

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
MISCELLANEOUS APPLICATION NO.56 OF 2023
[Arising from Civil Suit No.018 of 2023]

NATIONAL FOREST AUTHORITY

APPLICANT

VERSUS

1. MATOVU KARIMU & 3 OTHERS

RESPONDENTS

AND

MISCELLANEOUS APPLICATION NO. 57 OF 2023

[Arising from Civil Suit No.018 of 2023]

MATOVU KARIMU & 3 OTHERS

APPLICANTS

VERSUS

1. MUGISHA JONAN

2. AYEBARE JOSEPH

3. NATIONAL FOREST AUTHORITY

RESPONDENTS

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

RULING

This Ruling results from Miscellaneous Applications No.56/2023 and No.57/2023 all arising from Civil Suit No.018/2023. The suit was filed by the Applicants in Miscellaneous Application No.57/2023 with National Forestry Authority and two others being the defendants. The Applicants in both applications seek temporary injunctions to restrain the



and/or their agents from trespassing on land in Kyamutete LC1, Kitwala Parish, Kyankwanzi District.

Background.

Matovu Karim and 3 others filed Civil Suit No.018 of 2023 for a declaration that they are lawful owners of 1,007 acres of land formerly owned by Emmanuel Nsamba Sabasaba at Kyamutete Village, Kitwala Parish in Kyankwanzi District. It is claimed that Emmanuel Nsamba settled on the land in 1977. On his death Nsamba is stated to have left 86 beneficiaries and had settled 1,257 people on the land. The Plaintiffs claim their interest in the land as beneficiaries of Nsamba's estate and from those he settled on the suit land.

It is alleged in the suit that on 25th January 2023 the 1st and 2nd Respondents in MA No.56/2023 with six soldiers and 138 men invaded the land, destroyed the Plaintiff's crops and other developments killing two people in the process. Civil Suit No.018/2023 was filed for a declaration that defendants' acts constituted trespass, for compensatory orders, special damages, a permanent injunction and other reliefs.

The Plaintiffs further filed MA No.57/2023 for a Temporary Injunction pending the conclusion of the suit and further filed MA No.58/2023 for an Interim Order pending the disposal of MA No.57/2023. A Consent Order to maintain the status quo was entered by Counsel for the parties in MA No.58/2023.

National Forestry Authority was joined to the suit as the employer of the 1st and 2nd defendants. The Plaintiff's contentions are denied in the Written Statement of Defense and asserted that the suit land forms part of the Taala Central Forest Reserve gazetted under Legal Notice No.87 of 1932 and mapped on Cadastral Sheet No.58/2, registered as Public Land

No.2667.The forest reserve was later re-gazetted under Statutory Instrument No.63 of 1998.

The National Forestry Authority contends that the Plaintiffs have since 2013 encroached on the forest reserve and carried out destructive activities which they intend to perpetuate through the suit and the sought temporary injunction.MA No.56/2023 was thus filed by National Forestry Authority to restrain the Plaintiffs from carrying out the illegal encroachment until the final disposal of the suit.

It was deemed imperative to handle the applications simultaneously since they both arise from the same suit and are for the same reliefs.

Representation.

M/S Songon &Co. Advocates represent the Plaintiffs/Applicants while the Legal Department of the National Forestry Authority represents the Defendants/Applicant in MA No.56/2023.

The Law on Temporary Injunctions.

The granting of temporary injunctions is an exercise of judicial discretion and the purpose is to preserve the matters in status quo until the question to be investigated in the main suit is finally disposed of. The conditions for the grant of an interlocutory injunction are well settled;-

1. The Applicant must show a prima facie case with a probability of success
2. The injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be atoned for by an award of damages
3. If the court is in doubt, the application is decided on the balance of convenience.

I will now evaluate the merits of the respective applications based on the conditions laid out above.



Disclosure of a prima facie case.

It is imperative to note that in determining whether a prima facie case is established in the substantive suit, the court does not delve into the merits of the case. The duty of the court is to determine that the claim is not frivolous or vexatious and there is a serious legal issue to be tried.

In MA No.56/2023 the National Forest Authority contends that the land was gazetted as a forest reserve in 1932 and no part of it has been de-gazetted. Attached to the Application is a survey report for a boundary opening exercise carried out in October 2022 the findings of which are that the land, houses and human activities associated with Ssabasaba all entirely fall inside Taala Central Forest Reserve.

On the other hand the Plaintiffs/Applicants in MA No.57/2023 contend that they derive their interest in the land from Sabasaba who was settled on it as a customary owner in 1977. They claim to have grown up and established developments on the land as indeed confirmed in the survey report attached to MA No56/2023 filed by National Forest Authority.

I find that the contentions about the Plaintiff's claim to the land and the claim fronted by the National Forest Authority raise serious legal issues that merit consideration by the court. The suit and the counter claim filed both deserve legal scrutiny to aid the final determination of the respective claims. The two applications meet the 1st condition for the grant of a temporary injunction.

Irreparable injury.

In MA No.56/2023 the National Forest Authority seeks to restrain the Respondents from cultivating, constructing any structures, wasting the suit land, harvesting trees, destroying vegetation and altering the

geographical and environmental set up of the suit land measuring 9150 hectares.

The Plaintiffs/Applicants in MA No.57/2023 seek to restrain the National Forest Authority from alienating, evicting the applicants from carrying out any activities of destruction, wasting the suit land, dealing with the suit premises and /or interfering with the suit kibanja at Kyamutete village, Kitwala Parish in Kyankwanzi District.

The reliefs sought in both applications are the same. The flora and fauna the National Forestry Authority seeks to protect cannot be easily replaced and/ or atoned for in damages calculable as in normal suits. It is also crucial to note that Public funds are expended for the public good in the management of forest reserves and the court cannot injunct the Authority from performing her statutory functions under the **National Forestry and Tree Planting Act. Act No.8 of 2003.**

I find no irreparable injury that cannot be atoned for by an award of damages in the case of any loss that may be occasioned to the Plaintiffs/Applicants on MA No.57/2023. This is also demonstrated in the claim for compensation in the suit filed by them.

The National Forestry Authority is however not expected to and is hereby restrained from stopping the Applicants in MA No.57/2023 from carrying out normal farming but not construction activities within the bibanja occupied by them at the time the suit was filed.

Any purported extension of the farming or other activities to the areas controlled by the National Forestry Authority should however be resisted and culprits handled within the Law.

In sum, MA. No.56 of 2023 filed by the National Forestry Authority succeeds and MA No.57 of 2023 filed by the Plaintiffs fails and each party shall meet its costs. The Injunction granted in favor of the National



geographical and environmental set up of the suit land measuring 9150 hectares.

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In sum, MA. No.56 of 2023 filed by the National Forestry Authority succeeds and MA No.57 of 2023 filed by the Plaintiffs fails and each party shall meet its costs. The Injunction granted in favor of the National



Forestry Authority shall remain in force until the hearing of the suit on 7th August 2023.

In the interest of expediting the conclusion of Civil Suit No.018/2023 I make the following Orders.

- a) Counsel for both parties are directed to file a joint scheduling memorandum before the 17th July 2023.
- b) Counsel are directed to file and serve trial bundles and witness statements for their respective parties before the 31st July 2023.
- c) The case is fixed for hearing at Kiboga Court on 7th August 2023 and 8th August 2023 starting at 10.00am on each day.



Moses Kazibwe Kawumi

Judge

30th May 2023.