THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CA-045-2004

(From MLT-Mbarara Civil App. 32-2004)

KATUNGI ELIKADI ……APPELLANT

VS

KATUNGI EGIDIO…….. RESPONDENT

BEFORE: THE HON. MR. JUSTICE. P. K. MUGAMBA

JUDGMENT

In his memorandum of appeal, the appellant advanced five grounds contesting the order of a temporary injunction issued by Mbarara District Land Tribunal on 7th September 2004. Those grounds were as set out hereunder:

1. The Land Tribunal Court was wrong in law to issue a temporary injunction order against the appellant when the respondent had failed to prove that the circumstances which warrant the grant of a temporary injunction order exist.

2. The Land Tribunal Court was wrong to make a temporary injunction order against the appellant who is the registered owner of the land in dispute.

3. The Land Tribunal Court was wrong in law to hold that the cultivation of the land in dispute would cause irreparable damage which cannot be adequately compensated in money terms.

4. The Land Tribunal Court was wrong to hold that prima facie the respondent was a bona fide tenant on the disputed land when there was no evidence that such tenancy existed.

5. The Land Tribunal Court was wrong in law to condemn the appellant unheard especially when it relied on the observations made at the locus in quo by the Court in the absence of and without any notification to the appellant and this caused a substantial miscarriage of justice.

Towards the end of the ruling in issue the Mbarara District Land Tribunal stated inter alia at pages 6 and 7 thereof:

> ‘In the result, the application is allowed and a temporary injunction is hereby granted against the Respondent restraining his servants ‘or his agents from further cultivating or developing the land in dispute until the final determination of the head suit or until further orders of the Tribunal.’

Besides the above extract I have anxiously read the balance of the ruling. Happily the Tribunal was cognisant of what requires to be taken into account when considering an application for a temporary injunction. This emerges clearly in the ruling. The case before the Tribunal concerns rights to land. There is land registered under the Registration of Titles Act adjacent to land which is under customary occupancy. It is not disputed that the land under the Registration of Titles Act belongs to the Appellant herein. It is not disputed either that the Respondent who is son to the appellant is the occupant of the customary holding which he received as a gift from the Appellant. The issue before the Land Tribunal is whether the land which the appellant had started cultivating lies within land registered under the RTA to which he claims title or is part of the customary holding the Respondent claims rights to. The contested temporary injunction was granted after the Respondent herein applied for it. It was urged by the Respondent that cultivation of the suit land by the Appellant, if it was to continue, would result in the Respondent’s cattle dying owing to lack of pasture. For the Appellant the imperative was to cultivate the land for the growing of millet. Needless to say the Tribunal retained discretion in deciding whether or not the status quo should be maintained. In exercising that discretion however it is entitled to have regard to the balance of convenience and to the extent to which any damage to the appellant could be cured by payment of damages rather than by granting an injunction. See *Donmar Productions vs Bart* [1967] 1 W.L.R. 740. It must have occurred to the wisdom of the Tribunal that payment of damages was more feasible to the party which missed a season or so of crop than to the other party that would be hard put to find pasture and fresh grazing grounds for its livestock.

As for the merits of the case, the District Land Tribunal is still seized of the claim. Since it considered various aspects of the application, one of such must have been the merits of the case and the chances of success. I find no cause to doubt this was the case.

Ground 5 refers to the locus in quo. Counsel for the Appellant argues that substantial miscarriage of justice was occasioned owing to the absence of the Appellant at the locus in quo. The visit to the locus in quo served to show court that some cultivation had taken place on the suit land. As this is not disputed by the two litigants I find no merit in this claim. There was no miscarriage of justice at all.

This whole appeal fails. It is dismissed with costs.

P. K. Mugamba

Judge

12th July 2005