

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

MISC APPLICATION NO. 1013 OF 2015

ARISING FROM CIVIL REVISION NO. 532 OF 2015

ZAM NAMBI**APPLICANT**

VERSUS

- 1. BUJJINGO AYUB**
- 2. KASSIM ABDIRAHIM****RESPONDENTS**
- 3. KASABA B. M. INVESTMENTS**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant brought this application for a temporary injunction restraining the Respondents, their agents, servants and anybody acting through them from altering the *status quo* of the suit land comprised in Mailo Register Kibuga Block 12 Plot 13 situate at Mengo Kisenyi, from alienating, disposing of or carrying on any eviction of the suit land, until the main suit is heard and disposal.

The grounds of the application are contained in the chamber summons, supported by the affidavit of the Applicant.

The Respondents opposed the application.

On reading the pleadings and the submissions, I resolve this application as herebelow;-

The law that governs grant of temporary injunctions is contained in section 98 of the Civil Procedure Act and O.41 r1 of the Civil Procedure Rules. The law as contained in O.41 r1 Civil Procedure Rules lists the cases in which a temporary injunction may be granted as follows:

(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***

Or

(b) ***that the Defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors.***

‘The Court may order, grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing, wasting, damaging, sale, removal or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders’.

The purpose of the temporary injunction is basically to preserve the *status quo*. Courts have since laid down the guiding principles for consideration before deciding to grant or not to grant such an order. ***In Kiyimba Kagwa versus Katende (1985) HCB 43***, the court laid down the conditions for consideration before granting a temporary injunction as;

1. *The Applicant must show a prima facie case with a possibility of success.*
2. *Irreparable injury which would not adequately be compensated by an award of damages.*
3. *The balance of convenience favours the Applicant.*

I will now examine if the Applicant has proved the application in view of the above principles and conditions.

Prima facie case:

Prima facie case at this stage means that the Applicant comes with a triable case with serious issues for the decision of the Court. In the case before me, the plaint and chamber summons refer to the estate of the late Muhamud Makanga from which the Applicant claims benefit. It is contended for the Plaintiff by Counsel that the Applicant and other family members were interested in fathering the late Muhammad Makanga's mailo interests in the land, which the Respondents have now taken over, as registered proprietors of the same.

It is this relationship between the said Makanga and the Applicants which the Respondents have contested in their submission that the Applicant has failed to prove any ownership, save the fact that the late Makanga had intentions to purchase the mailo interest which he never fulfilled. The Respondents argue that the 3rd Respondent being a registered proprietor has to enjoy his proprietary rights over its land. The Respondents further argue that the Applicant is a trespasser.

The law is that for the Court to grant a temporary injunction, there must be a cause of action to sustain the pending suit from which the Application will be delivered (*see Sugar Corporation of Uganda Ltd. versus Mohammed Tijani HCCS NO. 39/1993 (unreported)*).

The import here is that apart from showing that there is a pending suit with a possibility of success (*prima facie*), the Applicant must also have a cause for which injunctive reliefs are being invoked. These are the concerns of Sec. 98 of the Civil Procedure Act and O.41 r1 of the Civil Procedure Rules. The Applicant must show that the said property in the suit is in danger of being wasted, damaged, alienated, wrongful sale, threat of removal or threat to dispose of to defraud creditors.

From the pleadings and submissions herein the Applicant only complains of a letter threatening to evict tenants, but the 3rd Respondent has shown that he is the current registered owner. The rest of the complainants are outside the scope of O.41 r1 of the Civil Procedure Rules (*above*). There is therefore a failure by the Applicant to show by evidence that any of the properties, the subject of the suit is in any danger. Once this element is missing, there can be no proof of a *prima facie* case for purposes of an injunctive relief. As far as the Applicant's rights viz the Respondent's rights are concerned, the Applicant has failed to establish that she has such a *prima facie* case, with a possibility of success as against the Defendants.

Irreparable injury

Having found that the Applicant failed to prove a *prima facie* case for the injunctive relief sought, she has not demonstrated that any damage or injury is likely to occur which is not compestable by an award of damages. It is important to note that the pleadings contain a prayer for damages. They also contain an alternative prayer for the Court to order the Respondents to give a full account of the money collected as rent from the tenants. (Paragraphs 35(e) and (f) of the plaint. These prayers show a possibility of compensation in case damage/injury occurred.

This condition therefore is not proved as well.

Balance of Convenience

From the discourse above, there is no evidence that the Applicant has tilted the balance in her favour. There is evidence that the Respondents have the registered interest and by virtue of section 59 of the Registration of Title Act, that interest, unless impeached is protected. There is no evidence to warrant any interference with the rights of the Respondents by injunctive relief. I find that the balance favours the Respondents.

Having found as above, I do not find merit in this application.

It is dismissed with costs to abide the main cause.

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Henry I. Kawesa

J U D G E

01/11/2017

01/11/2017:

Applicant present.

Respondent absent

Mr. Yusuf Kagere for Respondents.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in the presence of the above parties.

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Henry I. Kawesa

JUDGE

01/11/2017