



- The principle established in **Uganda Corporation Creameries Ltd & another v Reamaton Ltd (Civil Reference No.11 of 1999)** dictates that courts should adjudicate on real and existing issues between litigants, not hypothetical or academic ones. However, in environmental cases, a credible ongoing threat such as the potential future destruction of protected Mivule trees for development purposes constitutes a real and pressing issue. This warrants judicial intervention to secure the constitutional right to a clean and healthy environment.
- The threat to cut the Mivule trees jeopardizes the right to a clean and healthy environment, a fundamental right enshrined in **Article 39** of the Constitution and **Section 3(1)** of the National Environment Act.
- Mvule trees are of cultural and touristic value of the Mvule trees and important in preserving the Jinja City's heritage, as stipulated in **Articles 37 and 39** of the Constitution and supported by the National Environment Act
- There is need of public participation in environmental decision-making, as required by **Articles 38, 39, and 42** of the Constitution and **Sections 3 and 5(2)** of the National Environment Act.

HCT-03-CV-MC-0021-2023, **The Environment Shield Ltd** and **Gawaya Tugule** vs. **Jinja City Council** and **Zhongmei Engineering Group Ltd**. Ruling by **Hon. Justice Dr. Winifred N. Nabisinde** on **30/04/2024**.

Background:

This case involves The Environment Shield Limited and Gawayo Tugule (Applicants) who brought a legal action against Jinja City Council and Zhongmei Engineering Group Ltd (Respondents). The dispute centered on the planned cutting of endangered *Milicia excelsa* (Mvule) trees along Nile Avenue in Jinja City. The Applicants sought several declaratory orders and injunctions to prevent this action, citing environmental and heritage concerns.

Court's Analysis and Findings:

Environmental Protection: The court recognized that the cutting of Mvule trees posed a substantial threat to environmental rights. It underscored the significance of protecting biodiversity and the environment, aligning with constitutional mandates under **Article 39** and statutory requirements under the National Environment Act. The court highlighted that under **Article 39** of the Constitution, every Ugandan has a right to a clean and healthy environment, and under **Section 3** of the National Environment Act, there is a duty to protect and preserve the environment.

Cultural and Heritage Preservation: The court acknowledged the cultural and touristic value of the Mvule trees. It highlighted the importance of preserving the city's heritage, as stipulated in **Articles 37 and 39** of the Constitution and supported by the National Environment Act. The ruling stressed that development should not come at the expense of cultural and environmental assets. **Article 37** of the Constitution guarantees the right to culture, which includes the preservation of cultural sites and artifacts.

Public Participation: The court emphasized the necessity of public participation in environmental decision-making processes. It referred to constitutional provisions ensuring public involvement and accountability in governmental actions affecting the environment. The court found that the Respondents had failed to adequately involve the public, violating **Articles 38, 39, and 42** of the Constitution and **Sections 3 and 5(2)** of the National Environment Act. **Article 42** ensures the right to just and fair treatment in administrative decisions, which includes the right to be heard and to participate in decision-making processes.

NOTE

The court referred to the case **Uganda Corporation Creameries Ltd & another v Reamaton Ltd (Civil Reference No.11 of 1999)**, emphasizing that courts should focus on resolving actual disputes rather than academic ones. However, it justified its intervention by recognizing the potential for future harm if the trees were cut without proper safeguards and public consultation.

The court addressed the substantive threat to the environment posed by the respondents' actions, even though the immediate threat of cutting down Mivule trees has been temporarily halted. The court's adjudication is not rendered academic merely because the immediate harm has been paused; rather, the potential for future harm necessitates concrete legal declarations and guidelines to ensure ongoing environmental protection. This approach aligns with the principle in **Uganda Corporation Creameries Ltd & another v Reamaton Ltd**, which emphasizes that courts should resolve real, existing issues between litigants rather than hypothetical ones. Here, the potential for future environmental damage, as evidenced by the respondents' prior actions and the inherent growth and ongoing risk to the Mivule trees, constitutes a real and pressing issue that warrants judicial intervention to secure the constitutional right to a clean and healthy environment.

Reliefs Granted:

- **Declaration of Threat:** The court declared that the planned cutting of Mvule trees threatened the rights of residents to a clean and healthy environment and the city's heritage.
- **Temporary Injunction:** A temporary injunction was issued, preventing the Respondents from cutting the trees until necessary consultations and environmental safeguards were in place. This measure aimed to balance development needs with environmental protection.
- **Environmental Management Directive:** The court directed that future actions regarding the trees must involve consultations with relevant bodies such as the Uganda Forest Authority, NEMA, and human rights NGOs. It emphasized sustainable practices like trimming and pruning instead of outright cutting and mandated the replacement of any felled trees with similar young ones.



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