

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA KAMPALA  
**CIVIL SUIT NO 87 OF 2004**

ADMINISTRATOR GENERAL OF  
THE LATE BENEDICTO SEMAMBO..... APPLICANT  
VERSES

ALPHA INTERNATIONAL  
INVESTMENTS LTD.....RESPONDENT  
**17<sup>th</sup> march 2006.**

**BEFORE HON. MR. JUSTICE GIDEON TINYINONDI**

**RULING**

By this chamber summons under Order 37 rr 1(a) and 9 of the Civil Procedure Rules the Applicant sought the following orders: -

- (a) That the respondent above named, its officers, agents and/or any persons deriving title or authority from the defendant be restrained from selling, occupying or otherwise dealing with the suit property until further orders of the court.
- (b) That a consequential order be issued against the Registrar of Titles restraining him from removing the caveat on land comprised in Kyadondo Block 219 Plot 233 at Najera or otherwise registering or canceling any Instrument on the said land till final determination of the main suit.
- (c) That the costs of this application abide the final result of the main suit.

One Mary Ssemambo swears an affidavit in support of the chamber summons applicant, deponing: -

- “1. That I am a female adult Ugandan of sound mind and the applicant in this application.
- 2. That at all times material to this action, my late husband Ssemambo Benedicto who died on 13/10/2000 was the registered proprietor of lands comprised in Kyadondo Block

No. 219 Plot No. 235 at Najera, Kazinga LC1 Kiwantule, Nakawa Division Kampala District (hereinafter referred to as the suit property/land).

3. That in June 1998, the deceased Ssemambo Benedicto borrowed some money from the Respondent and secured the said loan by depositing his Certificate of title to the suit premises and signing blank transfer forms in respect of the same.
4. Sometime in August 2000, the deceased discovered that the Defendant/Respondent had secretly transferred the suit property in its names on the 21<sup>st</sup> day of December 1998. A copy of the Certificate of title is attached to the Plaint as “D”.
5. That upon the death of my late husband, I obtained Letters of Administration to his estate and a copy of the said letter is attached to the Plaint as “A”.
6. That on the 23<sup>rd</sup> day of August 2000, I registered a caveat on the suit land forbidding the registration of any dealing until prior notice is given to me.
7. That in November 2000, I instituted a civil suit against the Defendant vide H.C.C.S. No. 1546 of 2000 wherein I sought to vitiate the Respondent’s dealing in the suit land with my late husband on the ground that the said transaction involved our matrimonial home and was therefore illegal for lack of authority from me and our children. Reliance shall at the trial be placed on court record in H.C.C.S No. 1546/2000.
8. That during the trial of the said suit, I discovered that the Land Act was not applicable to my claim since the loan agreement had been made on 8<sup>th</sup> June 1998, a fact which I could not have discovered by use of reasonable diligence.
9. That in the above premises, on the 19<sup>th</sup> day of January 2004, I consented to the withdrawal of the said H.C.C.S. No. 1546/2000 with intent to institute another one to protect the interests of the estate of my deceased husband. A copy of the Consent Order is hereto attached “XXI”.
10. That on the 26<sup>th</sup> day of March 2004, the Respondent wrote and requested the Commissioner for Land Registration to issue to me a Notice to show cause why the caveat on the suit land should not be removed. Copy of the said letter is hereto annexed as “XX2”.

11. That thereupon, I instituted the main suit against the Defendant and promptly made this application to cause the delay of the removal of the caveat pending final determination of the main suit.
12. That the applicant has high chances of success against the Respondent in the main suit based on fraud and illegality. The applicant shall rely on the court record in the main suit.
13. That if the orders sought are not granted, the applicant's caveat will be removed on the lapse of the 60 days and the Respondent be at liberty to transfer ownership or otherwise deal in the suit property, thereby render the main suit nugatory.
14. That I make this affidavit in support of my application for a temporary injunction to restrain the Respondent from causing the removal of the caveat on the suit property, and/or selling, occupying or otherwise dealing in the suit property prior to final determination of the main suit or till court otherwise orders.
15. That whatever is herein stated is true to the best of my knowledge except for paragraphs 12 and 13 which are true to my genuine belief.”

One Lydia Juuko filed an affidavit in reply. She deponed: -

- “1. THAT I am a female adult Uganda of sound mind and the Acting General Manager of the Respondent/Defendant herein, and swear this affidavit in that capacity.
2. THAT I have perused the Applicant/Plaintiff's affidavit sworn on 3<sup>rd</sup> May 2004 in support of her Application No. 90 of 2004, and upon the advice of the Respondent/Defendant's lawyers **M/S BASAZA WASSWA & Co. ADVOCATES**, I respond to the allegations contained in the Applicant/Plaintiff's Application as hereunder.
3. THAT the Respondent/Defendant denies the contents of paragraphs 2, 4, 7, 12, 13, 14 and 15 of the said Affidavit of the Applicant.
4. THAT I am advised by the Respondent/Defendant's said lawyers that: -
  - (a) The Applicant/Plaintiff has shown sufficient cause to be granted an injunction against the Respondent/Defendant and the other Orders sought for.
  - (b) The Applicant has no valid legal or equitable interest in the suit property and the caveat she lodged thereon is irregular and ought to be removed.

- (c) The Applicant's said affidavit is irregular frivolous and vexatious and contains falsehoods.
5. THAT the deceased obtained a loan from the Respondent/Defendant and deposited his title to the suit land with the Respondent/Defendant. Upon default in re-payment of the loan monies, the deceased verbally agreed to effect a transfer, sell and demarcate the suit property and later put his said authorization in writing vide a letter dated 6<sup>th</sup> September 1999. Copies of the loan applications, loan agreement, powers of attorney, the payment voucher and the letter authorizing sale of the suit property are attached hereto and collectively marked as **Annexure "AA"**.
  6. THAT at all material times subsequent to the said verbal authorization of the deceased stated in paragraph 5 above, the Respondent/Defendant is the registered proprietor of the suit property. A copy of the certificate of title to the suit land is attached hereto and marked as **Annexure "BB"**.
  7. THAT the suit property was re-sold to **Winnie Kabogoza Musoke** on or about the 10/12/1999. The latter has not yet effected a transfer of the same into her names owing to the caveat on the suit property lodged irregularly by the Applicant A copy of the sale agreement is attached and marked as **annexture "CC"**.
  8. THAT since the institution of H.C.C.S NO. 1546/2000, the Respondent/Defendant has for six years now, been subjected to great prejudice and loss of valuable resources by the numerous frivolous and vexatious applications and suits that the Applicant has previously filed and continues to file over the suit property. A list of four previous applications/suits is attached hereto as **annexture "DD"**.
  9. THAT this application like the applications listed in annexure **"DD"** hereto, are/were filed only for the purpose of occasioning a miscarriage and delay of justice.
  10. THAT I am further advised by the Respondent/Defendant's lawyers that the consequential order sought for by the Applicant/Plaintiff is misplaced.
  11. THAT the averments contained in paragraph 7 of the Applicant's said affidavit relating to a purported matrimonial home are unknown to the Respondent/Defendant. According to the declarations made by the deceased, he introduced a one Salima Nandawula Ssemambo as his lawful wedded wife together with the deceased the latter executed all

the documents attached to the Defendant's written statement of defence, collectively marked as "SS".

12. THAT the Applicant's case has no likelihood of success.
13. THAT it is in the interests of justice that the Applicant/Plaintiff's application is not allowed.
14. THAT I swear this affidavit in opposition to the Applicant/Defendant and the Registrar of titles.
15. THAT whatever is stated hereinabove is true and correct to the best of my knowledge and belief, and where it is based on information and advice, the source thereof has been disclosed and I verily believe it to be true."

At the hearing both Counsel referred to their respective parties' documents in the chamber summons application and the pleading.

After carefully perusing the pleadings I have found and do hold that they raise several triable issues.

In this vein I allow the application. I make the following orders.

1. Neither the Respondent nor their officers, or agents nor their purported successors in title shall sell, occupy or in any other way deal with the property in dispute till final disposal of the main suit.
2. The Registrar of Titles shall not remove the caveat lodged on 23/08/2000 on the suit land. Furthermore the Registrar of Titles is hereby restrained from registering any instrument affecting the land in dispute till final disposal of the suit.
3. The costs of this application shall abide the event in the main suit.

**Sgd: Gideon Tinyinondi**

**JUDGE**

**17/03/2006.**

**17/03/2006:**

Ms Namuddu J. K. for Applicant

No appearance for Respondent

Ms Kauma, Court Clerk

**COURT:**

Ruling read in open court.

**Sgd: Gideon Tinyinondi**

**JUDGE**

**17/03/2006.**