

MISC. APPLICATION NO 71 OF 2006

(Arising out of misc. Application no. 215 of 2005)

(Itself arising out of civil suit no. 141 of 2002)

MARY KATIITI MASEMBE..... APPLICANT/J. CREDITOR

VERSUS

KAWEMPE DIVISION OF

KAMPALA CITY COUNCIL DEFENDANT/J. DEBTOR

AND

1. NANSIKOMBI MARY
2. KISAUZI S. NUWA
3. VICTORIA MWAGALE
4. RHODA NANKUMBI RESPONDENT/OBJECTOR
5. SEPUYA WILSON
6. NABYONGA H. MARGARET

13th April 2006.

BEFORE HON. MR. JUSTICE GIDEON TINYINONDI:

RULING:

The notice of motion herein reads: -

- “1. The execution of the instructions as issued by the Administrator General to Bailiffs to give vacant possession of land known as Kawempe/Nsangi Market to the respondents purposely following the Ruling/order of Court in Miscellaneous Application No. 215 of 2005, against the applicant Mary Masembe be stopped, suspended and/or set aside.

2. That the Ruling in Miscellaneous Application No. 215 of 2005 affected only six stalls belonging to the applicant/objectors therein.
3. That the Warrant to give vacant possession of the whole Market Stalls in Nsangi Market was improper and does not conform with the Ruling and/or the applicants/objectors' application.
4. That the Ruling as delivered on 11th November 2005 was in respect of the six (6) Stalls occupied by the respondent and not the entire Nsangi Market.
5. That the act of the respondents in moving the Administrator General to issue the instructions of Vacant possession to Bailiffs is illegal, null and void.
6. Costs of this application be provided for.

TAKE FURTHER NOTICE that the grounds this application are supported by the affidavit of CYPRIAN SEBUNJO the holder of powers of Attorney from Mary Katiiti Masembe, the applicant herein but briefly the grounds are: -

- a) That the Ruling delivered on 11th November 2005 in Miscellaneous Application No.215 of 2005, by His Lordship Mr. Justice Gideon Tinyinondi, affect only the six (6) Stalls at Nsangi Market, in occupation by the respondents and not the entire Market.
- b) That the applicant verily believes that the application and ruling were restricted to the six (6) Market Stalls which were occupied by the respondents and not the entire Market.
- c) That the respondents misinterpreted the Ruling of Court and hence proceeded to misuse it to acquire possession of the whole Market.
- d) That the Administrator General acted unlawfully by issuing the instructions for vacant possession to Court bailiffs.
- e) That the applicant will suffer irreparable and substantial damage if execution of the instructions for vacant possession is not stopped, suspended and/or set aside.
- f) That the applicant's application has overwhelming chances of success.
- g) That there has been no undue delay in filing this application.

- h) That it is just and equitable that Court stops, suspends and/or sets aside the instructions issued by the Administrator General to give vacant possession of the Market to the respondents.”

Cyprian Sebunjo swore an affidavit in support of the application deponing:

- “1. That I am an adult male Ugandan of sound mind, the son and holder of powers of attorney from Mary Katiiti Masembe, the applicant herein. A copy of the said powers of attorney is attached hereto and marked annexure “A”.

2. That I am conversant with this matter, competent and duly authorized to depone this affidavit.

3. That the respondents filed Objector Proceedings Vide Miscellaneous Application No. 215 of 2005 in respect of the six (6) market stalls they occupy at Nsangi market, which belongs to Mary Katiiti Masembe the applicant herein. A copy of the land title is attached and marked “B”.

4. That a Ruling was delivered by this Honourable Court on 11th November 2005 granting the application. A copy of the said Ruling is attached hereto and marked “C”.

5. That in the said application the applicants (now respondents) sought an order that execution of the decree in HCCS No. 141 of 2002: Mary Masembe vs. KCC as against the applicants’ six stalls be stayed/stopped. A copy of the Miscellaneous Application No. 215 of 2005 is attached hereto and marked “D”.

6. That I verily believe that the ruling was directed to the six (6) market stalls, which were occupied by the respondents and not the entire market.

7. That the respondents misused the said Ruling of Court and hence proceeded to extract an order. A copy of the order is attached hereto and marked annexure “E”.

8. The said order was not given to our counsel M/S Makeera & Co. Advocates for approval.

9. That the respondents abused the process of court because the applicant immediately after the ruling gave them possession of the six stalls and there was no need to resort to the Administrator General or any other authority to enforce the Court Ruling.
10. That the Administrator General acted outside the law by issuing instructions for vacant possession to court bailiffs. A copy of the said instructions is attached hereto marked "F₁ – F₂".
11. That the respondents further abused the law while executing the Administrator General's instructions by using security operatives from Major Kakooza Mutale's office who arrested me on 27th September 2005 unlawfully interrogated me, and later detained me in their offices at Sure House, Bombo Road.
12. That the said security operatives further unlawfully put me in custody at the Central Police Station in Kampala, on false charges of threatening violence, but I later managed to obtain a release on police bond. A copy of the Police bond is attached hereto marked "G".
13. That since the respondents fraudulently extracted the order, wrongly obtained the powers of execution and illegally executed the order, I verily believe that I shall suffer irreparable and substantial damage if execution of vacant possession is not stopped, suspended and/or set aside.
14. That there has been no undue delay in filing this application.
15. That it is just and equitable that Court stops, suspends and/or set aside the instructions for execution to the bailiffs to give vacant possession of the land.
16. That I swear this affidavit in support of the applicant's application for stopping, suspending and/or setting aside the execution by the respondents/Administrator General and/or their bailiffs purportedly following the ruling in Miscellaneous Application No. 215 of 2005.
17. That whatever is deponed herein is true and correct to the best of my knowledge and belief."

NANSIKOMBI MARY swore an affidavit in reply stating:

- “1. THAT I am an Adult Female Ugandan of sound mind and one of the Respondent’s herein.
2. THAT the Respondents No. 2 – 6 are my siblings and have given me authority to swear this Affidavit on their behalf as well.
3. THAT the Application filed and the Affidavit in support sworn by one CYPRIAN SEBUNJO has been explained to us by our lawyers M/S BAMWITE & KAKUBA ADVOCATES and we wish to reply as hereunder.
4. THAT MARY KATIITI MASEMBE is our eldest sister who grabbed our share in our late father’s estate and is trying to deny us our benefits in the estate.
5. THAT our father was the late MASEMBE KABALI who died in August 1981.
6. THAT CYPRIAN SEBUNJO is not conversant with matters concerning the estate of our late father because he is not our brother and is not a beneficiary in our father’s estate.
7. THAT when our father died in 1981 the Administrator General was appointed Administrator of our late father’s estate. The grant is annexed hereof and marked “A”.
8. THAT the distribution of our father’s estate was carried out and MARY KATIITI MASEMBE our eldest sister was given property on Block 204 Plot 127 was given to me and my Co-Respondents herein. The distribution is annexed hereof and marked “B₁”, “B₂”, and “B₃”.
9. THAT MARY KATIITI MASEMBE was however wrongly registered as proprietor of Plot 127 which was not given to her.
10. THAT when MARY KATIITI MASEMBE was questioned by the Administrator General how she came to be registered as proprietor of Plot 127 which was not given to her, she wrote a letter explaining that she registered our plot 127 into her names to use the property as security for a loan to pay for our School fees and that she wanted to safeguard our

property. The letter written by MARY KATIITI MASEMBE explaining the position is annexed hereof and marked “C”.

11. THAT for the above reasons it was proper for the Administrator General to take over the property on Block 204 plot 127 as Administrator of the estate of our late father.
12. THAT I have been informed by our Advocates M/S BAMWITE & KAKUBA ADVOCATES and I verily believe them that the action taken by CYPRIANO SEBUNJO by filing an application under O. 19 r 55 (1), 56 and 60 CPR is not proper as the proper action would be to sue the Administrator General.
13. THAT it is not true as alleged by CYPRIANO SEBUNJO that the Administrator General misused the Court ruling of 11th November 2005, because the Administrator General acted as Administrator of the estate and in accordance with the distribution which was made.
14. THAT this application is an abuse of Court process because MARY KATIITI MASEMBE has already served the Administrator General with Notice of Intention to challenge the Administrator General’s action. The Notice of Intention to sue is annexed and marked “D”.
15. THAT it is not true that we have threatened CYPRIAN SEBUNJO with violence as he claims in his Affidavit.
16. THAT we have never employed KAKOOZA MUTALE to execute instructions from Administrator General.
17. THAT the Administrator General instructed Court Bailiffs to execute his instructions. The instructions given to Court Bailiffs by the Administrator General is annexed hereof and marked “E”.
18. THAT for the above reasons I believe there is no merit in the application filed.
19. THAT I swear this Affidavit in reply to the application and state that what appears herein is true to the best of my knowledge save for paragraphs 13 which is based on information and paragraphs 19 which is based on belief.”

At the hearing Mr. Serwadda, Counsel for the Applicant/Creditor argued as follows. Following this Court's ruling of 11/11/2005 in Miscellaneous Application 215/05 allowing the six Respondents to retain six stalls in Kawempe market, the Respondents went ahead to connive with the Administrator General and obtained an order dated 23/11/05 whereby the said order gave them the entire market instead of the six stalls mentioned in the earlier ruling of 11/11/2005. Counsel stated that evidence of this wrongful take over of the entire market was annexures "F₁" and "F₂" to the notice of motion.

Counsel for the Applicants further contended that the Respondent's affidavit in reply did not contradict any of the material statements by the Applicants especially that they were in possession of the entire market. Nor did they deny that they were entitled to only six stalls that instead the Respondents had replied that the Applicants should sue the Administrator General without denying the illegality in taking over the entire market consisting of over forty stalls.

In reply Mr. Bamwite, Counsel for the Respondents, argued as follows. The present application was wrongly brought against the Respondents who were the young sisters of the Applicant; that nowhere had the Applicants shown that the Respondents taken any steps to execute the order in this case. That annexures "F₁" and "F₂" to the notice of motion were letters from the Administrator General instructing some people to take over the market but they did not emanate from the Respondents; that according to paragraph 8 of the affidavit in reply, plot 127 was given to the Respondents. That therefore it was wrong for the Applicant to proceed against the Respondents. That the Applicant should have sued the Administrator General who would explain why it distributed plot 127 to the Respondents.

Counsel prayed that the application be dismissed with costs.

Counsel for the Applicant replied that annexure "F₁" shows that the Administrator General was acting on behalf of the beneficiaries of the late Masembe Kabali's estate; that annexure "B₁" to the affidavit in reply was not a distribution by the Administrator General but a purported distribution by family members. That annexure "B₃" to the affidavit in reply should not be relied on because it was not signed by anyone, was not complete and contained many erasures which were not countersigned.

There can be no gainsaying that in Miscellaneous Application No. 215/05 this Court ruling of 11/11/05 allowed the application whereby the Objectors/Applicants (the Respondents/Objectors in the present application) were allowed to continue in possession and occupation of ONLY six stalls BUT NOT the ENTIRE market.

I find and hold that the order of this Court dated 23/11/2005 (extracted by the Registrar) did not conform to the terms of my ruling of 11/11/2005. By the powers conferred on me in S101 of the CIVIL PROCEDURE ACT, I hereby nullify the Registrar's Order dated 23/11/2005. The consequence of my present order is to stop any order/instruction that execution of my ruling of 11/11/2005 from any quarter whatsoever until a valid and proper order conforming to my said ruling has been made in this regard.

This application is hereby allowed with costs.

Sgd: Gideon Tinyinondi
JUDGE
13/04/2006.

13/04/2006:
Mr. Bamwite for Respondents
Applicants and Respondents in Court.
Miss Kauma Court Clerk.

COURT:
Ruling read in open court.

Sgd: Gideon Tinyinondi
JUDGE
13/04/2006.