**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISC APPLICATION NO. 0474 OF 2016**

**ARISING FROM CIVIL REVISION NO. 305 OF 2016**

**RITA NDAGIRE KYADONDO NAKYEKOLEDDE:::::::::::::::::::::APPLICANT**

**VERSUS**

**KAMPALA CAPITAL CITY AUTHORITY::::::::::::::::::::::::::::::RESPONDENT**

**Before: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Applicant filed this application seeking for an injunction against the Respondent.

The Respondent filed an affidavit in reply rebutting the application.

For an application for a temporary injunction to succeed, the Applicant has to prove that;

1. *He has a prima facie case with a probability of success.*
2. *Applicant will suffer irreparable injury which would not be adequately compensated by an award of damages.*
3. *That the status quo would not be altered and the balance of convenience is in the favour of the Applicant.*

See; ***In Kiyimba Kagwa versus Katende (1985) HCB*** 43. From the pleadings as filed and all the affidavits filed in this application by each party, I do find as follows:

1. ***Prima facie case***:

The Applicant must show that there is a substantive suit with triable issues, which have a possibility of being decided in his/her favour. This position is espoused in ***Daniel Mukwaya versus Administrator General. HCCS NO. 630/1993****(unreported).*

I do find that the Applicants have filed Civil Suit No. 305/2015. The same is still pending. From the plaint and the WSD, as filed, it is clear that there are triable issues between these parties. The suit is not *vexatious or frivolous*. This requirement is therefore proved.

2. ***Irreparable injury***

This is considered to determine if at the end of the trial, it is possible to remedy the mischief complained about by the Applicant by an award of damages. See ***American Cynamid versus Ethicon Limited [1975] AC 396.***

I have examined the plaint and the WSD, and I have also looked at the pleadings before me. I have noted that the matter (suitland) includes a school, which is threatened by the activities of both parties. It is not clear who demolished it. However, there is evidence suggestive of a possibility of erasing it to put up a market. All these activities would cause irreparable damage.

The school and its mandate cannot, if erased, be replaced by an award of damages. I do therefore find that irreparable damage would occur. This ground is proved.

***Balance of Convenience***

This means that if the risk of doing an injustice is going to make the Applicants suffer then, the balance is in their favour. See;  ***Gapco U Ltd. versus Kawesa Badru HCMA NO. 259/2013*** *(unreported).* This ties in well, with the need to maintain the *status quo*. In ***Legal Brains Trust Ltd. versus AG.( HCMA 638/2014)***, it was held that;

*‘the purpose of tilting the balance in favour of a party is*

*to preserve the status quo’****.***

Therefore in this case, there is need to preserve the *status quo* so that the subject matter is not rendered a nullity. This is the reason I find that there is need to protect the school children so that their school operates normally until the suit is disposed of.

I find that the balance tilts in favour of the Applicant.

All in all, I find that the Applicant has satisfied the grounds for this grant. The application is granted in terms as prayed. The application is granted.

Costs in the cause.

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Henry I. Kawesa

**J U D G E**

02/11/2017

02/11/2017:

Kibirango Erasto for the Plaintiff.

Plaintiff by lawful Attorney Mawejje – having revoked powers given to Muwonge Patrick.

Respondent by Jackline Atugonza.

Kibirango: application is for ruling.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in the presence of the above parties.

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Henry I. Kawesa

**JUDGE**

02/11/2017