

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-MC-0021-2023

1. THE ENVIRONMENT SHIELD LTD
2. GAWAYA TUGULE ::: APPLICANTS

VERSUS

1. JINJA CITY COUNCIL
2. ZHONGMEI ENGINEERING GROUP LTD:::RESPONDENTS

Application for Declaratory Orders

Held: Application Granted with Orders set forth in this Ruling.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application brought under **Articles 20(2), 28, 38, 39, 42, 50(1) & (2) of the 1995 Constitution of the Republic of Uganda, Sections 3(1), 3(2), 3(3), 3(4), 3(5), and Section 5 (2) of the National Environment Act, 2019, Sections 3, 4, 6 10 of the Human Rights (Enforcement) Act 2019; and Section 33 of the Judicature Act, Cap 13** seeking for:-

1. A declaration that the Respondents' planned cutting of the endangered *Milicia excelsa* (*Mvule* trees) along Nile Avenue in Jinja City (the endangered *Mvule* trees) is a threat to the right of City residents and other persons to a clean, healthy and decent environment guaranteed and protected by **Article 39 of Constitution of the Republic of Uganda, 1995; Sections 3 & 5(2) of the National Environment Act. 2019.**
2. A declaration that the Respondents' planned cutting of the endangered *Mvule* trees is a threat to the historic flair and touristic character, heritage and reputation of Jinja City protected by **Articles 37 & 39 of Constitution of the Republic of Uganda, 1995 and Sections 3 & 5(2) of the National Environment Act, 2019.**
3. A declaration that the Respondents' planned cutting of the endangered *Mvule* trees is devoid of meaningful, adequate or/and effective public participation in environmental decision making required by **Articles 8A, 17, 20(2), 28, 38, 39, 42 & 44 of Constitution of the Republic of Uganda, 1995 and Sections 3 & 5(2) of the National Environment Act, 2019.**

4. A permanent injunction issues restraining the Respondents, their agents, workmen, representatives or any other person acting on their instructions from cutting or felling down the endangered *Mvule* trees.
5. Other appropriate or incidental environmental protection orders.

The above stated grounds are reiterated in the Affidavit in Support of the Application deponed by **Gawaya Tegule and Turyakira John Robert**, the Applicants; the gist of which are that :-

1. The 1st Applicant is a nonprofit civic environment company limited by guarantee protecting nature and working for a just and green society.
2. The 2nd Applicant is a seasoned journalist, Daily Monitor Columnist, human rights lawyer, Advocate of the Courts of Judicature of Uganda and member of the Uganda Law Society and the East Africa Law Society; and he grew up and studied near the endangered *Mvule* trees in Jinja City.
3. The 1st Respondent is a legal person with capacity to sue and be sued & authorized the 2nd Respondent to cut the *Mvule* trees.
4. The 1st Respondent is directly responsible for planned cutting of the *Mvule* trees & the 2nd Respondent, a legal person with capacity to sue and be sued, is a private limited company engaged in construction and engineering business in the fields of roads, housing, public works, urban rail, mines, and hydropower as well as the installation of mechanical and electrical equipment and geological exploration in Uganda; and it has signaled its plan to cut the endangered *Mvule* trees in writing.
5. The Applicants, City residents and other persons have a right to a clean and healthy environment and are equally entitled to civic, cultural and good environment governance rights.
6. City residents and other persons have a duty to respect, uphold, create and promote a clean and healthy environment.
7. The Respondents in planning to cut or fell down the endangered *Mvule* trees are threatening the rights of City residents and other persons to a healthy environment, culture, tourism and civic rights.
8. The Respondents have a duty to create, respect, protect and promote a decent, clean and sustainable environment.
9. The Respondents MUST abide by the principles of good environmental management stipulated in **Section 5(2) of the National Environment Act, 2019** including:
 - a) The right to a clean, decent, safe & healthy environment;
 - b) Encouraging participation by the people of Uganda;
 - c) Conserving biological diversity; sustainability;
 - d) Precautionary principle;
 - e) Polluter pays principle;

- f) Adequate environmental protection standards;
- g) Scrutiny of environmental costs natural assets deterioration;
- h) Green growth;
- i) Sustainable Development Goals (SDGs);
- j) Circular economy;
- k) Prioritization of resilience to climate change;
- l) Promotion of implementation of applicable international environmental standards; and
- m) Regard to international human rights standards.

10. The planned cutting of the *Mvule* trees is inconsistent with the said principles of good environment management and the rights of City residents and other persons to a healthy environment, culture, tourism, and civic rights.

11. The International Union for the Conservation of Nature terms *Milicia excelsa*, *Mvule* tree, one of the most endangered species.

12. The endangered *Mivule* trees help in creating, protecting and promoting a clean and healthy environment, take some 50 years to mature and help in fighting pollution and also help in beautifying Jinja City and Uganda.

13. Jinja is a major tourist destination in Uganda and globally and trees profoundly contribute to their beauty. Tourism is one of the pillars of Uganda's economy. Trees are an essential feature of Jinja City's tourism, educational, social and cultural fabric.

14. The endangered *Mivule* trees help in battling triple planetary crisis of the climate emergency, pollution and biodiversity loss; are carbon sinks and reduce the Greenhouse' effect by removing carbon dioxide from the air and releasing oxygen.

15. Trees are essential to human health. Canopies of trees act as a physical filter, trapping dust and absorbing pollutants from the air, provide shade from solar radiation, break wind and reduce noise; and are also an effective sound barrier and can limit noise pollution.

16. It is lawful, just and equitable that all the reliefs sought are granted.

The 1st Respondent filed an Affidavit in Reply, deponed by **Lwanga Edward**, in which he averred that:-

1. He is an adult male Ugandan of sound mind, the City Town Clerk of Jinja City and swore this affidavit in that capacity.
2. He had read **High Court Misc. Cause No.21 of 2023**, the supporting affidavits deposed by Turyakira John Robert and Thomas Gawayya Tegulle

and the contents therein had been explained to him by Attorneys from the Attorney General's Chambers and wished to respond that:-

3. The 1st Respondent makes no admissions to any of the contents of the Affidavits of the Applicants unless expressly stated.
4. He knows that the application has been over taken by events as the decision to cut trees has been halted.
5. The contents of paragraphs 3 and 26 of the affidavit of Thomas Gawaya Tegulle and Turyakira John Robert are not within his knowledge.
6. In specific reply to paragraphs 6,18,21 of the affidavit of Gawaya Tegulle he knows that:-
 - i. The 1st Respondent entered into a contract with the 2nd Respondent for rehabilitation of Clive and Clerk Roads, Bell East and West, completion of Busoga Avenue, traffic signaling and drainage works.
 - ii. Part of the construction works in the contract included construction of the parking lane and walkway at the RHS in the above cited road segment.
 - iii. This road segment has trees and in order for the Contractor to execute the works as required under the contract there was need to cut 8 Mvule trees & these trees were to be replaced by planting others.
 - iv. The 1st Respondent received several concerns on the planned removal of the 8 trees and upon consideration of the issues raised, the Resident Engineer was instructed to halt the removal of the said trees by the 1st Respondent.
 - v. The 1st Respondent convened a meeting on the 21st June 2023 with all the relevant stakeholders and it was discussed and decided that No tree should be removed.
 - vi. The above position was communicated to the Resident Engineer by letter dated 21st June 2023. **See Annexure "A"**
7. The contents of paragraphs 9, 12, 17, 22, 23, 24 & 25 of the affidavit of Gawaya Tegulle and paragraphs 7 of the affidavit of Turyakira John Robert are denied; while the contents of paragraphs 11,13,14,15, 19 and 20 of the affidavit of Gawaya Tegulle and paragraphs 4,5,6,8,9,10, 11, 12, 13, 14, 15 a-f, 16,17A- E, 18, 19, 20, 21,22,23,24,25,27 of the affidavit of Turyakira John Robert are noted.
8. The 1st Respondent denies the contents of paragraph 16 of the affidavit deponed by Gawaya Tegulle and the Applicants shall be put to strict proof.
9. It is just and equitable that this application is disallowed; and he deponed this affidavit in opposition to the instant application.

BACKGROUND

It was submitted by learned counsel for the Applicants that the instant Application is for enforcement of the fundamental human right to a clean and

healthy environment, guaranteed and secured under **Articles 20(2), 38, 39, 50(1) & (2), of the 1995 Constitution of the Republic of Uganda, 1995; Sections 3(1), 3(2), 3(3), 3(4), 3(5) & Sections 5(2) of the National Environment Act, 2019 & Sections 3, 4, 6 and 10 of the Human Rights (Enforcement) Act, 2019.**

In the Motion and Affidavits supporting it, the 1st Applicant, a nonprofit civic environment company limited by guarantee and the 2nd Applicant, a seasoned journalist, human rights lawyer, Advocate of the Courts of Judicature of Uganda preferred this environmental suit against the Respondents to ensure legal protection of the suit urban trees and assert respect, protection, promotion and threatened by the respondents written threats to cut the *Mivule* trees in Jinja City.

The suit invites court to issue a permanent injunction restraining the Respondents, their agents, workmen, representatives and other persons acting on their instructions from cutting or felling down the endangered *Mivule* trees and grant other appropriate or incidental environmental protection orders.

The City residents, Applicants and other persons have a right to a clean and healthy environment enshrined under **Article 39 of the Constitution of the Republic of Uganda, 1995 and Section 3(1) of the National Environment Act, 2019.**

The Respondents have a duty to create, respect, protect and promote a descent, clean and sustainable environment pursuant to **Article 20(1) of the Constitution of the Republic of Uganda, 1995 and Section 3(2) of the National Environment Act, 2019.** It is also upon the 1st Respondent to ensure that the principles of environmental management set out in **Section 5 of the National Environment Act, 2019** are observed.

It is also the duty of the Respondents to conserve the cultural heritage and use the environment and natural resources of Uganda for the benefit of both present and future generations; **Objective XIII of the Constitution of the Republic of Uganda, 1995** provides that “*the Government is mandated to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda*”. See: ***Nyakaana vs National Environment Management Authority & Ors (Constitutional Appeal No. 5 of 2011) [2015] UGSC 14 (20 August 2015) (herein referred to as the Nyakaana case).***

Objective XXVII (ii) of the Constitution calls for utilization of Uganda's natural resources in such a way as to meet the development and environmental needs of the present and future generations of Ugandans and in particular, calls for

the State to take all possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes. **See: Nyakaana case.**

Objective XXVII (iv) (a) directs the State to create and develop parks, reserves and recreation areas ensuring the conservation of natural resources and

(b) directs the State to promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.

Section 54 (2) (b) of the National Forestry and Tree Planting Act, 2003 (herein referred to as the NFTA) requires the National Forestry Authority (NFA) to provide technical support and guidance to the district forest officers in their delivery of forestry advisory services relating to community forest, private forests, the promotion of tree planting, growing and awareness.

Section 54 (2) (c) of the NFTA requires NFA to supervise and train local governments in the implementation of this Act relating to the planting, protection and conservation of trees and forests.

Article 24 of the African Charter on Human and Peoples' Rights (1986) provides that *“all peoples shall have the right to a general satisfactory environment favorable to their development”*.

Additionally, **Article 237 of the Constitution, Section 44(1) of the Land Act and section 5(1) of the National Forestry and Tree Planting Act, 2013** all direct the State to hold in trust for the people and protect natural resources including forest reserves or ecological and touristic purposes for the common important natural resource, See: **National Objectives and Directive principles of state policy XXV; and XXVII (1) & (i).**

They relied on **STC4360-2018 de la Corte Suprema de Justicia, Sala de Casacion Civil**, where M.P. Luis Armando Tolosa Villabona, April 05, 2018; the Supreme Court emphasized that:

"The fundamental rights to life, health, the vital minimum, liberty and human dignity are substantially connected and determined by the environment and the ecosystem. Without a healthy environment, the Subjects of rights and sentient beings in general will not be able to Survey, much less protect those rights, for our children nor for future generations. Nor will we be able to guarantee the existence of the family, the society or the State itself. "

They argued that the law applicable highlighted above must be applied in light of the legal principles regulating the burden of proof in human rights suits of an environmental nature as follows:-

Under **Article 245**, Parliament made the **National Environment Act** to protect and preserve the environment. The Supreme Court clarified that the **National Environment Act** is the State's instrument to protect the environment from abuse, pollution and degradation. **See: Nyakaana case.**

The National Environment Act, the Supreme Court found, *“has its base in the Constitution; and that one has to start with the National Objectives and Directive Principles of State Policy which are meant to guide all organs and agencies of the State, all citizens, organizations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.”* **See: Nyakaana case.**

The principles of sustainable development- including the precautionary principle and polluter pays principle - must be adopted and applied if the State is to carry out its Constitutional mandate to protect the environment and guarantee a clean and healthy environment for the citizens, while at the same time promoting sustainable development.

Further, that the Supreme Court of India, while considering similar legislation to ours, i.e. **the Environment (Protection) Act, 1986**, has considered the above principles. **In Vellore Citizen's Welfare Forum -vs- Union of India & Others (1996) 5 Supreme Court cases, 647**, the court considered these principles at length. This was a case involving the pollution that was being caused by the discharge of untreated effluent by tannery industries in the state of Tamil Nadu. The Court considered the concept of sustainable development both in municipal as well as international context. That it should be recalled that our own Constitution in **Objective No. XXVII (Supra)** the State is obligated to *“promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.”*

That the **World Commission on Environment and Development** (the **Brundtland Report**) defined **"Sustainable Development that Development" as meets needs of the present without compromising the ability of the future generations to meet their own needs,**

“The Polluter Pays Principle” and The Precautionary Principle are essential features of “Sustainable Development.”

The Precautionary Principle means:-

- i. *The Environmental measures - by the State Government and the Statutory authorities must anticipate, prevent and attack the causes of environmental degradation;*
- ii. *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- iii. *The "Onus of proof" is on the actor or the developer/industrialist to show that his environmentally benign. "*

On "the Polluter Pays Principle", the court had this to say: -

"The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "sustainable Development" and as such the Polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology."

REPRESENTATION

When this Application came before me for hearing, the Applicant was represented by Counsel Eron Kiiiza of M/S. Kiiza & Mugisha Advocates Advocates, while the Respondents were represented by Counsel Turyakira John of Attorney General Chambers.

Both parties were directed to file Written Submissions, but by the time of writing this Judgement, it is only the Applicants who had complied. I have analyzed the same and relied on them in this Ruling.

THE LAW

Articles 20(2) of the 1995 Constitution of the Republic of Uganda,

"20. Fundamental and other human rights and freedoms

...

"(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons".

Article 28 of the 1995 Constitution of the Republic of Uganda states that;-

"Right to a fair hearing

- (1) *In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law".*

Article 38 of the 1995 Constitution of the Republic of Uganda states that:-

“Civic rights and activities

(1)Every Uganda citizen has the right to participate in the affairs of government, individually or through his or her representatives in accordance with law.

(2)Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations”.

Article 39 of the 1995 Constitution of the Republic of Uganda provides for:-

“Right to a clean and healthy environment

Every Ugandan has a right to a clean and healthy environment”.

Article 42 of the 1995 Constitution of the Republic of Uganda provides for;-

“Right to just and fair treatment in administrative decisions

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her”.

Article 50(1) & (2) of the 1995 Constitution of the Republic of Uganda provides for:-,

“Enforcement of rights and freedoms by courts

(1)Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.

(2)Any person or organization may bring an action against the violation of another person’s or group’s human rights”.

Sections 3(1) (2), (3),(4), (5) of the National Environment Act, 2019, provides for;-

“3. Right to a decent environment

(1) Every person has a right to a healthy environment.

(2)Every person has a duty to maintain and enhance the environment, including the duty to inform the authority or the local environment committee of all activities and phenomena that may affect the environment significantly.

(3)In furtherance of the right to a healthy environment and enforcement of the duty to maintain and enhance the environment, the authority or the local environment committee so informed under subsection (2) is entitled to bring an action against

any other person whose activities or omissions have or are likely to have a significant impact on the environment to—

(a) prevent, stop or discontinue any act or omission deleterious to the environment;

(b) compel any public officer to take measures to prevent or to discontinue any act or omission deleterious to the environment;

(c) require that any ongoing activity be subjected to an environmental audit in accordance with section 22;

(d) require that any ongoing activity be subjected to environmental monitoring in accordance with section 23;

(e) request a court order for the taking of other measures that would ensure that the environment does not suffer any significant damage.

(4)The authority or the local environment committee proceeding under subsection (3) is entitled to bring an action notwithstanding that the person cannot show that the defendant's act or omission has caused or is likely to cause any personal loss or injury”.

Sections 3 of the Human Rights (Enforcement) Act. 2019, provides for;-

“Enforcement of human rights and freedoms

(1)In accordance with article 50 of the Constitution, a person or organization who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act.

(2)Court proceedings under subsection (1) may be instituted by—

(a) a person acting on behalf of another person, who cannot act in their own name;

(b) a person acting as a member of, or in the interest of a group or class of persons;

(c) a person acting in public interest; or

(d) an association acting in the interest of one or more of its members”.

Section 4 of the Human Rights (Enforcement) Act 2019, provides for;-

“Enforcement of rights and freedoms by the High Court

(1)The High Court shall hear and determine any application relating to the enforcement or violation of—

(a) non-derogable rights and freedoms guaranteed in article 44 of the Constitution;

(b) other rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms envisaged in article 45 of the Constitution;

(c) rights and freedoms restricted under a law made for purposes of a state of emergency; and

(d) rights and freedoms which are preserved by this Act, to be determined by a magistrate court, where the remedy sought by the applicant is beyond the pecuniary jurisdiction of that court.

(2) Applications under subsection (1) shall be in the form prescribed by regulations and may, unless the High Court determines otherwise, be heard in open court.

Section 6, of the Human Rights (Enforcement) Act. 2019 provides that;-

“General provisions on human rights suits

(1) A suit for the enforcement or protection of human rights and freedoms shall, where possible, be instituted in the court in whose jurisdiction the alleged violation took place.

(2) Where a person is in doubt as to the person from whom he or she is entitled to obtain redress, he or she may join two or more persons in order for the question as to which person is liable for the violation to be determined by the competent court.

(3) The competent court may allow any person with expertise on a particular issue which is before court to appear as a friend of the court, either on application or on the competent court’s own request.

(4) For avoidance of doubt, statutory notice shall not be a requirement for suits under this Act.

(5) No suit instituted under this Act, shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality.

And

Section 10 of the Human Rights (Enforcement) Act. 2019 provides for;-

“Personal liability for infringement of rights and freedoms

(1) A public officer who, individually or in association with others, violates or participates in the violation of a person’s rights or freedoms shall be held personally liable for the violation notwithstanding the State being vicariously liable for his or her actions.

(2) Whenever the competent court orders for the payment of compensation or any other form of restitution to a victim of a human rights violation by the State, a public officer who is found by the competent court to have personally violated or participated in the violation of a person's human rights or freedoms shall pay a portion of the compensation or restitution so ordered as shall be determined by the competent court

And

Section 33 of the Judicature Act, Cap 13

“General provisions as to remedies.

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided”.

RESOLUTION OF THE APPLICATION

I have carefully analyzed this Application, the laws under which it was brought and the submissions of learned counsel for the Applicants. It was submitted by learned Counsel for the Applicants that the basic expectation in any society based on the rule of law is that the holders of public authority must be able to justify their action as legally valid and socially wise and just. **See: M. Ssekaana, Public Law in East Africa, 2010; Law Africa, at page 2.**

That the Applicant upon alleging violations of or threats to human rights, the burden shifts to the respondent to justify the limitation on such human rights. Such justification must be one that can hold in a democratic society. It cannot hold in such a society unless it complies with the **Article 43 of the Constitution's limitation on limitations** that the restriction or limitation must be necessary and justifiable in a free and democratic society. It must meet all elements of the three-part test articulated in various leading authorities.

That in the **Obbo** decision, the Judgment of Tsekooko JSC is to the effect that by incorporating in our constitution the human rights provisions which are set out in various international instruments, the framers of our constitution, consciously, opted for the objective test in determining "*what is acceptable and demonstrably justifiable in a free and democratic society*".

That "Demonstrably" as used in **our Article 43 (2) (c) of the Constitution** appears to connote that whoever wants to show that the act or commission complained of is justifiable, that person must prove it by evidence.

They framed only a few issues - for ease of resolution of the suit. The issues revolved around the THREAT to the right to a clean and healthy environment by the Respondents' written plans to cut trees in the city. They are as follows:-

ISSUE 1: Whether the Respondents threatened to cut *Mivule* trees in Jinja City?

It was submitted by the Applicants that the Respondents threatened to cut *Mivule* trees in Jinja City is fact the 1st Respondent admitted and the 2nd Respondent did not contest by failure to defend this suit. That the threat was reduced into writing and annexed to the Applicants' pleadings; and prayed that court answers this issue in the affirmative.

ISSUE 2: Whether the Respondents' threat to cut the *Mivule* trees threatened the right to a clean a clean and healthy environment?

It was submitted by the Applicants that "*Every Ugandan has a right to a clean and healthy environment.*" That is the supreme law stating so in **Article 39 of the Constitution of the Republic of Uganda, 1995.**

Subsection (1) of Section 3 of the National Environment Act, 2019 stipulates that: "*Every person in Uganda has a right to a clean and healthy environment in accordance with the Constitution and the principles of sustainable development.*"

That the Respondent's threat to cut the *Mivule* trees was inconsistent with and threatened the rights of City residents and other persons to a clean, healthy and decent environment guaranteed by law and critical to the culture, tourism, and well-being of Jinja City. It was also a negation of their duty to prevent pollution in the city.

The right to a clean and healthy environment is a fundamental human right that recognizes every individual's entitlement to live in a safe and ecologically balanced environment. It encompasses the idea that every person should have access to natural resources, clean air, clean water, and a habitat that supports their physical and mental well-being. This right emphasizes the importance of environmental protection and sustainability for the benefit of current and future generations.

The right to a clean and healthy environment is closely linked to the concept of environmental human rights, which acknowledges that the environment is not just a commodity for exploitation but an essential element for human dignity

and quality of life. It implies that governments and authorities have a duty to protect and preserve the environment, and individuals have a right to participate in decisions related to environmental matters that affect them.

Further, that the right to a healthy environment has substantive and procedural elements. The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.

The duty to uphold the right to a healthy environment lies first and foremost with the State - represented by City authorities, the 1st Respondent - who have an obligation to respect, protect and fulfil all human rights in accordance with **Article 20(1) of the Constitution of the Republic of Uganda, 1995** and **Section 3(2) of the National Environment Act, 2019**.

At the same time, everyone has an important role to play in making the right to a healthy environment a reality.

See <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP>

In addition, that **Article 20(1) of the Constitution** couldn't be clearer regarding fundamental human rights like the one to a clean and healthy environment secured by **Article 39 of the Constitution** and succinctly says that:-

“The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”.

That **Section 3 (2) of the National Environment Act, 2019** is more specific in providing that:

"Every person has a duty to create, maintain and enhance the environment, including the duty to prevent pollution."

They submitted that everyone has a duty to protect the environment and prevent pollution and environmental degradation. This duty is for every person, every government agency or authority and every business. On the environmental protection duties of citizens - like the Applicants and some officials of the Respondents - the law is even louder.

In addition, that **Article 17 of the Constitution of the Republic of Uganda, 1995** is to the effect that it is the duty of every citizen of Uganda to create and

protect a clean and healthy environment. This constitutional duty to create and protect a clean and healthy environment has been elaborated by **Section 3 (2) of the National Environment Act, 2019** to include the “*duty to prevent pollution.*”

They argued that businesses - like the 2nd Respondent which refused to defend this suit have a responsibility to respect human rights. That the **UN Guiding Principles on Business and Human Rights** articulate the minimum duties of States with respect to human rights.

With respect to environmentally impactful activities, States must ensure that businesses perform environmental and human rights impact assessments and due diligence, provide access to information to affected individuals and communities, and engage in community consultation and transparent decision-making. Businesses must respect the right to a healthy environment and should seek to proactively advance it through responsible business practice.

Again, that the right to a clean and healthy environment is embedded in the supreme law and statutory law of the land. The right to a clean, decent, safe & healthy environment is guaranteed by **Article 39 of the Constitution of the Republic of Uganda, 1995** and further stipulated in **Section 3(1) of the National Environment Act, 2019**.

Article 50 (1) of the Constitution of the Republic of Uganda, 1995 makes a threat to any fundamental human right actionable. Verbatim, it is to the effect that:

"Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or THREATENED, is entitled to apply to a competent court for redress which may include compensation."

Section 3 of the National Environment Act, 2019 specifically makes any THREAT to the right to a clean and healthy environment actionable.

It states that:-

"A person may, where the right referred to in subsection (1) is THREATENED as a result of an act or omission by any person which has or is likely to cause harm to human health or the environment or in enforcement of the duty referred to in subsection (2), file a civil suit against the person whose act or omission has or is likely to cause harm to human health or the environment,"

They therefore submitted that the respondents threatened to cut the trees which are an essential part of the environment and only recoiled after a public outcry. Those threats to the urban trees were illegal and not allowed by law. The threats

were incapable of justification in accordance with **Article 43 of the Constitution of the Republic of Uganda, 1995** and the Respondents made no attempt to justify them. The 1st Respondents admits the threats.

That their agent, the 2nd Respondent did not bother defending the suit. All people have the right to a clean, healthy and sustainable environment. As human rights and the environment are interdependent, a clean, healthy and sustainable environment is necessary for the full enjoyment of a wide range of human rights, such as the rights to life, health, food, water and sanitation and development, among others.

Air pollution is considered one of the biggest environmental threats to health resulting in an estimated seven million premature deaths every year in violation of the rights to health and life, Environmental degradation disproportionately impacts persons, groups and peoples already in vulnerable situations.

It is axiomatic that cutting urban trees, more so the more 50 years old *Mivule* trees is a threat not only to the environment in the trees' environs but also a threat to the broader environment, biodiversity and the climate system on which life not only in the Jinja City but also entire planet depends.

In the ***Nyakaana case***, the Supreme Court held that the right to a clean and healthy environment enshrined in the Constitution must be protected by the State; and the State must act with vigilance to protect the environment to ensure that the common good is protected for the community as a whole.

The grave matter of protecting the environment as commanded by the Constitution, held the Supreme Court in the Nyakaana case, is a matter that is of interest to, and impacts on the community as a whole. The individual's interest must be viewed in the context of that larger interest of society as a whole and in the context of the Constitution and the laws made thereunder.

The Respondents' written threat to cut the urban *Mivule* trees in Jinja city threatened the right to a clean and healthy environment in several ways including in the following respects:

1. Air Pollution: Urban trees play a crucial role in improving air quality by absorbing carbon dioxide and other pollutants, while releasing oxygen through the process of photosynthesis. Cutting down trees reduces the city's natural capacity to filter harmful airborne pollutants, leading to increased levels of air pollution. This can have detrimental effects on public health, leading to respiratory illnesses and other health issues.
2. Heat Island Effect: Trees provide shade and help mitigate the urban heat island effect, which is the phenomenon of cities being significantly warmer than

surrounding rural areas due to human activities and lack of vegetation. When trees are removed, urban areas become hotter, exacerbating heat-related illnesses and discomfort for residents.

3. Biodiversity Loss: Urban trees provide habitats for various animal and plant species. Cutting down trees can disrupt the local ecosystem, leading to a loss of biodiversity. This, in turn, can affect the balance of the environment and reduce the resilience of urban ecosystems to climate change and other environmental challenges.

4. Storm water Management: Trees play a role in managing storm water runoff by absorbing and slowing down rainwater. Without trees, cities may face increased flooding and damage to infrastructure during heavy rainfall events.

5. Mental Health and Well-being: Urban green spaces, including trees, have been linked to improved mental health and well-being. They offer opportunities for relaxation, recreation, and stress reduction. Removing trees can have negative psychological impacts on residents, leading to increased stress and anxiety.

6. Climate Change Impact: Trees act as carbon sinks, absorbing carbon dioxide from the atmosphere. Cutting down urban trees reduces the city's capacity to sequester carbon, contributing to the exacerbation of climate change and its associated impacts, such as extreme weather events.

7. Aesthetic and Recreational Value: Trees contribute to the aesthetic beauty of urban landscapes, enhancing the overall liability and attractiveness of cities. They provide spaces for recreational activities and social interactions, contributing to community cohesion and well-being.

8. Urban Wildlife: Trees are essential for urban wildlife, providing food, shelter, and nesting sites for various animal species. Removing trees can disrupt the habitat and survival of urban wildlife.

They concluded that the Respondents' written threats to cut the urban *Mivule* trees in Jinja city threatened wide-ranging and detrimental effects on the environment and the well-being of city residents.

That the detrimental effects on the environment and the well-being of city residents the cutting of the trees promised and was bound to cause threatened the right to a clean and healthy environment, which encompasses access to clean air, a stable climate, biodiversity, and a space that promotes physical and mental well-being for all members of the community; and prayed that court answers this issue in the affirmative.

ISSUE 3: What remedies are available in the circumstances?

It was submitted for the Applicants that the point of this suit was to protect the *Mivule* trees from current or future demise. Their demise would constitute an environmental, ecological, human rights and sustainable development blunder and catastrophe.

That this suit will have served no purpose, if after its filing, and resolution, the respondents can in the coming years or months fell the trees, a permanent injunction is the minimum threshold for a legal bar to that Scenario, Court is enjoined take active measures to respect, protect and fulfil the right to a healthy environment. Court should also ensure effective remedies for threats to the right to a healthy environment enjoins this court to give judicial reliefs designed to prevent **Section 3 (5)(a) of the National Environment Act, 2019** environmental degradation, pollution or anything deleterious to human health or environment;

Section 3 (5)(e) of the National Environment Act, 2019 empowers court to compel any agency or local government to take measures to prevent anything – act or omission - deleterious to human health or environment.

Section 3 (5) of the National Environment Act, 2019 arms the court "to require any person to take any other measures to ensure that human health or the environment do not suffer any significant harm or damage."

The Respondents threat to cut down the *Mivule* trees was a threat to the right to a clean and healthy environment as trees form a central feature of Uganda's environment. This threat offended **Article 39 of the 1995 Uganda Constitution and Section 3(1) of the National Environment Act, 2019** that secure and guarantee the right to a clean and healthy environment for all Ugandans.

The protection of the environment and of the Residents of Jinja City are matters of grave public importance. The threat to cut the *Mivule* trees threatened the environment and portended irreparable damage to the tourist city and its city residents since this is a kind of tree that takes Over 50 years to mature.

A permanent injunction stopping the cutting of *Mivule* trees in Jinja City is a crucial step in protecting the environment and preserving theological balance of the tourist city. Such a permanent injunction is necessary for the following reasons:

1. Environmental Protection: Trees play a vital role in maintaining ecological balance and biodiversity. They absorb carbon dioxide, release oxygen, and provide habitats for various wildlife species. Cutting down trees could lead to adverse effects on the local ecosystem, potentially causing irreversible damage to the environment.

Climate Change Mitigation: Trees are essential in mitigating the impacts of climate change. They act as carbon sinks, helping to reduce greenhouse gas emissions. Preserving trees is vital in the fight against global warming and its associated consequences, such as extreme weather events, flooding, and disruptions to ecosystems.

Watershed Protection: Trees play a crucial role in protecting watersheds and preventing soil erosion. Their root systems help retain water and stabilize soil, reducing the risk of landslides and maintaining the health of rivers, lakes, and groundwater reserves.

Aesthetic and Recreational Value: Trees contribute to the esthetic beauty of the landscape and provide recreational spaces for the community. They offer shade, clean air, and opportunities for outdoor activities, positively impacting the physical and mental well-being of residents.

Public Health: Trees help improve air quality by filtering pollutants and particulate matter. By preventing tree cutting, we can ensure better air quality and reduce the risk of respiratory diseases and other health issues associated with poor air pollution.

Cultural and Historical Significance: In many cases, trees hold cultural and historical value, being integral to local traditions, stories, and landmarks. Preserving those helps maintain a community's sense of identity and heritage.

Sustainable Development: Emphasizing sustainable practices and responsible land management is vital for the long-term well-being of communities. Conserving trees can be part of a broader strategy to promote sustainable development, where economic growth is balanced with environmental and social considerations in accordance with Sections 3(2) and 5(2) of the National Environment Act, 2019.

Wildlife Habitat Preservation: Many animal - avian species in this case - and plant species rely on trees for their habitats and Survival. By protecting trees, we also protect the diverse flora and fauna that depend on them for shelter and food.

Precautionary Principle: The precautionary principle suggests that if an action or policy has the potential to cause significant harm to the public or the environment, it is better to avoid or mitigate that harm.

A permanent injunction against tree cutting aligns with this principle, safeguarding against potential environmental and societal risks.

They cited the Indian Supreme Court, ***MC Mehta vs Union of India and others AIR 1988 Supreme Court 1037***, Court held:

"Man is both creature and molder of his environment which gives him physical sustenance and affords him opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on unprecedented scale. Both aspects of man's environment the natural and man-made, are essential to his well-being and to the enjoyment of the basic human rights, even the right to life itself

The Supreme Court in the **Luis Amando** case supra stated that;-

"In cases concerning environmental governance, it is a duty of courts to assess the case on its merits based on the materials present before it. Matters concerning environmental governance concern not just the living, but generations to come. The protection of the environment, as an essential facet of human development, ensures sustainable development for today and tomorrow. "

A permanent injunction restraining the cutting of the *Mivule* trees is essential for safeguarding the environment, protecting biodiversity, mitigating climate change, and promoting sustainable development. It can serve as a necessary tool to preserve Jinja's touristic natural resources and ensure a better future for generations to come.

They relied on the case of **Akena & ors v. Opwonya (Civil Appeal No. 35 of 2016) UGHCLD 70 (13 December 2018)** as the authority for the legal proposition that:-

"It is settled law that a permanent injunction is a remedy for preventing wrongs and preserving rights so that by single exercise of equitable power an injury is both restrained and repaired, for the purpose of dispensing complete justice between the parties. Permanent or final injunctions are granted as a remedy against an infringement or violation which has been proven at trial. Such an injunction will be granted to prevent ongoing or future infringement or violations. By the letter addressed to the appellants demanding that they leave the land, the defendant threatened their quiet possession and enjoyment of the land and they are therefore entitled to the equitable relief of a permanent injunction."

In resolving this Application, I have critically analyzed the Application, its supporting affidavit, the Affidavit in Reply by the 1st Respondent and the submissions of learned counsel as captured above. I agree with all the three issues raised by learned counsel for the Applicants and for ease and coherence, I will handle all them concurrently.

In the first place, it is clear from this Application that the Applicants brought it as a public interest concern, not only for their benefit, but for the benefit of the

general public. They also grounded their Application in the relevant laws which they cited at length and also submitted upon in detail.

As to Whether the Respondents threatened to cut *Mivule* trees in Jinja City?; it is not disputed by the Respondents that this was a real threat; I therefore agree with the Applicants and resolve this issue in the affirmative.

As to Whether the Respondents' threat to cut the *Mivule* trees threatened the right to a clean a clean and healthy environment?; the Respondents in “paragraph 6(vi) of the Affidavit in Reply by the 1st Respondent, itthe 1st Respondent convened a meeting on the 21st June 2023 with all the relevant stakeholders and it was discussed and decided that No tree should be removed.

In paragraph 6(vii) of the Affidavit in Reply by the 1st Respondent, that the above position was communicated to the Resident Engineer by letter dated 21st June 2023. See **Annexure "A"**

Upon perusal of **Annexure A**, of the Affidavit in Reply by the 1st Respondent it was resolved on the 21st June, 2023 a site meeting was held that was attended by USMID Project Coordinator, the Resident Engineer of the Professional Engineering Consultants and the Town Clerk and thee City Speaker, it was resolved that NO tree was to be removed and a revised plan was laid out to save the trees and also carry out construction works.

I have also considered the decision in ***The Environment Action Network Ltd v Joseph Eryau (Civil Application No. 98/05) [2008] UGCA 15 (19 February 2008)***, Court of Appeal was of the view that :-

*“This court has had occasion to judicially consider a matter where the Application has been overtaken by events in the case of **Uganda Electricity Board v Charles Kabagambe- Civil Appeal No.58/2000.***

*The brief facts were that Charles Kabagambe sued Uganda Electricity Board in High Court Miscellaneous Application No. 928/99 for wrongful dismissal. Before the said application was heard, he filed **Miscellaneous Application No.1074/99** seeking a temporary injunction to restrain the Board from evicting him from the residential premises until the disposal of the main suit. The injunction was granted on 24th August 2000. The Board was aggrieved by the decision and filed Civil Appeal No.58/2000.*

On 19th December 2002 the High Court gave its ruling in Miscellaneous Application No.928/99 –thus ending the temporary injunction.

When the appeal came up for hearing, counsel for Kabagambe raised a preliminary objection and submitted that there was nothing the appellant was appealing against as the injunction was vacated when the application was heard.

Counsel for the Board did not agree. He submitted that the appeal was against the whole ruling. He argued that the ruling sets a bad precedent which the court should reverse. He argued that there was no law to prevent the appeal from being heard. He implored court to hear the appeal for academic purposes.

In upholding the preliminary objection this court said:

“According to the Memorandum of Appeal the order sought is:

The temporary injunction granted to the respondent refraining (sic) the appellant from evicting the respondent from the appellant’s property comprised in plot 8 Windsor Crescent Kololo be discharged.

The appeal has obviously been overtaken by events. The relief sought was realized before the appeal was heard. There are no more reliefs to be granted by this court.”

On whether the court can hear the appeal for academic purposes, the court said:

*“It is a well-known principle of law that courts adjudicate on issues which actually exist between litigants and not academic ones. See **Uganda Corporation Creameries Ltd & another v Reamaton Ltd. Civil Reference No.11 of 1999, Court of Appeal (unreported).**”*

Relating the above to the instant Application, it is clear that the Applicant’s major complaint was the decision by the 1st Respondent to cut down *Mivule* trees in order for the contractor to execute the Works as required under the contract for rehabilitation of Clive and Clerk Roads, Bell East and West, completion of Busoga Avenue, traffic signaling and drainage works. The Applicants were seeking the reliefs captured earlier in this Ruling (supra).

I have found that due to public outcry and possibly the threat of litigation against the Respondents in cases such as this one, the Respondents stopped the cutting of the said *Mvule* trees as averred in their affidavit in reply to this Application.

What comes out of this is that this is a temporary measure which if not clearly put a stop to in no uncertain terms, has a likelihood of happening again. This means that the threat to cut the said *Mivule* trees or destruction of any other natural protected trees and the environmental generally is threatened by modern development and if it is not curtailed or approached with caution, can lead to the devastating effect of denying society the right to a clean a clean and healthy environment.

This leads me to the reliefs sought by the Applicant. They are geared toward achieving the constitutional guarantees of a safe, clean, healthy and sustainable environment for not only Jinja City and its surroundings, but for all Ugandans and if the acts such as those threatened by the Respondents are not nipped in the bud, they are likely to cause harm to human health or the environment.

This Honourable Court cannot therefore take this Application lightly; and much as the immediate threat of cutting down the said trees has been overtaken by events for now, this to me is just a temporary measure. The lasting solution to achieve safety of the environment requires more effective remedies other than administrative letters to prevent ongoing or future infringement or violations on the natural environment.

For that reason, I agree with the concerns raised by the Applicants in this case and find them valid. Without losing focus of the decision in ***Uganda Corporation Creameries Ltd & another v Reamaton Ltd (supra)***, to the effect that courts adjudicate on issues which actually exist between litigants and not academic ones, my own findings are that for as long as the said trees exist; and bearing in mind that the said trees are living and growing entities which with time shall continue to grow, then there is need to make concrete declarations and guidelines regarding their safety.

In so doing, I have not lost focus of the fact that Jinja is a City and has to put in place modern infrastructure suitable for the status of a City. The said trees may also become a threat and safety hazard in themselves if not managed and trimmed to coexist with the surrounding City developments.

For that reason, it is my directive that in the eventuality that there is need to cut any of the said protected trees, the responsible authorities in Jinja City should first make consultations with the responsible institutions like the Uganda Forest Authority, NEMA and concerned human rights NGOs with an interest in preserving the environment to ensure that this exercise is carried out without endangering the environment.

Secondly, while trees should regularly be trimmed and pruned to remove obstructive and dead branches, ONLY those that have been proved to have become old and a danger to other City structures should be entirely cut down; and in so doing, plans should be in place to replace them with similar young ones to maintain the status quo.

The above means that a permanent injunction restraining the Respondents, their agents, workmen, representatives or any other person acting on their instructions from cutting or felling down the endangered *Mvule* trees cannot be granted, but instead, a Temporary Injunction is granted. This should remain in

place for as long as it is safe to maintain the said *Mvule* trees in the form they are. In the event that there is any need to cut any of them, the above should be complied with.

My final decision is that:-

1. A declaration that the Respondents' planned cutting of the endangered *Milicia excelsa* (*Mvule* trees) along Nile Avenue in Jinja City (the endangered *Mvule* trees) is a threat to the right of City residents and other persons to a clean, healthy and decent environment guaranteed and protected by **Article 39 of Constitution of the Republic of Uganda, 1995; Sections 3; & 5(2); of the National Environment Act, 2019.**
2. A declaration that the Respondents' planned cutting of them endangered *Mvule* trees is a threat to the historic flair and touristic character, heritage and reputation of Jinja City protected by **Articles 37 & 39 of Constitution of the Republic of Uganda, 1995 and Sections 3 & 5(2); of the National Environment Act, 2019.**
3. A declaration that the Respondents' planned cutting of the endangered *Mvule* trees is devoid of meaningful, adequate or/ and effective public participation in environmental decision making required by **Articles 8A, 17, 20(2), 28, 38, 39, 42, 44 of Constitution of the Republic of Uganda, 1995; Sections 3; & 5(2); of the National Environment Act, 2019.**
4. A temporary injunction is issued against the Respondents, their agents, attorneys or anyone acting on their behalf from cutting the 8 endangered *Milicia excelsa* (*Mvule* trees) along Nile Avenue in Jinja City (the endangered *Mvule* trees) and should remain in place until as long as it is safe to maintain the said *Mvule* trees in the form they are.
5. In the event that there is any need to cut any of them due to old age or any other valid reasons, the responsible authorities in Jinja City should first make consultations with the responsible institutions like the Uganda Forest Authority, NEMA and concerned human rights NGOs with an interest in preserving the environment to ensure that this exercise is carried out without endangering the environment.

Finally, it is now well-established law that costs generally follow the event. See **section 27 Civil Procedure Act** and the cases of ***Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989 (SC) and Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35.*** Indeed, in the case of ***Sutherland vs. Canada (Attorney General) 2008 BCCA 27*** it was held that courts should not depart from this rule except in special circumstances, as a successful litigant has a 'reasonable expectation' of obtaining an order for costs.

In respect of this case, having carefully analyzed all the evidence, I have found valid reasons why the Applicants although they are the successful parties should not be awarded any costs in this matter. This is because this is a public interest case and the 1st Applicant as a nonprofit civic environment company limited by guarantee protecting nature and working for a just and green society and the 2nd Applicant being a seasoned journalist, Daily Monitor Columnist, human rights lawyer, Advocate of the courts of Judicature of Uganda and member of the Uganda Law Society and the East Africa Law Society, are expected to do *pro bono* work and give back to society.

For that reason, each party will bear its own costs.

I SO ORDER

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
30/04/2024

This Ruling shall be delivered by the Magistrate Grade 1 attached to the chambers of the Resident Judge of the High Court Jinja who shall also explain the right of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
30/04/2024