

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA
MISC. APPLICATION No. 721 OF 2012**

(Arising from Misc. Application No. 614 of 2012, Arising from Misc Application No. 613 of 2012 and Arising from Civil Suit No. 331 of 2012)

1. PATRICK BYAKAGABA 2. KAPERRE RODGERS 3. NAKANWAGI PRISCA 4. NABASSA ALLEN 5. MUROLE TEDDY 6. KARUHANGA K. DENIS 7. PETER O. SANDE	} ::::::::::	APPLICANTS
VERSUS		

1. ATTORNEY GENERAL 2. UGANDA LAND COMMISSION 3. NABAGEREKA DEV'T FOUNDATION LTD	} ::::::::::	RESPONDENTS
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RULING BY HON. MR. JUSTICE MURANGIRA JOSEPH

The Applicants through their lawyers M/S Lubega, Babu & co. Advocates brought this application by Chamber Summons supported by the 7th applicant's affidavit under Order 41 Rules 2, 3 and 9 of Civil Procedure Rules S.I. 71-1, Sections 98 Civil Procedure Act Cap 71 and Section 33 of Judicature Act Cap 13. This application is seeking for orders that;

- 1. The respondents and /or the agents of the respondents be detained in a civil prison for disobedience of the court order.**

2. Further orders be made to vary the Interim court order of injunction granted on the 6th day of August 2012.

3. Costs of the application be provided for

The grounds upon which the application is based are set out in the affidavit of Peter O. Sande the 7th applicant, which were briefly that:-

- i. An Interim Order of injunction in Misc Application No. 614 of 2012, (Arising from Misc. Application No. 613 of 2012, also arising from Civil Suit No. 331 of 2012) was issued by court on the 6th day of August, 2012.**
- ii. Prior to issuing the interim order of injunction both parties (the applicants as well as the respondents parties) had appeared before Court on the 3rd August 2012 where an inter parte application for a Certificate of Urgency was granted and or allowed.**
- iii. The Application for interim order of injunction was adjourned by consent of the parties present in Court to the 7th day of August 2012 at 2:30pm within which date and time the applicants would have filed a possible rejoinder to the respondents' affidavits in reply.**
- iv. Both parties in respect of the suit land were present in court on the 3rd day of August 2012 and all were expected before court on the 7th of August 2012 at 2:30pm.**
- v. The agents of the respondents (most particularly the 3rd respondent) descended on the suit property, broke the main gate to**

the suit entry on the 4th August 2012 Saturday and forcefully occupied the main hall and continued drumming and shouting till late in the night when they appeared to relent and with drew.

- vi. On the morning of 6th August 2012 (Monday) the respondents' agents came back in a high handed manner backed by police (who had issued the applicants an ultimatum to leave by 6 O'clock that very day) threw out the applicants from the suit property where they had been living for around 2 decades- a number of their property vandalized, stolen and lost in the process.**
- vii. The very day (6th August 2012) at midday, the applicants and their advocates rushed and complained to Court after which an interim order of injunction was issued as a first aid justice and duly served before 5pm to the advocates of the 3rd respondent as well as the area DPC of Old Kampala Police station who flagrantly disregarded the order from Court.**
- viii. The advocates and/ or attorneys of the 3rd respondent confirmed in writing to court early on 7th August 2012 that the applicants had been evicted and that the interim order of injunction had become nugatory.**
- ix. That the respondents' action on the disputed suit property is gross contempt to court and a flagrant abuse of court process.**
- x. That it is in the interest of justice that the respondents be detained for disobedience of Court orders and or the agents who include**

directors of the 3rd respondent be given a punitive and or exemplary fine and that further orders be made to vary the court order.

The 1st and 2nd respondents opposed the application by filing an affidavit in reply sworn by Jane Francis Nanvuma a State Attorney in the Attorney General's chambers on 4th September 2012 in which they briefly stated that:-

- 4. "That I know that the applicants in this matter obtained an ex parte interim order against the respondents.**
- 5. That the said interim order dated 6th August 212 was never brought and or served upon the office of the Attorney General, the Principle Legal Advisor of Government, or to the secretary of Uganda Land Commission, who are parties to all the civil proceedings brought by the applicants in this Court.**
- 6. That I know that the Attorney General, the Principle Legal Advisor of Government have never disobeyed any of the terms of the interim order issued by this Court as the applicants tend to insinuate in this application.**
- 7. That I know that the prayers and or orders being sought from this Court by the applicants are purely academic and have no substance..."**

The 3rd respondent also opposed the application by filing an affidavit in reply on 4th September 2012 sworn by Andrew Mukiibi Program Manager of the 3rd respondent in which he briefly stated that:-

1. “.....
2. That on the 3rd day of August 2012, the applicants counsel failed to proceed with the application for an interim injunction vide Misc Application No. 614 of 2012, and sought for an adjournment which was granted by court to the 7th day of August 2012.
3. That several parties who are interested in the matter and not under the direct control of the 3rd respondent continued to demand that the applicant’s and other occupants of the suit property vacate the same through holding demonstrations.
4. That Uganda Police dispatched officers to the suit property to keep peace and order due to the ensuing confrontation of various interest groups occupying the suit property each demanding control. That is occupants against occupants demanding to be in control of the suit property and crowds of people demanding that all the occupants vacate the suit property.
5. That the police demanded that all occupants including the applicants vacate the suit property, including occupants of illegal temporary structures.
6. That on or about the 5th or 6th of August 2012, all occupants (the applicants inclusive) vacated the suit property by packing and putting on vehicles all their personal effects and belongings.
7. That the said interim order dated the 6th August 2012 was only served on the counsel for the 3rd respondent on Tuesday the 7th of

August 2012 at 9:00am and the same was obtained without either the knowledge of the 3rd respondent or our counsel.

- 8. That when our counsel was served with the said interim order, he informed me and I advised that a letter be sent to Court to explain the status of the events.**
- 9. That the 3rd respondent never evicted the applicants, but the latter left/ vacated the suit property or premises voluntarily.**
- 10. That at the time the applicants vacated the suit property, there was no interim order or any injunction in place in respect to any of the parties to this application.**
- 11. That the applicants have not attached any affidavit of service to prove that the said interim order was ever served on the 3rd respondent before the 5th or 6th of August 2012 when the applicants vacated the suit property....”**

On perusal of the Court record I found that the interim order which is the basis of this application was issued by the Assistant Registrar of this Court, His Worship Festor Nsenga under the Powers of Registrars to hear and determine such applications.

In that respect, this application which did not come to me on reference, I would have no jurisdiction to hear it.

Further, all orders of the High Court of Uganda are executed or enforced by the Registrars. Hence, this application would be placed before the Court of the Assistant Registrar of this Court to which issued if for management.

To that extent I would have sent back this application for hearing before the Assistant Registrar of this Court.

Furthermore, it is on record that on 10th September, 2012, the applicants withdrew the main application, Miscellaneous Application no. 613 of 2012 between the parties on the following ground:-

“Since the applicants were evicted as indicated in the affidavits, this main application for a temporary injunction is overtaken by events as the applicants are out of the suit premises. In the circumstances, the matter stands withdrawn without costs.”

Counsel for the respondents conceded to the withdrawal of the said application.

To the extent of the above, I would I agree with the submissions by Counsel for the respondents that this application, too, is overtaken by events.

In the result and for the reasons given hereinabove in this ruling, this application stands dismissed with each party bearing its own costs.

Dated at Kampala this 21st day of June, 2013.

sgd

**MURANGIRA JOSEPH
JUDGE**