

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT NAKAWA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.518 OF 2009

(Arising from Civil Suit NO. 200 of 2009)

EMMANEUL KIMOTE MULINDWA

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APPLICANT

V E R S U S

1. TOMUSANGE EMMANUEL

2. NABISUBI NORAH

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RESPONDENTS

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The Applicant, Emmanuel Kimote Mulindwa brought this application under order 41 rules 1, 2, 7 and 9 of the Civil Procedure Rules S. 1. 71 -1, Section 98 of the Civil Procedure Act, cap. 71, through M/s Kaggwa Sempala Mukasa Obonyo (KSMO) Advocates against the respondents, Tomusange Emmanuel and Nabisubi Norah. The respondents are represented by M/s Nsubuga – Mubiru & Co. Advocates.

The application is for a temporary injunction, depositing rent of Shs. 1, 870, 000/= monthly rental income from the disputed suit property in court until full determination of the main suit and costs of the application to be provided for. The application is based on seven grounds and supported by the affidavit of the applicant sworn on 24th July, 2009. The 1st respondent, Tomusange Emmanuel swore an affidavit in reply and in opposition to the application. On the day (that is, 1st September 2009) of the hearing the applicant was represented by Sempala David, Fred Gadala all from KSMO Advocates and Ms. Nsenge Judith from Musinguzi & Co. Advocates. And whereas, the respondents were being represented by Allan Sserulika from

Nsubuga- Mubiru & Co. Advocates; together with Furah Fitz Patrick from Fitz Patrick Furah &co.Advocates.

The parties, on 1st September 2009, consented to the application to the extent that the parties maintain the status –quo of the suit property. The status quo being that the two respondents are in occupation of two structures on the disputed property, that actually two rooms, and that the rest of the rooms/apartments are being occupied by tenants. The applicant agreed that the respondents to continue occupying the said two rooms/ apartments until full determination of the main suit.

The parties disagreed on the issue of depositing the rental income from the suit property in court. This issue generated hot arguments and the parties were more less confrontational against each other. Each party had come to court with a number of it's supporters. Hence to agree to an amicable settlement became difficult. The applicant/plaintiff being the registered proprietor of the suit property is applying to have the rental income from the suit property deposited in court on monthly basis till full determination of the main suit. On the other hand, Mr. Allan Sserulika in reply submitted that they consented to the injunction being granted. He vehemently opposed the request and prayer by the applicant to have the rental income from the suit premises being deposited in court that the respondents used the rent collected from the said premises fro their upkeep that is necessary for their survival and livelihood as well as their participation in this suit. In the alternative, counsel for the respondents argued that the rental income from the suit property be shared between the parties without such money lying idle on the court's account so as each party to meet its needs as the suit goes on.

The applicant is seeking among other orders, that:-

“2 that an order does issue the respondent and all those deriving tenancy from them in the suit premises to deposit the rent from the suit premises in court pending the hearing and final disposal of the main suit.”

The applicant gave affidavit evidence to that effect as follows:-

“Paragraph 20 and 21 of his affidavit in support of the application:-

20. That I shall suffer irreparable loss and damages should the respondents' injuries and illegal actions continue unabated.

21. That I swear this affidavit in support of an application for a temporary injunction inter alia restraining the respondents from further collection of rent from the suit premises, and order of court to have the rent payable to be deposited in court in the alternative and an order restraining them from any form of interference or breach of contract to issue against the respondents pending the hearing and final disposal of the main suit."

To the above affidavit evidence, the 2nd respondent, Nabisubi Norah did not file on record an affidavit in reply. In law, therefore, she is taken to have admitted such piece of evidence. As far as the 2nd respondent is concerned she did not contest the application. However, it should be noted that the respondents are sued jointly in this application and the main suit. I have read the affidavit sworn by the 1st respondent on 28th August 2009 and noted that he is not objecting to the rental income from the suit property being deposited in court. His affidavit in reply in just opposing the grant of a temporary injunction against them. Therefore, the order in item two (2) being sought in this application stands uncontested by the respondents. It is also my considered view that the respondents' counsel's submissions in opposition are not supported by the affidavit evidence of the respondents. He was trying to adduce evidence from the bar to challenge the applicant's application to have the rental income from the suit property deposited in court.

Further, counsel for the respondent submitted that the respondents depend entirely on the rent collected the suit premises for their survival and continuation of the main suit. To me, that is hard to comprehend. This is because the respondents upon being sued in court engaged the services of two different law firms to represent them to defend the suit against the applicant. Yet it is on record that the monthly rental income from the suit premises is only 1, 870, 000/=. The respondents' actions, therefore, clearly show that they have other sources of income where they are able to fund the services of two different law firms. They are therefore, estopped from claiming that they entirely depend on the rental income from the suit property.

In any case, the applicant's reliefs in the main suit among other things is the recovery of rent received by the respondents from the suit property. And if the respondents are allowed to continue receiving rent from tenants and spending the same anyhow, it could create hardships on their part in the event of losing the main suit. It is, therefore, fair and just that the disputed rental income on a monthly basis be deposited in a neutral place, that is the court. It is also safer to all parties that in the likely event that court finds in favour of the either the applicant or the respondents, the successful party would easily pick the money from the court.

In the result, I allow the application in the following terms:-

- a) By consent, a temporary injunction as prayed for in the application is granted.
- b) It is ordered that the rental income from the suit property of Shillings 1, 870, 000 or as the case may be, be deposited with court on a monthly basis till full hearing and determination of the main suit.
- c) The collection of rent from the suit property and depositing the same in court on a monthly basis shall be taken care of by all counsel for the parties.
- d) Costs of this application shall abide the results of the main suit.

Dated at Kampala this 7th day of September, 2009.

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JOSEPH MURANGIRA
JUDGE