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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO.648 OF 2022

(Arising out of Civil Application No.676 of 2022)

(Arising from Civil Application No.325 of 2017)

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(Arising out of Civil Suit No.69 of 2012)

SENYONJO DICK:.....APPLICANT

VERSUS

DELTA PETROLEUM (UGANDA) LTD:.....RESPONDENT

CORAM: HON. MR. JUSTICE CHEBORION BARISHAKI, JA

15

(Single Justice)

RULING

INTRODUCTION

This is an application for interim order of injunction restraining the respondent and/ or her agents, assignees, employees and/or any other person directly dealing with or acting under the respondent's authority from evicting the applicant, carrying out construction work, deploying security guards, alienating or disposing off the suit property by way of sale, mortgaging and creating other 3rd party interests on the suit property, wasting the suit land, selling, subdivision and or in any other way interfering with the suit

5 land to alter the current status quo of the land until the final disposal of the main suit.

The application is brought by way of Notice of Motion under Rule 6(2) (b), 2 (1) and 43 (1) & (2) of the Judicature (Court of Appeal Rules) Directions S.I 13 – 10.

10 The background to the application is that the respondent sued the applicant in the High Court at Jinja vide Civil Suit No.69 of 2012 seeking inter alia a declaration that the respondent was the lawful owner of the land comprised of LRV 1456 Folio 8, Plot 81 block 530 Mukono measuring 0.046 hectares, a declaration that Nsubuga Robert was a duly authorized agent of the defendant
15 under a valid and lawful power of attorney with powers to sell and transfer land, a permanent injunction, orders for specific performance and costs of the suit. Judgment was delivered in favour of the respondent.

Dissatisfied with the judgment of the High Court, the applicant lodged Civil Appeal No.20 of 2017 but the same was filed out of time. The applicant then
20 sought leave of this Court vide Civil Application No.325 of 2017 for extension of time within which to file an appeal which has not been fixed for hearing to date. In the meantime, the respondent extracted a decree and has since used it to cause the transfer of the land title of the suit property from the names of the applicant into the names of Delta Petroleum (U) Limited. The applicant
25 averred that the respondent had been frequenting the Suitland with the view of buying it. That the respondent has previously used several people with threats of evicting the applicant.

5 The applicant then filed a substantive application No.676 of 2022 for grant of an injunction which is pending hearing and filed the instant application for interim injunction.

The Notice of Motion and Supporting Affidavit deponed by Senyonjo Dick on 11th August, 2022 contain the following grounds on which the Application is
10 premised:

1. *That the applicant was the original owner of the suit property.*
2. *The respondent fraudulently purchased the suit property from a one Nsubuga Robert using a forged power of attorney.*
3. *The respondent successfully sued the applicant in the High Court.*
- 15 4. *That the applicant has since applied for leave to appeal out of time.*
5. *The respondent continues to bring various and notorious land brokers and potential land buyers with intentions to sell the land to 3rd parties.*
6. *That the applicant is at the risk of being evicted and the suit property is at the risk of being wasted by the respondent.*
- 20 7. *That the applicant filed in this Court an application for stay of execution or an injunction against the respondent which is still pending hearing with a likelihood of success.*
8. *That due to the busy schedule of this Court, hearing of the main application is likely to delay.*
- 25 9. *That the suit property is in eminent danger of being sold to 3rd parties who will change the status quo and render the main application nugatory.*

5 10. *That if the Court doesn't grant an interim order, the outcome of the main application will be rendered nugatory and applicants will be evicted.*

 11. *That it is in the interest of justice that an interim order be issued against the respondent to preserve the status quo until determination*
10 *of the main application.*

On the other hand, the application was opposed by the respondent through an affidavit in reply dated 19th August, 2022 and deponed by Eric Karambasaizi. The grounds in opposition that could be discerned from the affidavit in reply can be summarized as follows:

15 a) *That the respondent is the registered proprietor of the land comprised in Leasehold Register Volume 1456 Folio 8 Plot 81 Block 530 Kyaggwe.*

 b) *That the respondent is the judgment creditor in High Court Civil Suit No. 69 of 2012, Delta Petroleum (Uganda) Limited V Dick Senyonjo*
20 *wherein on the 8th of April, 2016, the High Court of Uganda at Mukono inter alia declared the respondent as the lawful owner of the said land.*

 c) *That the applicant has never obtained an order of the High Court or of this Court staying execution of the aforesaid judgment and decree.*

25 d) *That on the 30th of March, 2017, the respondent filed an application, Civil Application No.78 of 2017, Delta Petroleum (U) Limited V Dick Senyonjo seeking orders of this Court to strike out the applicant's Appeal in Civil Appeal No.20 of 2017 on grounds that the applicant*

5 *did not serve the notice of appeal on the respondent within the time prescribed by law.*

e) That the parties appeared before the Registrar of this Court who informed them that the applicant had withdrawn his appeal and the respondent in turn withdrew the aforesaid application.

10 *f) That there is presently no pending appeal or notice of appeal against the said judgment of the High Court.*

g) That the respondent successfully applied for and on the 21st June 2022 obtained an order of the High Court at Jinja ordering the removal of a caveat affecting the land.

15 *h) That the respondent has lawfully applied for and obtained a warrant for vacant possession from the High Court in Jinja.*

i) That the respondent who has been denied enjoyment of its adjudicated rights over the land seeks to give effect to the said orders of the High Court and enjoy its constitutional rights to own and use its property.

20 *j) That the balance of convenience in the circumstances lies in favour of the respondent as the registered proprietor.*

At the hearing of the application, Mr. Songon Mustafa appeared for the applicant while the respondent was represented by Mr. George Arinaitwe.

25 Counsel for the applicant submitted that it was now a settled principle that where there is a preferred appeal and a substantive application for stay of execution pending before this Court with a clear threat of execution, the court is mandated to issue an interim order to preserve the main application and

5 the appeal. He further submitted that in the instant application, the applicant had filed Civil Application No.325 of 2017 for leave to appeal out of time and Civil Application No.676 of 2022 both pending hearing. That there was evidence that the respondent was in the process of selling the suit property before the disposal of the main suit. He added that this was a good case for
10 an interim order to be issued because there is a substantive application for stay of execution that has been filed in Court and an eminent threat of evicting the applicant exists. He relied on ***Hwan Sung Industries Ltd V Tajdin Hissein & 2 Ors, Supreme Court Civil Application No.19 of 2008*** for the conditions required before an interim order is issued.

15 In reply, counsel for the respondent submitted that the principles upon which this Court can grant an interim order of injunction pending determination of the main application for injunction are that there must be a competent notice of appeal. Counsel submitted that annexure "B" to his affidavit is a notice of appeal filed on 9th May, 2016 in the High Court at Jinja which was withdrawn.
20 He added that upon withdrawing the appeal, the notice of appeal was taken to have been withdrawn. By withdrawing the appeal even when there is allegedly a pending application for leave to appeal out of time means that the applicant did not institute the appeal within the prescribed time.

Counsel submitted that the applicant had not shown that there was a pending
25 substantive application for a temporary injunction. That the Notice of Motion shows the instant application referenced as No.648 of 2022 arising out of a subsequent application No.676 of 2022. In counsel's view, the substantive application ought to have been filed before the instant application. He added

5 that by seeking an injunction to allow the applicant interfere with the
respondent's use and enjoyment of the land is to invite this Court to overrule
the order of the High Court without merits of the order being adjudicated upon
by way of an appeal. In counsel's view, a stay of execution would have
suspended the order in the decree, an injunction on the other hand would
10 interfere with the rights of an adjudicated registered proprietor of the land.

Rule 2(2) of the rules of this Court provides for inherent powers of this Court
to make such orders as maybe necessary for attaining the ends of justice.

In ***Zubeda Mohamed & Sadru Mohamed V Laila Kaka Wallia & Anor,***
Supreme Court Civil Reference No.07 of 2016 which cited with approval
15 ***Hwan Sung Industries Ltd vs. Tajdin Hussien and 2 others SCMA No. 19***
of 2008, the Supreme Court stated as follows;

*"Considerations for the grant of an interim order of stay of execution or
interim injunction are whether there is a substantive application pending
and whether there is a serious threat of execution before hearing of the
20 substantive application. Needless to say, there must be a Notice of
Appeal. See ***Hwan Sung Industries Ltd vs. Tajdin Hussien and 2***
others SCMA No. 19 of 2008.*

*In summary, there are three conditions that an applicant must satisfy to
justify the grant of an interim order:*

- 25
1. *A competent Notice of Appeal;*
 2. *A substantive application; and*
 3. *A serious threat of execution."*

5 Counsel for the applicant submitted that the applicant had filed Civil Application No.325 of 2017 for leave to appeal out of time and filed Civil Application No.676 of 2022 which are pending fixing and hearing before this Court. In reply, counsel for the respondent submitted that the applicant attached annexure "B" to his affidavit which is a notice of appeal filed on 9th
10 May, 2016 in the High Court at Jinja whoever the same was withdrawn.

I have looked at annexure "B" attached to the applicant's affidavit and indeed the applicant filed a Notice of Motion on 6th May, 2016 in the High Court of Jinja. The respondent did not adduce any evidence to show that the applicant had withdrawn the appeal. He merely averred under paragraphs 7 and 8 of
15 his affidavit as follows:

*"7. That I am informed by my lawyer Mr. Peter Nkurunziza and I verily believe that on the 30th day of March, 2017 the respondent filed an application Civil Application No.78 of 2017, Delta Petroleum (Uganda) Limited V Dick Senyonjo seeking orders of this Honourable Court to strike out the applicant's appeal in
20 Civil Appeal No.20 of 2017 on the grounds that the applicant did not serve the notice of appeal on the respondent within the time prescribed by law.*

*8. That I am also informed by Mr. George Arinaitwe an advocate practicing with PNK Advocates and I verily believe that on the 13th of September, 2022 the applicant through his advocate Mr.Songon and the respondent represented by
25 George Arinaitwe appeared before Her Worship Lillian Buchana, Assistant Registrar of this Honourable Court where the applicant's advocate confirmed that the said appeal had been withdrawn and the respondent in turn withdrew the aforesaid application."*

5 The applicant filed a substantive application referenced as Civil Application No.676 of 2022 on 13th September, 2022.

As to whether there is a serious threat of execution, the applicant averred under paragraph 8 of his affidavit that the respondent had on several occasions through different people threatened to evict him and sell the suit
10 land. He attached annexure "D" a letter demanding the applicant to vacate the suit land. The applicant further averred under paragraph 12 of his affidavit that the respondent removed the caveats that had been lodged on the suit property and has now registered the property into his names. He attached a copy of the land title marked as annexure "E". In my view, the acts of the
15 respondent as shown in annexures "D" and "E" amount to serious and eminent threat.

I therefore, find that the applicant has satisfied the conditions for the grant of an interim order of injunction by this Court.

The application is allowed and an interim order of injunction is hereby granted
20 with the following Orders:

- 1) An interim order of injunction is hereby issued restraining the respondent and/or her agents, assignees, employees and/or any other person directly dealing with or acting under the respondent's authority from evicting the applicant, carrying out construction work, deploying
25 security guards, alienating or disposing off the suit property by way of sale, mortgaging and creating other 3rd party interests on the suit property, wasting the suit land, selling, subdivision and or in any other way interfering with the suit land to alter the current status quo of the

5 land until the final disposal of the substantive application vide Civil Application No.676 of 2022.

2) The costs of this application shall abide the outcome of the substantive application for an order of injunction.

10 3) The Registrar of this Court is hereby directed to cause list Civil Application No. 676 of 2022 for hearing within 21 days from the date of this ruling.

Dated at Kampala this.....18th.....day of.....Oct.....2022



15 Cheborion Barishaki

JUSTICE OF APPEAL