

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]

MISC APPLICATION NO. 0523 OF 2023

(Arising from Civil Suit No. 0297 OF 2023)

NAMAKAJO SEWAVA HABIB

**(administrator of the Estate of =====APPLICANT
the late Sewava Musa)**

VERSUS

1. KCB BANK(U) LTD]

2. MUJAASI DAVID]=====RESPONDENTS

Before Hon. Lady Justice Patricia Kahigi Asimwe
Ruling

Introduction

1. The Applicant instituted Civil Suit No. 0297 of 2023 against the Respondents for orders of cancellation of a mortgage registered on the suit land. Pending the determination of the main suit, the Applicant filed an Application seeking an Interim Order restraining the Respondents from auctioning transferring alienating, or in any way dealing with the suit property. The Applicant also filed the present Application for a temporary injunction restraining the Respondents' agents and servants from evicting, intimidating, and threatening the Applicant's use of the suit land.
2. The Application for the interim order was heard and granted by the learned registrar on condition that the Applicant pays 30% of the forced sale value of the suit property. The learned Registrar also directed the 2nd Respondent to provide the Applicant with a valuation report of the suit property. The Applicant contested the validity of the report. The Registrar then referred the present

Application to this court for resolution under Order 50 Rule 7 of the Civil Procedure Rules.

3. This Application was brought by way of Chamber Summons under Section 98 of the Civil Procedure Act and Order 41 Rule 1 & 2 of the Civil Procedure Rules SI 71-1.
4. The grounds of the Application are contained in the Affidavit in Support sworn by Namakajo Sewava Habib, the Applicant herein, who stated that:
 - i) On 11th September 1994, his late father purchased the suit property as a kibanja from Christopher K. Byekwaso and Roza Nantongo.
 - ii) Immediately after payment of the full purchase price certificate of title comprised in Busiro Block 333-335 Plot 724 was issued, his late father built commercial rental houses thereon. The said houses are being managed by their family.
 - iii) His father believed that the title deed corresponded to his land, however in 2019, his father found out that the title deed he obtained did not correspond with his land, and that the right title for his land was that comprised in Busiro Block Plot 221.
 - iv) On 1st July 2019 in a letter addressed to the administrator of Kabusu's Estate and which was duly received by Mubiru Cyrus Kabusu, his late father informed them that he was ready and willing to swap the title for Plot 724 with that of Plot 221 on which suit property was situated.
 - v) Nothing was done to actualize the swapping of the titles, much as Mubiru Cyrus Kabusu had committed to rendering assistance for the swapping of titles.
 - vi) Albeit not being in possession of the suit property, the 2nd Respondent transferred the title deed for Plot



221 into his name and was duly registered on the title on 12th August 2021.

- vii) His late father tried to trace the 2nd Respondent for a swap of title deeds but all efforts were futile.
- viii) The 2nd Respondent illegally and fraudulently mortgaged the property to the bank.
- ix) Neither the Applicant nor his family noticed any officials from the 1st Respondent conducting due diligence on the ground before the mortgage was registered, and before it advanced the loan amount to the 2nd Respondent.
- x) The family was shocked when they received an eviction notice from the 1st Respondent's auctioneers who had instructions to proceed and recover the loan amount in default through auctioning of the property.
- xi) There is an imminent threat of eviction and auctioning of their property by the 1st Respondent which can only be halted by the grant of this Application.
- xii) He instituted a main suit against the Respondents seeking among other orders cancellation of a mortgage registered on suit land which suit has a high likelihood of success.
- xiii) The family shall suffer irreparable loss in the event that the Respondents proceed with the auction and or deal in the suit land which loss would not be adequately compensated by an award of damages.

5. The 1st Respondent opposed the Application by way of Affidavit in Reply sworn by Timothy Nabaala the Collections and Recoveries Manager of the 1st Respondent, who stated as follows: