

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

EXECUTION MISCELLANEOUS APPLICATION- NO. 991 OF 2012

(Arising from HCT-CIVIL APEAL-NO.30 OF 2010)

NANKUMBA JANE PROSCOVIA)::: PLAINTIFF/RESPONDENT

VERSUS

SSEKANDI ISAAC)::: DEFENDANT/RESPONDENT

VERSUS

1.NAGADYA SARAH

2. BAMWEYANA KACHWANO

3. ANIFA KANYUNYUZI

4. SEZIBWA FRED

5. KYAMERA KOSMA

6. MUGUME ROBERT

**7. KATEBAKA DONOZIO):::
OBJECTORS/APPLICANTS**

8. SERUGA NASSIBU

9. KASULE FRANCIS

10. SEBUNYA PETER

11.LUKYAMUZI MUGAGA

12. NATUHERA AGNES

RULING:

BEFORE: HON. JUSTICE ELDAD MWANGUSYA

The applicants, who are twelve in number brought this application under Order 22 Rules 55, 57 and 59 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that their property/Bibanja and all the developments thereon (houses) situated at Kigwanya zone, Busega which are on the verge of being demolished to give vacant possession to Nankumba Jane Proscovia vide warrant No. EMA 99/2012 be forthwith stayed and that the costs of the application be provided for.

The application is by a Notice of Motion filed in this court on 2/2/2012 and supported by affidavits of some of the applicants, namely Sezibwa Fred (4th applicant) Kyamera Kosma(5th applicant) Mugume Robert(6th applicant), Seruga Najjibu(8th applicant), Kasule Francis (9th applicant) and Sebuuye Peter(10th applicant) and is based on the following grounds:-

1. That the objectors/Applicants are party to the above suit and have interest in the said land subject to a warrant of vacant possession.
2. That the land subject to the warrant is not in possession of the respondent/applicant or in occupation of the defendant.
3. The objectors vehemently object to the above warrant in so far as the above said land is not liable to the warrant as this land is occupied by many bonafide occupants having purchased Bibanja from different people.
4. The auctioneers are threatening to demolish and destroy properties and thus the objectors shall suffer irreparable damage if the threatened demolition is not halted.
5. The objectors interest or claims are pending investigation before demolition.
6. The objectors have never been a party to the said suit.
7. The objectors application has been presented expeditiously.
8. It is in the interest of justice that the objectors application be granted.

All the affidavits in support of the application indicate that the deponents at various dates and for various amounts bought bibanja from various people and currently occupy their bibanja. According to Sezibwa Fred he bought his kibanja in 2007 from one John Kakooza and constructed a house on it which he occupies with his family. According to Kyamera Kosma he bought his kibanja on 28th August 2005 from one Nicholas Kasinde and he pays Busulu to the Buganda Kingdom who owns the land. Mugume Robert claims to have bought his kibanja in 2005 from one Nyondo Jude following which he constructed a two bedroomed house where he stays with his family. Seruga Najjibu claims to have brought his kibanja in 2005 from one

Sekalala Kasase after which he constructed a house where he stays with his family. Kasule Francis depones that he bought his Kibanja from Kankaka Leonard in 2001 and constructed houses for rent which are still there. Lastly Sebunya Peter depones that he bought his kibanja from one Yasin Mayanja and built a two bedroomed house on it in which he stays with his family. In addition to claiming that they bought the bibanja where they have constructed their houses the deponents claim that they have carried out searches and established that the land belongs to the Buganda Kingdom. They deny any knowledge of either Isaac Ssekandi or Nankumba Jane Proscovia whose attempt to evict them from their bibanja they now object to.

Only NANKUMBA JANE (1st Respondent) filed an affidavit in reply. In her affidavit she depones that she is the Registered proprietor of the suit land comprised in KIBUGA, Block 21 Plots 557, 558 and 559 which is not disputed because according to the judgment of Justice Opio Aweri which was annexed to her affidavit in reply court found in her favour over a dispute between her and Isaac Sekandi who was declared to be a trespasser on the plaintiff's land and kibanja. An order was given for removal of the structures put up by Isaac Ssekandi to allow her to enjoy quiet possession and utilization of her land and kibanja.

Para 8 of the affidavit in reply to the effect

“That the Court declared me as the rightful owner of the suit land and ordered the eviction and demolition of all illegal structures erected there on” is not accurate because the orders which I reproduce hereunder were more specific than what the paragraph seems to suggest. The orders were as follows:-

“(1) A declaration that the Appellant/Defendant was a trespasser on the plaintiff's land and Kibanja.

(2) A permanent injunction restraining the Appellant, or his agents from trespassing the suit land and kibanja.

(3) Removal of structures put up by the Appellant to allow the Respondent enjoy quiet possession and utilization of her land and kibanja (underlined for emphasis)

(4).....

(5).....”

The structures to be removed were the appellants and the claims of the objectors/applicants should not be mixed with those of Isaac Ssekandi who was the appellant referred to in the above orders. Paragraph 9 of the affidavit in reply to the effect “THAT the claim of NAGADYA SARAH, KATEBAKA and all the other objectors is futile on grounds that the court battle lasted six years and at that time, the land had semi detached houses under construction with no occupants at all. They only began to reside thereon recently. Besides, at all material times everyone in the neighbourhood knew of the dispute in court, but they did not rise to declare their interest till now” seems to suggest that there were more structures than Ssekandi's and if the objectors were not party to the dispute in court and were drawn into the dispute when they were

told to vacate their kibanja and their structures were threatened with demolition they are entitled to defend their rights in the disputed land which is the essence of these proceedings. The scope of investigation to be carried out by this court under Order 22 Rules 55, 56 and 57 of the Civil Procedure Rules was defined in the case of **Uganda Mineral Waters LTD V. AMIN PIRANI AND KAMPALA MINERALS LTD** (1994-95) HCB. 87 where Justice Kibuuka Musoke held as follows among others.

- i. The scope of investigation to be carried out by the court under order 19 rr 55(1), 56 and 57 CPR is not for determining ownership being threatened by attachment. At the end of the objector proceedings one of the parties must sue in order to determine the issue of title to the property. An order made under the rule is only provisional and a suit may be brought to claim the property notwithstanding the order.
- ii. The Court must answer the question whether on the date of attachment the judgment debtor or the objector was in possession of the property. If the court finds that it was the judgment debtor who was in possession then the inquiry will proceed no further.

Secondly the court must determine whether the objector held the property on his or her own account or in trust for the judgment debtor or some other person.

In the instant case court is satisfied that the objectors/applicants held property in the disputed land in their own right and independent of the structures belonging to Ssekandi that were supposed to be removed following the court judgment. This finding does not in any way preclude the respondent from taking court action against any or all the objectors to recover any land or kibanja that she feels is hers. As of now given the scope of the inquiry in proceedings of this nature as explained in this ruling the order sought by the objectors/applicants to stay demolition of their houses to give vacant possession of the land to Nankumba Jane Proscovia is granted with costs to the applicant.

ELDAD MWANGUSYA

JUDGE.

21st/01/2013.

21st/01/2013

- Applicant in Court.
- Respondent Absent
- Clerk Milton.

Court:

Ruling read in open chambers.

JOHN EUDES KEITRIMA

DEPUTY REGISTRAR.

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