

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0059 OF 2023
(ARISING FROM MISCELLANEOUS CAUSE NO. 0008 OF 2023)

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1. BABYESIZA WAHID
2. BYARUHANGA SIMON :..... APPLICANTS

VERSUS

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MASINDI DISTRICT LOCAL GOVERNMENT :..... RESPONDENT

BEFORE: Hon. Justice Isah Serunkuma

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RULING

This application was brought under Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71 and Order 52, rules 1,2,3 of the Civil Procedure Rules S.I 71-1 seeking for the order that;

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1. A consequential order doth issue directing the commissioner Land Registration to transfer the Certificate of Title for land comprised in FRV MAS22 Folio 13 Block 1 Plot 126 at Kyabatega, Buruli, Masindi District (Kihonda Demonstration Farm) from the respondent's name to the name of Uganda Land Commission (ULC), Ministry of Education and Sports-Bunyoro University to give full effect to the Ruling and Orders of this court in *HCMC No. 0008 of 2023 (Babyesiza Wahid & Another vs Masindi District Local Government)*.

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2. Costs of this application be provided for.

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The affidavit in support of the application deponed by the 1st applicant where he briefly states that;

1. That the applicants sued the respondent in this honorable court for a declaration that the decision of refusal by the respondent's council to approve land at Kihonda

village, Masindi District for the establishment of Bunyoro University (BU)-Greater Masindi Campus and insistence on approval of the unavailable, disputed and encumbered land at Kayanja cell, Masindi Municipality, Masindi District is unreasonable, illogical and irrational.

- 5 2. That the applicants further sought for an order of mandamus to issue directing the respondent to immediately allocate land at Kihonda Village Masindi district which is suitable and available according to the respondent's records for the establishment of Bunyoro University (BU) Greater Masindi campus.
- 10 3. That the applicants also prayed for an order of prohibition to issue stopping the respondent from proposing as an option for the purpose of establishment of Bunyoro University (BU) Greater Masindi Campus the unavailable, disputed and encumbered land at Kayanja cell, Masindi Municipality, Masindi District.
- 15 4. That the applicants' application for judicial review vide Miscellaneous Cause No.0008 of 2023 (*Babyesiza Wahid & another vs Masindi District Local Government*) was on the 12th day of September, 2023 decided in their favour and all prayers therein granted.
- 20 5. That the respondent through its servants, employees and agents have in total disregard of the Ruling and Orders of this honorable court in *Miscellaneous Cause No. 0008 of 2023* unreasonably delayed to pass a resolution that the respondent's land at Kihonda village, Masindi District which is suitable and available according to the respondent's records to the Ministry of Education and Sports to pave way for establishment of Bunyoro University (BU)-Greater Masindi Campus.
- 25 6. That the respondent's council speaker and a handful of councilors are strongly opposed to the convening of the council with the view of transferring the said land to the Ministry of Education and Sports for the establishment of Bunyoro University (BU)-Greater Masindi Campus.
- 30 7. That unless the application is granted the respondent's speaker and councilors may never convene a council sitting with the view of transferring the said land with an aim of establishing the said university.

8. That the conduct of the respondent, a handful of councilors and the council speaker is likely to create anarchy in the greater Masindi District, risk the Government resources to waste and deny the long-awaited opportunity of having a public university within Bunyoro region commerce.
- 5 According to the record the respondent was duly served with the application and its supporting affidavit however did not file any reply contesting the same.

Issues

1. *Whether this is a proper case for consequential orders.*
2. *Whether the applicants are entitled to the orders prayed for in the application.*

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Representation

The applicants were represented by Mr. Leonard Tumwesige and the respondent was represented by Mr. Simon Kasangaki. The litigants were ordered by this court to file written submissions however only the applicants complied to the same.

15 Determination of court

Appropriate consideration has been made as regards the submissions of the applicants which I will not reiterate here but will often refer to them. I will handle the two issues as argued by counsel for the applicant in his submission. The issues are;

1. *Whether this is a proper case for consequential orders.*
- 20 2. *Whether the applicants are entitled to the orders prayed for in the application.*

According to the record the respondents were duly served with the application but opted not to file a reply and submissions. They were however represented by counsel.

- 25 Counsel for the applicants argued that since the respondents declined to file an affidavit in reply and written submission this application should be declared unchallenged and as such ought to be allowed with all prayers therein. This argument by counsel is not entirely correct. The law is that in matters proceeding by affidavit evidence where there is no replying affidavit, the application remains unchallenged however the unchallenged
- 30 application must intrinsically be tenable on its own. See; *Makerere University versus St. Mark Education institute; HCCS No. 0378 of 1993.*

This court will therefore consider this application on its merit, in light of the law and evidence.

Issue No.1

5 Whether this is a proper case for consequential orders.

I agree with the definition of the term consequential order as stated in the submissions of counsel for the applicant that the term consequential means an order following naturally in terms of consistency and giving effect to the main judgment. This order is normally
10 directly traceable from the judgment or decision duly prayed for or granted by court. *See; Obayagbona vs Obazee [1970]5 SC 247.*

The importance of an application for consequential orders is to help enforce court orders in a judgment or ruling. In essence an application for consequential orders is made where the court gives orders in a judgment or ruling implementation of the same is impossible
15 without further court orders. As such for an application to be suitable for consequential orders it must be following an already existing application, cause or head suit.

Section 34 of the **Civil Procedure Act** provides as thus;

(1) *“All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the
20 decree, shall be determined by the court executing the decree and not by separate suit”.*

This application was brought as a miscellaneous application arising from a miscellaneous cause which was determined by this honorable court. According to my analysis, the prayers as per the application of the applicants are aimed at aiding the execution of the court ruling given by this honorable court in Miscellaneous Cause No. 0008 of 2023 ,
25 without any doubt this makes the application a proper one for consequential orders.

Issue No. 2

Whether the applicants are entitled to the orders prayed for in the application.

In Miscellaneous Cause No. 0008 of 2023 this court gave orders that;

a) *The decision of refusal by the respondent’s council to approve land at Kihonda village, Masindi District for establishment of Bunyoro University (BU) –Greater Masindi
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Campus and insistence on approval of the unavailable, disputed and encumbered land at Kayanja cell, Masindi municipality, Masindi district is unreasonable, illogical and irrational.

- 5 b) *An order of mandamus doth issue directing the respondent to immediately allocate land at Kihonda village, Masindi District which is suitable and available according to the respondent's records for establishment of Bunyoro University (BU)-Greater Masindi Campus.*
- 10 c) *An order of prohibition doth issue stopping the respondent from proposing as an option for the purpose of establishment of Bunyoro University (BU) –Greater Masindi Campus the unavailable, disputed and encumbered land at Kayanja cell, Masindi Municipality, Masindi District.*

In order to enforce the above orders, *Order (b)* in particular according to the protocol to be followed by the respondent, a council meeting/sitting of the respondent's council members has to be convened so that a resolution is passed to that effect. However, as
15 stated by counsel in his submissions, since the key members in charge of the same arrangement are the same members that are opposing establishment of the university on land at Kihonda, village Masindi district in particular the Speaker then such a meeting cannot be convened with the urgency it deserves.

In this application the applicants made prayers for;

- 20 **a)** *A Consequential Order doth issue directing the Commissioner Land Registration to transfer the Certificate of Title for land comprised in FRV MAS22 Folio 13 block 1 plot 126 at Kyabatega, Buruli, Masindi District (kihonda Demonstration Farm) from the respondent's name to the name of Uganda Land Commission (ULC), Ministry of Education and Sports-Bunyoro University to give full effect to the Ruling and Orders of
25 this court in **HCMC No. 0008 of 2023 (Babyesiza Wahid & Another vs Masindi District Local Government).***
- b)** *The costs of this application be provided for.*

In his submission as regards this issue, counsel for the applicants' argument and assertion is that the respondent is not handling the execution of the court orders with the urgency
30 that they deserve as such the applicants are seeking remedy from this court. Counsel for applicant further submitted that the respondents through its servants, employees and agents have in total disregard of the ruling and orders of this honorable court

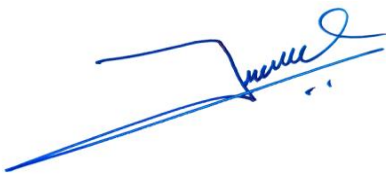
unreasonably delayed to convene a council sitting aimed at passing a resolution to transfer land at Kihonda village Masindi district into the names of Ministry of Education and Sports with a view of constructing Bunyoro University Greater Masindi Branch.

5 *Section 98 of the Civil Procedure Act* empowers this court with discretion to grant any orders aimed at achieving justice. Well aware of the mandate in as far as property of the respondent is concerned, I therefore order as thus;

- 10 1. A Consequential Order doth issue directing the Commissioner Land Registration to transfer the Certificate of Title for land comprised in FRV MAS22 Folio 13 block 1 Plot 126 at Kyabatega, Buruli, Masindi District (Kihonda Demonstration Farm) from the respondent's name to the name of Uganda Land Commission (ULC), Ministry of Education and Sports-Bunyoro University to give full effect to the Ruling and Orders of this court in **HCMC No. 0008 of 2023 (Babyesiza Wahid & Another vs Masindi District Local Government)** with immediate effect.
- 15 2. No orders as to costs is granted.

I so Order.

20 Dated and Delivered this 2nd day of February 2024.



Isah Serunkuma
JUDGE

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