

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

**MISC. APPLICATION NO.371 OF 2002**

**(Arising from HCCS No.482 of 2001)**

**JANE LUGOLOBI & 9 OTHERS } :::::::::::::::::::: APPLICANTS/ PLAINTIFF**

**VERSUS**

**GERALD SEGIRINYA }**

**T/a SMAT CURRY POWDER FACTORY } :::::::::::RESPONDENT/ DEFENDANT**

**BEFORE: HON. MR. AG. JUSTICE LAMECK N. MUKASA.**

*Civil Procedure : whether the status quo was maintained*  
*Civil Procedure : whether the consequences of manufacture could be remedied by award of damages*  
*Civil Procedure : whether the precautionary principle could be applied .*  
*Civil Procedure : whether the temporary injunction could be issued on a Balance of convenience*

This application was brought by chamber summons under Order 37 rules 1,2 and 9 of the Civil Procedure Rules.

The applicants sought a temporary injunction restraining the respondents from carrying on the manufacture and processing of curry powder at the respondents' factory in a residential area in Kanyanya, Kampala.

Counsel for the Applicants submitted that if orders were granted in line with the averments in the Respondents affidavit in reply, that would meet the ends of justice as they would meet the status quo as stated by the Respondent and would reduce the suffering complained of by the Applicants.

Counsel for the Applicants therefore prayed for an order for Temporary Injunction restraining the respondent from operating the factory outside the hours of 8.00 a.m to 11.00 p.m., restraining him from operating the factory on Sundays so that he operates six days a week from Monday to Saturday and requiring the respondent to comply with his averments of paragraph 16 of the affidavit in reply that he operates the factory one week in three months and four weeks in one year.

**Held:**

1. The main purpose for a temporary injunction is to preserve the status quo pending

the disposal of the main suit.

2. The law is that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted. See *Massa V Achen* [1978] HCB 297
3. The averments in the Respondents affidavit in reply are neither denied nor rebutted. Without going into further merits and demerits of the application, I order that pending final disposal of H.C.C.S. No. 482 of 2001 the manufacturing and processing of curry powder at the Respondents factory be maintained at the status quo as stated by the Respondent in his affidavit in reply, that is to say; the machinery at the factory be operated between the hours from 8 a.m. to 6 p.m. and that the machinery be operated for only one week within a continuous period of three months.
4. The order as to costs in the main suit shall apply in this application.

Application upheld.

**SGD: LAMECK. N. MUKASA**

**AG. JUDGE**

**28/04/03**

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**BEFORE: HON. MR. AG JUSTICE LAMECK . N. MUKASA.**

**RULING:**

This is an application by the plaintiff/ applicants for an order of temporary injunction against the defendant/ respondent, his employees, assignees, agents and workmen restraining them from carrying on the manufacture and processing curry powder at the Respondents factory at Lutunda Zone Kanyanya, Kampala. The application is brought by Chamber Summons under Order 37 rules 1,2 and 9 of the Civil Procedure Rules.

The grounds for the application are that: -

1. The applicants have filed a suit H.C.C.S. No. 482 of the 2001 now pending before this court restrain the Respondent from carrying on the business of curry powder manufacturing in their neighborhood contrary to the law.
2. The continued manufacturing and processing of the curry powder at the Respondents premises continues to be a health hazard to the Applicants whose conditions of living have become unbearable because of the activities of the Respondent.
3. The consequences of continued processing of curry powder in the neighborhood of the applicants by the Respondent are so serious and long term that they cannot be compensated by the damages.
4. The precautionary principle is applied in this case.  
It is just and equitable on balance of convenience to issue the injunction.

The application is supported by an affidavit sworn by Jane Lugolobi, one of the Plaintiff /Applicants, dated 7<sup>th</sup> June 2003. The deponent therein states in paragraph 3 that since the institution of the main suit the Respondent has installed bigger machinery increased the

time of production and the factory emits more pollution than before. That as a result she has been falling sick with headaches, stomach pains, eyes and skin irritation and many other ailments.

She is unable to dry her clothes or food outside the house, for more than 10 minutes and cannot leave her windows or doors open. Because of the continued vibrations her pit latrine and those of others have cracked and are in danger of collapsing and she cannot read, write or listen to the radio or television. That the gas used in the factory is likely to have long time health effects, which may be fatal from the factory to make the neighbors uneasy or ill. In paragraph 15 and 16 of his affidavit the Respondent avers that he does not operate the factory at night, the factory operates from 8.00a.m to 6.00p.m and that the factory machine operates for only one week within every three months, this operates only four weeks in a given year.

In his submission Counsel for the applicants submitted that if orders were granted in line with the averments in the Respondents affidavit in reply, that would meet the status quo as started by the Respondent and would reduce the suffering complained of by the Applicants. Counsel therefore prayed for an order for an order for Temporary Injunction to issue restraining the Respondent from operating his factory outside the hours of 8.00 a.m. -11.00p.m, restraining him from operating the factory on Sundays so that he operates only six days a week from Monday to Saturday and requiring the Respondent to comply with the averments in paragraph 16 of the affidavit in reply that he operates the factory one week in three months and four weeks in one year.

At this stage proof of facts on which the main suit is based is not required.

The main purpose for a temporary injunction is to preserve the status quo pending the disposal of the main suit. See *Noormohamed Jammohanod vs. Kassamali Virji Madhain (1953) EACA 8*.

The applicants have been prompted to institute this Application by the conduct of the Respondent as deponed to in the affidavit in support of this application wherein in paragraph 4 it is stated: -

“4 That since was instituted he has installed bigger machinery increased the time of production and the factory emits more pollution than ever before”

In his affidavit in reply the Respondent stated: -

15: “ That I do not operate the factory at night. The factory operates from 8.00a.m to 6.00p.m.

16:That I operate the factory for only one week and after one week I spend about three months without switching on the factory because the materials processed are packed and sold off within about three months. That means in one year I operate the machine for only about four weeks”.

The law is that where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted. See *Massa Vs. Achen [1978] HCB 297*.

The above averments in the Respondents affidavit in reply are neither denied nor rebutted. In fact as, already pointed out above, the Applicants will be satisfied if the status quo as stated by the Respondent in paragraph 15 and 16 of the Affidavit in reply is preserved. In the circumstances without going into further details of the merits and demerits of the application I hereby make the following orders: -

1. Pending the final disposal of H.C.C.S No.482 of 2001 the manufacturing and processing of curry powder at the Respondents factory at Lutunda Zone, Kanyanya must be maintained at the status quo as stated by the Respondent in his affidavit in reply, that is to say: -
  - (i) the machinery at the factory must be operated between the hours from 8.00 a.m. to 6.00p.m.
  - (ii) the machinery at the factory must be operated for only one week within a continued period of three months.
2. The order as to costs in the main suit shall bind the costs for this application.

I so order.

**SGD: LAMECK. N. MUKASA**

**AG. JUDGE**

**28/04/03**

Mr. Kenneth Kakuru - counsel for the applicants/ plaintiffs

Mr. Lutakome - counsel for the Respondent/ defendant