

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CV-MA-0037-2010

(From HCCS No. 0008-2010)

- 1. PENINA OBBO OGOLA**
 - 2. AWOR LOI**
 - 3. AKUMU JESCA NYAMORI**
 - 4. NYABWOLO BENCEMANCE ODOI**
 - 5. NYARUA GRACE LOYO**
 - 6. AGALI HELLEN ATHIENO**
 - 7. ALWENY HELLEN ATHIENO**
- APPLICANTS

VERSUS

OGOLA BALAMU.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

This is an application for a temporary injunction brought by chamber summons under O.41 rr.1 and a of the Civil Procedure Rules.

The applicants are represented by M/s Dagira & Co. Advocates.

The grounds of the application are that;

- The applicants have filed HCCS No. 0008 of 2010 against the respondent which suit was high chances of success.
- The respondent is threatening to sell the disputed land to a third party.
- The applicants have been in occupation of the disputed land and obtain their livelihood from the same.
- The balance of convenience is in favour of granting the order sought.

The chamber summons is supported by the affidavit of Byabwolo Bencemence Odoi on her own behalf and on behalf of all the applicants.

I will not reproduce the deponements in this ruling.

The respondent Ogola Balamu represented by M/s Lex Advocates and Solicitors filed an affidavit in rejoinder opposing the application and rebutting the averments by the applicants.

During the hearing of this application, each of the advocates made submissions in support of their respective cases. I have considered the application as a whole. I have considered the reply by the respondent. I have related the same to the respective submission by learned counsel and to the law applicable.

The conditions that must be satisfied before a temporary injunction may be granted are outlined under O.4 1 r.1 of the Civil Procedure Rules. It has to be proved by affidavit or otherwise:-

- a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree.
- b) That the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors.

The applicants' affidavit does not demonstrate that the respondent is contravening any of the above provisions. On the contrary, I am on a balance of probabilities convinced by the averments by the respondent in rebuttal. The respondent denies that he has strangers he intends to sell the disputed land to. He avers that the estate of Andrea Obbo Ogola was distributed. That there has been litigation on the same disputed land. It is most probable given their age, that the applicants, save for the 1st applicant do not live on the disputed land but could be claiming for a share of the disputed land which will be proved during the hearing of the main suit. I am not convinced by a mere statement that the applicants saw strangers inspecting the land in dispute with a view of buying the same. This assertion is speculative given the denial by the respondent.

I am not satisfied that the balance of convenience is in favour of the applicants.

The requirement of O.41 r.1 CPR has not been satisfied by the applicants. This application will be dismissed with costs. Be that as it may the respondent is bound not to hereafter waste, damage, alienate or sale the suit property until the main suit is disposed of. The suit land should remain in place as it is.

I so order.

Musota Stephen

JUDGE

22.6.2010

22/6/2010

All parties present.

Court Clerk Catherine Khanzila.

Counsel Tonny Okwenye holding brief for Mr. Kamugisha Byamugisha counsel for the respondent.

Mr. Dagira represents the applicants but is not present in court.

Tonny Okwenye: This matter was for ruling and we are ready to receive it.

Court: I was instructed to read and deliver this ruling. Ruling read and delivered in my open chambers on 22/6/2010.

Lillian C.N. Mwandha

ASSISTANT REGISTRAR

22/6/2010

