

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL APPEAL NO. 0091 OF 2022

(ARISING FROM MISC. AAPLN NO. 0068 OF 2022)

5 **(ARISING FROM HCT – 01 – CV – CS – NO. 046 OF 2022)**

(ARISING FROM ADMINISTRATION CAUSE NO. 18 OF 2022)

1. MAKUNE JAMES
2. HASAN MUHENDA
3. ALIJUNA GEOFREY ::: APPELLANTS

10 **VERSUS**

1. BULIKARARA JOSEPH
2. ATUGONZA RONALD ::: RESPONDENTS

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

15 This ruling arises from an appeal brought under Article 126(2)(e) of the 1995 Constitution, Section 98 and 79(1)(b) of the Civil Procedure Act Cap. 71, Section 33 of the Judicature Act and Order 50 Rule 8 of the Civil Procedure Rules seeking orders:

20 **(i) That the learned Deputy Registrar’s Order dismissing Misc. Appln No. 0068 of 2022 was contrary to the facts and the law governing temporary injunctions and ought to be set aside.**

(ii) That a temporary injunction be issued maintaining the status quo on the suit land and restraining the Respondents, their workmen, agents

25 **and servants from carrying out any activity on the suit land, fencing off, evicting, cultivating, disposing of or otherwise interfering with the applicant's possession of the suit land until the disposal of the main suit.**

(iii) That the costs of taking out the application be granted to the applicant.

The grounds of the application are contained in the supporting affidavit of Makune
30 James, the 1st Appellant stating:

1. That the appellants filed Misc. Application No. 0068 of 2022 seeking a temporary injunction against the Respondents to maintain the status quo on the suit land and restrain the Respondents, their workmen, agents and servants from carrying out any activity on the suit land, fencing off, evicting,
35 cultivating, disposing of or otherwise interfering with the applicants' possession of the suit land until the disposal of the main suit.

2. That the said application was dismissed by the Assistant Registrar on 1st September 2022 and being dissatisfied with the said ruling, they filed this appeal on grounds that:

40 (i) *The learned Deputy Registrar erred in law and fact in ignoring the fact that in rejecting the application for a temporary injunction, the appellants who are in possession of the suit land were subjected to danger of being evicted.*

(ii) *That the learned Deputy Registrar erred in law and fact when he
45 dismissed the appellants' application for a temporary injunction on the sole basis that the Respondents had letters of administration.*

(iii) *That the learned Deputy Registrar erred in law when he failed to and or refused to preserve the subject matter till the logical conclusion of the main suit.*

50 (iv) *That the learned Deputy Registrar erred in law and fact when he dismissed the appellants' application for a temporary injunction which had the consequential effect of determining the question of ownership of the suit land.*

55 (v) *That learned Deputy Registrar erred in law when he ignored and misapplied the facts of the case and the law on temporary injunctions and found that the conditions for the grant of a temporary injunction all favoured the dismissal of the application.*

60 (vi) *That the learned Deputy Registrar misled himself about the law governing temporary injunctions and that it is in the interest justice that this application is allowed.*

3. That from the affidavit in support of Misc. Application No. 068 of 2022, it was clear that the appellants had serious triable issues including questions about ownership of the suit land which they acquired by a deed of gift and questions about the letters of administration secured by the Respondents.

65 4. That the status quo that court was to maintain is that the appellants would keep in occupation of the suit land which they held since 2014 and 2018 respectively until the disposal of the suit. That the change of the status quo by the respondents or any attempt to do so amount to rendering the suit nugatory. That the learned registrar caused paralysis of the appellants' 70 livelihood since the use of their land was under threat due to the wrongful sale and the appellants continue to live with such threat. That it is fair, just and equitable that the appeal is allowed with costs.

The application was served upon the Respondents and when it came up for mention on 11th November 2022, the Respondents' Counsel was present and asked 75 for time to file an affidavit in reply and court gave him up to 18th November 2022

to have filed and served the Respondents' affidavit in reply plus the written submissions. The Respondents' Counsel did not comply as directed by court as such I will proceed to consider this application exparte.

Issues/grounds:

- 80 **1. Whether the Learned Registrar erred in law and fact when he dismissed the appellants' application for a temporary injunction?**
- 2. Remedies available to the parties.**

CONSIDERATION OF THE APPLICATION:

Order 50 Rule 8 of the Civil Procedure Rules grants any aggrieved party by the 85 decision of the registrar a right to appeal against the same to the Judge.

The appellants filed Misc. Application No. 0068 of 2022 for an interlocutory injunction pending the disposal of the main suit.

It was contended by the appellants that their father, the late Gerson Bulikarara died testate in 2019 and left land of about 2 acres developed with a temporary house at 90 Kyamiyaga, Kijaguzo Parish, Kakabara Sub County, Kyegegwa District and he was survived by 6 children. That prior to his death, on 26th March 2014, the deceased gave a piece of land forming part of the 2 acres as a gift *inter vivos* to the 1st appellant and the 1st appellant reported the said acquisition to the Sub County. That the 2nd Respondent has since entered the suit land and removed boundary 95 marks which prompted the 1st appellant to open a case against him in L.C.II Court which was determined in favour of the 1st Appellant. It was further contended that on 16th January 2018, the late gave a piece of land to the 2nd appellant and in June 2018 the deceased gave 2 plots to the 3rd appellant.

It was furthermore contended that the Respondents applied and were granted letters 100 of administration over the estate on the 10th of May 2022. That the Respondents made false claims that land given to the appellants was included in the petition as forming part of the estate of the late and they concealed the fact that the late left a will.

That on the 21st May 2022, the Respondents in the company of a gang of people 105 entered the appellants' land and purportedly demarcated it under the pretext that it formed part of the estate. That the Respondents and their agents cut down the appellant's crops to wit, maize, banana, cassava and eucalyptus trees; that the Respondents' acts threatened the appellants' quite occupancy of their land.

In response the 1st Respondent averred that he is a biological child of the late 110 Bulikarara Gerson and thus has every right to utilize his father's estate until the same is lawfully distributed. That he and the 2nd Respondent were appointed as administrators of the estate of the late but the appellants had made the administration difficult. That the application sought by the appellants had the effect of disposing off the merits in the main suit. That the appellants' application had no 115 merit and the same should be dismissed.

The Learned assistant registrar made a ruling dismissing the application and in his ruling he stated that:

120 *“This Court has looked at the grounds of the application, the affidavits in support and the reply and the submissions and find that; 1. The Respondents who are the duly appointed administrators of the deceased's estate on the authority of the grant have a good case visa vis the applicant's interest. Unless the grant is revoked, the applicants have no authority to curtail the Respondent's activities on the estate. They (Applicants) had time to block*

125 *the grant but did nothing. It is clear based on the grant in place, the Respondents have a prima facie case. 2. The balance of convenience favours the Respondents who have been authorized by Court to deal with the estate. 3. The Applicants will not suffer any irreparable loss by not granting them an injunction against the Respondents. The application lacks merit and is accordingly dismissed.*

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Order 41 Rule 1 provides for cases in which temporary injunction may be granted and states that:

Where in any suit it is proved by affidavit or otherwise—

135 *(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; 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,

140 *the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders*

In **Ndema Emanzi Rukandema v Mubiru Henry MA No. 225 of 2013**, the Hon. Lady Justice Tuhaise held that:

145 *“Court’s duty is only to preserve the existing situation pending the disposal of the substantive suit. In exercising this duty, Court does not determine the*

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

The appellants contended that the prevailing status at the time was; they were in possession of the suit land and had developments thereon to wit, a banana plantation, maize, cassava crops and eucalyptus trees which the respondents destroyed and threatened to destroy more if the injunction was not granted. These facts were not denied by the Respondents in the affidavit in reply.

The plaint, that was filed earlier, states in paragraph 4 (l), (m) & (n) that the defendants had already demarcated the suit land and cut down trees and crops on the land, barred them from using the land, and they had put it on the market for sale. I thus take the view that the prevailing status-quo at the time the Misc. Application No. 068 of 2022 was heard and disposed of, was that none of the appellants was in possession.

The grounds which must be proved before an injunction is granted were stated in **Kiyimba Kaggwa Vs. Hajji Abdul Nasser Katende (1985) HCB page 43**, thus:

- (a) Firstly, that the applicant must show a prima facie case with a probability of success.
- (b) Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for in damages.
- (c) Thirdly, if the court is in doubt, it would decide an application on a balance of convenience.

The applicant must show a prima facie case with a probability of success. At this 170stage, court does not delve deep into the merits of the case to see if the Applicant has a plausible case. Rather, court determines that the claim is not frivolous or vexatious and that there is a serious issue to be determined at the trial. Court is meant to examine the pleadings to establish whether on the face of it, the applicant's claim merits judicial consideration and it is not a mere legal moot 175(See **Daniel Mukwaya v Administrator General HCCS 630 of 1993 (Unreported)**). The appellant contended in the main suit that the grant of letters of administration over the estate of the late was fraudulently secured by the Respondents since he died testate and they attached a copy of last will of the late. That further, the Respondents included personal properties which were given out 180by the late to the appellants as forming part of the estate of the late and attached agreements where they were given such land. It is contended that the appellants were never engaged in the process of getting letters of administration to the estate. In my view, the facts presented by the appellants would invite serious judicial consideration. In my view the appellants presented a prima facie case with a 185probability of success and this ground was therefore proved.

Such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for in damages. This does not mean that there must not be physical possibility of repairing the injury but means that the injury must be a substantial or material one 190that is one that cannot be adequately compensated for in damages. (See **Kiyimba Kagwa Supra**). The appellant in this case averred that they were given the pieces land in issue by the late and attached agreements to that effect. That they had developments on the land including crops and eucalyptus trees. That the Respondents and their accomplices raided their gardens and took away their food

195stuffs and have since stopped them from using the same. That the Respondents had put the estate and their land on sale posing a big threat to their livelihood. The Respondents did not deny these facts. They contended that they had the right to use the estate the way they desired until the distribution is done. I believe the acts of the Respondents poses an imminent danger to the appellants' portions which they 200claim to have been given by the late and on which they have developments. The appellants also contended that they had gardens on the same land and it is where they were deriving means of sustenance. In the premises I find that this ground was proved by the *appellants*.

Balance of convenience: The concept of balance of convenience was expounded 205in **Jayndrakumar Devechand Devani Vs. Haridas Vallabhadas Bhadresha & Anor, Civil Appeal No. 21 of 1971** where the Court of East Africa observed inter-alia that:

210 *Where any doubt exists as to the plaintiff's right, or if his right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the defendant, on the one hand, would suffer if the injunction was granted and he should ultimately turn out to be right, and that which the plaintiff on the other hand, might sustain if the injunction was refused and he should 215 ultimately turn out to be right. The burden of proof that the inconvenience which the plaintiff will suffer by the refusal of the injunction is greater than that which the defendant will suffer, if it is granted, lies on the plaintiff."*

In **KiyimbaKaggwa v Haji A.N Katende (supra)** court held that the balance of convenience lies more on the one who will suffer more if the respondent is not
220restrained in the activities complained of in the suit.

Therefore, in arriving at the proper decision whether the balance of convenience favours the applicant or not, court must weigh the loss or risk at exposure for the applicant in the event the injunction is denied and the damage which could be suffered if it is not granted. In my view court should equally examine the prejudice
225and the injury the respondent is likely to suffer if the injunction is granted and the possibility of other avenues of addressing the applicant's fears and claims without necessarily granting the injunction.

In this case the applicant contended they were in possession of the suit portions of land which the claim was given by the late when he was still living. That they have
230the developments thereon including a banana plantation and other seasonal crops. They further averred that there were fears of sharing out their land and a possibility of sale of the same by the Respondents as administrators which would be to their detriment. They thus prayed that the injunction is granted maintaining the status quo until the determination of the main suit. I believe the balance of convenience
235favors the appellant who stand to be prejudiced if their portions they received from the late are shared and sold.


Court orders should not be made in vain. Based on the complaint that was filed earlier, the Respondents had already demarcated the suit land and cut down trees and crops on the land, barred the appellants herein from using the land, and the Respondents
240had put the suit land on the market for sale; thus, the prevailing status-quo at the time Misc. Application No. 068 of 2022 was heard and disposed of, was that none of the appellants was in possession. Therefore, the only acts that can be stopped relate to sale or disposal.

I therefore allow the appeal, set aside the ruling and orders of the learned Assistant
245Registrar and instead order as follows:

1. **That a temporary injunction is hereby granted restraining the Respondents herein or any person from selling, buying, mortgaging, disposing of, distributing, sharing, leasing, or otherwise dealing or transacting in any part of the estate or land attributed to the estate of**
250 **the late Gerson Bulikarara, pending the final determination of Civil Suit No. 046 of 2022 that has been filed in the High Court at Fort-portal.**

2. **Each party shall bear own costs.**

255I so order.



Vincent Wagona
High Court Judge
FORT-PORTAL
26023.01.2023