

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 627 OF 1993

ADMINISTRATOR GENERAL : : : : : PLAINTIFF

VERSUS

JOVIA KORUGYENDO BANDIHO

WILSON KABIKIRA : : : : : DEFENDANTS

BEFORE: THE HON. MR. JUSTICE G.M. OKELLO

R U L I N G:

This application was brought by chamber summons under 0.37 rr.1. (a) 3 and 9 of the CPR for an order for a temporary injunction to restrain the Plaintiff/Respondent from disposing of, in any way any property that forms part of the Estate of the late Emmanuel Bandiho until the disposal of the head suit.

The application was based on three grounds namely:-

- (1) that the Respondent has already advertised some property part of the said estate for sale when his right to administer the estate is the subject of dispute in the main suit.
- (2) that the Respondent has prepared a distribution scheme which contravenes the provisions of the will of the deceased Emmanuel Bandiho.
- (3) that the Respondent's intended distribution of the property of the estate would render the whole suit a nugatory if it was effected.

The application was supported by an affidavit of the 1st defendant/applicant- Jovia Korugyendo Bandiho, widow of the deceased. The affidavit is dated 30/9/93.

When the application was called for hearing before me, time was 11.00 a.m. The Respondent or his representative was not present though there was evidence of due service of the chamber summons. The affidavit of service dated 1/10/93 by Fiat Richard Kangwamu shows that the chamber summons was served on one Ziigira, an assistant Administrator-General on the 30/9/93. He accepted service and made an endorsement. I am satisfied with the service as revealed by the affidavit of service. The service was proper and effective.

But there was no explanation for the absence of the Respondent or of his representative when the application was called for hearing. By 11.00 a.m. the Respondent or his representative could have been able to reach the High Court premises even if he walked from his office at Parliamentary Building. Alternatively he could have even rung the Registrar of this court to explain his difficulties if any, regarding his coming to court for this case. None of these steps was taken. Perhaps the Respondent did not see that as necessary. That kind of attitude is not at all helpful to my body.

In these circumstances I found no justification for adjourning the case. So I allowed application by counsel for the applicant to proceed *ex parte*. The application was therefore heard *ex parte*.

The back ground of the application is as follows:- The administrator-General had applied for grant of Letters of Administration of the Estate of the late Emmanuel Bandiho who,

according to the administrator-General died intestate. However, the widow of the deceased lodged a caveat objecting to the grant of the letters of Administration of the Estate of her late husband to the administrator-General on the alleged ground that her deceased husband did not die intestate. That he left a will in which he appointed her the executress and directed how his properties should be distributed.

Following the dispute, the Administrator-General filed the head suit naming the caveators as the defendants. They are the applicants in this application.

While the above suit is still pending, the administrator-General advertised in the New Vision Newspaper of 14/9/93 for sale properties which form part of the estate of the late Emmanuel Bandiho. (Annexure 'A' to the supporting affidavit). He also drew a scheme for distributing the Estate to the beneficiaries. (Annexure "DD").

The applicants opposed the above. They are of the view that the proposed sale is a threat to the status quo of the estate and that the distribution scheme was contrary to the will which the deceased left. That if executed would amount to waste of the estate. They accordingly filed this application for a temporary injunction to restrain the Respondent from disposing of the estate in any way until the main suit was heard and determined.

Order 37 r.1. (a) of the civil Procedure Rules empowers this court to grant a temporary injunction to preserve the status quo of property which is in dispute in a suit and is in danger of being wasted, damaged or alienated by any party to the suit.

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The following are the established principles applicable in determining application for a temporary injunction:-

- (1) the applicant must show a prima facie case with a likelihood of his success in the head suit.
- (2) that the applicant will suffer irreparable damage if the injunction ^{was} not granted. That is that he is likely to suffer damages which can not be adequately compensated by payment of damages if the temporary injunction was refused.
- (3) where the court is in doubt as to whether the applicant was likely to suffer irreparable damages, it is to decide the application on the balance of convenience of the parties. That is whether the applicant would suffer more inconvenience if the temporary injunction was refused than the Respondent would if the temporary injunction was granted.

(See *Giela vs. Casmana Brown & Co. Ltd.* (1973) EA 358).

In the instant case, the supporting affidavit established that there is a serious issue between the parties in the head suit to be heard and determined. That there is a likelihood of the applicant's success in that head suit. As a widow of the deceased, the 1st Applicant has the right to the claim of the administration of the estate of her late husband. Secondly there is evidence of an existence of a will in which the deceased appointed the 1st defendant/Applicant the executress and directed how his Properties should be distribute. These issues are pending in the head suit. The publication by the Respondent in the News-

- 2 -

paper for sale, properties which form part of the estate while the issue of his right to administer the estate was still pending before the court is unfair and poses a threat to the safety of the properties. Further the issuance by the Respondent of a distribution scheme of the estate when his right to administer the estate was still pending and when there is an allegation of an existence of a will does not argue well. What is the hurry for?

I think the underlining principle governing the determination of an application for a temporary injunction must ultimately be on the basis of fairness, justice and common sense in relation to the whole issue of facts and law which are relevant. In this cases, the allegation of the existence of a will in which the deceased allegedly appointed the first applicant the executress and directed how his properties should be distributed can not be ignored. It must be investigated. And this investigation can be done at the hearing of the main suit. In the meantime the properties that form part of the estate must be intact.

There appears to be no compelling reason for the administrator-General to hurry in attempting to dispose of some of the properties which form part of the estate when the issue of his right to administer the estate was still pending in the main suit. The sale of the properties and the execution of the protected distribution scheme would render the pending head suit unnecessary. Would there be any fairness let alone justice?

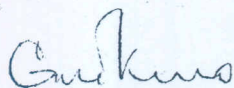
In those circumstances the applicants are likely to suffer more inconvenience if the temporary injunction was refused.

In my view this is a proper case in which to grant a temporary injunction to preserve the status quo until the main suit is heard and determined. For the reasons given above the application is allowed and the temporary injunction is granted as prayed.

G.M. OKELLO
JUDGE.

7/10/93

Ruling: delivered in the presence of Mr. Kangwamu for the
Applicant Mr. Ddungu - Court Clerk.


G.M. OKELLO
JUDGE.

7/10/93

2.30 p.m.