

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEUS APPLICATION NO. 98 OF 2014
(Arising from Civil Suit No. 98 of 2014)**

**RHODA KAUMA
CHRISTOPHER DANIEL SSEVUME
BENON SSENYONDWA
SAMSON KYAMAGGWA :::
APPLICANTS**

VERSUS

**DAMALIE NANTEGE KAUMA
CISSY NAMBOOZE KAUMA :::
RESPONDENTS**

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING

This is an Application for a temporary injunction brought by Notice of Motion under Order 41 Rules 1, 2 and 9 of the Civil Procedure Rules S.I 71-1. This Application concerns property forming part of the Estate of the late NamukangulaKauma Paul which is comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda). This Application seeks for orders that;-

- a. A temporary injunction doth issue restraining the Respondents, their servants/agents or any person acting on their behalf from administering or doing anything whatsoever in the matter of the Estate of the late NamukangulaKauma Paul and / or from evicting the 1st Applicant from land comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda) until the final determination of the main suit or further orders of this Court.
- b. Costs of the Application are provided for.

The Applicants were represented by Mr. Paul Ekoch of Messrs GP Advocates whereas Ms. Rachael Sheila Tumwebaze of M/s Mbidde & Co. Advocates represented the Respondents.

The Application is supported by the Affidavit of the Applicant, Rhoda Kauma which reiterates the grounds of this Application but briefly they are that unless immediately restrained the Respondents shall interfere with the Estate of the deceased by among others evicting the 1st Applicant from her matrimonial home at LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda) in spite of the wishes of the Deceased as contained in his last testament. The Applicants avers that they shall suffer substantial loss and irreparable injury if the Respondent carries out the threatened action. The suit raises triable issues in and the Applicant has a strong case with likelihood of success.

The Respondents filed an Affidavit in Rebuttal deposed by Ms. Damalie Nantege Kauma (1st Respondent). Damalie Nantege Kauma states that she averred that the Applicant's Affidavit in support of the Chamber summons is fraudulent, vexatious and frivolous since not all the Applicants have an interest in the subject matter and are only harbouring criminal intentions. She rejected the Will and the contents thereof for being fraudulent. Furthermore, by her Affidavit, Ms. Damalie Nantege Kauma deposed that the Respondents legally obtained Letters of Administration for the deceased's Estate. Damalie Nantege further admitted that notwithstanding that the deceased withdrew his gift to the 2nd Respondent, he reinstated it prior to his death. She further averred that the purported Executors, without justification, started selling off part of the deceased's Estate just after the burial. She denied that the deceased died testate. Therefore, the Estate ought to be administered by the lawful Administrators. That the Letters of Administration were legally obtained by the Respondents, they filed an inventory giving the details of how the property had been distributed except the matrimonial home. She asked Court not to grant a temporary injunction on the premise that there

is no status quo to be preserved. The deponent denied that the Respondents ever tried to evict the 1st Applicant from the matrimonial home at Lukuli or any of the Applicants.

In Rejoinder by the Applicants, it was averred that the 3rd and 4th Applicants were named Executors of the last testament of the late Paulo NamukangulaKauma and therefore, they do have to ensure that the deceased's intentions as expressed in his will are fulfilled. Furthermore, that the Will is valid since it has never been never been contested, altered or abrogated. The deponent deponed that the suit land was transacted in with the express approval and authorisation of deceased prior to her death and that the Respondents' averment that the properties forming part of the late Paulo NamukangulaKauma were distributed is spurious and ineffective since the Estate is still intact.

Resolution of issues.

I have given due consideration to the submissions of counsel and the documents on record. The Applicant, *inter alia* seeks orders for a temporary injunction to restrain the Respondents, their servants/agents or any person acting on their behalf from administering or doing anything whatsoever in the matter of the Estate of the late NamukangulaKauma Paul which is comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda) until the final determination of the main suit or further orders of this Court.

This Application was brought under **Order 41 r 1 & 2 of the CPR**. It provides:-

'Where in any suit it is proved by affidavit or otherwise-

a. That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, ...

The court may by order grant a temporary injunction to restrain such at, 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'.

The criteria for grant of a temporary injunction is well set out in the case of ***Giella vs. Casman Brown (1973) EA 358; Kiyimba Kaggwa vs. Haji A.N. Katende [1985] HCB 43***. In those cases, it was held that for a temporary injunction to be granted, the Applicant must show that there is a prima facie case with probability of success; and that the applicant might otherwise suffer irreparable damage which would not easily be compensated in damages. And if court is in doubt, it will decide the question on the balance of convenience.

Prima facie case

In ***Kiyimba Kaggwa vs. Haji A.N. Katende [1985] HCB 43*** it was decided that a prima facie case means the existence of a triable issue or a serious question to be tried, that is, an issue which raises a prima facie case for adjudication.

The facts at hand are that the 1st Applicant is the widow to the late Namukangula Kauma Paul. The Applicants' case against the Respondents is that the deceased left behind a valid Will dated 7th March 2006. This was attached and marked Annexure "B" and "D" is the translation thereof in English. The 1st Applicant and 3 other persons *to wit*, Benon Ssenyondwa, Samson Kyamagwa and Namasole Rebecca were appointed Executors thereof. Further, according to the Applicants, the property comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda) which is situated in Makindye Kampala was used by the late as his matrimonial home. It seems that prior to his death, the late Namukangula had given away some properties as gifts to the surviving children, but withdrew them prior to his death. According to the Respondents', the deceased reinstated their rights to those properties prior to his death. It should be observed that notwithstanding the above, on or about 3rd February, 2014, the 1st Applicant was served with a

Photostat copy of the Letters of Administration issued to the Respondents as Administrators of the Estate of the late *vide* High Court Administration Cause No. 886 of 2013. See Annexure "H". The Applicants also attached a copy of a letter dated 3rd February, 2014 from the Respondents' lawyers, Messrs Mbidde & Co. Advocates by which the 1st Applicant was ordered to vacate the matrimonial home. See Annexure "I". Whereas, the Applicants state that the Letters of Administration were obtained by the Respondents illegally, by concealment of material facts and fraudulently and they filed a suit before this Court seeking the revocation of letters of administration. The Respondents also plead fraud on behalf of the Applicants in respect of the Will. The Respondents also claim that the purported Executors have wasted away the Estate through illegal transactions.

Therefore from the above, I hold that the case raises serious questions for determination of Court.

Irreparable injury

The definition of "irreparable injury" was enunciated in the case of **Kiyimba Kaggwa vs. Haji Katende** (supra) to the effect that "*there must not be physical possibility of repairing injury, but that the injury must be substantial or material which cannot be adequately compensated for in damages*".

Therefore with respect to the above and the facts at hand, I am satisfied that the Applicant will suffer irreparable injury if the Application is not granted. There is a probable threat by the Respondents to evict the 1st Applicant from the matrimonial home notwithstanding that the Respondents denied it. This will cause irreparable injury since the Applicants would wish to continue to hold on the Letters of Administration of the Estate. In contrast, it is not denied that the 1st Applicant is a wife to the late.

Status quo

Based upon the facts of the case before me now, the *status quo* is that the 1st Applicant is in occupation of the suit property which is comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda).

I have noted the submissions of Counsel for the Respondent that the letter was merely addressed to the trespassers who were living on the property without knowledge of the Administrators and the beneficiaries. That in any case there is no threat of eviction. Further, that in any case, there is no *status quo* to be maintained considering the fact that the distribution of the Estate has been completed and there is no threat of eviction of the widow from her matrimonial home.

Recalling the facts of this case, the Applicants are seeking Orders that a temporary injunction doth issue restraining the Respondents, their servants/agents or any person acting on their behalf from administering or doing anything whatsoever in the matter of the Estate of the late Namukangula Kauma Paul and / or from evicting the 1st Applicant from land comprised in LRV 844 Folio 22 Kyadondo Block 253 Plot 270 at Lukuli Estate (West Buganda) until the final determination of the main suit or further orders of this Court. Although the Respondent denied that the letter in question was intended for the Applicant, I find it quite weird that the widow, who is occupying the property would be served with an eviction letter without pertinent explanation that she is not affected. With due respect, I am guided by the fact that in exercising its duty, the Court does not determine the legal rights to property but merely preserves it in its actual condition until the legal title or ownership can be established or declared [see ***Commodity Trading Industries V Uganda Maize Industries & Anor [2001 - 2005] HCB 118.***] Therefore, I do not see anything wrong with maintaining the state of things as they are since the

Respondents are not objecting to the Applicant being in occupation of the property.

Balance of convenience

I take notice that Court is not obliged to consider this element but where it is in doubt whether to grant the Application or not, Court is supposed to consider it. Mr. Paul Ekoch submitted on the ground that the Applicants who are in occupation of the land and have been utilising it stand to be more inconvenienced if the Application is not allowed. I agree with this submission.

For the FOREGOING REASONS, the Application is hereby allowed. Costs in the cause.

SIGNED

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HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

JUDGE

25th August, 2014