

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
MISCELLANEOUS APPLICATION NUMBER 045OF 2020  
ARISING FROM CIVIL SUIT NUMBER 0001 OF 2020**

**S G WANZIRA ..... APPLICANT  
VERSUS**

- 1. KAKOOZA DAVID  
2. KATONGOLE NATHAN ..... RESPONDENTS**

**RULING BY GADENYA PAUL WOLIMBWA - JUDGE**

**Introduction**

This application is brought under Order 41 rules 1, 2 and 3 of the Civil Procedure Rules.

The Application seeks the following orders:

1. A temporary injunction doth issue restraining the Respondents, their agents or servants and any other person claiming title from them from evicting, or in any other way interfering or interrupting, the Applicant's use and quiet occupation of the suit land comprised in Kiryandongo District Bunyoro Ranching Scheme, ranch 5B6, 5B7, 5B8, 5B18 and 5B30, street 31/4/21 Scale 1/4/21 MM/8560 measuring approximately 190 acres and Ranch 5B, 5B7, 5B8, 5B30 Street 31/4/21 MM8560 measuring approximately 93.7 acres (hereinafter called the suit land), until final disposal of the main suit.
2. Provision be made for costs of this application.

The grounds for the application are as follows:

1. The Applicant filed the main suit seeking inter alia an order for specific performance of the sale contract for the suit land between him as a buyer and the Respondents as sellers.
2. That the Respondents and their agents are threatening to dispose and or evict the Applicant from the suit land and have greatly interfered with the Applicant's quiet enjoyment of the suit land.
3. That if this application is not granted, the applicant will suffer irreparable damages which cannot be adequately attoned by damages.

4. That balance of convenience weighs heavily in favour of the grant of the temporary injunction restraining the respondents from the threatened actions to the applicant's detriment.
5. It is in the interest of justice that this application be granted.

The Application is supported by the affidavit of the Applicant, who has deponed as follows:

1. That I am a male adult Ugandan of sound mind and the applicant herein.
2. That I have filed the main suit seeking inter alia the following orders from the court.
  - a) Specific performance of the contract of sale of land comprised in Ranch 5B6, 5B7, 5B8 and 5B18, Kiryandongo District, Bunyoro ranching Scheme measuring approximately 190 acres and Ranch 5B, 5B7, 5B8, 5B30 Street 31/4/21 MM8560 measuring approximately 93.7 acres at Kiryandongo District Bunyoro Ranching Scheme hereinafter referred to as the suit land, by the defendants to the Plaintiff.
  - b) A declaration that the Plaintiff is the rightful owner of the suit land.
  - c) A permanent injunction restraining the defendants by themselves or through their agents and servants from interfering with the Plaintiff's quiet use and enjoyment of the suit land.
  - d) General damages for trespass
  - e) Interest on (b) above
  - f) Costs of the suit.
3. That the said suit is pending disposal before this Honourable Court and has a very high likelihood of success on merit.
4. That the Respondents' and or their agents have threatened to evict and interfere with the suit property, wherein they have destroyed my crops and I have reported the matter to the Police vide CRB 383/2019 Kiryandongo – malicious damage to crops.
5. That the Respondents and or their agents have also committed several acts of criminal trespass, assaults and threatened violence, which I have also reported vide Kiryandongo CRB 18/2020.
6. That my enjoyment of the suit premises has been disturbed by their respondents and their agents and servants.
7. That if the Respondents are not stopped by allowing this application the main suit will be rendered nugatory.

8. That the balance of convenience weighs heavily in favour of a grant of a temporary injunction restraining the Respondents by themselves, or through their agents from interfering with the applicant's occupation and use of the suit property.
9. That it is in the interest of justice that this application be allowed.
10. That I swear this affidavit in support of the chamber summons craving the indulgence of this Honourable Court to grant the prayers therein.
11. That all the facts hereto deponed are true and correct to the best of my knowledge and belief.

The Applicant was represented by Mr. Richard Okalany. The Respondents, though served neither sent counsel nor appeared in court. As such the application proceeded *ex parte*.

### **Submissions by the Applicant**

Mr. Richard Okalany for the Applicant submitted that the case before the court was a fit and proper one for which I should grant the Applicant a temporary injunction.

He submitted that the law on the grant of temporary injunction was stated in the case of *E.L.T Kiyimba Kaggwa Versus Haji Abdu Nasser Katende [1985] HCB 43* where **Odoki J** (as he then was) laid down the rules for granting a temporary Injunction; thus: -

**“The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of. The conditions for the grant of the interlocutory injunction are;**

- i. **Firstly, that, the applicant must show a prima facie case with a probability of success.**
- ii. **Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.**
- iii. **Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.”**

According to this case, the applicant must satisfy the following grounds before an injunction is granted:

1. There must be a prima facie case;

2. There must be proof that the applicant will suffer irreparable injury if the injunction is not granted;
3. In case the court is in doubt then the injunction is decided on who would suffer greater injustice if the injunction was denied.

It was applicant's case that the respondents sold him the suit land but they have turned around to claim for the land. He submitted that on several occasions the Respondents have trespassed on the land and that he has reported a number of cases of trespass and the police station against the Respondents. He submitted that the Respondents are men of straw, who have no capacity to compensate him in damages if court was to give judgment in his favour. He submitted that based on this, he would suffer irreparable injury if the injunction was denied.

### **Consideration of the Application:**

Section 38 of the Judicature Act grants the High Court power to grant injunctions if the ends of justice so require. An injunction is an equitable remedy by its nature and will only be granted if specific conditions are met. As the law has evolved, the modern tendency is to grant an injunction if the justice of the case of the case will be served by interrogating the three major conditions for the grant of injunction which for emphasis are: -

1. There must be a prima facie case;
2. There must be proof that the applicant will suffer irreparable injury if the injunction is not granted; and,
3. In case the court is in doubt then the injunction is decided on who would suffer greater injustice if the injunction was denied.

In the case before me, the Applicant is the owner and purchaser of the suit land. He is in possession and is gainfully using the land. The Respondents on the other hand, are not in possession of the land and are allegedly using unlawful means to enter on the land. The Respondents are also men of humble means, who are unlikely to be in position to compensate the Applicant in damages should judgment be given in his favour. Looking at all the above considerations, the equities and balance of convenience will better be served by an injunction restraining the Respondents from interfering with the Applicant's quite enjoyment of the suit land until the suit is determined.

**Decision**

Consequently, I grant the Applicant a temporary injunction stopping the respondents or indeed, anybody acting on their behalf from interfering or interrupting the Applicant's use and quiet possession of the land comprised in Kiryadongo district Bunyoro Ranching Scheme, ranch 5B6, 5B7, 5B8, 5B18, 5B 30, Street 31/4/21 scale 1/4/21 MM/8560, measuring approximately 190 acres and Rach 5b, 5B7, 5B8, 5B30 Street 31/4/21 MM/8560 measuring approximately 93.7 acres. The Applicant will have costs of the Application.

It is so ordered.



Gadenya Paul Wolimbwa

**JUDGE**

20<sup>th</sup> February 2020.

Mr R. Okalya for the Applicant.  
Ruly read in open court  
in the presence of [unclear]  
and the court clerk - Okyga.



27/2/20