Court. Counsel Golooba prayed that the Court be pleased to dismiss this Application with costs.

It should be noted that Counsel for the Applicant and the Respondents have addressed me on Judicial Review which is the subject of the main Application yet the Application before me now is for a grant of a Temporary Injunction. There are laid down considerations that have been established by Courts for a grant of judicial review. The same considerations have been pointed out by both Counsel. I appreciate both Parties' submissions. However, I am not inclined to follow them in this Application. I will allow the parties to address me on Judicial Review in the main Application. Whenever the parties are ready to address me on the same, they are free to adopt their submissions in this Application for the main Application. I would urge litigants to narrow their submissions to a given matter especially in miscellaneous Applications like this one. This is because the orders sought there in are not intended to dispose off the main suit.

The Applicants filed a suit against the Respondents *vide* ***Miscellaneous Cause No. 54 of 2014*** which has a likelihood of success. Having considered the submissions of the Applicants *visa-vis* the Respondents submissions and the evidence on record, I find that there is *prima-facie* case/

triable issues shown by the Applicants. In the result, the first condition for grant of a Temporary Injunction is met.

Irreparable Harm

The other cardinal consideration is whether in fact the Applicant would suffer irreparable injury or damage by the refusal to grant the application. If the answer is in the affirmative, then Court ought to grant the order. ***(See: Giella v. Cassman Brown & Co. [1973] E.A 358)***. By irreparable injury it does not mean that there must not be physical possibility of repairing the injury, but it means that the injury or damage must be substantial or material one that is; one that cannot be adequately atoned for in damages. See: ***Tonny Wasswa v. Joseph Kakooza [1987] HCB 79; NTCO Ltd.v. Hope Nyakairu [1992 – 1993] HCB 135.***

Counsel SSsemakadde referred this Court to **paragraph 8 of Ms Enid Akampulira's Affidavit in Rejoinder** filed in Court on the 14th of October 2014 and **paragraph 7 of Ms Maureen Ijang's Affidavit in Reply** and **paragraphs 9, 10, 11 and 12 of Ms Enid Akampulira's supporting Affidavit**. Ms Enid Akampulira articulates the harm that will be suffered by the existing National Sports Associations if this Injunction is not granted. Ms Enid avers that the rights of the people of Uganda are likely to be damaged severally by the implementation of the Statutory Instrument.

Counsel SSsemakadde relied on the case of ***Ananias Tumukunde versus Attorney General Constitutional Petition Application No. 3 of 2009,*** the principle in the instant case is that a Court of law which has been approached to protect human rights must not engage in the business of doubting the harm that will be done if the Injunction prayed for is not granted because it goes without saying that the damage to the Constitutional rights is irreparable. Mr. Ssemakadde submitted that the approach taken by the Constitutional Court in this case is similar to that taken by the Constitutional Court in the Gladys Nakibuule's case. In his closing submissions, Counsel Ssemakadde submitted that Constitutional rights are to be taken seriously when a threat to them is identified and the best way to protect the people against a threat to their rights is by the issue of conservatory orders such as an Injunction. In addition, he submitted that under **Article 50** of

the Constitution of the Republic of Uganda 1995, this Court is required to provide adequate reliefs to those who claim a threat to their rights and by granting this Injunction, this Court will be fulfilling that role.

In reply, Counsel Adrole submitted that the law is that Temporary Injunctions cannot be granted if the Applicant has not satisfied Court that the is a *prima facie* case with a likelihood of success. Counsel Adrole contended that the Applicants have failed to prove that they have a *prima facie* with a likelihood of success. According to Mr. Adrole, since the Applicants have failed to prove that there is a *prima facie* case, he chose not to dwell into the issue. In order to support his argument, Mr. Adrole relied on the case of ***Timothy Alvin Kakkoko versus the Secretary General of the East African Community Application No.005 of 2012***.

However, it was Counsel Adrole's submission that the Applicants will not suffer irreparable loss since the impugned Statutory Instrument No. 38 of 2014 has been passed into law as stipulated in paragraph 7 of the Affidavit in Reply of Ms. Ijang. It was also Mr. Adrole's submission that irreparable damage can only be occasioned if the Statute currently issued was still in the stages of being passed. According to him, this Court is mandated to adhere and apply the law and the law can only be challenged if there is an issue of Constitutionality. Counsel Adrole contended that the Applicants will not suffer irreparable damage as a result of an already existing law. Mr. Adrole also contended that the Interim Injunction was never brought to his attention.

In his closing submissions, Mr. Adrole's prayers are that since the Applicants have failed to satisfy this Court that they have a *prima facie* with a likelihood of success and secondly that the Applicants will suffer irreparable damage that cannot be atoned sufficiently by way of damages, this Application for a Temporary Injunction should be dismissed with costs.

On irreparable damages, I find very instructive the words of **Lord Diplock** in the case of ***American Cyanamid Cov Ethicon [1975]* 1*ALL E.R. 504***. He states;

> ***"The governing principle is that the court should first consider whether if the Plaintiff were to succeed at the trial in establishing his right to a Permanent Injunction he would***

be adequately compensated by an award of damages for the loss he would have sustained as a result of the Defendant's continuing to do what was sought to be enjoined between the time of the Application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the Defendant would be in a financial position to pay them, no Interlocutory Injunction should normally be granted…"

In ***Francis Kanyanya V Diamond Trust Bank, HCCS No. 300 of 2008*** Hon. Mr. Justice Lameck N. Mukasa relying on ***Kiyimba Kaggwa*** (supra) held that:-

"Irreparable damage does not mean that there must not be physical possibility of repairing injury, but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages" (emphasis added)

It was strongly argued for the Applicants that they will suffer irreparable damage if the Temporary Injunction is not granted. On the other hand, the Applicants rights, if violated by the said impugned Regulations, those infringed rights cannot be compensated by way of damages. Thus, in my view, the Applicants' will suffer irreparable injury which cannot be adequately compensated for by way of damages. This ground succeeds.

Balance of convenience

It is trite law that if the Court is in doubt on any of the above two principles, it will decide the Application on the balance of convenience. The term balance of convenience literally means that if the risk of doing an injustice is going to make the Applicant suffer then probably the balance of convenience is favorable to him/her and the Court would most likely be inclined to grant to him/her the Application for a temporary injunction. The "balance of harms" refers to the threatened injury to the party seeking the Preliminary Injunction as compared to the harm that the other party may suffer from the Injunction. The Court will consider where the "balance of convenience" lies, that is, the respective inconvenience or loss to each Party if the Order is granted or not. The Court will consider all the circumstances of the case.

Counsel for the Applicants, Counsel Ssemakadde invited this Court to hold that the balance of convenience tilts significantly in favour of the Applicants. He submitted the Applicants have elaborately advanced this Court with reasons why balance of convenience should be resolved in their favour. At the close of his submissions, Counsel Ssemakadde raised a Preliminary Objection that Mr. Kavuma Kabenge and Mr. Goloba Muhammed representing the 2nd Respondent have no *locus standi* before this Court. It was Mr. Ssemakadde's prayer that Mr. Kabenge and Mr. Goloba be disqualified from these proceedings until the procedure of procuring their services is properly followed. Counsel Ssemakadde relied on the authority of ***Attorney General & Hon. Nyombi Peter vs. Uganda Law Society, Misc. Cause No. 321 of 2013***.

In reply, Counsel Adrole submitted relied on Article 28 of the Constitution of the Republic of Uganda 1995.It was Mr. Adrole's contention that one cannot be condemned unheard. I agree with Counsel Adrole that Court should observe the principle of fair hearing as enshrined under Article 28 of the Constitution of the Republic of Uganda 1995. The 2nd Respondent should be given an opportunity to present his case concerning the objection raised by the Applicant's Counsel. I will give Mr. Kavuma a chance to respond to the objection in the main suit before making a decision on the objection.

The purpose of the Order for Temporary Injunction is primarily to preserve the *Status Quo* of the subject matter of the dispute pending the final determination of the case. An Order for a Temporary Injunction is granted so as to prevent the ends of justice from being defeated. See: ***Daniel Mukwaya v. Administrator General, H.C.C.S No. 630 of 1993; Erisa Rainbow Musoke v. Ahamada Kezala [1987] HCB 81.***

The Court of Appeal in ***Godfrey Sekitoleko & Ors V Seezi Mutabaazi & Ors [2001 – 2005] HCB 80*** made the position clear by stating as follows;-

> ***"The Court has a duty to protect the interests of parties pending the disposal of the substantive suit. The subject matter of a Temporary Injunction is the protection of legal rights pending litigation ....."***

Besides, an Injunction is an extraordinary remedy that Courts utilize in special cases where preservation ***of the Status Quo or taking some specific action is required in order to prevent***

possible injustice. The purpose of the Order for Temporary Injunction is primarily to preserve the *Status Quo* of the subject matter of the dispute pending the final determination of the case, and the order is granted in order to prevent the ends of justice from being defeated. See ***Daniel Mukwaya v. Administrator General, supra; Rainbow Musoke v. Ahamada Kezala, supra.*** *''Status Quo''* is purely a question of fact and simply denotes the existing state of affairs existing before a given particular point in time and the relevant consideration is the point in time at which the acts complained of as affecting or likely to affect or threatening to affect the existing state of things occurred. Depending on the facts of the case, a party may apply for an Injunction in order to preserve the *Status Quo*.

I am concerned with the violation of a right**.** It is such an act that must be stopped if the Applicants are to enjoy their rights. It is indeed a cardinal principle of law that a Temporary Injunction is intended to preserve the *Status Quo* until the dispute to be investigated in the suit can be finally disposed of. See ***Mastermind Tobacco Uganda (PTY) Ltd v Bujugiro Ayabatwa & Another Misc. Application No. 713 of 2002 (****arising from* ***Misc. Application No. 712 of 2002)****; (arising from* ***Civil Suit No. 497 of 2002)***.

In my view, the Applicants have made their case and I accordingly allow their Application on this ground. In the case of ***Victoria Construction works Ltd Versus Uganda National Roads Authority HMA No. 601 of 2010*** the High Court while citing the decision in ***J. K. Sentongo vs. Shell (U) Ltd [1995] 111 KLR 1,*** Justice Lugayizi observed that if the Applicant fails to establish a Prima Facie case with likelihood of success, irreparable injury and need to preserve the *Status-Quo,* then he/she must show that the balance of convenience was in his favor. I wish to say that the Applicants' have satisfied Court that all the four ingredients exist. This Application, therefore, ought to succeed.

In the result and for the reasons given hereinabove in this Ruling the Applicant demonstrated that this Application has merit. It ought to succeed. I am aware of the decision in the case of ***Francis Babumba & Others vs. Erusa Bunju (1992) 111 KALR 120,*** where it was held that a Temporary Injunction would not be granted if its effect is to dispose of the whole case. The Application before me seeks for an order of a Temporary Injunction. This does not dispose off the main suit as it is still pending before me with different remedies sought therein. Accordingly, this

Application is allowed. I therefore grant the Orders sought in this Application. Costs shall be in the main cause.

I SO ORDER.

SIGNED:.....

HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

JUDGE

5TH DECEMBER, 2014