

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
HCT MISC APPL NO. 303 OF 2009
(ARISING FROM HIGH COURT CIVIL SUIT NO. 91 OF 2009)**

**UGANDA EX-SERVICE MEN ASSOCIATION: APPLICANT
VERSUS**

**1 KIBOGA DISTRICT LAND BOARD
2 SARAH NANZIRI
3 SHARIFAH BABIRYE
4 NATURAL FOOD INDUSTRIES: RESPONDENTS**

BEFORE: HON. LADY JUSTICE FAITH MWONDHA

JUDGMENT

This application by Chamber Summons was brought before me by Counsel for the applicants under S.98 of the Civil Procedure Rules. S.33 of the Judicature Act and or 41 rule (1) (a) and rule 9 of the Civil Procedure Rules for orders that;-

- (a) A temporary injunction do issue restraining the respondents/defendants and or their nominees, agents or servants from entering or carrying on any developments or introducing people/cattle on the suit land till the determination of the main suit.

- (b) That costs of the application be provided.

The application was supported by an affidavit of one Kakubale Boniface and briefly the grounds were as follows:-

- (1) That the suit property is in danger of being damaged, washed and or alienated by the respondents.

- (2) That the applicants shall suffer irreparable loss if the suit property is disposed of and the applicant/plaintiff's suit shall have barren results.
- (3) That the respondents have embarked on the process of opening boundaries despite the presence of occupants on the land as such infringing on their rights.
- (4) That the applicant has filed High Court Civil Suit NO. 91/2009 challenging the extension and issuance of certificate of title for leases granted to the respondents.
- (5) That the *status quo* should be maintained pending the outcome of the suit because it's just and equitable to do so when a temporary injunction is issued.

In ground 8 of the affidavit of Kakubare Boniface, the applicants averred that the applicants will suffer irreparable injury/damage and loss of the whole property if the suit property is disposed of before the hearing of the suit if the orders for the temporary injunction are not issued.

At the hearing of the application, the parties were directed to file written submissions and a schedule was made to that effect. The schedule was complied with and the ruling was received to 14/07/10.

The respondents 2, 3, and in reply averred that they were the registered owners of the suit land and that it was the initial lease term of 5 years which expired in 1996 and was extended to full term effective 1st October 1996. That the land which was allegedly leased to the applicants is comprised in Singo Block 517, Plots 33 and 34 at Kibanda Bukomero which is not the same description with the respondent's land.

That she had been informed by her lawyers which she verily believed that it was true there couldn't be different blocks for the same piece of land. She averred further that the respondents have always been in occupation of their land and have carried out developments thereon and the applicants were trying to use police and army men to force the applicants from their land and have on several occasions tried to involve the District Police Commander and have so far introduced one Captain Franklin Kwehangana who has brought his animals and is carrying thereon illegal structures. She averred further that the applicants waited to obtain the court order to cover their illegal acts and eventually evict the respondents from their land. That the

applicants have not shown any injury suffered or likely to be suffered that cannot be compensated by damages.

To support these grounds, counsel for the respondent submitted that in 2008, the leases of the respondents were extended to full term effective from 1st October 1996.

That in Kagubare's affidavit in support of the application, acknowledged that the leases for plot 8, 9 and 10 on block 831 Singo were granted to the 2, 3 and 4th respondents. That he acknowledged that it was the 1st respondent who was controlling authority over the land and it is the 1st respondent who gave it to the 2nd, 3rd and 4th respondents the leases and subsequently extended it to full term.

He affirmed the grounds in paragraphs 5 of the 2nd respondent's affidavit that the applicants were granted leases on Singo Block 5, 7 plot 33 and 34 and these were granted leases on Singo block 517 plots 33 and 34, the applicants had made overlapping survey of the respondents' land and had presented them as Singo block 517 plots 33 and 34, the applicants' lease was cancelled by the 1st respondent.

He submitted that the status quo is that the respondents are in occupation of the suit land and carrying out mixed farming as provided by the lease.

That the respondents are trying to illegally seek the help of court to stop the respondents from carrying on their activities on the suit land and to also introduce their agents on the suit land which would be disturbing from the *status quo*.

Counsel for the respondents further submitted that if the temporary injunction is issued, the applicants will use it to evict the respondents from their land over which they lawfully have a certificate of title and stop them from permanently carrying on their farming activities. That they are trying to get illegal possession of the respondents' land by use of army men, contacts in police and cover it up with the order of this court.

O.41 r1 (a) and (2) of the Civil Procedure Rules states;-

'where in a suit its proved by affidavit or other wise and that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or

wrongly sold in execution of a decree, the court may by way of order, grant a temporary injunction to restrain such act or make such order for the purpose of staying and preventing the wasting damaging, alienating, sale, renewal or disposition of the property, as court thinks fit until the disposal of the suit or until further order’.

After careful perusal of the chamber summons application and the affidavit attached thereon of the applicants and the reply of the respondents and upon careful consideration of the submissions filed by counsel for the applicant and the respondents, I find the following;-

- (1) That before the court can grant the application and issue the order, there has to be a *prima facie* case established by the applicant. And that the applicant has a duty and he/she is bound to satisfy court that the suit is not a sham and that the applicant has a probability of succeeding in the main suit. I respectfully cite with approval the case of **Imelda Gertrude Basudde Nalongo versus Tereza Mwenkise, Misc Appl N0. 0402/2003 (unreported)** where **His Lordship Hon. Justice Kibuuka Musoke of High Court of Uganda** described what a *prima facie* meant in this context of the application for a temporary injunction.
- (2) The applicant needs to establish by evidence by the affidavit that there are triable issues in the main suit and therefore the two issues to be determined at this stage are -;
 - i) Whether he/she has established a *prima facie* case.
 - ii) Whether he/she would suffer irreparable damage if the injunction is not issued.

Among the cases I perused on the subject of injunction, is **Godfrey Sekitoleko and four others versus Seezi Peter Mutabazi and two others. Court of Appeal Civil Appeal N0. 65 of 2001 in which the Hon. Justices of the Court of Appeal led by Her Lordship Mukasa Kikonyogo DCJ, ENGWAU AND Byamugisha JJA** in July 2004 held as follows among others:-

- (a) *For a temporary injunction to issue, court must be satisfied that the applicant has a prima facie case with a probability of success that the applicant must otherwise suffer irreparable damage which would not be adequately compensated in damages. If the court is in doubt, it will decided the application on a balance of convenience.*
- (b) *The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal rights to property from irreparable or serious damage pending the trial, the court does not determine the*

legal rights to property but merely preserves it in its actual condition until the legal title or ownership can be established or declared

- (2) I had the opportunity to peruse the pleadings of the parties i.e., both the plaint and the written statement of defence and I have carefully studied the chamber summons and the affidavits thereon, including the rejoinders. I could not come across anything in the affidavits which established that the property was in danger or being wasted or alienated and that the applicant would suffer irreparable damage if the order is not issued. The evidence established by the affidavits was that the respondents were opening boundaries.

In my opinion this *per se* can not establish to my satisfaction that the property is in danger and that he suffers the damage it cannot be compensated by way of damages.

- (3) On the contrary, from perusal of the affidavit and the written statement of defence of the respondents, there has been established a case that, they are in occupation of the suit land though its this suit land which is being disputed. But this is an issue for the main trial not in a case of the grant since in the full fledged trial; evidence will have to be brought to prove their occupation. Besides, the respondents have for the time being a valid certificate of title which the applicants are seeking cancellation of.

There is evidence established by affidavits of the respondents that they are dealing and or utilising the suit land in accordance with the lease terms.

- (4) So on a balance of convenience, it seems to me if the application is granted, and it will be contrary to good conscious, equity and definitely will result into injustice on part of the respondents.

Accordingly because of the above foregoing, I find the applicants have failed to establish that there is a *prima facie* case to warrant the grant and secondly they have failed to prove that the suit is not a shum and that they will suffer irreparable injury which cannot be compensated by damages.

An injunction is a question of exercise of courts discretion and this court is unable to exercise it because of the above stated reasons.

The application is dismissed with costs.

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FAITH MWONDHA

J U D G E

14/07/10