

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**MISCELLANEOUS APPLICATION NO. 540 OF 2013**  
**(Arising from Civil Suit No. 307 of 2012)**

**JOSEPH SEKITOLEKO** ..... **APPLICANT** /  
**PLAINTIFF**

**VERSUS**

**1. JOYCE RITA ZIRIBAGWA**

**2. FLAVIA KAMYA**

**3. MOSES SENDIWALA**

**4. PAUL LUYIMA**

**5. EDITH NALWANGA**

**6. MARY NAMUTEBI**

**7. ROBERT MUKUYE** .....  
**RESPONDENTS**

**BEFORE: LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**RULING**

This is the detailed Ruling arising out of an Order in which I held that Miscellaneous Application 504 of 2013 be withdrawn and that Counsel for the Applicant personally pays the costs. I now proceed to give the detailed reasons for that decision.

The brief background of this Application is that the Applicant herein, “Joseph Sekitoleko” filed an Application by Summons in Chambers under Section 140 (3) of the Registration of Titles Act, Section 98 of the Civil Procedure Act Cap 71 and Order 41, Rules 1 and 9 of the Civil Procedure Rules S1 71- 1.

The Application was for Orders that a temporary injunction be issued against the Registrar of Titles to stop her from removing a caveat. This was lodged in respect of the land comprised in LRV 83 Folio 24, known as Busimbi Estate (Singo Block 425 Plot 1) lodged as instrument No. MIT 65416 and was to last until disposal of the main suit and costs of the Application be provided for.

In support of the Application, the Applicant, Joseph Sekitoleko swore an Affidavit dated 7<sup>th</sup> January, 2013 in which he deponed that he is the registered proprietor of a 99 year lease on LRV 83 Folio 24, *to wit*, Busimbi Estate Singo Block 425 Plot 1. He also stated that he acquired the interest through a purchase from the Government of Uganda under the Expropriated Properties Act Cap 87 after the former Asian lease owner, Gullam Hussein failed to claim it. Further, that he was issued a Certificate of Title and that the lease was originally registered as an encumbrance on the mailo register title formerly known as Mailo Register Volume 105 Folio 17. It was his disposition that the encumbrance was unlawfully removed by the Administrators of the Estate of the late Paul Kamyia, who was the mailo owner of the suit land. He also states that the Administrators, who are listed as Joyce Rita Ziribagwa Kamyia, Susan Kijjambu and Henry Mubiru subdivided the suit land. They created various Plots including the plot in dispute. He also stated that he issued a letter to the tenants thereon offering them an opportunity to regularize their occupation which they ignored. As a result, he lodged a caveat on the suit land and filed a main suit challenging their occupancy on the suit land. The Applicant also stated that on the 2<sup>nd</sup> May, 2014, the Registrar of Titles sent him a letter notifying him of his intention to remove the caveat unless he obtained a Court Order to stop him. The Applicant stated that he will suffer irreparable damage if the land is disposed of. He contends that it is in the interests of justice that this Application be granted.

The 1<sup>st</sup> Respondent filed a separate Affidavit in Reply whereas the 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Respondents filed a joint Affidavit in Reply.

In reply, the 1<sup>st</sup> Respondent deponed that the Application was bad in law since the Applicant has filed two suits namely, HCCS 96/2008 and HCCS 97/2008 which involves the same parties. Furthermore, the Applicant was seeking an injunction against the alleged trespass. He was not seeking an Order in respect of the prayer in the Complaint which is an abuse of the Court process. The 1<sup>st</sup> Respondent's prayer is that the Application should be dismissed on the basis that the Applicant did not show any sufficient grounds to warrant the issuance of a temporary injunction.

During the hearing, the Applicant was represented by Fiona Kunihira of Sendege Ssenyondo & Co. Advocates whereas the 1<sup>st</sup> Respondent was represented by Tendo Kabenge of Simon Kabenge & Co. Advocates and the 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> Respondents were represented by Counsel Esther Nakamatte who held brief on behalf of David Matovu of Kiyemba, Matovu & Co. Advocates.

Both Parties made oral submissions before Court. During the hearing, Counsel Kabenge raised an objection in relation to the propriety of the Application on the basis that a temporary injunction must arise from a suit in which a permanent injunction is claimed as a relief. Additionally, both the permanent and temporary injunction must relate to the same conduct which it seeks to restrain which was in fact not the case in this Application. Counsel noted that the Application in the main suit seeks a permanent injunction against the Respondents to restrain them from trespass whereas the Miscellaneous Application is for Orders of a temporary injunction to restrain removal of a caveat by the Registrar, which is totally unrelated to the prayer in the main suit. Further, that the Registrar should have been added as a

party to the Application. Counsel concluded that the Application is incompetent and should therefore be dismissed.

I allowed the matter to be stood over for 30 minutes in order to allow Counsel for the Applicant to consider the withdrawal of the application and to accord her an opportunity to consult another Counsel who was not in Court but who had personal conduct of the matter. However, when Court resumed, Counsel for the Applicant decided to proceed with the Application on the basis that she had instructions to proceed with the Application.

I allowed the Parties to continue with their submissions and Counsel Kabenge maintained his objections. He submitted that based upon the authority of ***Robert Kavuma V. Hotel International SCCA No. 9 of 1990***, it was held that before an application for a temporary injunction can be maintained, there must be an application for a permanent injunction in that regard. Counsel further, referred Court to the letter from the Commissioner Land Registration addressed to the Applicant, the purpose of which was to notify the Applicant of the intended removal of the caveat. Counsel noted that the Commissioner should have been added as a party to the suit since he initiated the letter. He relied on ***Article 28 (1) Constitution of the Republic of Uganda, 1995*** on the right to fair hearing. In Rejoinder, Counsel for the Applicant conceded to the points of objection. However, she insisted that she handled the matter with Counsel Ssendege, who was in fact not before Court during the hearing of the Application and she had to proceed in the matter. The Court endeavored to guide Counsel for the Respondent to no avail. There were so many apparent loopholes in the Application but Counsel insisted and proceeded with the Application notwithstanding the guidance from Court and advice of Senior Counsel, for the Respondent. The latter advised her to withdraw the Application and file proper pleadings, if she wished to proceed with the matter.

According to the record, a copy of the Amended Plaintiff in Civil Suit No. 307 of 2013, filed on the 28<sup>th</sup> November 2013, the Applicant prayed to Court to grant him a permanent injunction restraining the Defendant from any further acts of trespass. Whereas in the Miscellaneous Application, the Applicant is seeking Orders that a temporary injunction does issue to restrain the Registrar of Titles from removing the caveat lodged by Joseph Sekitoleko in respect of the suit land.

This fact was also deposed to in the Affidavit in Reply by the 1<sup>st</sup> Respondent, Joyce Rita Ziribaggwa. Paragraph 5 states that the Applicant in the Plaintiff only seeks an injunction *against the alleged trespass and does not seek any Order in respect of that prayer in this Application* which is simply an abuse of the Court process.

It should be borne in mind that the Application and the Orders in the main suit are precisely seeking different Orders which were not raised in the main suit from which this Application arises.

It is trite law that a temporary injunction is premised on the fact that there is an application for a permanent injunction otherwise a temporary injunction cannot stand on its own. Ideally, a temporary injunction is intended to operate in the interim and maintain the *status quo* pending determination of the main suit. See **Robert Kavuma V. Hotel International SCCA No. 9 of 1990; Giella v Cassman Brown and Company Ltd [1973] EA 358**. Therefore, from the above, there is no prayer in the main suit which would warrant Court to issue an Order for a temporary injunction.

Furthermore, according to the Amended Plaintiff, the main suit is in respect of a Plaintiff known as Joseph Nkata Sekitoleko. I have noted that the Miscellaneous Application is in respect of Joseph Sekitoleko as rightly submitted by Counsel for the Respondent. On the other hand, Counsel for

the Applicant insisted that the Applicant and the Plaintiff are the same in both matters. I do not give much regard to her submission because it was made from the bar and therefore not admissible. There is no Statutory Declaration filed on the record and sworn by the Applicant to indicate that the Applicant changed his name or that the Applicant and the Plaintiff are one and the same person.

Under the Statutory Declarations Act, Cap 22 Laws of Uganda, Sections 2 and 3, the Applicant should have sworn a Statutory Declaration and state that the Applicant is one and the same person.

The inadvertent conduct of Counsel amounts to gross negligence on her part. Thus her client should not be made to pay costs but rather, they should be borne by Counsel herself. In the Court of Appeal decision of ***Champion Matovu Spares Ltd vs. Padke [1969] EA 42***, the Court allowed the Appeal and declared the Respondent firm of Advocates, which had represented the Appellant Company in the previous litigation, negligent. They ordered the lawyers to bear the costs and damages. Court observed *that an advocate is not liable for any reasonable error of judgment or for ignorance of some obscure points of law, but is liable for an act of gross negligence or ignorance of elementary matters of law constantly arising in practice and on that basis, since the law Reform (Miscellaneous Provisions) Act is constantly being invoked and cases arising out of motor vehicle accidents are frequent, this was not an obscure negligence and they were therefore liable to the Appellant.*

In view of the above, the conduct of Counsel in the matter before me was dilatory and has resulted in incurring costs against the Applicant. It has also delayed disposal of the Application and the main suit. It is clear that Counsel received guidance on several occasions to withdraw the Application and file proper pleadings in the matter, but she insisted on proceeding with the

matter following advice of Counsel who was not even in Court. Being an Advocate in her own right, there were two options either to do the right thing or pray for an adjournment. Instead she opted to continue with the application. She disregarded her own right in practice because clearly she recognized the loopholes and shortcomings presented in her pleadings and had a right to choose whether to proceed with the Application and file proper documentation.

**FOR THE FOREGOING REASONS, I Order;**

1. The withdraw of Miscellaneous Application 504 of 2013 seeking Orders that a temporary injunction be issued against the Registrar of Titles to stop her from removing the caveat lodged in respect of the land comprised in LRV 83 Folio 24, until disposal of the main suit.
2. That Counsel for the Applicant Fiona Kunihira personally pay the costs in this Application.

Signed:.....

**Hon. Lady Justice Elizabeth Ibanda Nahamya**

**J U D G E**

21<sup>st</sup> February 2014