

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-MA-225-2009

(FROM HCCS NO. 0045 OF 2009)

RUTH KABAGANDA WAMBALEAPPLICANT

VERSUS

1. SILAS MUYESA WAMBALE

2. KHAYEMBA MUBARAKA

3. EQUITY BANK TIRINYI.....RESPONDENTS

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

The applicant Ruth Kabaganda Kiambale through her lawyers M/s Gyabi & Co. Advocates filed this application by way of Chamber summons under order 41 Rules , 2 and 3 of the Civil Procedure Rules (CPR) moving this court for orders that:

- 1) A temporary injunction doth issue restraining the defendant/Respondents from dealing in the suit property, intimidating, threatening or in any way interrupting the applicant's use and quiet enjoyment of the suit property situate in block No.3 Plot 7 at Moni Central Mbale Municipality.

2) Costs of application be provided for.

The application is supported by the affidavit of the applicant in which she deposes that the suit property is a residential holding of the applicant and five children. That her husband gave one Khayemba Mubaraka (the 2nd defendant) Powers of Attorney to borrow money using the suit property as security. That the said Khayemba Mubaraka mortgaged the suit property to Equity Bank the 2nd defendant. The applicant learnt about the mortgage and lodged a caveat. That the applicant has filed civil suit 045 of 2009 which is pending hearing which will be rendered nugatory if this application is not granted. None of the defendants filed a written statement of defence. Learned counsel for the applicant filed written submissions which are on record.

I have considered the application as a whole. I have looked at the law governing grant of temporary injunctions. I have studied the brief written submissions by counsel for the applicant.

I agree with counsel for the applicant that an order for a temporary injunction can be issued when the applicant shows that:

- a) There is a pending suit between the parties.
- b) The suit discloses serious triable issues
- c) Unless the temporary injunction is issued, there is likelihood of the applicant suffering substantial injury or loss which may not be adequately compensated by monetary damages.
- d) The balance convenience is in favour of granting the application.

Although not mentioned by learned counsel for the applicant it is a requirement that before a temporary injunction is granted the relief sought in the main action must be for an injunction and that the applicant's case has a *prima facie* case of success. ***SOLE ELECTRIC (U) LTD V. TOWN CLERK KK & NAKIBUKA ENTERPRISES (1992) 1 KALR 182.***

In the instant case, the applicant's affidavit has not been rebutted. The suit pending raises serious triable issues as a family dwelling is in dispute. Should the status quo be disturbed or threatened, irreparable loss is likely to be incurred by the applicant. It is unlikely that in case the applicant suffered a loss at the end it will be atoned by an award of general damages.

I will therefore grant this application with costs in the cause.

Musota Stephen

JUDGE

28.4.2010

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Musolwa for applicant.

Representative of Respondent 3 in court.

Wanale Interpreter.

Musolwa: I am ready to receive the ruling.

Court: Ruling delivered.

Musota Stephen

JUDGE