

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 717 OF 2012
ARISING FROM CIVIL SUIT NO. 226 OF 2011

MUHUMUZA HILLARY.....APPLICANT

VERSUS

- 1. WENSI NUWAGABA JOHNSTONE**
- 2. HON. AWONGO AHMED.....RESPONDENTS**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

On 05/03/2013, in the course of submitting in *Muhumuza Hillary V Wensi Nuwagaba Johnstone MA 717/2012 arising out of CS 226/2011* which was heard *ex parte*, Counsel Geoffrey Nangumya for the applicant also prayed this court to extend an interim order of 24/06/2011 to cover the 2nd respondent concerning suit property comprised in Block 206 Plot 2641 land at Mpererwe. This prayer was granted by court. The said interim order issued in 2011 had previously been operating only against the 1st respondent/defendant and was to cease on the hearing and disposal of the main application for temporary injunction scheduled to be heard by this court on 28/05/2013. The respondents' Counsel who had not attended the proceedings protested the extension by communicating to the registrar of this court in a letter ref NRS/K/994/2013 dated 19/03/2013 that the extended order conflicted with orders of the Commercial Court earlier issued in respect of the same suit property.

After listening to both Counsel in the presence of parties to the suit, and having perused the Commercial Court records availed by the respondent's Counsel as well as the records of this court on the matter, I have made the following findings:-

Counsel Nangumya for the applicant filed objector proceedings in the Commercial Court in Misc. Application No. 364/2011 challenging the attachment and sale of the suit property pursuant to a Commercial Court order issued in CS 205/2010. The objector proceedings were dismissed with costs on account of the sale having taken place lawfully and the buyer (now 2nd respondent/defendant in MA 717/2012 & CS 226/2011) confirmed as owner and occupant of the suit property. This same factor was conceded to before this court by the applicant and his Counsel in MA 717/2012 where it was averred on oath and submitted that the 2nd respondent had evicted the applicant and was in occupation of the suit premises. This factor was in fact relied on as a basis for adding the 2nd respondent as a co defendant in *CS 226/2011 Muhumuza Hillary V Wensi Nuwagaba Johnstone & Hon. Awongo Ahmed* pending before this court.

The foregoing situation only came to the attention of this court after it had extended the interim order of 24/06/2011 to cover the 2nd respondent. Counsel for the applicant, who was proceeding *ex parte*, did not bring it to the attention of court when he was seeking the extension. The respondents' Counsel was also not in court to raise it.

In my opinion this renders the extension I made on 05/03/2013 to have been redundant and overtaken by events at the time I issued it. If the said facts had been raised before me in the course of entertaining the request by the applicant's Counsel I would not have granted the extension. It is unfortunate that the applicant's Counsel, who is an officer of court, concealed this vital information from this court when he made the prayer for the extension. I condemn Counsel's conduct in the strongest terms. I note from the reading of the order eventually extracted by the registrar of this court that, if executed, the effect would be to bring the applicant who had been evicted back to the suit land. I will not delve into the question of whether the eviction was justified as that will be determined when the main suit is heard on the merits.

In the interests of justice, I have no option but to recall the extension order I made. It should be cancelled as it is a redundant order by virtue of the prevailing *status quo* on the suit land.

Dated in Kampala this 2nd day of April 2013.

Percy Night Tuhaise

JUDGE.