THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CONSOLIDATED MISCELLANEOUS CAUSE NOs.239 & 255 OF 2020

1. WATER & ENVIRONMENT MEDIA NETWORK (U) LTD
2. NATIONAL ASSOCIATION OF PROFESSIONAL ENVIRONMENTALISTS (NAPE)
3. AFRICA INSTITUTE FOR ENERGY GOVERNANCE:::::::::::::::: APPLICANTS

VERSUS

1. NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY
2. HOIMA SUGAR LIMITED :: RESPONDENTS

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants filed two separate applications premised on the same facts and the law under Articles 42, 39 and 50 of the Constitution and Section 33 and 36 of the Judicature Act Cap 13 and Rule 3, 4, 6 & 7 the Judicature (Judicial Review) Rules, 2009 and Regulation 38 of the Environmental Impact Assessment Regulations S.I No. 153 for the orders that;

1. A declaration that the approval of the project brief/Environmental and Social Impact Statement and the issuing of the Certificate of Approval of Environmental and Social Impact Assessment (Certificate No. NEMA/ESIA 13709) by the National Environment Management Authority to the 2nd Respondent on 14th August 2020 for the ***KYANGWALI MIXED LAND USE PROJECT***, was marred by flaws, procedural irregularities and without due recourse to the relevant provisions of the laws and regulations and thereby denying the interested parties including the Applicants a chance to

effectively put forth their views aimed at protecting their rights to a clean and healthy environment.

2. An Order of Certiorari quashing the 2nd respondent's certificate of approval of the Environmental Social Impact Assessment issued by the 1st respondent on 14th day of August for the Kyangwali mixed land use project.

3. An Order of Prohibition stopping the Respondents and any other entity from implementing and acting on the said certificate of Approval.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavits in support of the applications of Mutale Joshua-Programmes Manager of 1st Applicant and Dickens Kamugisha-Executive Director of 3rd applicant and Muramuzi Frank-Executive Director of 2nd Applicant but generally and briefly state that;

1) The applicants are Nongovernmental Organisations involved in public policy research and advocacy work, which among others involves promoting the rule of law, ensuring every person in Uganda enjoys the right to clean and healthy environment, protecting the environment and defending the public in the use, management, conservation and preservation of Uganda's natural resources.

2) That the applicants by virtue of their role in protecting the environment and defending the public in the management, conservation and preservation of Uganda's natural resources, the applicants have a direct sufficient interest in the matter and are aggrieved by the decision of the 1st respondent.

3) That on 26th day of June 2020 in a meeting with National Forestry Authority over plans to save Bugoma forest campaign, the applicants got wind of the fact that the 2nd respondent had commenced the process of an Environmental and Social Impact Assessment study for Kyangwali Land Use Mixed Project despite pleas from the National Forest Authority (NFA) to the

1st respondent not to undertake the same due to the ongoing court cases over Bugoma forest.

4) That on the 14th day of August 2020, the 1st respondent issued a certificate of approval for an Environmental and Social Impact Assessment (ESIA) to the 2nd respondent for Kyangwali Land Use Mixed Project to among others grow sugar cane on Bugoma Forest land.

5) That the said Certificate of Approval issued by the 1st respondent to the 2nd respondent for Kyangwali Land Use Mixed Project by Hoima Sugar Ltd was issued improperly and without following the statutory procedures laid down under the laws and regulations, thereby denying the Applicants and other interested parties a chance to effectively put forth their views aimed at protecting their right to a clean and healthy environment and protection of the country's natural resources.

6) That in issuing the above mentioned certificate of Approval, the 1st respondent relied on the Environment and Social Impact Assessment Report by the 2nd respondent that was undertaken without consultations and taking into account the views and concerns of the local communities and they ignored the need of subjecting the Environmental and Social Impact statement of the public for written comments as per the requirements of the law.

7) That the issuing of the Certificate of Approval of the Environmental and Social Impact Assessment shall allow the 2nd respondent to commence its Surgarcane project and thereby destroying Bugoma forest, a critical sensitive biodiversity ecosystem in Uganda without according the applicants and other interested Ugandans a chance to present their views aimed at the protection of their fundamental right to clean and healthy environment.

The respondents opposed this application and the 1st respondent's filed an affidavit in reply through *Francis Ogwal*- Natural Resources Manager

(Biodiversity) of National Environment Management Authority (NEMA) and *RAJASEKARAN RAMADOSS*- Agricultural Manager of the 2nd Respondent but briefly;

1) The 1st respondent admits receiving an Environmental Impact Assessment report from the 2nd respondent, which was subsequently and legally issued a certificate of approval for Environmental and Social Impact Assessment. A certificate of approval of the Kyangwali Mixed Land Use project was issued in accordance with the relevant laws, regulations and standards.

2) That the Environmental and Social Impact Assessment Report was subjected to sufficient review, comments were sought and obtained from the relevant stakeholders, a baseline verification was carried out and the Executive Director properly exercised his powers under the National Environment Act No. 5 of 2019 and National Environment (Environment Impact Assessment) Regulations SI 153-1 to issue Environment and Social Impact Assessment Certificate.

3) That the 1st respondent and National Forest Authority are sister Agencies under the Ministry of Water and Environment. Their statutory relationship is that of a regulator (NEMA) and Lead Agency (NFA). The Executive Director of NEMA submitted the Environment and Social Impact Assessment report to NFA and other stakeholders. NFA and other stakeholders replied and their comments most of which were incorporated in the Environment and Social Impact Assessment report.

4) That the 1st respondent held a meeting at its boardroom on 3rd July 2020 and informed the applicants and other Civil Society Organisations representatives of the on-going Kyangwali Mixed Land Use Project by the 2nd respondent. The 1st respondent consulted them and they made comments which were recorded and they were all put into consideration and incorporated in the Environment and Social Impact Report.

5) That there is no controversy because the matters raised by the Lead Agency were taken into consideration in the review of the ESIA. The issues of ownership of land were resolved by High Court in HCCS No. 0031 of 2016 and HCC.Application No. 266 of 2019.

6) That a public hearing was not necessary because there was controversy existing at the time and secondly, public gatherings could not be convened due to the enactment of Public Health Control of COVID-19 Rules, SI No. 83 of 2020.

7) That there were public meetings conducted by the 1st applicant prior to COVID-19 lockdown and restrictions on public gatherings and the public gave their views on the project.

8) That the allegation of destroying Bugoma Forest is misconceived, baseless and maliciously brought before this Honourable court. The land were the Kyangwali Mixed Land Use project is located being Plot 216 Block (Road) 2 Buhanguzi Kyangwali Sub-county, Kikuube District is official property of the Omukama of the Kingdom of Bunyoro with a certificate of title.

9) That the developer (Hoima Sugar Limited) obtained a lease from the Omukama of Bunyoro Kitara Kingdom and it is in possession of the property. The Environment and Social Impact Assessment was approved and the development of Kyangwali Mixed Land Use project is already in progress.

10) That the project has no controversies as alleged by the applicants since the land hardly has any mature trees almost the entire land is covered by shrub vegetation, with pockets of it used for grazing of cattle on temporary basis, charcoal burning and temporary growing of seasonal

food crops which are symbolic of private land use which has not been effectively utilized for a long time.

11) That the policy committee of the respondent fully studied the impact statement as per the law and guidelines of the 1st respondent and did not identify any obstacles as to the implementation of the project.

12) That the 2nd respondent was issued with a Certificate of Approval of the project for only 2,393.8483 hectares of land out of the total land owned by the 2nd respondent of 5,579 hectares which is less than half of the land. The said land has been cleared for the project and substantially in compliance with conditions of the Certificate of Approval.

13) That the 2nd respondent using the Environment and Social Impact Assessment Report will preserve the land occupied by the Kyangwali Mixed Land Use project by building an eco-lodge in the vicinity and actively carry out enrichment replanting of degraded private trees on Plot 216 Block 3 Bugguzzi Kyangwari-Sub-county, Buhanguzi County, Kikuube District.

At the hearing of this application the parties were directed to file written submissions which I have had the occasion to read and consider in the determination of this application.

The applicant's counsel raised two issues for determination by this court;

1. *Whether the application is competently before the court?*

2. *Whether the issuance of the certificate of Approval of Environment and Social Impact Assessment report, Certificate No. NEMA/ESIA 13709 issued on 14th August 2020 was tainted with illegality and procedural Impropriety?*

3. *What remedies are available to the parties?*

The 1st applicant was represented by *Mr. Kasadha David* while the 2nd & 3rd applicants were represented by *Mr. Kaganzi Lester* and *Mr. Bariyo Allan* whereas the 1st respondent was represented by *Mr. Mr Kamugisha Javason* and the 2nd respondent was represented by *Mr. Isingoma Esau*.

Preliminary Objections

The respondents objected to the filing of affidavits in rejoinder contending that they were filed and served out of time and it is incurably defective since it contained new evidence. They prayed that the same be struck out.

The applicants never responded to this contention and it would appear they agreed that the same were filed out of time.

Analysis

The general law on applications is ***Order 52 of the Civil Procedure Rules*** which provides;

Rule 3; *Every notice of motion shall state in general terms the grounds of application, and, where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.*

Rule 7*: All applications by summons shall be in chambers and, if supported by affidavit, a copy of any affidavit or affidavits relied upon shall be attached to each copy of the summons directed to be served.*

It can be deduced from the above provisions that the law does not envisage filing of affidavit in rejoinder to an application. Therefore a party who intends to use additional affidavits must seek leave of court to file a supplementary affidavit in support of their application.

Similarly, ***Rule 7 of the Judicature (Judicial Review) Rules, 2009*** provides as follows;

(1) The Court may, on hearing of the motion, allow the applicant to amend his or her motion, whether by specifying different additional grounds or reliefs or otherwise, on such terms, if any, as it thinks fit and may allow further

affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application.

(2) *Where the applicant intends to ask to be allowed to amend his or her motion or to use further affidavits, he or she shall give notice of his or her intention and of any proposed amendment, to every other party.*

(3) *Any respondent who intends to use any affidavit at the hearing shall file it with the registrar of the High court as soon as practicable and in any event, unless the court otherwise directs, within sixty days after service upon the respondent of the documents required to be served by subrule (1).*

It can further be seen from the above rules that the law does not provide for filing of the so called affidavits in rejoinder, rebutter, surrejoinder or surrebutter. Any additional or further affidavits shall be filed with leave of court as supplementary affidavits (further affidavits).

According to ***Black's Law Dictionary 11th Edition, 2019***; *Rejoinder* refers to common-law pleading: Defendant's answer to the plaintiff's reply.

Surrejoinder refers to common-law pleading: means the plaintiff's answer to the defendant's rejoinder

Rebutter refers to Common-law pleading: the defendant's answer to the plaintiff's *surrejoinder*; the pleading that followed the *rejoinder* and *surrejoinder*, and that might in turn be answered by the *surrebutter*.

Therefore, it is clear that the above refers to pleadings and not evidence as presented to court. Any party who files an affidavit under any of those headings would be wrong since an affidavit is not a pleading within the meaning of applications.

The applicants' affidavits in rejoinder were wrongly filed in court without leave of court and the same are struck out since they are contrary to the Judicature (Judicial Review Rules) and the Civil Procedure Rules. *See* ***Dr. Wilberforce Wandera Kifudde v National Animal Genetic Resources Centre and Data Bank (NAGRC&DB) & 2 Others High Court Miscellaneous Cause No. 2 of 2020***

ISSUE ONE

1. *Whether the application is competently before the court?*

In paragraph 3 of the 2nd Respondent's affidavit in reply, the 2nd respondent raises three matters relating to the propriety of this application. They are;

a. The Applicants have no *locus standi* to institute these judicial review proceedings against the Respondents.

b. The Application is an abuse of court process on account of the Applicants' failure to exhaust the existing remedies available as required by law

c. Judicial review is not a remedy available in the circumstances before court.

It is on the basis of the fore going matters the 2nd Respondent challenges the propriety of this application before this honourable court.

<u>Locus Standi</u>

The applicant's counsel submitted that the 2nd and 3rd Applicants have direct sufficient interest in the matter before court and this is enough to give them *locus standi* to bring this application.

Applicants are Non-government organisations involved in public policy research and advocacy work, which among others involves promoting the rule of law, protecting the environment and defending the public in the management, conservation and preservation of Uganda's natural resources. By virtue of their role in protecting the environment and defending the public in the management, conservation and preservation of Uganda's natural resources, the 2nd and 3rd Applicants have direct sufficient interest in this matter.

Rule 3A of the Judicature (Judicial Review) Rules, 2009 (as amended by Rule 4 of the Judicature (Judicial Review) (Amendment) Rules S.I. No 32 of 2019 provides for who may apply for judicial review and provides that;

> *"Any person who has a direct or sufficient interest in a matter may apply for judicial review."*

The 2nd respondent's counsel submitted that the Applicants have no *locus standi* to institute these judicial review proceedings against the respondents.

According to **BLACK'S LAW DICTIONARY 9TH EDITION**, the term *locus standi* is defined as referring to the right to bring an action or to be given the forum to bring an action.

In **DIMA DOMNIC PORO vs INYANI GODFREY AND ANOR H.C.C.A NO.17 OF 2016, HON. JUSTICE STEPHEN MUBIRU** whilst commenting about standing noted as follows:

> *"for any person to otherwise have locus standi, such person must have "sufficient interest" in respect of the subject matter of a suit, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the suit; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical"*

In determining *locus standi* court held in **KIKUNGWE ISSA AND OTHERS vs STANDARD CHARTERED BANK INVESTMENT CORPORATION AND OTHERS HCCS 409 OF 2004** that the Applicant must show:

1. That he/she is a citizen of Uganda.
2. "Sufficient Interest" in the matter and must not be a mere busybody.
3. That the issues raised for decision are sufficiently grave and of sufficient public importance.
4. That they involve a high constitutional principle.

The principle of sufficient interest has been imported into the amendment of **THE JUDICATURE (JUDICIAL REVIEW) RULES**. **Rule 4 of the Judicature (Judicial Review) (Amendment) Rules 2019** which introduces **Rule 3A of the Judicature (Judicial Review) (Amendment) Rules SI 32 of 2019** provides that;

> "*Any person who has a direct or sufficient interest in a matter may apply for judicial review."*

Rule 3A above undoubtedly shows that not every applicant is entitled to judicial review as of right. They have to show direct or sufficient interest in the matter.

In **DIMA DOMNIC PORO vs INYANI GODFREY AND ANOR (SUPRA)** the learned judge noted that:

> *"the requirement of sufficient interest is an important safeguard to prevent having 'busy-bodies' in litigation with misguided complaints. If the requirement did not exist, Court would be flooded, and persons harassed by irresponsible suits."*

Counsel for the 2nd respondent further submitted that the "sufficient interest" test thus facilitates an accommodation of constitutional principle and pragmatic considerations in a way that a "direct interest" test, taken at face value, likely would not.

In **R vs. INSPECTORATE OF POLLUTION, EX PARTE GREENPEACE LTD** court set forth the following test to determine whether a party has sufficient interest:

> *"(1) whether the applicant is raising issues of importance that affect a large number of people*
>
> *(2) whether the applicant has the resources and ability to faithfully advocate the issue on behalf of the public generally*
>
> *(3) whether denying standing to the applicant would effectively foreclose any judicial review of the challenged statute."*

The respondent's counsel contended that the Applicants had to satisfy each of the above. The applicants have claimed they have a sufficient interest. The Applicants also must prove that they raise issues that affect many people. In **R vs INSPECTORATE OF POLLUTION, EX PARTE GREENPEACE LTD (SUPRA)** court stated that:

> "The fact that some thousands of people join together and assert that they have an interest does not create an interest if the individuals did not have an interest".

They submitted that the Applicants have no direct or sufficient interest in the matter to bring an application for Judicial review as required by **Rule 3A of the Judicature (Judicial Review) (Amendment) Rules 2019**.

Analysis

The applicants are Nongovernmental Organisations duly registered in Uganda and carrying out their business in areas of environment protection and awareness which puts them on different pedestal from other entities or ordinary members of the public.

This court is in agreement with the cases cited by the 2nd respondent's counsel and the principles enshrined therein as the true position of *locus standi*. The applicants in my view satisfy the threshold of coming to court to challenge the decision of the 1st respondent and the merits of the case should not be used to determine whether they have *locus standi* in the matter. A mere interest would not entitle a person to challenge a decision unless his/her interest is more than that of an ordinary member.

The applicants in this matter have a standing as responsible organisations concerned on a matter of public concern in relation to conserving the environment and they do not have any special interest nor have they suffered any personal injury but their interest is what is referred to as *'Public Concern Standing'.*

The courts should be strict on the standing threshold, so that the court's resources are not be dissipated by the need to provide a forum for frivolous or academic proceedings. This encourages meddlesome interlopers invoking the jurisdiction of the courts in matters in which they are not concerned. The public bodies should not be disrupted unnecessarily, to the disadvantage of other members of the public, by having to contest unmeritorious proceedings. The courts should reserve their power to interfere with the working of public authorities to those occasions

when there is a claim before them by someone who has been adversely affected by the unlawful conduct of which the complaint is made. It may not be necessary for the applicant to show any personal proximity to the decision or special impact or interest over and above that 'shared with the generality of the public' and does not necessarily need to come from the section of the community on which the alleged breach of public law has impacted . ***See R. (on application of Dixon) v Somerset CC [1997] EWHC Admin 393: R. (on application of Williams) v Surrey 2012 EWHC 516 (Admin)***

The court in this matter will attach great importance to the track record of concern and activity by the applicants in relation to the area of government-decision making under challenge especially on matters of environment protection and public awareness. ***See R v Secretary of State for Social Services Ex p. Child Poverty Action Group [1990] 2 Q.B 540 at 546; R (on the application of Kides) v South Cambridgeshire DC [2002] EWCA Civ 1370***

Where an application for judicial review is filed for personal gain or political motivation or other oblique considerations, the court should not allow its process to be abused. Usually Non-governmental Organisations are increasingly relying on public interest standing or Public concern standing to challenge governmental action and this preferred from individuals who are merely interested in personal fame (Publicity Litigation).

Public interest litigation should not be used for personal or political gains or for mere publicity or for other oblique reasons. Such public interest matters should be done by persons having expert knowledge in the field after making proper research especially if it is concerned with issues of constitutional law. It is true that public interest litigation has been abused and is increasingly used by advocates for publicity and or seeking prominence in the legal profession and it is now *'Publicity Litigation'*. It is supposed to be a special type of litigation which is essentially meant to protect basic human rights of the weak and disadvantaged who on account of poverty, helplessness, or social and economic disabilities could not approach the court for relief or for upholding the rule of law and constitutionalism or where a matter of grave public concern is involved.

The courts should be circumspect in recognising public interest standing and the judicial officer must determine whether the applicant is a genuine public interest litigant and is not acting *malafide* for personal gain, private profit or for political or other oblique considerations. ***See Aboneka Micheal & Another v AG High Court Miscellaneous Cause No. 367 of 2018***

The applicants have sufficient interest in challenging the decisions of 1st respondent. The consciousness for environmental protection in this country is of recent origin and were justifiably made should be encouraged rather than being discouraged. The protection of the environment should be encouraged but the court's jurisdiction should be exercised with great deal of circumspection and caution.

<u>Exhaustion of Alternative remedies</u>

The 2nd respondent's counsel submitted that it is an established principle of law that judicial review is available as a remedy of last resort and is not to be engaged as an automatic recourse for an aggrieved party.

To this effect, **Rule 5 of the Judicature Judicial Review (Amendment) Rules 2019** which introduces **Rule 7A (1) (b**) is couched in the following terms;

"*The court shall in handling applications for judicial review, satisfy itself of the following;*

a. *That the Application is amenable for judicial review*
b. ***That the aggrieved person has exhausted the existing remedies available within the public body or under the law****;"*

The applicants are challenging the decision of NEMA granting a certificate of approval to Hoima Sugar Limited for the proposed Kyangwali Mixed Land Use Project. However, **S.140 (1) of the National Environment Act 2019** states that:

> "*Unless otherwise expressly provided under this Act, where this Act empowers the Authority or any of its organs to make a decision, the decision shall be subject to review within the structure of the Authority in accordance with administrative procedures established for the purpose."*

It is the respondent's contention that this procedural misstep denied the 2nd Respondent an opportunity to address any further grievances that might have been borne by the applicant. They contended that they fully exhausted the remedies available to them.

It is therefore the 2nd respondent's submission that the applicants have not exhausted the remedies available to them within the Authority and the law and thus are wrongly before this court with the application for judicial review and the application should be accordingly dismissed and the Applicants referred to the complaint mechanisms enshrined in the National Environment Act of 2019.

The applicants' on other hand argued that they did take steps to challenge and halt the process of issuance of the impugned certificate of approval of the Environmental and Social Impact Assessment report for Kyangwali Mixed Land Use Project; but their efforts were ignored by the 1st Respondent, who went ahead to issue the said certificate.

The law does not specifically provide for a procedure to challenge the legality or procedural propriety of the process of issuance of a certificate of approval of an Environmental and Social Impact Assessment report because Section 140 (1) of the National Environment Act No 5 of 2019 simply provides that a decision of the 1st Respondent shall be subject to the procedures of review within the structure of the Authority. These procedures were duly exhausted by the 2nd and 3rd Applicants and the 1st Respondent maintained its position.

As so guided by the provisions of Section 140 (2) of the National Environment Act No 5 of 2019, the 2nd and 3rd Applicants had to exercise their right to invoke this honourable court's powers under the Judicature Act, Cap 13 and the Judicature (Judicial Review) Rules, 2009 to look into the legality and procedural propriety of the impugned process of issuance of a certificate of approval of an Environmental and Social Impact Assessment report, since the power of court is not limited by the provisions of Section 140(1) of the National Environment Act No 5 of 2019. The National Environment Act No 5 of 2019 in Section 140 (1) and (2) provides that;

(1) Unless otherwise expressly provided under this Act, where this Act empowers the Authority or any of its organs to make a decision, the decision

shall be subject to review within the structure of the Authority in accordance with administrative procedures established for the purpose.

(2) Nothing provided for in this section shall limit court in the exercise of its jurisdiction.

It is applicants' contention that in a situation such as this where the 2nd and 3rd Applicant's engaged the 1st Respondent and its sister agency National Forestry Authority to consider the issues of the legality and procedural propriety of the process of issuance of a certificate of approval of an Environmental and Social Impact Assessment report for Kyangwali Mixed Land Use Project in vain, then the 2nd and 3rd Applicants are legally entitled to invoke the powers of this honourable court for judicial review.

In the case of ***Dr. Badru Ssessimba vs Nakaseke District Service Commission & Nakaseke District Local Government HCMC No 16 of 2018***, you held that;

"*This court has noted that in some cases, it is not a requirement that a party should exhaust the available remedies but it is advisable to explore all such alternate procedure to get the same remedies.*"
"The Court has discretion to give remedies in judicial review even if alternative remedies exist."

The applicants' submitted that indeed this is one of those cases where it is not a requirement to exhaust other available remedies before invoking the jurisdiction of this court via judicial review and this is confirmed by Section 140 (2) of the National Environment Act No 5 of 2019.

Analysis

Before resolving this issue, I wish to note that the 2nd and 3rd applicants counsel has cited a wrong decision in the case of ***Dr. Badru Ssessimba vs Nakaseke District Service Commission & Nakaseke District Local Government HCMC No 16 of 2018***, *alleging* that this court held that;
"*This court has noted that in some cases, it is not a requirement that a party should exhaust the available remedies but it is advisable to explore all such alternate procedure to get the same remedies.*"

"The Court has discretion to give remedies in judicial review even if alternative remedies exist."

I wish to clarify that this court decided that case on different points of law and the *issue of exhaustion of alternative remedies* never arose in that matter. I take it that the applicants' counsel wanted to mislead court by citing non-existing principle in the case wrongly cited. This act must either be bordering of professional incompetence/negligence or professional fraud intended to confuse and mislead court. I deprecate this practice in the strongest terms and counsel should be reprimanded for such behavior and misconduct.

The main contention is that the applicants have not exhausted alternative remedy of review by the 1st respondent before coming to court. It bears emphasis that the rule of exhaustion of alternative remedy is not one that bars jurisdiction of the court, but it is a rule which courts have laid down in the exercise of their discretion. **Rule 7A (1) (b**) is provides;

"*The court shall in handling applications for judicial review, satisfy itself of the following;*

a. *That the Application is amenable for judicial review*
b. ***That the aggrieved person has exhausted the existing remedies available within the public body or under the law;"***

The ***National Environment Act No 5 of 2019*** in Section 140 (1) and (2) provides that;

(1) Unless otherwise expressly provided under this Act, where this Act empowers the Authority or any of its organs to make a decision, the decision shall be subject to review within the structure of the Authority in accordance with administrative procedures established for the purpose.

(2) Nothing provided for in this section shall limit court in the exercise of its jurisdiction.

It can be deduced from the above provision of the Act that the jurisdiction of court is not limited and any party dissatisfied may have recourse to the court without exhausting the available alternative remedies. Even in the face of an alternative remedy, the discretion lies with the High Court to entertain the

application for judicial review. No flexible rules can be laid down for the exercise of discretion in this regard. But the broad policy consideration for this principle of exhaustion of alternative remedies must be upheld to avoid short-circuiting or circumventing statutory procedures. It is only where the statutory remedies are ill suited to meet the extraordinary situations that may have arisen in the circumstances of the particular case. The court must have good and sufficient reason to bypass the alternative remedy provided under a statute. To allow litigants to proceed straight to court, would be to undermine the autonomy of the administrative processes, all the more so where administrators have specialised knowledge or easier access to the relevant facts and information. See ***Koyobe v Minister for Home Affairs 2010 (4) SA 327***

In the present case the NEMA Statute allows court to exercise its discretion in avoiding existing alternative remedies and procedures and does not limit the jurisdiction of court. The Act overrides the subsidiary legislation that provides for exhaustion of alternative remedies. The requirement of exhaustion of alternative remedies should not be rigidly imposed, and nor should it be used by decision-makers/ administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny.

This application is therefore competently before this court and shall be determined on its merits.

Whether the issuance of the certificate of Approval of Environment and Social Impact Assessment report, Certificate No. NEMA/ESIA 13709 issued on 14th August 2020 was tainted with illegality and procedural Impropriety?

The 1st applicants counsel submitted the illegal of the conduct of the Executive Director of the 1stRespondent by ignoring a clear command of the law in **Regulation 22(2)S.i 13/1998** to hold a public hearing in a controversial matter which makes the decision *ultra vires*.

This need for public hearing was premised on fact that this is a controversial matter that is subject to litigation with even the lead agency of National Forest Authority(NFA) being one of the litigants as deposed in **paragraph 15** together with annexures attached thereto of the supporting affidavit. What constitutes

controversy can be discerned from the definition of **Black's Law Dictionary 8th Edition at page 1001** where it is defined as a disagreement or a dispute especially in public.

The 2nd and 3rd respondent's counsel submitted that regulations enjoin the Technical committee on Environmental Impact Assessment to advise the board and the Executive Director of the 1st Respondent on effective communication of environmental concerns associated with development projects in order to promote multi-sectoral and public participation in implementation of environmental policy.

In the matter at hand, there was no effective communication of the public's concerns associated with the Kyangwali Mixed Land Use Project, since the public was not consulted and the concerns of the few who were consulted were not considered and or were ignored without any justification.

They further submitted that it was illegal and procedurally improper for the Executive Director of the 1st Respondent to issue the impugned certificate of approval while he was well aware that the 2nd Respondent's sister lead agency – National Forestry Authority, was in the courts of law challenging the legality of *inter alia* the 2nd Respondent's lease over forest land vide ***High Court of Uganda at Masindi Civil Suit No 0031 of 2016 NFA vs The Omukama of Bunyoro – Kitara, Hoima Sugar Ltd & Uganda Land Commission*** – and which matter is currently still on appeal at the Court of Appeal of Uganda, and yet no mitigating measures were submitted or mentioned in the 2nd Respondent's Environment and Social Impact Assessment Report.

Further it is illegal and improper for the lead agency not to be consulted or participate in the development of the terms of reference for Kyangwali Mixed Land Use project. The alleged meeting of the community is disputed by the applicants since the 2nd Respondent met not more than 85 (eighty five) people. The people to be affected by the Kyangwali Mixed Land Use project which is a 21.54 square miles project are all Ugandans who enjoy and inherent right to a clean and healthy environment.

In counsel's view the no evidence has been adduced in this court proving that a public hearing was called for by the 2nd Respondent, yet law Regulation 12(2) (a) of the *National Environment (Environmental Impact Assessment) Regulations S.I.*

No. 13 of 1998 requires that the intended project must be publicized and its anticipates effects and benefits must be publicized through the mass media, meeting should be held where the effects of the project are discussed and the venues should be agreed to by the Local Councils.

The 2nd Respondent's Kyangwali mixed land use project is riddled with several controversies including the fact that the ownership of the land on which it is to be carried out it still subject to litigation in the Court of Appeal of the republic of Uganda as pointed herein above. Further it is clear from size of the project and the fact that it involves cutting down 21 square miles of a forest area, that there would be trans boundary impacts.

All these issues clearly show the several controversies regarding 2nd Respondent's Kyangwali Mixed Land Use Project and these controversies were brought to the attention of the 1st Respondent by the various stakeholders and lead agencies. And as such, the Executive Director of the 1st Respondent was legally required to halt the process until comprehensive consultations and public hearings were done. Refusing to do so was illegal, procedurally improper and offended the provisions of Regulations 20, 21, 22 and 24 of the *National Environment (Environmental Impact Assessment) Regulations S.I. No. 13 of 1998*

The 1st respondent's counsel submitted that the Authority acted within the law-National Environment Act No. 5 of 2019 and National Environment Impact Assessment regulations, 1998. The Executive director of the 1st respondent transmitted the Environment and Social Impact Report to the lead agency to make comments and the comments were duly received from the lead agencies and were taken into consideration.

The 1st respondent approved planting of sugarcane on 2393.8483 hectares out of the entire piece of land covering 5,000 hectares and the 2nd respondent was required to secure the natural forest area to safeguard it against degradation and illegal activities and undertake restoration of the degraded area. This was in response to NFA observations and concerns. In addition more views were obtained from Uganda Wildlife Authority and Kikuube District Local government and the same were duly considered with necessary modifications since the 1st respondent is not mandated to accept all comments from the different agencies whole sale.

The 1st respondent's Executive director also held a meeting with the applicants and he fully explained to the applicants all issues pertaining to Kyangwali Mixed Land Use Project and the environment impact assessment. The different stakeholders including the community were consulted and they made comments which were considered. Public hearings were conducted prior to the Covid-19 pandemic by the developer and it became impossible after the outbreak. Secondly, public hearings in the ordinary fashion were not necessary since the Executive Director is only required to call for a meeting where there is controversy or where the project may have transboundary impacts.

The Executive Director exercised his discretionary powers provided under the regulations not to call for public hearings since there were no controversies and there were no transboundary impacts. The property in issue is private property upon which the 2nd respondent is a private developer who ought to be merely regulated in the use of their private property as a holder of a certificate of title.

The 2nd respondent's counsel submitted that Hoima Sugar Limited complied with all the relevant laws and regulatory requirements in obtaining a certificate of approval from the 1st Respondent and has not flouted any law or procedures contrary to the claims of the Applicants.

The procedure to be followed in respect of an Environmental and Impact Assessment for Hoima Sugar Limited in the circumstance is governed by **s.113 of the National Environment Act, 2019** which provides that:

> *"(1) A developer of a project set out in Schedule 5 shall-*
>
> *(a) conduct an environmental and social impact assessment by way of scoping.*
>
> *(b) prepare terms of reference for an environmental and social impact study; and*
>
> *(c) undertake an environmental and social impact study as prescribed by regulations*."

The 2nd respondent -Hoima Sugar Limited is a developer in the circumstances bringing them squarely within the ambit of S.113 of the National Environment Act, 2019 as they intend to develop Plot 216 Block 2 Buhaguzi, Kyangwali Sub-County, Buhugazi County, Kikuube District into mixed land use project where they intend to, among other things, plant sugar cane, establish work camps, a primary school,

secondary school, technical school, hospital and an urban center, and an eco-lodge, walk trails and camping sites with a section of land left under natural conservation. The entire land for these proposed projects measures approximately 22 square miles.

Thereafter, the 2nd Respondent submitted an Environmental Impact Assessment Report made in accordance with the law and later upon consideration of the views and comments of the different stakeholders a certificate of Approval was issued on 14th August 2020.

The 2nd and 3rd Applicants contend that the 1st Respondent was under an obligation to transmit to the lead agency a project brief under **Regulations 6(2), 7(1) & (2), 9(1) & (2) and 10(1), (2) & (3) National Environment (Environmental Impact Assessment) Regulations S.I No 13 of 1998**. According to the 2nd respondent's counsel this submission is misconceived as a clear reading of those Regulations in line with the National Environment Act 2019 shows that the Regulations are inapplicable to the present circumstances.

The National Environment Act 2019 made substantial alterations to the procedures applicable for obtaining project approval from the National Environment Management Authority. The Act differentiates between projects where developers are required to conduct an environmental social impact assessment by way of project brief and by other means listed under **Section 113 of the Act**.

With respect to project briefs, **s.112(1) of the Act** requires a developer to carry out an environmental impact assessment through these means if their project falls under those enumerated in Schedule 4 to the Act. Under Schedule 4, large scale agriculture is not provided for.

Therefore, the most appropriate means of carrying out the environmental impact assessment was in accordance with **s.113 of the Act** which requires developers with projects enumerated under Schedule 5 to the Act to carry out environmental social impact assessments in the mode detailed under **s.113(1)(a) -(c) of The National Environment Act 2019.** Particularly, Paragraph 6(a) under Schedule 5 provides for *"large scale cultivation of 20 hectares or more."* The 2nd Respondent's Kyangwali Mixed Land Use Project therefore comes under this provision as opposed to **s.112 of the Act** providing for project briefs.

The Executive Director of the 1st Respondent consulted the National Forest Authority in accordance with the legal regime applicable in the circumstances. Indeed, **Annexure G to the 1st Respondent's Affidavit in Reply** details a letter written by the Executive Director of the National Forest Authority responding to a review of the Environmental Social Impact Assessment Report as is required under **Regulation 18 of the National Environment (Environmental Impact Assessment) Regulations S.I No 13 of 1998.**

Regulation 12 of the National Environment (Environmental Impact Assessment) Regulations S.I No 13 of 1998 requires a developer to take all necessary measures to obtain the views of people that might be affected by the project. It was the 2nd respondent's submission that this process was adhered to specifically, the Report notes that a consultative meeting as held at Nsonzi Primary School and Minutes of that meeting are contained at Appendix 3 of the aforementioned annexure. Therefore, the allegation that the 2nd Respondent did not abide by the requirement to consult the communities that would possibly be affect by the project is therefore untrue.

The Applicants' also argued that the 2nd Respondent should have carried out a consultative meeting that exceeded the 85 people who attended the meeting aforementioned. However, there is no legal provision that indicates any numerical requirement regarding the minimum number of people to be consulted or that form a quorum for the purposes of consultation under the **Environmental Impact Assessment Regulations.**

Regulation 21 of the Regulations provides two instances through which the Executive Director may call a public hearing. It provides that:

> "*Determination to make a decision or hold a public hearing.*
>
> *(1) The executive director* ***shall consider the environmental impact statement and all the comments received under regulations 18, 19 and 20 of these Regulations and make the decision under regulation 25 of these Regulations or determine whether a public hearing be held under regulation 22 of these Regulations.***
>
> *(2) The executive director shall call for a public hearing under these Regulations where there is a controversy or where the project may have transboundary impacts."*

Under **Regulation 21(1)** therefore, the Executive Director is empowered to exercise discretion to either hold a public hearing as per Regulation 22 or follow the procedure stipulated under **Regulation 25** of the Regulations.

Regulation 25 provides that:

> *"Decision of the executive director*
>
> *(1) The executive director in taking into account the whole review process may—*
>
> ***(a) approve the project or part of the project**;*
>
> *(b) require that the project be redesigned, including directing that different technology or an alternative site be chosen;*
>
> *(c) refer back the project or part of the project to the developer where there is insufficient information for further study or submission of additional information as may be required to enable the executive director to make a decision; or*
>
> *(d) reject the project."*

Therefore, the Executive Director is empowered under **Regulation 25 of the Regulations** to approve a project after due consideration of the environmental impact statement and comments submitted in response to it under **Regulation 21**. Further it shows that comments were solicited from various regulatory agencies between 11th May to 5th June 2020 following which comments received were collated and analyzed. Following this action, the project was accordingly approved as detailed by the Regulations above without the requirement to hold a public hearing.

The 2nd & 3rd Applicant's contestation that a public hearing should have been held would therefore stray into questioning the merits of the decision and not the decision-making process as required under judicial review.

It is trite law that judicial review focuses not on the decision but the decision-making process. In this respect, it was held in the case of **PRIME CONTRACTORS vs THE INSPECTOR GENERAL OF GOVERNMENT & ANOTHER MISC CAUSE NO 301 OF 2013** that:

"It was held in Kuluo Joseph Andres & 2 others vs Attorney General & 6 others Miscellaneous Cause 106 of 2010 per Bamwine J (then) and I agree, that:

"It is trite law that Judicial Review is concerned not with the decision in issue perse, but with the decision-making process. Essentially Judicial Review involves the assessment of the manner in which the decision is made; it is not an appeal and the jurisdiction is exercised in supervisory manner, not to vindicate rights as such, but to ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality."

As a result, the Applicants' contention that in the circumstances, the Executive Director of the 1st Respondent should have held a public hearing because of alleged prevailing controversies seeks to challenge the decision of the Executive Director as opposed to the process undertaken in arriving at that decision.

That notwithstanding, it is 2nd respondent's submission that the Applicants were afforded a fair hearing by the 1st Respondent. It is trite that what is required in instances of judicial review is procedural fairness and not necessarily a fair hearing as envisaged under **Article 28 of the Constitution of the Republic of Uganda.** To this effect, it was held in **DR KASOZI CHARLES vs THE ATTORNEY GENERAL & ANOTHER MISC CAUSE NO 206 OF 2018** that:

"Public bodies may have their own internal mechanisms of handling matters without necessarily following the fair hearing as envisaged in courts."

Further, court cited with approval the case of **KENYA REVENUE AUTHORITY vs MENGINYA SALIM MURGANI CIVIL APPEAL NO 108 OF 2009** where the Court of Appeal noted as follows:

"There is ample authority that the decision-making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed."

In that event, it is clear that the Applicants' were accorded a hearing by the 1st Respondent and their comments were taken into account by the 1st Respondent in arriving at the decision made.

In the case of **ERIAS LUKWAGO vs THE ELECTORAL COMMISSION MISC CAUSE 393 OF 2020** this honourable Court observed that:

> *"Because of the flexibility of the concept, the administrator or decision maker has to make determination of what is procedurally fair in the specific circumstances.* ***It is not necessary in every case to afford a person a trial-type hearing before making a decision that affects that person****."*

Due to the prevailing circumstances, that is, the COVID 19 pandemic, it is was the 2nd respondent's submission that by inviting the Applicants' to make written submissions as detailed at **page 4 of Annexure B to the 1st Respondent's affidavit in reply**, the 1st Respondent offered the Applicants' a fair hearing under the prevailing circumstances. Therefore, the decision of the 1st Respondent was for the purposes of substance, procedurally fair.

Analysis

The applicants in their submissions argue that the issuance of the Certificate of Approval of the Environment and Social Impact Assessment was illegal and procedurally improper. They have cited different provisions which in their view makes the same questionable and the basis of which it ought to be quashed for illegality.

The task of the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the 'four corners' of their powers and duties. They are also acting as guardians of Parliament's will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament's enactments. ***See Public Law in East Africa by Ssekaana Musa page 95 Lawafrica Publishers.***

The legislations give the decision-maker wide infinite power, or atleast the power to choose from a wide range of alternatives, free of judicial interference and allow the exercise of discretion in taking decisions on matters specifically provided under the enactments. The rule of law and other fundamental principles of democratic constitutionalism should be presumed to inform the exercise of all public functions unless Parliament expressly excludes them. The courts should

strive to interpret powers in accordance with these principles in order to establish whether the decision has been reached lawfully or not.

The 1st respondent through its Executive Director is granted power under the National Environment Act and the regulations made thereunder to approve or not to approve a project by evaluating the Environment and Social Impact Assessment report which is wholly an exercise of discretion while taking into account the different considerations. When the legislation gives a decision-maker the discretion to act, it presupposes that there is no unique legal answer to the problem and there may, however, be a number of answers that are wrong in law.

There may also be different degrees of discretion, varying the scope for manoeuvre afforded to the decision maker. It bears emphasis that the scope of judicial review of the exercise of discretion will be determined mainly by the wording of the power and context in which it is exercised. 'There is no universal rule as to the principles on which the exercise of a discretion may be reviewed: Each statute or type of statute must be individually looked at.' ***See Secretary of State for Education and Science v Tameside MBC [1977] A.C 1014 at 1047***

The decision-maker must understand correctly the law that regulates his/her decision-making power and must give effect to it. The initial everyday interpretation of legislation is by the public bodies rather than the courts. Where the exercise of power is broad, the courts should accord public powers leeway in applying these concepts to particular instances and circumstances and will not routinely substitute judicial judgment for that of the public body. Where there is a dispute as to the interpretation of any legislation, it always ultimately for the court to determine the correct legal meaning of the legislation. There must be respect for the agencies Parliament has vested with the task of administering legislation and intervention should only be when their actions are not conformable with the rule of law and the interpretation is not made in whatever manner they wished. See ***R. (on application of Unison) v Monitor [2009]EWHC 3221 (Admin): Council of Civil Service Unions v Minister for the Civil Service [1985] A.C 374***

The applicants are challenging the decision for illegality by interpreting certain provisions of the legislation and contending that the 1st respondent acted contrary to the said legislations. It is the duty of this court to analyse and evaluate whether

the interpretation the Executive Director had in the issuing the Certificate of approval was in accordance with the law or within the 'four corners'.

The applicants' contend that the 1st Respondent was under an obligation to transmit to the lead agency a project brief under *Regulations 6(2), 7(1) & (2), 9(1) & (2) and 10(1), (2) & (3) National Environment (Environmental Impact Assessment) Regulations S.I No 13 of 1998.*

However, it should be noted that t*he National Environment Act 2019* made substantial alterations to the procedures applicable for obtaining project approval from the National Environment Management Authority. The Act differentiates between projects where developers are required to conduct an environmental social impact assessment by way of project brief and by other means listed under *Section 113 of the Act*. Under project briefs, *S.112(1) of the Act* requires a developer to carry out an environmental impact assessment through these means if their project falls under those enumerated in *Schedule 4 to the Act*. Under Schedule 4, large scale agriculture is not provided for.

Therefore, the most appropriate means of carrying out the environmental impact assessment was in accordance with S.113 of the Act which requires developers with projects enumerated under Schedule 5 to the Act to carry out environmental social impact assessments in the mode detailed under *s.113(1)(a) -(c) of The National Environment Act 2019*. Particularly, Paragraph 6(a) under Schedule 5 provides for *"large scale cultivation of 20 hectares or more."* The 2nd Respondent's Kyangwali Mixed Land Use Project therefore comes under this provision as opposed to s.112 of the Act providing for project briefs.

The provision of the Act overrides regulations and such regulations should always be read harmoniously and with necessary modification not to defeat the meaning and intention of the Act. The application of *Regulations 6,7,8, 9 and 10* was accordingly modified by the Act and their application has to be read subject to their conformity with the Act in the prevailing circumstances.

The Executive Director of the 1st Respondent did not bear any obligation to send a project brief to the supposed lead agency, National Forest Authority. Further, the

Executive Director of the 1st Respondent was equally not obligated to consult the latter in respect of the terms of reference for the approval of the project.

It should be noted however, that notwithstanding this interpretation and application of the Act, the 1st respondent went ahead and sent a copy of the Environmental and Social Impact Assessment to National Forestry Authority and other stakeholders. Indeed they made their comments to the entire project which comments were addressed before the approval of the project. The 1st respondent wrote to the Prime Minister of Bunyoro Kingdom, The Permanent Secretary, Ministry of Agriculture, Animal Industry and Fisheries, The Commissioner, Forestry Sector Support Department-Ministry of Water and Environment, Executive Director, Uganda Wildlife Authority, Executive Director, National Forestry Authority, Chief Administrative Officer, Kikuube District Local Government.

Where a duty of 'consultation is placed upon the decision-maker, this is almost interpreted by the courts to require merely an opportunity to make written representations, or comments upon announced proposals. What was required of the 1st respondent as the decision-maker was to comply with the duty as set out within the legal framework. The fundamental requirements of the duty of consultation have been summarised by Lord Woolfe in the case of ***R v North and East Devon Health Authority ex parte Coughlan [2001] QB 213:***

> *"To be proper, consultation must be undertaken at a time when proposals are still at informative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken"*

In the present case, the different stakeholders were consulted before the certificate of approval of the Environmental and Social Impact Assessment Report was approved. The standard of consultation under the particular statutory context was satisfied since it is a general principle of fairness that the consulted party is able to address the concerns of the decision-maker. The concerns of the

stakeholders and especially National Forestry Authority and Wildlife Authority were considered and this evidence is clearly set out on the court record.

The applicants also contended that the 1st respondent decision to issue a Certificate of Approval was in illegal and procedurally improper for not conducting a public hearing and or allowing public participation in decision making. Regulation 12 of the National Environment (Environmental Impact Assessment) Regulations required a developer to take all necessary measures to obtain views of the people that might be affected by the project. The 2nd respondent consulted with the community at Nsozi Primary School and over 85 people attended this meeting. In addition, Kikuube District Local Government was equally consulted about the project and indeed they made written responses to the entire project. The 1st respondent further confirmed that they were not able to make further public hearings due to COVID-19 which this court takes judicial notice of and public gatherings were barred at the moment by the government.

This court is satisfied that the community was duly consulted and heard on their views about the project and the court is not persuaded by the applicants counsel's argument that the people consulted were few in absence of any evidence to the contrary. The law does not require consultation of everybody in the community and this would definitely be an impossibility to achieve. The law does not prescribe or set any standard procedure and number of people to be consulted. The court would be wrong in setting a standard for the decision-maker to satisfy for the hearing of the views of the community about the said project. The court would leave the discretion to be exercised by the decision-maker on whether the community is satisfactorily consulted.

Secondly, the argument for a public hearing is derived from **Regulation 21** of the Regulations provides two instances through which the Executive Director may call a public hearing. It provides that:

> "*Determination to make a decision or hold a public hearing.*
>
> *(1) The executive director* ***shall consider the environmental impact statement and all the comments received under regulations 18, 19 and 20 of these Regulations and make the decision under regulation 25 of these***

Regulations or determine whether a public hearing be held under regulation 22 of these Regulations.

(2) The executive director shall call for a public hearing under these Regulations where there is a controversy or where the project may have transboundary impacts."

Under **Regulation 21(1)** therefore, the Executive Director was empowered to exercise discretion to either hold a public hearing as per Regulation 22 or follow the procedure stipulated under **Regulation 25** of the Regulations.

Regulation 25 provides that:

"Decision of the executive director

(1) The executive director in taking into account the whole review process may—

***(a) approve the project or part of the project**;*

(b) require that the project be redesigned, including directing that different technology or an alternative site be chosen;

(c) refer back the project or part of the project to the developer where there is insufficient information for further study or submission of additional information as may be required to enable the executive director to make a decision; or

(d) reject the project."

Therefore, the Executive Director is empowered under **Regulation 25 of the Regulations** to approve a project after due consideration of the environmental impact statement and comments submitted in response to it under **Regulation 21**. We contend that this is what occurred in this case.

The 1st respondent Executive Director was not bound to hold any public hearing premised on the above rules since there was no controversy and there are no transboundary impacts. The argument by the applicants that there was controversy in ownership of the land and there is a pending Appeal against the

decision of High Court is extremely weak and Executive Director should not be used as court on legal matters which are pending in the Court of Appeal.

It appears the applications in this matter were premised on distorted facts and the applicants have attempted the suppress the real facts in order to make 'flowery' case in court by exaggerating that the entire forest is being cleared for sugarcane planting or that 5000 hectares (21 square miles) of the forest is being cleared for sugarcane growing. This is not true and it is an alarmism since out of the entire leasehold certificate of title issued to the 2nd respondent, they are supposed to plant sugarcanes on 2,393.8483 hectares against a total area of 5,579 hectares which is less than half. Secondly, the Bugoma Central Forest Reserve is still intact and the 2nd respondent has been directed to undertake enrichment planting covering an area of 3.8919 sq miles and must carry out regulated activities.

The applicants in order to attract attention of the public and also to justify their existence as as bodies concerned with environment protection and awareness are trying to make all sorts of unsubstantiated allegations to win public sympathy. Courts of law are strictly guided by the law and sensationalism should never be used to sway court in any matter. The key stakeholders were consulted and they made written representations but the applicants seem to argue as if no consultation was ever made before the certificate of approval was made.

The 1st respondent is enjoined under the National Objectives and Directive Principles of State policy in the Constitution to provide 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.

The application fails and is accordingly dismissed and but each party shall bear its costs. Since the applicants never asked for costs in the application.

I so Order

Dated, signed and delivered be email and whatsApp at Kampala this 7th day of May 2021

SSEKAANA MUSA
JUDGE
7th/05/2021.