

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

HCT-04-CV-MA-129-2010
(ARISING FROM CIVIL SUIT NO. 041/2010)

TORORO DISTRICT LOCAL

GOVERNMENT.....APPLICANT/PLAINTIFF

VERSUS

MULOWOOZA KAYONDO.....RESPONDENT/DEFENDANT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

RULING

This is an application for a Temporary injunction brought by way of Chamber summons under Order 41 rules 1, 2 and 9 of the Civil Procedure Rules (CPR) and Section 98 of the Civil Procedure Act. The applicant Tororo District Local Government Council is represented by Mr. Lumbe of the Attorney General's Chambers.

The respondent, Mulowooza Kayondo is represented by Mr. Muhamad Mbabazi of M/s Nyanzi, Kiboneka & Mbabazi advocates.

The application seeks for orders from this court that a temporary injunction be issued to stop the respondent's assignees in title, successors in title and respondent's agents from executing the order for distress for rent on the house on plot No.6-8 Osukuru Road, Tororo Municipal Council which was obtained in Misc. Application No.52 of 2010 of Tororo Chief Magistrate's Court. It also seeks to stop the respondent's assignees in title, successors in title and agents from evicting the applicant or District Official (Mr. Osuna Emmanuel) from occupying the house on Plot 6-8 Osukuru Road in Tororo Municipal Council and costs of this application.

The application is supported by the affidavit of one Osudo Jackson an Assistant Chief Administrative Officer for the applicant and Secretary District Land Board; who outlined the history of acquisition of the suit land and emphasized the need to restrain the respondent from executing the Distress for rent Warrant and/or evicting the applicant. The affidavit also alleges that the respondent fraudulently obtained ownership of plot 6-8 Osukuru Road in Tororo Municipal Council. That the applicant has a good case against the respondent.

The respondent filed an affidavit in reply, reaffirming his ownership of the suit property and that he has a certificate of title to the same which is mortgaged to Housing Finance Bank Limited as security for the money paid as consideration for the property. The respondent also deposes that he obtained a special certificate to levy Distress for rent which is due for execution. That the house is partially rented to one Emmanuel Osuna at a rental of 350,000/= and partially occupied by the respondent's family.

Each of the respective counsel submitted in support of their cases.

I have considered the application as a whole. I have also considered the respondent's opposition to the application. I have related the same to the law applicable.

Mr. Lumbe for the applicant has rightly outlined consideration for grant of temporary injunctions as enacted under order 41 rule (1) CPR that a temporary injunction is granted when:

- (a) any property in dispute is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (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.

From the application before me I have found no proof that the respondent is about to or the property in dispute is in danger of being wasted, damaged or alienated by any party to the suit. There is no proof that the property is about to be wrongfully sold in execution of a decree. I have not found such a suggestion in the special certificate to levy distress for rent issued by the Chief Magistrate Tororo against one Emmanuel Osuna.

I agree with the submission by Mr. Mbabazi that the method adopted by the applicant herein to circumvent the execution of the distress warrant is unknown in law. It is a clear back door attempt by the applicant to protect its official. Whereas, the special certificate to levy Distress is between Mulwooza Kayondo

the applicant and Emmanuel Osuna as respondent, the suit under which this application is brought is between Tororo District Local Government and Mulwooza Kayondo. The parties to the two suits are different.

It is irregular for the applicant to try and stop the operation of orders in a different suit using the present suit. Distress for rent is governed by the Distress for Rent (Bailiffs) Act Cap.76 and The Distress For Rent (Bailiffs) Rules Statutory Instrument 76-1. Cancellation or variation of a Distress for Rent order must be done by the certifying officer who is either a Chief Magistrate or Magistrate Grade I. It is not done by a temporary injunction by the High court. This Court has no jurisdiction to issue a temporary injunction stopping the operation of a distress warrant.

Learned counsel for the applicant submitted that other parties are to be joined to this suit later on. He singled out the Uganda Land Commission to whom a Notice of intention to Sue has been served. I wonder why the suit was filed before all the ground work was completed. I uphold the objection to this application by learned counsel for the respondent that this application is an abuse of court process.

It is dismissed with costs.

Musota Stephen

JUDGE

13.01.2011

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Respondent in court.

Applicant- that is, the Attorney General representative not in court.

Court Clerk Hadija.

Respondent: Mbabazi from Nyanzi, Kiboneka and Company Advocates are my lawyers but they didn't come but they instructed me to receive the ruling so I am ready to receive it.

Court: Ruling read.

My instructions were to read this ruling and I have done so.

Lillian C.N. Mwandha

ASSISTANT REGISTRAR

13.01.2011