

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT LUWERO**  
**CIVIL APPEAL NO.0022 OF 2023**  
**(Arising from Mics Application No. 33 of 2022)**  
**(Arising from Civil Suit No. 0796 of 2022)**

1. **PAUL RWABUTARA**  
2. **PASCAL RWAKAHANDA**  
3. **PATRIC NDAHURA**  
4. **STEPHEN RWANKORE ..... APPELLANTS**

**VERSUS**

1. **NATIONAL FORESTRY AUTHORITY**  
2. **COMMISSIONER LAND REGISTRATION .....RESPONDENTS**

**BEFORE LADY JUSTICE HENRIETTA WOLAYO**

**RULING**

Introduction

1. On 4.5.2023, the appellants moved court by Notice of Motion under Section 98 and 79(1)b of the Civil Procedure Act, Section 33 of the Judicature Act and Order 50 rule 8 the Civil Procedure Rules on 4.5.2023 for orders that:
  - a) The Ruling and Orders of the Assistant Registrar (Her Worship Nakadama Esther Mubiru) dated 3.3.2023 in Miscellaneous Application No. 33 of 2022 be set aside.
  - b) A temporary injunction be issued maintaining the status quo on the register land comprised in **Block 160, LRV 346-12, Volume HQT385 Folio 12, Plot 27, Volume HQT 385 folio 11, Plot 26, Volume HQT385 Plot 25 and Volume 3476 Folio 12, Plot 24, Naksaongola District** and restraining the respondents, their workmen, agents and servants from carrying out any eviction, fencing off and disposing of or otherwise interfering with the

Appellants' possession of the suit until determination and disposal of the main suit.

c) Costs of this application be provided for.

2. The grounds of appeal are contained in the affidavit in support of the application. I have paraphrased these grounds because they are repetitive.

a) The learned assistant registrar did not properly interpret the law and evaluate the evidence thereby failing to make orders as to the maintenance of the status quo;

b) The learned assistant registrar did not properly evaluate the evidence before her when she ignored the fact that the applicants were in active possession of the suit land thereby giving the first respondent a green card to the first respondent to evict the applicants.

c) The learned assistant registrar erred in law and in fact when she relied on evidence and facts that were not produced by the appellants thereby occasioning a miscarriage of justice.

d) The learned assistant registrar erred in law and fact when she found the balance of convenience in favor of the first respondent despite the applicants being registered proprietors and in active possession of the suit land.

3. In opposition to this application, the first Respondent filed an affidavit in reply deposed by Namara Caroline wherein she raised a preliminary objection that the application had been instituted under wrong procedure as a civil appeal instead of an application. She further deposed that;

- a) The first respondent has a statutory mandate to protect and manage the suit land from illegal activities of the applicant and that the learned registrar did not determine the proprietorship of the suit land as such can only be determined at trial.
  - b) The applicants continue to damage the suit land with their activities contrary to the court order vide Misc Application No.33 of 2022 and that the temporary injunction sought was in bad faith and an abuse of court process as it gave the applicants liberty to destroy the status quo while restraining the first respondent from protecting the reserve on the suit land.
  - c) It is in the interest of justice for court not to grant this application as restraining the first respondent will cause irreparable damage to the forest reserve and the applicant's possession on the suit land is illegal and amounts to encroachment on Kasagala forest reserve since the suit land had never been degazetted.
  - d) The first respondent's statutory mandate is to protect and manage the suit land from illegal activities of the applicants. The appellants filed their affidavit in rejoinder deposed by Sarah Kisubi wherein she reiterated her averments in the affidavit in support.
4. At the hearing of the appeal, parties were directed to file their written submissions. Both the appellants and the first Respondent filed their written submissions on 01/08/2023 and 01/11/2023 respectively which submissions I have carefully considered.

### Background facts

5. On 26.09.2022, the appellants sued the Defendants (first and second Respondents) vide **Civil Suit No. 0796 of 2022** for trespass on suit land comprised in **formerly Buruli Block 169, Plot 9 at Kyamusobe LRV 3476 Folio 12** seeking for declarations that the plaintiffs are the proprietors of the suit land and that their acts of fencing the suit and declaring it a forest reserve are illegal and amount to trespass, a permanent injunction and an order for eviction. The first respondent denied the claim and averred that the applicants had encroached onto Kasagala Forest Reserve Land.
6. On 9.11.2022, the plaintiffs filed **Miscellaneous Application No. 33 of 2022** for a temporary injunction restraining the first and second defendants from entering, encroaching, trespassing and dealing with the suit land now comprised in **Buruli Block 160, LRV 346-12, Volume HQT385 Folio 12, Plot 27, Volume HQT 385 folio 11, Plot 26, Volume HQT385 Plot 25 and Volume 3476 Folio 12, Plot 24, Nakasongola District** until the main suit is heard and determined. The assistant registrar dismissed the application on 3.3.2013 hence this appeal.

### Whether the application was filed under wrong procedure

7. Section 76 (1) (h) of the Civil Procedure Act provides that an appeal shall lie from any order made under the rules from which an appeal is expressly allowed by the rules except as otherwise, maybe provided for in this Act or any other law.

8. **Order 50 rule 8** of the Civil Procedure Rules provides for the right of appeal to a party aggrieved by the decision of the registrar. The appellants were aggrieved by the decision of the learned assistant registrar made under Order 41 of the Civil Procedure Rules therefore, as the appeal is properly before me, the preliminary objection is overruled.

Re-evaluation of evidence

9. The duty of the first appellate court is to re-evaluate the evidence and arrive at my own conclusions on issues of fact and the law. The often cited precedent **Supreme Court Civil Appeal No. 17 of 2002 Fr. Narcensio Begumisa v Erci Tibegaga** refers. Counsel for the first respondent raised a preliminary objection that I want to dispose of first before canvassing the merits of the appeal.

10. It is not disputed that the appellants are registered proprietors of the suit property and what is in dispute is that the said property is part of the forest reserve. A lease agreement attached to the application for a temporary injunction shows that in 2005, Nakasongola District Land Board leased the suit land measuring 125 hectares to Eridadi Kigayaza who obtained a certificate of title for the same on 1.12.2005.

11. In 2011, by a sale agreement, the said Kigayaza sold his interest to four appellants (Paul Rwabutara, Pascal Rwakahanda, Stephen Karugaba, and Ndahura Patrick). It is therefore evident that the applicants are currently in constructive and physical possession of the suit property.

12. Paragraph 7 of the affidavit of Paul Rwabutara in support of the chamber summons shows that the appellants are carrying out the following activities on the suit land, namely: sugar cane growing, cattle and goat rearing, cultivation of cassava, mangoes and tree planting. Counsel for the appellants submitted that the learned assistant registrar imported her own facts in her Ruling which she found that the appellants were engaged in construction, charcoal burning, timber cutting. I found no mention of specific destructive activities in the affidavit in reply of the first respondent and therefore the learned assistant registrar erred when she included facts not pleaded by the first respondent. In the absence of hard evidence that the appellant were degrading the forest, I find that they were engaged in productive economic activities on the suit land.
13. Rwabutura further deposed in his supplementary affidavit in support of the chamber summons that on 8.11.2022, police officers and agents of the respondents approached him and forbade him from using the land. They also served him with an eviction notice which I failed to find on the record.
14. Regarding the case for the first respondent, their main point is that the suit land is part of a gazette forest reserve known as Kasagala Forest Reserve which must be preserved.
15. The key facts that emerge from the affidavits of the parties are that the appellants were in possession when the application for a temporary injunction was heard by the assistant registrar while the first respondents was not.

#### Resolution of the appeal

16. As submitted by counsel for the applicants, citing **Byaruhanga & two others v Kabagahya MA NO. 564 of 2016** citing with approval **Commodity Trading Industries v Uganda Maize Industries and another [2001-2005] HCB 118** where the court held, inter alia, that the purpose of a temporary injunction is to protect the property from waste, alienation , damage regardless of the litigants' claim to it, pending determination of the suit.

17. I also agree with the principle in **Daniel Mukwaya v Administrator General HCCS NO. 630 of 1993**, cited by counsel for the respondent, that a temporary injunction is to prevent the ends of justice from being defeated.

18. It is trite law that before the court grants an order for a temporary injunction, the following conditions as laid out in the case of **Kiyimba Kagwa v Katende [1985] HCB 43** must be evident from the facts of the case:

- i) There is a prima facie case with a probability of success.
- ii) Evidence that the applicant will suffer irreparable damages which would not be adequately compensated by an award of damages if the temporary injunction is denied.

19. If the court is in doubt, it may grant an application on the balance of convenience.

#### Prima facie case

20. With regard to whether there exists a prima facie case, counsel for the applicant submitted that the main suit has a probability of success on the basis the applicant has been in active possession of the suit land

for eleven (11) years. Both parties claim a legitimate interest in the property which is the main issue in the case. For these reasons, the learned Ass. Registrar rightly declined to venture into the merits of the case.

### Irreparable Damage

21. Irreparable damage or injury is defined to mean damage or injury which must be substantial or a material one, that is to say; one that cannot be adequately compensated or atoned by an award of damages. Kwesiga Joseph on behalf of the first respondent deposed that the land was resurveyed in 2021 and it was ascertained that it was part of Kasagala forest reserve. Evidently, this is a triable issue that cannot be factored in determining whether an application for temporary injunction should succeed.
22. The applicants have been in possession since 2011, and through their predecessor in title, since 2005 when he acquired a lease. They have been carrying out economic activities since then, and would suffer irreparable damage if the injunction is not granted. Furthermore, there is a risk the first respondent will disturb the appellants' possession and use of the suit land if the injunction is not granted thereby depriving them of the use of the suit land.
23. The learned trial magistrate therefore erred which she found in favor of the first respondent yet the appellants had already invested in the suit land unlike the first respondent who waited for seventeen years to attempt to re-enter possession.



24. Regarding the submission of counsel for the appellants that the learned trial magistrate delved into the merits of the suit when she found that the suit land is a forest reserve and that therefore it will be damaged by the appellants if an injunction is not granted, I find merit in this submission. On the face of it, the appellants are registered proprietors and whether they are on forest reserve land is a question of fact to be determined during the trial.

25. In the result, I allow the appeal and set aside the Ruling of the learned assistant registrar . I make the following orders:

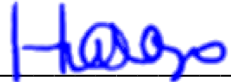
- a) The appellants will continue in possession of the suit land undisturbed.
- b) The appellants are forbidden from carrying out any further construction of permanent structures on the suit land.
- c) The appellants are forbidden from engaging in charcoal burning and felling trees on the suit land.
- d) The appellants shall restrict their economic activities to cattle and goat rearing; cultivation including tree planting; cultivation of crops such as cassava, maize, sugarcane, mango and any other crops on the suit land.
- e) The first respondent is restrained from interfering with the appellants' use of the land as listed above.
- f) The second respondent, Commissioner Land Registration is restrained from effecting any changes in the registration of the appellants as

proprietors until the determination of Civil Suit No.HCT-17-LD-CS-0212-2022.

g) The applicants will take immediate steps to take out a summons for directions so that the case is scheduled in preparation for hearing in the first quarter of 2024.

h) Costs shall be in the cause.

**DATED AT LUWERO THIS 30TH DAY OF NOVEMBER 2023.**

  
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**LADY JUSTICE HENRIETTA WOLAYO**

**Legal representation**

Kalenge, Bwanika, Kisubi & Co. Advocates for the appellants

Legal Department of the National Forestry Authority for the First respondent.