

THE REPUBLIC OF UGANDA
IN TH HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0126 OF 2022
(ARISING OUT OF CIVIL SUIT NO. 0075 OF 2022)

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- 1. JANET BYAHUKA
- 2. STELLA BYAHUKA
- 3. EDITH BYAHUKA
- 4. ROSE BYAHUKA
- 10 5. DAN BYAHUKA
- 6. DAVID BYAHUKA
- 7. JOHNSON KAIJA
- 8. EDWARD KAIJA
- 9. EDIN BATEGEKA BYENKYA
- 15 10. SOLOME BAKAHUNA APPLICANTS

VERSUS

MOSES MUTAGWA BYAHUKA RESPONDENT

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BEFORE: Hon. Justice Isah Serunkuma

RULING

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This was an application brought by Chamber Summons under **Order 41 rules 1(a) and 9 of the Civil Procedure Rules S1 71-1** for a temporary injunction to be issued against the Respondent to the extent of orders that;

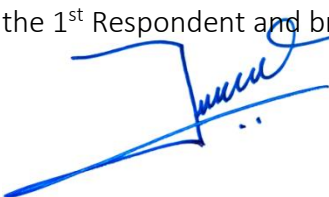
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- a. A Temporary Injunction doth issue against the Respondent to restrain him and / or his agents or anyone claiming title under him from interfering with any property of the Estate of the Late Erisa Byahuka until the determination of the main suit.

- b. Costs of the application.

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The grounds for the application are set out in the Chamber Summons and the affidavit sworn by the 1st Respondent and briefly are;

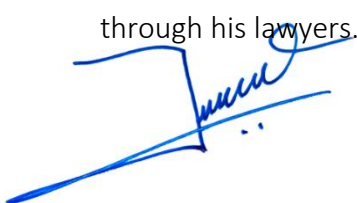


- a. The parties to this Application are all children of the Late Erisa Byahuka and beneficiaries of his estate.
- b. That sometime in 2020, the Applicants discovered that the Respondent applied and obtained Letters of Administration to the Estate of the Late Erisa Byahuka without their knowledge and consent.
- 5 c. That the Respondent has ever since obtaining the said Letters of Administrators never distributed the said Estate to the beneficiaries.
- d. The Respondent has never filed an inventory in Court in regard to the said Estate and has mismanaged it.
- 10 e. The Respondent has disposed of part of the Estate to third parties for his own personal benefit and continues to dispose of the said Estate to the detriment of the Applicants.
- f. The Applicants fear that the Respondent may dispose of the entire estate without them benefitting at all.
- g. That there is Civil Suit No. 0075 of 2022 filed before this Honorable Court seeking for various declarations including revocation of the said grant and permanent injunction restraining the Respondent from interfering with the estate.
- 15 h. That if a temporary injunction is not issued against the Respondent and his agents from further dealing with the Estate in any way, the suit shall be rendered nugatory and the applicants shall suffer irreparable loss.
- 20 i. The pending suit has a high chance of probability of success.
- j. That the issue of the Chamber Summons shall serve to maintain the status quo until the determination of the main suit.

Grounds opposing the application

In response to the above, the Respondent swore an affidavit in Reply by which he stated that;

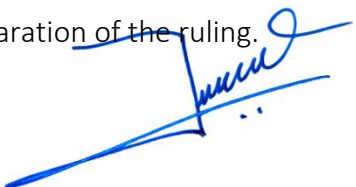
- 25 a. The application is incurably defective and that he would raise a preliminary objection through his lawyers.



- b. That upon the death of his late father, Erisa Byahuka, the last funeral rights were held at Kigoroby Hoima District in 1986 and on that occasion, he was unanimously chosen as the customary heir and authorised to obtain letters of administration.
- c. That some of the properties being referred to in the affidavit in support of the application did not form part of the late Erisa Byahuka's estate.
- d. That the properties comprised in LRV 724 Folio 24 Plot 3 Bujumbura Road Hoima and at Mboira-Kigumba District were lawfully disposed off in agreement with all the beneficiaries and the proceeds evenly distributed and accounted for.
- e. That the land comprised in Kigoroby measuring 22 Hectares with burial grounds which was listed among his father's property actually belongs to the estate of his late grandfather and is not part of the estate.
- f. That part of the land at Mboira- Kigumba was leased out with the consent of the beneficiaries and the proceeds duly distributed among the beneficiaries as well as the remaining part that had not been leased out.
- g. That he started managing the estate of the Late Erisa Byahuka after acquiring letters of administration and he filed an inventory.
- h. That the paternity of the 4th and 6th Applicants is doubted and it is for that reason that they were excluded in the distribution of the estate pending receipt of the DNA results.
- i. That he has always fairly distributed all proceeds of the estate and fairly managed the estate of his father.
- j. That the suit against him is frivolous and the applicants have not fulfilled any of the conditions for grant of the temporary application.

Representation:

The Applicants were represented by **Mr. Ahumuza Edward of M/s J.P Baigana & Associates Advocates** while the Respondent was represented by **Mr. Christopher Mwebaze of M/s Mwebaze & Co. Advocates**. Both parties filed written submissions which the Court has considered in preparation of the ruling.



Ruling on preliminary objection.

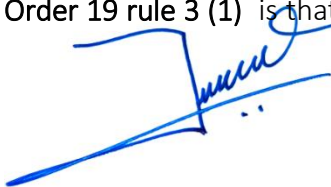
Counsel for the Respondent raised a preliminary objection in their submissions to the extent that the 1st Applicant swore an affidavit on behalf of the other applicants without the written authorization do so. They submitted that this contravenes Order 1 rule 12 (2) of the Civil Procedure Rules which provides that authority granted to one party to a suit to appear, plead or act on their behalf shall be in writing and filed in the case. The Respondent's Counsel submitted that an affidavit sworn on behalf of others without showing that the deponent had authority to swear on behalf of others is defective and renders the application nugatory. The respondents referred to the case of **Joy Kaigana v. Dabo Boubou [1986] HCB 89.**

10 In response, counsel for the applicants submitted that the 1st applicant swore the affidavit in only her capacity and not on behalf of others and that the case referred to by the respondent's lawyers was inapplicable as it is meant to apply where one swears on behalf of others, which wasn't the case here. They referred to the case of **Erias Sewava & 18 Ors v. Richard Male Mukasa & 2 Ors; Revision Application No. 0034 of 2018** in which the 11th Applicant had sworn the affidavit only and
15 in his own capacity and court held that no authority was needed as he swore in his own capacity and not on behalf of other people.

Further, they submitted that even if court found that the affidavit was sworn on behalf of others, it would still not need written authority given that the parties have the same interest in the case. They relied on the authority of **Bankore Ltd v. Simbamanyo Estates Limited; Misc. Applic. No. 0645**
20 **of 2020** in which court held that in affidavits, the consideration is knowledge and belief of the deponent rather than the authorization by a party to litigation. It was further held that there is no rule of law or procedure requiring the said authorization for affidavits and that the same had only to apply for representative suits and that for parties with the same interest in the litigation, an affidavit by one of them will suffice. On that basis, they prayed for the preliminary objection to be
25 overruled.

I have considered the submissions of both parties and come to the following decision;

Affidavits are provided for in **Order 19 of the Civil Procedure Rules SI 71-1.** The general rule in **Order 19 rule 3 (1)** is that affidavits shall be confined to such facts as the deponent is able of his



or her own knowledge to prove, except in interlocutory applications where statements of his or her own belief may be admitted, provided the grounds for the said belief are disclosed thereof. This therefore means that the sufficiency of an affidavit is considered on the basis of whether whoever swears it has knowledge of the facts they are deponing rather than just being hearsay.

5 In the case of **Centenary Rural Development Bank Limited vs. Wakabi Martin; HCMA No. 0423 of 2020** where the issue was whether the affidavit in reply of the respondent was defective for having been sworn by legal counsel rather than the respondent himself, court held that it is permissible for a person not being the respondent (or applicant) to swear an affidavit in support of the application provided that he or she bears knowledge of what is being stated in the affidavit.

10 I agree with the submissions of counsel for the applicant that the affidavit sworn by one of the many applicants suffices for as long as the facts are within the deponent's knowledge. As was held in the case of **Bankore Limited v. Simbamanyo Estates Limited (supra)** to which the applicant referred, affidavits are a form of evidence and therefore the ordinary rules of evidence refer to them. The said rules are limited to facts being within the deponent's knowledge because there is
15 a possibility of being cross examined.

The court distinguished the authority of **Kaingana per Kaigana John v. Bourbon [1986] HCB 59** from the circumstances where a single applicant swears the application and held that affidavits are a form of adducing evidence and would suffice so long as the information therein would be the kind acceptable in evidence. The court also rightly noted that instances where an affidavit has been
20 queried for lack of said written authority is misguided as the said requirement appears to have been developed from the analogy of representative suits, and which analogy is misplaced in rules of evidence.

Accordingly, the preliminary objection raised by the respondent is overruled.

25 I shall now proceed to determining the application for a temporary injunction.

The application for a temporary injunction here was brought on the premise of **Order 41 rule 1(a) of the Civil Procedure Rules** which provides that,



“ where in any suit it is proved by affidavit or otherwise 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 an execution of a decree, 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. “

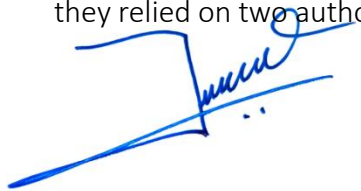
According to **E.L.T Kiyimba Kaggwa v. Haji Abdu Nasser Katende [1985] HCB 43**, the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of. The Court further laid out the considerations for the grant of the temporary injunction and these are;

- a. The application must show a prima facie case with a probability of success.
- b. Such injunction may not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
- c. If the court is in doubt, it would decide the application on a balance of convenience.

a. The application must show a prima facie case with a probability of success.

The applicants’ lawyers submitted that the applicants filed Civil Suit No. 0075 of 2022 for revocation of the letters of administration granted to the respondent, among other declarations sought. The said suit is premised on the allegations that the respondent had acquired the letters of administration without the consent and knowledge of the other beneficiaries, that he had disposed of some of the properties as was shown in the 1st applicant’s affidavit, that the respondent had never distributed the estate of the deceased. He had also neither distributed the said estate to the beneficiaries nor exhibited an inventory contrary to the provisions Section 278 of the Succession Act nor accounted for the estate since obtaining the grant.

The applicants thus submitted that their suit has triable issues to be determined by court and they relied on two authorities; **Nakanjako Francis & Ors v. Peter Senkubuge; HCMA No. 0255 of**



2018 and **Byaruhanga Samuel & Ors v. Kabagahya Harriet; HCMA No. 0564 of 2016**, both of which related to the main suits in which parties sought revocation of letters of administration that were said to be acquired fraudulently. In both cases, the applications for temporary injunctions were granted because the grounds for revocation needed to be considered in a main suit.

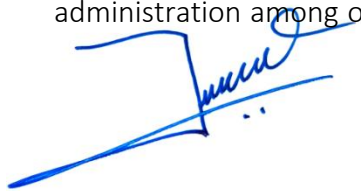
In response, the respondent's lawyers submitted that the respondent is the lawful administrator of the estate and that the applicants' suit is frivolous. He submitted that the applicants have not provided any proof of their allegations and that some of the evidence provided such as being tipped off by the LC1 Chairperson is rather speculative in nature. They referred to **Advocates Coalition for Development & Environment v. Attorney General; Constitutional Petition No. 0014 of 2011** in which the Constitutional Court held that courts must rely on evidence before them and not indulge in conjecture, speculation, attractive reasoning and fanciful theories. It was submitted that the allegations relating to the intended sale of the land in Moira were within this caliber and should be disregarded.

It should be noted that the purpose of a temporary injunction is to prevent the ends of justice from being defeated. See: **Erisa Rainbow Musoke v. Ahamada Kezala [1981] HCB 81**. However, court is cognizant of the fact that sometimes suits are misused for delaying tactics and thus the condition requiring in this case for a prima facie case.

In the case of **Kigongo Edward Nakabale v. Kakeeto and Anor; HCMA No. 0144 of 2017 [2017] UGHCCD 146**, a prima facie case with a probability of success was defined as being, "no more than court being satisfied that the claim is not frivolous or vexatious. In other words, that there are serious questions to be tried".

Further, in the case of **Robert Kavuma v. M/s Hotel International; SCCA No. 008 of 1990** as was cited in **Kisakye Suzan v. Ameru Zadok Olokos & Anor; HCMA No.0142 of 2022, Wambuzi CJ** as he then was emphasized that the applicant at this stage in trial is only required to show that he or she has a prima facie case with a probability of success but not success itself.

In instant case, the applicants filed Civil Suit No. 0075 of 2022 for revocation of letters of administration among other orders on the ground of fraud, the failure to file an inventory in



line with **Section 278 of the Succession Act** and unlawfully dealing with the estate of the Late Erisa Byahuka. All these are serious issues for which evidence must be adduced and a full-blown trial conducted in order to establish whether that is the reality at hand or whether they are false allegations as is claimed by the Respondent.

5 I therefore find that the applicants have fulfilled this condition.

b. Such injunction may not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

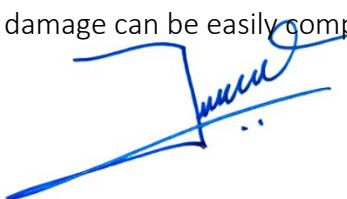
Counsel for the applicants submitted that the applicants had discovered that the respondent was planning to dispose off other parts of the estate by selling off parts to third parties and they were
10 tipped off by the LC1 of Mborya village and that they were concerned that the estate would be completely disposed off without them benefitting. The applicants plead that such damage cannot be compensated by an award of damages if the court does not grant the temporary injunction to prevent the respondent from further interfering with the estate of the Late Erisa Byahuka until determination of the main suit.

15 Counsel for the respondent in turn submitted that the applicants have not specifically demonstrated how they are likely to suffer irreparable damage and in any case, if there is any loss likely to be suffered by the applicants, the same can be comfortably atoned for in terms of damages that court may order at the closure of the suit.

Both parties highlighted the authority of **E.L.T Kiyimba Kaggwa v. Hajji Abdu Nasser Katende (supra)**
20 in which it was held that;

“Irreparable injury does not mean that there must not be physical possibility of repairing the injury but means that the injury must be substantial or material one that cannot be adequately compensated for in damages”.

Applicants submitted that the interference with the Late Erisa Byahuka’s estate is substantial and
25 cannot be adequately compensated by damages while the respondents submitted that any such damage can be easily compensated by damages if it occurs.



In the authority of **Uganda Electricity Transmission Company Limited v. Citibank Uganda Limited & 2 Ors; HCMA No. 01397 of 2022**, while determining the condition of irreparable damage, court held that,

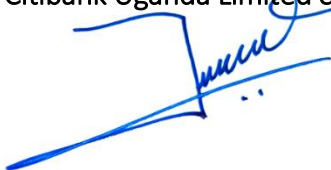
5 *“Irreparable damage has been defined by the Black’s Law Dictionary 9th Edition page 477 to mean;” damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement. “It has also been defined as “loss that cannot be compensated with money”. The purpose of granting a temporary injunction is for preservation of the parties, legal rights pending litigation. The court doesn’t determine the legal rights to the property but merely preserves it in its current condition until the legal title or ownership can*
10 *be established or declared. If failure to grant the injunction might compromise the applicants’ ability to assert their claimed rights, for example when intervening adverse claims by third parties are created, there is a very high likelihood of occasioning a loss that cannot be compensated for with money”.*

15 In this case, if the temporary injunction is not granted, there is a likelihood that the applicants’ rights as beneficiaries of their father’s estate will be compromised. Where the estate is interfered with or further interfered with if it hasn’t been interfered with before, the same shall mean that third party rights shall arise which will make it difficult for the applicants as beneficiaries to enjoy their shares of the estate without any frustration and further legal battles with people, if any, who may acquire their rights from purchasing from the respondent.

20 Accordingly, I find that the damage likely to be suffered in the event that the respondents’ further deals with the estate may not be easily quantifiable or easy to compensate with costs and thus this ground too is fulfilled.

c. If the court is in doubt, it would decide the application on a balance of convenience.

25 The third condition of balance of convenience comes into play when the court is in doubt on any of the condition or the both of them. (See: **Uganda Electricity Transmission Company Limited v. Citibank Uganda Limited & 2 Ors (supra)**).



According to **Gapco Uganda Limited v. Kaweesa & Anor; HCMA. No. 0259 of 2013**, the court held that if the risk of doing an injustice is going to make the applicants suffer then the balance of convenience is in their favour.....”.

5 In **Proline Soccer Academy v. Commissioner Land Registration; HCMA No. 0494 of 2018[2018] UGHCCD 99**, court held that balance of convenience simply means that the applicant has to show that failure to grant the temporary injunction is to his greater detriment.

10 In the instant case, court has established that the first and second conditions are fulfilled and therefore it is not in doubt. Irrespective, even if this condition was necessary, for determination of the application, the same is in favour of the applicants as they are more likely to be inconvenienced where their rights as beneficiaries may be compromised vis -a - vis halting the administration of the estate until the determination of the main suit.

The applicants have fulfilled the conditions for the grant of a temporary injunction and therefore, the application for a temporary injunction is hereby granted.

The costs in this application shall follow the suit.

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It is so ruled and ordered

DATED and delivered on this 27th day of October 2023.

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Isah Serunkuma

JUDGE