

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
CIVIL SUIT NO. 818 OF 1991

BURUHANI NAMUDALA :: : ;: : :::: : : :: : ::::: PIAlNTIFF

VERSUS

STEFANO KAZIBWE :::::;:;:;: DEFENDANT

BEFORE: The Honourable Mrs. Ag. Justice M.Kireju

RULING.

This application by Chamber summons was filed under order 37 rules I and 9 of the Civil Procedure Rules. It seeks an order to restrain and delay the Registrar of Titles from registering any dealing in the property in dispute until the disposal of the suit or until further orders. The general grounds of the application are that:-

(1) The caveat placed on the property in dispute is lapsing on 13/1/92 and shall thereafter be removed from the Register Book.

(2) The property in dispute is in danger of being sold, alienated, sold and disposed off. The application is supported by the affidavit of Buruhani Namundala, applicant/plaintiff sworn on 13/1/92. He deponed that he had filed a suit against the respondent/defendant on 23/12/91. On the 16/7/91 he placed a caveat on the land comprised on Block 230 Plot 273 situate at Mengo which is the land in dispute in the said suit. On 13/11/91 he received a Statutory Notice Dated 13/11/91 from the Registrar of titles giving him notice to obtain within 60 days an order from the High Court preventing the said Registrar of Titles from effecting transfer of the land in dispute to a third party. The copy of the said notice was annexed to the affidavit and marked "A". He further deponed that if the caveat lapses as it was due to lapse on 13/1/92, and there is no court order restraining the Registrar of Titles from transferring the land in ,dispute, the defendant/respondent will execute his plan of selling the land in dispute. He was advised by his lawyers that court can only dispense with service of notice to the opposite party if the object of

granting the injunction would be defeated by delay. That since the said court order must be obtained before or on 13/1/92 that this was the kind of case in which, the object of granting the injunction would be defeated by delay arising from issue and service of the said notice on the defendant/respondent.

In addition to what was deponed in the applicant's affidavit, counsel for the applicant submitted that since the time given by the Registrar of Titles in which to apply to Court extending the caveat had already lapsed, that the situation was more urgent. That this is a case which justifies the dispensing with the giving of notice to the other party as the respondent would now have the chance of affecting his sale. He submitted that the application was being brought under section 149 of the registration of Titles Act which provides that a caveat will only remain for a limited period unless he applies to court.

He contended that if the injunction is not granted the land would be disposed of and would be alienated to the applicant/ plaintiff and that no injustice would be done to the defendant /respondent as he had already sold the land to the plaintiff. He prayed that the court doth grant the application as prayed.

The brief facts of the main, suit as stated in the plaint are that the plaintiff/applicant, bought land from the defendant/ respondent in 1987 and paid the full price, but the land was not transferred and there was, no agreement of sale executed, until in 1990 when the defendant agreed to transfer-the land to the plaintiff. The transfer was registered in land office on 11/10/90. The original land certificate of title of the disputed land was handed to the plaintiff. When the plaintiff went to the land with the intention of developing it he found that the defendant had obtained a duplicate certificate of title and was planning to sell the land to some other third party unknown to the plaintiff. The plaintiff filed a suit claiming among other reliefs, a declaration that he is the legal proprietor of that disputed land. The certificate of title was never transferred in his names.

This application is made under Order. 37 rule I and 9, rule (1) is as follows;-

“1. 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, or .....

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.

Although the application does not specifically state that it is also brought under rule 3 of the same order, the affidavit in support of the application takes it into consideration. This rule is as follows:-

“3. The court shall in all cases, except where it appears that the object of granting an injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.”

The principles to be followed when granting an *ex parte* injunction were set out in the case of Noor Mohamed Janmohamed Vs. Kassamali Virji Madhani (1953) 20 EACA 8 and was cited with approval in the case of Nsubuga and Anor vs mutawe 1974 EA 487.

The requirement to give notice is mandatory, the onus satisfying the court that there is a good cause for dispensing with it lies on the applicant.

In the present case the applicant's argument is that the 60 days given to him by Registrar of Titles to seek extension from court expired on 13/1/92 and that the suit property is in danger of being sold by the defendant.

It is important to note that the Applicant did not apply to court as he was advised by Registrar of Titles but waited until the last day to file, this application. Now he is asking court to dispense with service of notice to the opposite party on the ground that if he is given notice he will be alerted and he may complete the sale. The applicant did not advance any reasons why he took so long to make this application. It is well established that the purpose of an interim injunction is to maintain the status quo until the question to be investigated in the suit can be finally disposed of. The letter to the applicant from the Registrar of Titles stated,-

“You are hereby given notice that the proprietor of the land registered and the above title has applied for the registration of a (1) application which appears to affect the estate or interest claimed by you in this land. If you object to the registration of this application then you should go to the High Court for an order delaying me from registering it. You must get such order from the court before the expiration of 60 days after this notice otherwise you will have no reason to complain and your caveat will lapse and be removed from the Register Book....”

The applicant did not adduce any evidence to show that the Registrar of Titles has not yet registered the defendant’s application. The need and the hurry to hear this application exparte may no longer be there. I do not think that the court should unduly interfere with the registrar of Titles powers under section 149 of the registration of Titles Act.

The application is against the registrar of Titles who is not a party to the suit. I do not know why the applicant did not apply for an injunction against the defendant who is a party to the suit, especially in view of the fact that the he was already out of time to apply under s.149 of RTA. In view of the above circumstances the application is barred as against the Registrar of Titles. The temporary injunction should have been directed against the respondent /defendant who is a party to the suit.

This application cannot be allowed to proceed exparte as it is time tarred and incompetent. It is therefore struck out. The applicant is free to file a proper application if he so wishes.

M. KIREJU

Ag. JUDGE.

22/1/1992.

Emoru for applicant Present.

Ruling Delivered in Chambers

RICHARD BUTEERA