THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0404 OF 2026

(ARISING FROM CIVIL SUIT NO. 0156 OF 2026)

1. **AKULILAWO WILSON SAAZI MARVINS**
2. **AKULIREWO WILSON KYEYA**..............................**APPLICANTS**

VERSUS

1. **UGANDA N'EDDAGALAYO THE NATIONAL TRADITIONAL HEALERS AND HERBALISTS ASSOCIATION LIMITED**
2. **WARYABIRA KARIM**…….....................................**RESPONDENTS**

BEFORE: HON. LADY JUSTICE SUSAN ODONGO

RULING

INTRODUCTION

The Applicant brought this application under O.52 Rules 1 & 3, O.41 Rules 1 (a) of the CPR, Section 98 of the Civil Procedure Act, Section 17 (1) & (2 a & b) of the Judicature Act, Article 139 of the Constitution of Uganda 1995 as Amended, seeking orders;

(a) That the criminal proceedings in Criminal Case NO. S.U.W 530 of 2022 Uganda Vs Saazi Marvins & 3 others before the Standards, Utilities & Wildlife Chief Magistrate

Court in Makindye be stayed pending hearing and determination of Civil Suit No. 0156 of 2026 herein main suit.

(b) That a temporary injunction barring the Respondents from further using Trademark No. UG/T/1997/020862 in goods and services class 5 (Schedule) until full determination of Civil Suit No. 0156 of 2026 by this Honouroble Court be issued.

(c) Costs of this application be in the cause.

BACKGROUND

The Applicants, Akulilawo Wilson Saazi Marvins and Akulirewo Wilson Kyeya, appear before this Court as leaders of the Uganda Neddagala Lyayo the National Traditional Healers and Herbalists Association, an entity with roots dating back to the 1960s that was formally registered in 1965. On 20th October 1997, the Association registered its logo/symbol with the Registrar of Trademarks as Trademark No. UG/T/1997/020862 in goods and services Class 5. The Association's leadership has changed over the decades, including the appointment of the 2nd Respondent, Waryabira Karim, as chairperson on 6th March 2015, a position he held until his removal by the Board of Founders on 9th March 2020.

The dispute centers on allegations that following his removal, the 2nd Respondent secretly and fraudulently registered a private company, the 1st Respondent herein on 13th January 2021. The Applicants further aver that on 1st March 2022, the Respondents, without authorization from the Association's leadership, changed the ownership of the disputed trademark into the name of the 1st Respondent. This led to the filing of Civil Suit No. 0156 of 2026, in which the Applicants seek various reliefs, including declarations of rightful ownership and orders directing the Registrar of Trademarks and Registrar of Companies to cancel the registrations they claim were procured in bad faith.

Parallel to the civil dispute, on 6 June 2022, the 2nd Respondent caused the commencement of criminal proceedings against the Applicants in Criminal Case No. S.U.W 530 of 2022 before the Standards, Utilities & Wildlife Chief Magistrate Court in Makindye. The Applicants face charges of falsely applying a registered trademark and conspiracy to commit a felony, offences they argue are directly predicated on the contested ownership of the trademark. By this, the Applicants now seek a stay of the criminal proceedings pending the determination of the main civil suit and a temporary injunction barring the Respondents from using the trademark in the interim.

APPLICANTS' AFFIDAVITS

The 1st Applicant, Saazi Marvins, deposes that he and the 2nd Applicant are the legitimate leaders of the Uganda Neddaggala Lyayo the National Traditional Healers and Herbalists Association, an entity established in the 1960s. He asserts that the Association is the original and rightful owner of Trademark No. UG/T/1997/020862 in Class 5, having registered the symbol with the Registrar of Trademarks on 20 October 1997.

The deponent states that the 2nd Respondent, Waryabira Karim, was appointed chairperson of the Association in March 2015 but was later formally removed from this position by the Board of Founders and District Chairpersons on 9 March 2020. He contends that the Respondents have since misrepresented themselves as the Association's leaders to facilitate the alleged fraudulent acts.

Saazi avers that following his removal, the 2nd Respondent secretly registered a private limited company (the 1st Respondent) in January 2021. He further testifies that on 1 March 2022, the Respondents, acting without the knowledge or consent of the Association's lawful leadership, changed the ownership of the disputed trademark into the name of this private company.

Regarding the application for a stay, the deponent explains that the Applicants were charged on 6 June 2022 with falsely applying a registered trademark and conspiracy to commit a felony in Criminal Case No. S.U.W 530 of 2022. He argues that the criminal charges are predicated entirely on the question of trademark ownership, which is the central issue to be determined in the pending civil suit.

The deponent asserts that if the criminal proceedings are not stayed, there is an inherent danger of the courts rendering conflicting judgments. Furthermore, he avers that the Respondents' continued unauthorized use of the trademark causes the Association grave financial loss and irreparable damage to its reputation and goodwill, which cannot be compensated by damages alone.

In his affidavit in rejoinder, Saazi Marvins raises a Preliminary Objection, contending that the Respondents' joint affidavit in reply is incurably defective. He alleges that the document fails to state the deponent’s name or capacity, was signed by unknown persons, and was not sworn before a commissioner for oaths, rendering it a legal nullity that should be struck from the record.

Finally, the deponent testifies that the criminal proceedings were instituted in bad faith with no genuine intention of prosecution, but rather to incontinence and frustrate the Applicants. He notes that since 2022, the Applicants have reported to court monthly, yet the prosecution has failed to produce a single witness, which he describes as a waste of time and resources designed to further a fraudulent agenda.

RESPONDENTS' AFFIDAVIT IN REPLY

The 2nd Respondent, Waryabira Karim, deposes that the application to stay criminal proceedings is fundamentally misconceived, legally untenable, and an abuse of the court's process. He contends that civil and criminal proceedings are distinct in their nature, purpose, and legal framework, meaning they may properly proceed concurrently without legal inconsistency. He asserts that the mere existence of a civil dispute over trademark ownership does not constitute a valid ground to stay or bar criminal prosecutions arising from the same facts.

Regarding the merits of the dispute, the Respondents strongly contest the Applicants' claim to ownership of the trademark and put them to strict proof thereof. Karim further avers that the prayer for a temporary injunction is untenable because it was not properly pleaded in the main suit and cannot be granted at an interlocutory stage. He argues that such an order would be highly prejudicial and would unjustly interfere with the Respondents' lawful operations by pre-empting the final determination of the suit.

The Respondents emphasize the fundamental distinctions in evidentiary standards, noting that criminal cases require proof beyond reasonable doubt, a burden that never shifts from the prosecution whereas civil cases are decided on a balance of probabilities. They argue that the speculative apprehension of conflicting decisions is not a lawful basis to fetter the administration of criminal justice or the independence of prosecutorial authority.

Finally, the deponent alleges that the application is a dilatory tactic brought in bad faith at the eleventh hour to frustrate the due course of justice. He points out that the criminal proceedings were instituted four years ago in 2022 and have yet to proceed to hearing. He further states that this is not the first attempt by the Applicants to stay the criminal proceedings, noting a pattern of repeated and failed applications intended to obstruct the administration of justice.

REPRESENTATION AND HEARING

When this Application was called on for hearing, the applicants were represented by counsel Karashani Wycliff, and the respondents by Counsel Balikudembe Joseph.

The court issued directions for the filing of pleadings and written submissions.

Counsel filed their pleadings and written submissions which I have duly considered in deciding this Application.

APPLICANTS' WRITTEN SUBMISSION

The Applicants first raise a Preliminary Objection contending that the Respondents' joint affidavit in reply is incurably defective for failing to state the name and capacity of the deponent and for being signed by unknown persons without proper commissioning. Relying on Section 11(1) of the Oaths Act Cap 9 and Section 5 of the Commissioners for Oaths (Advocates) Act, they argue that the omission of the name of the commissioner and deponent in the jurat renders the document a legal nullity that must be struck from the record. They support this position by citing ***Attorney General Versus Okello James Enos & another (High Court Miscellaneous Application No. 31 of 2020)***, where it was held that a fundamentally defective affidavit is an illegality that overrides all questions of pleading, and ***Silver Springs Hotel Limited & others Versus the Attorney General (High Court Miscellaneous Appeal No. 8 of 1988),*** which affirmed that procedural rules are binding and cannot be ignored.

Regarding the substantive prayer to stay criminal proceedings, the Applicants argue that such an order is necessary under Section 98 of the Civil Procedure Act and Section 17 of the Judicature Act to prevent an abuse of process and the danger of conflicting judgments. They contend that the civil suit seeks to determine trademark ownership, which is a central ingredient for the criminal charges of falsely applying a registered trademark currently pending in the lower court. To justify this intervention, they rely on ***Sebulime Basker Versus Uganda (Criminal Appeal No. 21 of 2018)***, where Hon. Justice Flavia Senoga Anglin held that criminal proceedings should be stayed when a civil court has already taken cognizance of and is deciding the same core issue.

In seeking a temporary injunction under ***Order 41 Rule 1*** *of the* **CPR**, the Applicants assert they have established a prima facie case with a probability of success regarding their rightful ownership of the trademark. Citing the guidelines in ***American Cynamid co. v Ethicon ltd***, ***AC 399*** and ***Kiyimba Kaggwa Vs Hajji Abdul Nasser Katende (Civil Suit No. 2109 of 1984 HCB 43),*** they argue that they only need to demonstrate a serious question to be tried rather than absolute success at this interlocutory stage. They further cite ***Robert Kavuma Vs M/S Hotel international*** **(*SCCA No. 08 1990)*** to maintain that the court must grant relief where the claim is shown to be neither frivolous nor vexatious.

The Applicants further argue that they will suffer irreparable injury if the Respondents are not restrained from using the trademark, as the Association's reputation and goodwill are being actively damaged. They rely on the definition provided in ***Kiyimba Kaggwa Vs Hajji Abdul Nasser Katende*** **(supra)**, asserting that the injury is substantial and material in a way that cannot be adequately atoned for by an award of money. They emphasize that since the trademark has been legally theirs since 1997, any continued usage by the Respondents constitutes a fraudulent misrepresentation that causes grave financial and reputational loss.

Furthermore, the Applicants submit that the balance of convenience tilts in their favour because the risk of doing an injustice by allowing the Respondents to misuse the trademark outweighs any potential harm to the Respondents. They invoke ***Gapco (U) Ltd Vs Kaweesa Badru & Anor (Misc. Application 259/13),*** which held that if a refusal to grant an injunction would cause the applicant to suffer more injury, the court should be inclined to grant the application. They maintain that protecting their established legal rights from further damage is the most reasonable and fair course of action for all parties involved.

Finally, in their submissions in rejoinder, the Applicants dismiss the Respondents' claim that the defects in their affidavit were mere scanning errors, noting that the Court only considers what is actually filed on the record. They argue that the Respondents failed to utilize the amendment procedure under ***Order 6 Rule 19 of the CPR***, thereby confirming their affidavit remains a nullity. Moreover, they allege that the criminal proceedings were brought in bad faith to incontinence them, pointing out that since 2022, the Applicants have reported to court monthly while the prosecution has failed to produce a single witness.

RESPONDENTS WRITTEN SUBMISSION

The Respondents first contend that the Applicants' challenge to their joint affidavit in reply is an attempt to elevate form over substance, as the alleged defects specifically the omission of the deponent's name and capacity were merely curable scanning and electronic transmission errors on the ECCMIS system. Relying on the principle that substantive justice should be administered without undue regard to technicalities, they cite ***Amama Mbabazi v Yoweri Kaguta Museveni & Electoral Commission (Presidential Election Petition No. 01 of 2016, Supreme Court of Uganda)***, which affirmed that procedural irregularities that cause no prejudice should not be used to strike out valid pleadings. They further distinguish the Applicants' reliance on ***Attorney General v Okello James Enos & Another (HCCMA No. 31 of 2020)***, arguing that unlike the affidavit in that case, their own original hard copy was properly sworn and commissioned, rendering it legally valid.

Regarding the substantive prayer for a stay of proceedings, the Respondents submit that the application is legally untenable because civil and criminal proceedings are distinct in nature, purpose, and institutional mandate. They cite ***Rwekisigazi Herbert & 3 Ors v Uganda (HCT-05-CR-0004-2023)*** to underscore the position that the mere existence of a civil dispute does not bar or stay criminal prosecutions arising from the same facts. They argue that the Applicants' reliance on ***Sebulime Basker v Uganda (Criminal Appeal No. 21 of 2018)*** is misplaced, as that case involved a factual context where civil issues had already been conclusively addressed, whereas here, the criminal matter was instituted four years ago and should not be fettered by a later-filed civil suit.

On the prayer for a temporary injunction, the Respondents argue that the Applicants have failed to satisfy the mandatory requirements set out in ***American Cyanamid Co v Ethicon Ltd AC 396*** and ***Kiyimba Kaggwa v Katende (HCCS No. 2109 of 1984)***. They maintain that there is no clear *prima facie* case since trademark ownership is hotly contested and requires full trial scrutiny rather than a summary determination at an interlocutory stage. Furthermore, they assert that no irreparable injury has been demonstrated because the trademark is a quantifiable commercial asset for which damages would be an adequate remedy, and that the balance of convenience tilts in their favour as the current users of the mark.

Finally, the Respondents characterize this application as a dilatory tactic and an abuse of court process brought in bad faith to obstruct the administration of criminal justice. They emphasize that the criminal proceedings were instituted in 2022 and have been delayed for four years, largely due to the Applicants' repeated filing of similar applications intended to frustrate the trial. They urge this Court to apply the maxim that equity aids the vigilant and not those who slumber on their rights, asserting that the Applicants' delay in seeking these reliefs further undermines the urgency of their claims and warrants a dismissal of the application with costs.

ISSUES FOR DETERMINATION

In the formulation of issues, this court may consider various materials before it, including; statements made on oath by the parties or by any persons present on their behalf, or made by the advocates of the parties; pleadings and answers to interrogatories, as well as documents produced by either party (Order 15 rule 3 of the Civil Procedure Rules S.I 71-1).

The issues for determination are:

1. Whether the criminal proceedings in Criminal Case No. S.U.W 530 of 2022 (Uganda Vs Saazi Marvins & 3 Others) should be stayed pending the hearing and final determination of Civil Suit No. 0156 of 2026?
2. Whether the Applicants have satisfied the legal requirements for the grant of a temporary injunction restraining the Respondents from using Trademark No. UG/T/1997/020862 pending the final determination of Civil Suit No. 0156 of 2026

COURT'S DETERMINATION

Before I can proceed to the merits of the application regarding the stay of proceedings and the temporary injunction, I must first attend to a Preliminary Objection raised by the Applicants concerning the validity of the Respondents' Joint Affidavit in Reply. The Applicants contend that the affidavit is incurably defective and a nullity for failing to state the name and capacity of the deponent, being signed by unknown persons, and lacking proper commissioning under ***Section 11(1) of the Oaths Act (Chapter 21)*** *and* ***Section 6 of the Commissioners for Oaths (Advocates) Act (Cap 6)***. Therefore, I will address the procedural integrity of the affidavits first before evaluating the substantive merits of the application.

The validity of the Respondents' Joint Affidavit in Reply.

By way of a Preliminary Objection, the Applicants contend that the Respondents' Joint Affidavit in Reply is incurably defective and a legal nullity that must be struck from the record. The Applicants' grievance, as articulated in their Written Submissions and their Applicants' Joint Affidavit in Rejoinder, is that the said document fails to state the names of the deponent, the capacity in which the deponent is swearing, and appears to be signed by unknown persons. Most critically, the Applicants aver that the affidavit was not sworn before a commissioner for oaths, which they argue constitutes a fatal breach of the procedural requirements governing the integrity of sworn testimony in this jurisdiction.

In support of this objection, the Applicants' counsel moved this Court to apply the strictures of the law as set out in the Oaths Act Cap 9 and the Commissioners for Oaths (Advocates) Act Cap 6. They specifically invoked ***Section 11 (1) of the Oaths Act***, which provides:

"The Chief Justice, a judge of the High Court, the chief registrar of the High Court, a magistrate, a notary public and any commissioner for oaths may administer any lawful oath or take any lawful affirmation or affidavit".

This is read in tandem with ***Section 6 of the Commissioners for Oaths (Advocates) Act***, which mandates:

"Every commissioner for oaths before whom any oath or affidavit is taken or made shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made".

The Applicants submit that the absence of these particulars on the scanned version of the affidavit filed on the Electronic Court Case Management Information System (ECCMIS) leaves them in a difficult position to tell who actually swore the affidavit and who administered the taking/swearing of the same.

To cement their position, the Applicants rely on the robust precedent set in ***Attorney General Versus Okello James Enos & another (High Court Miscellaneous Application No. 31 of 2020)***, where Hon. Justice Dr. Henry Peter Adonyo held:

"I find that the said affidavit does not comply with the law and thus is an illegality which once brought to the attention of court overrides all questions of pleading including admissions".

They further cite ***Silver Springs Hotel Limited & others Versus the Attorney General*** **(*High Court Miscellaneous Appeal No. 8 of 1988)*** for the proposition that procedure rules are binding on all litigants and therefore courts cannot ignore clear procedural requirements.

Based on these authorities, the Applicants pray that this Court treats the Respondents as if they had never filed a reply and proceeds with the application ex parte.

In a spirited defense of their pleadings, the Respondents' counsel argued that the Applicants' objection is an attempt to elevate form over substance, which would defeat the ends of justice. In their Respondents' Written Submissions, they clarified that the original hard copy of the affidavit which was physically presented for this Court's verification is intact, properly commissioned by a competent Commissioner for Oaths, and fully compliant with the law. They contend that the alleged defects regarding the omission of the deponent's name and capacity on the court record arose purely from a scanning and electronic transmission error during the capture of the document into the ECCMIS system. They argued that a mere scanning and electronic capture omission should not be elevated to an illegality capable of rendering a deponent's sworn testimony inadmissible.

The Respondents urged this Court to adopt the modern judicial philosophy that discourages the striking out of pleadings on purely technical grounds where no prejudice has been demonstrated. They relied on the landmark decision of the Supreme Court of Uganda in ***Anama Mbabazi v Yoweri Kaguta Museveni & Electoral Commission (Presidential Election Petition No. 01 of 2016),*** which emphasized that procedural irregularities which do not go to the root of the matter and which cause no prejudice should not be used to strike out otherwise valid pleadings or affidavits. They distinguish the ***Okello James Enos*** case on the basis that the affidavit in that matter lacked commissioning entirely, whereas their original document, referred to in their submissions as the attached copy of the original commissioned affidavit, contains the place, date, signature, and official stamp of the Commissioner.

As the judge, I must balance the necessity of procedural rigor with the constitutional mandate to administer substantive justice without undue regard to technicalities. Under ***Order 19 Rule 3(1) of the Civil Procedure Rules***, it is provided that:

"Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove".

While the law as stated in ***Section 6 of the Commissioners for Oaths (Advocates) Act*** requires strict adherence to the jurat's particulars to ensure authenticity, this Court must take judicial notice of the technological era in which we operate. The introduction of ECCMIS was intended to enhance efficiency, not to create new traps for litigants whose physical documents are in order but whose digital representations suffer from electronic capture omissions. To strike out an affidavit because of a scanner's failure to capture a header or a footer would be to punish a party for the limitations of a machine rather than the merits of their cause.

Upon a careful physical inspection of the original hard copy of the Respondents' Joint Affidavit in Reply, I find that it is indeed signed by Ssalongo Walyabira Karim and was duly sworn before Mutalya Brian, an Advocate and Commissioner for Oaths, on 7 April 2026. The document contains a Certificate of Translation where the commissioner confirms that he is fluent in both Lusoga and English and interpreted the contents to the deponent before he affixed his thumbprint. This original document satisfies the requirements of both the Oaths Act and the Commissioners for Oaths Act. The discrepancy between this valid original and the truncated version on the ECCMIS system is, in my considered view, a curable irregularity *under **Section 100 of the Civil Procedure Act***, which grants this Court the power to *"at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit".*

In the final result, this Court finds that the Applicants have not demonstrated any substantial prejudice suffered by the Respondents' reliance on a scanned copy that omitted technical identifiers, especially when the original document was made available for verification. The principle of substantive justice as envisioned in ***Section 17(1) of the Judicature Act*** must prevail over the rigid proceduralism invited by the Applicants. To uphold this preliminary objection would be to shutter a party from being heard on a matter involving serious allegations of trademark fraud and criminal liability. This Court refuses to be a slave to technicalities in the face of a validly sworn instrument.

The Preliminary Objection is accordingly overruled and dismissed.

This Court will now proceed to consider the merits of the application, treating the Respondents' Joint Affidavit in Reply as properly filed and part of the record.

Issue 1. <u>Whether the criminal proceedings in Criminal Case No. S.U.W 530 of 2022 (Uganda Vs Saazi Marvins & 3 Others) should be stayed pending the hearing and final determination of Civil Suit No. 0156 of 2026?</u>

The Applicants move this Court to invoke its protective mantle to prevent what they characterize as an inherent danger of conflicting judgments and an abuse of the process of the law. The Applicants contend that the central pivot upon which both the criminal prosecution and the civil suit turn is the proprietary ownership of Trademark No. UG/T/1997/020862, a matter they argue must be resolved by this Court in its civil capacity before the Applicants can be lawfully tried for allegedly infringing upon it.

The jurisdiction of this Court to grant such a stay is anchored in the bedrock of ***Section 98 of the Civil Procedure Act Cap 282***, which preserves the Court's plenary authority:

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court".

This is fortified by ***Section 17(1) and (2)(a) of the Judicature Act, Cap 16,*** which confers upon the High Court the duty of supervision over magistrates' courts and the specific inherent power to prevent abuse of process of the court by curtailing delays in trials and delivery of judgment.

These provisions empower this Court to act as a sentinel of justice, ensuring that the wheels of criminal and civil litigation do not collide in a manner that produces a legal wreck, thereby bringing the administration of justice into disrepute.

Counsel for the Applicants argued that the criminal charges, as set out in ***Annexure B*** (the Charge Sheet) and ***Annexure G*** (the Amended Charge Sheet), are inextricably linked to the civil dispute. The Applicants are charged with Falsely applying a registered trademark, contrary to section 75(1)(b) of the Trademarks Act 17, 2010. The particulars of the offence allege that the Applicants used the mark Uganda Neddagala Lyayo knowing it was registered to the detriment of the registered owner. The Applicants' Written Submissions contend that since the civil suit seeks a declaration that the Applicants are the true and original owners and that the Respondents' change of name in ***Annexure C*** (the Certificate of Change of Name dated 1 March 2022) was fraudulent, the criminal court cannot proceed without a definitive ruling on ownership.

To support this position, the Applicants lean heavily on the decision of the High Court in ***Sebulime Basker Versus Uganda*** **(*Criminal Appeal No. 21 of 2018)*,** where Hon. Justice Flavia Senoga Anglin (as she then was) enunciated a principle of judicial economy and fairness. The learned Judge held:

"where a civil court has taken cognizance and is deciding the same issue, the criminal proceedings before the trial court amount to abuse of process of law, proceedings pending before the trial court in such circumstance ought to be stayed till the disposal of the civil suit."

The Applicants submit that allowing the criminal trial to proceed in Makindye while this Court is seized with the question of trademark ownership would be to put the cart before the horse, creating a risk where a man might be convicted of a crime involving a mark that this Court later declares to be his own.

In response, the Respondents' counsel maintains that the Applicants are inviting this Court to commit a legal heresy by fettering the lawful exercise of prosecutorial authority. They argue that the application is fundamentally misconceived, legally untenable, and an abuse of the court process because civil and criminal courts serve entirely different masters. Relying on the Joint Affidavit in Reply, the 2nd Respondent, Waryabira Karim, deposes that civil and criminal proceedings are distinct in nature, purpose, and legal framework, and may proceed concurrently without offending any principle of law. The Respondents urge this Court to respect the institutional independence of the Director of Public Prosecutions (DPP), who is not even a party to these civil proceedings.

The Respondents find their legal refuge in the more recent precedent of ***Rwekisigazi Herbert & 3 Ors v Uganda (HCT-05-CR-CV-0004-2023)***. In that matter, this Court, sitting in Mbarara, underscored that the mere existence of a civil dispute does not bar or stay criminal prosecution arising from the same facts. The Respondents argue that the standard of proof creates a firewall between the two jurisdictions: in the criminal court, the prosecution must prove its case beyond reasonable doubt, a burden that never shifts, whereas in this Court, the matter will be decided on a balance of probabilities. They submit that a criminal court is perfectly competent to evaluate evidence of ownership for the purposes of a criminal trial without needing a prior civil declaration.

In analyzing these competing positions, this Court must consider the impact of the timeline of litigation. The Respondents correctly point out in paragraph 22 of their Joint Affidavit in Reply that the criminal proceedings were instituted in

2022, while the civil suit was only filed in 2026. This Court is wary of litigants who, after slumbering on their rights for four years, suddenly discover a civil cause of action as a means to derail a long-pending criminal trial. The maxim equity aids the vigilant and not those who slumber on their rights is relevant here. To stay a 2022 criminal case because of a 2026 civil suit would be to reward delay and encourage a culture of using the Commercial Division as a sanctuary for those seeking to avoid the rigors of the Standards, Utilities & Wildlife Court.

Furthermore, the inherent danger of conflicting judgments cited by the Applicants is often more speculative than real. As noted in ***Rwekisigazi Herbert***, (supra) the purposes of the two proceedings are fundamentally different: one is the vindication of public justice by the State, and the other is the determination of private rights. The criminal court in Makindye is tasked with determining if the Applicants committed an act with fraudulent intent at the time of the alleged offence; it is not bound by a subsequent civil determination of title, which focuses on different legal elements. The goodness of justice lies in its efficiency and finality, not in the indefinite suspension of criminal liability while parties litigate private property rights.

This Court finds that the Applicants have failed to demonstrate exceptional circumstances that would justify a stay. While ***Sebulime Basker (supra)*** remains good law, it must be applied with surgical precision only where the civil outcome is truly dispositive and the criminal proceeding is a transparent abuse of process. Here, the criminal case was first in time by nearly half a decade. The Applicants have been appearing monthly in Makindye since 2022, and as they themselves aver in their rejoinder, the prosecution has yet to produce witnesses. If the prosecution is failing, the remedy lies in a dismissal for want of prosecution in the criminal court itself, not in a stay issued by a civil court. To grant this stay would be to shutter the streams of justice and allow a later-filed civil suit to hijack a pre-existing criminal process.

In the final result, this Court holds that the administration of criminal justice must not be fettered by the pendency of a civil suit unless it is clearly shown that the criminal matter is being used as a tool of oppression or is totally devoid of any independent legal foundation. The Applicants have shown no such thing. They have merely shown that they disagree with the charges and wish to litigate their ownership of the mark. They may do so in this Court, but they must also answer to the State in the lower court. This Court will not set a precedent that allows civil litigation to be used as a standard "pause button" for criminal accountability.

The prayer for a stay of criminal proceedings is hereby denied and dismissed.

Issue 2. Whether the Applicants have satisfied the legal requirements for the grant of a temporary injunction restraining the Respondents from using Trademark No. UG/T/1997/020862 pending the final determination of Civil Suit No. 0156 of 2026

The Applicants move this Court to issue an order barring the Respondents from the continued use of Trademark No. UG/T/1997/020862 in goods and services Class 5 until the final determination of Civil Suit No. 0156 of 2026. This prayer is essentially an appeal to the Court's equitable jurisdiction to preserve the subject matter of the suit and maintain the status quo so that the eventual victory of the successful party is not rendered a hollow triumph.

The statutory foundation for this relief is firmly rooted in ***Order 41 Rule 1 of the Civil Procedure Rules (SI 71-1)***, which I shall reproduce here in its precise terms:

"Where in any suit it is proved by affidavit or otherwise—(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders".

This is augmented by ***Section 42(1) of the Judicature Act, Cap 16***, which grants the High Court the plenary power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.

The legal threshold for the grant of such interlocutory relief is governed by the tripartite test established in the celebrated case of ***E.L.T Kiyimba Kaggwa Versus Haji Abdu Nasser Katende HCB 43***, where the High Court (Odoki J, as he then was) laid down the mandatory conditions that an applicant must satisfy. As recorded in the authorities cited by both parties, the Court held:

"The conditions for the grant of an interlocutory injunction are first that, the applicant must show a prima facie case with a probability of success. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt, it will decide an application on the balance of convenience".

I shall now proceed to evaluate the Applicants' prayer against each of these three cumulative grounds.

Regarding the first ground, the Applicants bear the burden of demonstrating that their claim in the main suit is neither frivolous nor vexatious and that there is a serious question to be tried. In ***Robert Kavuma Vs M/S Hotel International* (*SCCA No. 08 1990),*** the Supreme Court clarified that the applicant is required at this stage of trial to show a prima facie case and probability of success but not success. This ground does not require the Court to conduct a mini-trial or reach final conclusions on the evidence; rather, it requires a finding that the Applicants have a legal right that appears, on the face of the record, to be in need of protection.

The Applicants' claim to a prima facie case is built on the historical ownership of the trademark. They have exhibited ***Annexure B*** to the Plaint, which is a Certificate of Registration of a Trademark confirming that the logo for "Uganda Neddagala Lyayo" was registered on 20 October 1997 in Class 5. They contend that the Respondents' recent actions specifically the change of ownership into the name of the 1st Respondent on 1 March 2022, as evidenced by the Certificate of Change of Name in ***Annexure C*** were fraudulent and done without the consent of the Association's Board of Founders. They argue that as the true and original owners who have renewed the mark annually since 1997, they have a clear proprietary interest that has been unlawfully high-jacked.

In opposition, the Respondents contend that no prima facie case exists because the ownership of the mark is hotly contested and remains the central issue for the main trial. They argue in their written submissions that a prima facie case discloses a right that has apparently been infringed and which calls for rebuttal from the opposite party. The Respondents assert that the Applicants have not placed before this Court clear and conclusive evidence demonstrating that their claim is more probable than that of the Respondents. They maintain that where the very foundation of the claim the title to the mark is in serious dispute, it cannot be said that a prima facie case with a probability of success has been established.

In my considered judicial view, the Applicants have indeed established a prima facie case. The existence of a registration dating back to 1997 in favor of the Association, coupled with the admitted fact that ownership was transferred to a private company (the 1st Respondent) only in 2022 under the 2nd Respondent's chairmanship, creates a serious question to be tried regarding the lawfulness of that transfer. As held in ***American Cyanamid Co. vs Ethicon Ltd***, ***ALL ER 504***, the Court must be satisfied that the claim is not frivolous, and given the documented history of the mark, the Applicants' claim certainly reaches this threshold.

I find that there is a triable issue of trademark fraud and proprietary rights that necessitates a full hearing.

Turning to the second ground, the Applicants must prove that they will suffer irreparable injury if the Respondents are not restrained. In ***Kiyimba Kaggwa (supra)***, this Court defined irreparable injury as follows:

"Irreparable injury does not mean that there must not be physical possibility of repairing injury, but means that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages".

The Applicants argue that the Respondents' continued misrepresentation causes grave financial loss and a lot of inconveniences for which monetary compensation would be insufficient. They emphasize that the goodwill and reputation the Association has cultivated since the 1960s is being actively damaged by the Respondents' unauthorized use of the mark.

The Respondents vehemently reject this assertion, arguing that a trademark is a commercial asset whose value is quantifiable in monetary terms. They submit that any loss of business, goodwill, or profits resulting from an alleged infringement can be calculated and atoned for by an award of damages should the Applicants ultimately succeed. They rely on the principle that interlocutory relief should not be granted where damages would be an adequate remedy. Furthermore, they point out that the Applicants have failed to provide concrete evidence of imminent and irreparable harm, relying instead on mere assertions of possible misuse.

This Court notes that in cases involving Intellectual Property, irreparable injury often pertains to the dilution of a brand's unique identity, a loss that is difficult to quantify with mathematical precision. However, I must agree with the Respondents that the Applicants have not demonstrated that this particular trademark is so exceptional that its use by the Respondents pending trial would cause a substantial and material injury that money could not fix. The Applicants themselves, in paragraph 7 of their Plaint, allege they have suffered a grave financial loss, a statement that implies the harm is economic and, by definition, compensable.

I find that the Applicants have not met the high burden of proving that an award of damages at the end of the trial would be an illusory or unenforceable remedy.

The final ground is the balance of convenience. This Court is guided by the principle that if there is doubt regarding the first two grounds, the matter must be decided by determining which party would suffer more if the injunction were granted or refused. In ***Gapco (U) Ltd Vs Kaweesa Badru & Anor*** **(*Misc. Application 259/13*)**, it was held that;

"If the risk of doing an injustice is going to make the applicant suffer, then probably the balance of convenience is favorable to him or her and the Court would most likely be inclined to grant the application".

The Applicants argue that protecting their 1997 rights from further fraudulent damage is the only just and fair course of action.

The Respondents, however, argue that the balance of convenience tilts heavily in their favor as they are the current users and registered owners of the mark. They contend that granting an injunction now would not preserve the status quo but would alter it fundamentally by restraining them from exercising rights they presently enjoy and effectively halting their ongoing business operations before the matter is fully heard. They argue that the Applicants' four-year delay in seeking this relief (from 2022 to 2026) undermines any claim of urgency and that equity aids the vigilant and not those who slumber on their rights.

In weighing these competing interests, I find that the Respondents' point regarding the status quo is dispositive. The status quo is the existing state of things at the time the application is made. Currently, the Respondents are the ones in possession of the registration and are using the mark. To restrain them now would be to disrupt an existing commercial arrangement based on allegations of fraud that have yet to be proven to the standard required. The greater risk of injustice lies in halting the Respondents' operations on the basis of a later-filed civil suit, especially given the Applicants' significant delay in moving this Court for a civil remedy.

While the Applicants have established a prima facie case showing a serious question to be tried regarding the 2022 transfer of the trademark, they have failed to satisfy the remaining mandatory requirements for a temporary injunction.

They have not demonstrated that the injury they face is truly irreparable in the legal sense, as any financial loss can be recovered through damages. Furthermore, the balance of convenience favors the Respondents, whose current operations would be unfairly crippled by an interlocutory order that effectively pre-empts the outcome of the main suit.

The issue is answered in the negative.

ORDERS

1. The prayer to stay the criminal proceedings in Criminal Case No. S.U.W 530 of 2022 (*Uganda Vs Saazi Marvins & 3 Others*) pending the determination of Civil Suit No. 0156 of 2026 is denied.
2. The prayer for a temporary injunction barring the Respondents from using Trademark No. UG/T/1997/020862 is denied.
3. The application is hereby dismissed with costs to the Respondents.

Dated, signed and delivered electronically this 7th day of June, 2026.

SUSAN ODONGO
Ag. JUDGE