

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
MISCELLANEOUS APPLICATION NO.157 OF 2024
(Arising from Civil Application No.156 of 2024)
(Arising from Civil Appeal No.1150 of 2023)
(All arising from HCCS No.243 of 2023)

- 1. MUSINGUZI LYDIA**
- 2. MUGUME FAHD SEBUHANYA**
- 3. WALUGEMBE JOHN PAUL**
- 4. BUKOMEKO TONNY**

APPLICANTS

Versus

KYAMBOGO UNIVERSITY

RESPONDENT

RULING

The Applicants filed a Notice of Motion with supporting affidavits seeking an interim order to;

1. Restrain the Respondent, their servants/agents from trespassing on the Applicants' land and/or to create third party rights, building any new structures on the vacant land, demolishing the Applicants' buildings, arresting and forcefully evicting the Applicants and their workers from the suit land until the determination of the application for a temporary injunction by this court.

The suit land is described in the application to be comprised in Mailo Register **Block 137 measuring 100 acres located in UPK Parish Zones K2, K3, a half of K4, K5, K6 and K8 in Nakawa Division Kampala.**



The grounds on which the application is premised are that the Applicants filed a competent appeal arising from HCCS No.243 of 2023 which has a high chance of success since the Plaint was struck off on grounds that the applicants did not have an inventory which led to a series of illegal evictions, demolition of buildings and grabbing of huge chunks of land.

The Applicants further contend that the Respondent's agents have continued to trespass on the suit land by fencing of huge chunks of it and threaten to forcefully grab it all. It is also the Applicants contention that if the application is not granted, they will suffer irreparable damage and it is in the interest of justice that the application is granted so that the parties are heard on merit.

The Affidavits deposed by the Applicants restate the grounds of the application and the reliefs sought adding that the court should also order that Kasigiri road and Kabaka's road blocked by the Respondent's agents should be opened. The applicants further seek to be allowed to deploy security guards to protect their interests in the suit land and to be awarded costs of the application.

Representation

At the hearing of the application the Applicants were represented by Mr.Kazinda Naafi and Mr. Okwi Joseph while Mr.Baguma Cyrus represented the Respondent.

Submissions filed by Counsel were adopted and have been considered in the determination of the application.

Background

The 1st and 2nd Applicants claim to be beneficiaries in the estate of Nguriyaho Joseph. The 3rd Applicant claims to be a beneficiary in the estate of Prince Wavamuno Paulo Kisawuzi while the 4th Applicant claims to be a beneficiary in the estate of Mubiru Iskaal. The estates of the three deceased are comprised of 100 acres of land described in the application as Block 137 located in UPK Parish Zones K2, K3, a half of K4, K5, K6 and K8 in Nakawa Division Kampala Districts.

The land forming the estates of the named deceased is stated to have been acquired from the King of Buganda in 1954 and the Applicants state that they are still looking for a certificate of title to date. All the Applicants through their predecessors claim to have peacefully settled on the land without any interruption from anyone until 2018 when the Respondent's agents started laying claim to the land in dispute.

After the intervention of various Government agencies, the Commissioner Surveys and Mapping carried out a boundary opening exercise for the land of the Respondent. Anomalies relating to the titling of some pieces of land leading to overlaps into pre-existing titles were allegedly discovered. The Applicants are not specifically mentioned to have been affected by the alleged overlaps in the report.

The Applicants filed Civil Suit No.243 of 2023 in the High Court and further applied for an injunction. In the course of the Court Registrar hearing an application for a temporary injunction the Applicants sought that the court visits the suit land which was objected to by Counsel for the Respondent.



The trial Judge in the course of interacting with the parties over the objection to the locus visit by the Registrar scrutinized the Plaint filed by the Applicants and found no cause of action disclosed within the meaning of Order 7 rule 11 of the Civil Procedure Rules and struck out the Plaint. Civil Appeal No.1150 of 2023 was filed in this court together with MA No,156/2024 for a temporary injunction from which the present application arises.

The application is opposed by the Respondent through an Affidavit sworn by Arthur Katongole the Ag. University Secretary basically stating that the sought injunction cannot be granted on account of the applicants' failure to properly describe the suit land in terms of plot number or boundaries.

The Respondent further contends that the Order appealed against has nothing to do with the suit property since the court only struck out the Plaint hence there is no positive order to execute and for which a stay of execution can be ordered.

It is further contended by the Respondents that the land claimed by the Applicants has never been surveyed to confirm its extents. The Respondent denies any acts of violence and/or forcefully evicting the applicants and contends that the main application for a temporary injunction from which the present one arises is a non-starter for want of description and/or identification of the suit land.

Decision

I have considered the application and the submissions filed by counsel for the parties. I have also carefully perused the authorities provided by counsel which I found to be instructive on the subject in contention.

Rule 6(2)(b) of the Judicature (Court of Appeal) Rules grants jurisdiction for the court to stay execution of High Court Orders or Decrees in the following terms:

Suspension of sentences and stay of execution.

6(2) Subject to sub rule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may-

(a).....

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court may think just.

The rationale for granting interim orders is to preserve the right of an intending appellant to have his or her appeal heard to ensure that the intended appeal or main application is not rendered nugatory. In **Wilson V Church (1879) Vol.12 Ch. D 454** the court observed:

‘As a matter of practice, where an unsuccessful party is exercising an unrestricted right of appeal, it is the duty of the court in ordinary cases to make such orders for staying proceedings in the judgment appealed from as will prevent the appeal if successful from being rendered nugatory.’

The conditions that an applicant must satisfy for the grant of an interim order are the existence of :

1. A competent Notice of Appeal
2. A substantive application
3. A serious threat of execution.

There is no contention about the Applicants filing of a Notice of Appeal and even a Memorandum of Appeal. There is also on record Miscellaneous Application No.156/2024 for a temporary injunction from



which the present application arises. The application for a temporary injunction also seeks an order for the applicants to furnish additional evidence and it is thus out of the jurisdiction of a single Justice of the court. The first two conditions for the grant of an interim order were satisfied by the Applicants.

The Applicants in an effort to show that there is a serious threat of execution state that after the Plaint was struck off by the court on 20th September 2023, the Respondent's officials asked them to apologize in order to be given money to leave the suit land.

It is also stated that the same officials chased away people who had been allowed to cultivate parts of the suit land by the Applicants and a ground breaking function for the construction of the Ministry of Education and Sports Headquarters on Plots M892 and M893 was held before they were compensated.

I find it pertinent to observe that the respondent is an institution. Any claim that her officials carried out the acts complained of by the Applicants must be accompanied by an identification of the particular officials and how they relate to the respondent. Mere statements about the unnamed "*Respondent's officials*" does not in the opinion of this court amount to evidence on which to base for a decision.

I fail to find credibility in mere assertions about what are called the respondent's officials are purported to have done as proof of any threat of execution.

Further still, the alleged construction of the headquarters of the Ministry of Education and Sports on Plots M892 and M893 is no proof that it is the Applicant's land that has been encroached on. The applicant's claim is on Block 137 UPK Parish Zones K2, K3, K4, K5, K6 and K8 and they have to date acquired no certificate of title for it.

It would be baseless for the court to assume that the UPK zones claimed by the Applicants are all found on Plots M892 and M893 which is titled land yet the Applicants also claim titled land for which they claim to have got no certificate of title since 1954.

On account of the above observations per se, I find no proof of any threat of execution adduced by the applicants to merit an interim relief pending the hearing of an application for a temporary injunction.

The applicants' failure to properly describe the boundaries of the land for which the interim order is sought denies their application of any credibility. The description of the land as Block 137 UPK Zones K2 to K8 creates the kind of uncertainty that will either render any order issued unenforceable or affect third parties who are not a party to the dispute before the court.

It is also not specified that the named UPK Zones make up the 100 acres claimed by the Applicants or which parts of them are equivalent to the 100 acres. Even then the geographical extents of the respective zones are not set out in the application.

I find solace in the decision of this court where an application for an interim order in a matter where the subject matter was not defined was denied.

Faustino Ntambara V Jack Kityo Segawole. MA No.150 of 2021.

I also find credibility in the submissions of counsel or the Respondent to the effect that there is no execution to stay since the order appealed against was a negative order incapable of execution. The Plaint in Civil Suit No.243 of 2023 was struck off for disclosing no cause of action and there was no application filed for its reinstatement.

The order to strike out the Plaint was a negative one which is not capable of being executed by the respondent. An application for an interim order



as in the case instant presupposes that there is an order capable of execution to be stayed which does not apply to the facts on which the application is premised.

Ssemwanga Charles V Nazziwa Aisha&2others.Civil Application No.20 of 2022; Faustino Ntambara V Jack Kityo(supra).

In the result, I decline to grant the interim order of injunction sought by the applicants. Costs shall abide the cause.

Dated at Kampala this th13..... day of ^{June}..... 2024.



Moses Kazibwe Kawumi

JUSTICE OF APPEAL.