

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

MISC. APPLICATION NO. 105 OF 2015
(Arising from Civil Suit No. 043 of 2015)

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1. LUTAAYA PONSIANO
2. ERIYA **PAULO**
KIWANUKA:.....APPLICANTS

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VERSUS

1. KASIRIVU GODFREY
2. KIRINYA
15 **3. BATWARA MUSA**
4. KATEGERE
5. SSEKIMULI GODFREY
6. LUKYAMUZI ALEX
7. MUNABA MEDIE
20 **RESPONDENTS**

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

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This is an Application for a Temporary Injunction brought under order 41 Rules 1 & 9 of the Civil Procedure Rules.

It seeks Orders restraining the Respondents and their agents and employees from entering on to the Farms of the Applicants comprised in Block 88, Plot 3 (the suit land) or entering thereto and destroying or ordering
5 destruction of any property thereto, dealing with the land or until the disposal of the main suit.

The Applicants claim they bought the suit land from Bukirwa Betty Mukebezi, Nantume Margaret and
10 Sendikanawa Samwili who are beneficiaries of the Estate of the late Mujabi Erasto and this was with the consent of the Administrator Ssekandi Erasto Mujabi.

That the Respondents have started allocating
15 themselves the suit land and destroyed all the Applicants' property without any colour of right. The affidavit in support reiterates the grounds and further claims that although they have no yet obtained Certificates of Title, the vendors handed over possession
20 to the purchasers.

However, the Respondents have made it impossible for the Applicants to use the land by allocating themselves the land.

The Respondents through Kategere Badiru filed an affidavit in reply and avers that the Respondents have been in occupation of the suit land since the 1970s and
5 are accordingly customary occupants.

The Applicants have instead come and started fencing off, portions of the suit land illegally well knowing that there are customary tenants on the land.

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At the hearing of the Application, Counsel for the Applicants submitted that the activities of the Applicants is within the wetland area for the time being. That the Respondents have their customary holdings on the
15 upper land. The Respondents have prevented the Applicants from using the wetland area where they graze their cattle. That they have an interest in the land which should be protected.

20 The Respondents it is prayed should remain on the upper side until the determination of the head suit.

The Respondents' Counsel on the other hand submitted that the Applicants are neither registered owners nor customary occupants.

- 5 That they are fencing off the Respondents bibanjas to create a Farm. The Respondents claim the Applicants want to take their land without compensating them and they should instead be restrained in their activities.
- 10 In considering Applications of this nature, the Courts will consider the following:
 1. That there is a prima facie case with a likelihood of success.
 2. The Applicant must prove irreparable damage not
15 capable of atonement.
 3. The Applicant must prove that the balance of convenience favours him.

In **Robert Kavuma Vrs. Hotel International SCCA 8/1990** Chief Justice Wambuzi held that the Court will
20 decide the Application on a balance of convenience when in doubt.

In other words, whether the inconveniences which are likely to issue from withholding the injunction would be

greater than those which are likely to arise from granting it.

The facts of this matter are that none of the parties is a
5 Title holder over the suit land.

The Respondents are customary tenants (so they claim) while the Applicants claim an equitable interest having bought from the beneficiaries of the Estate of the Title
10 holder (with the consent of the Administrator of the Estate).

For the time being the Applicants have not taken steps to remove the Respondents from their bibanjas. They
15 are instead using the wetland area of the suit land where apparently there are no developments.

This matter will be eventually heard and the rights of each party under the Land Law of this country will be
20 determined.

The fact that the Applicants have bought from the beneficiaries of the Estate with the knowledge of the

Administrator of the Estate gives credence to their claim of an equitable interest.

I find it in the interests of justice that the Application
5 should be allowed and a Temporary Injunction issues pending the determination of the head suit as below.

The following orders are accordingly made:

- 10 1. The Respondents are to remain on the upper part of the suit land and the Applicants will remain on the wetland area they are occupying.
2. None of the parties should interfere with the above position.
- 15 3. The order will be in force until the determination of the head suit.
4. Costs will abide by the results of the head suit.

Godfrey Namundi

20 **JUDGE**

8/6/2015