

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

**MISC. APPLICATION NO. 092 OF 2015**  
(ARISING FROM CIVIL SUIT NO. 035 OF 2015)

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- 1. KIWOMBE FRANCIS**
- 2. KATWALO JOSEPH**
- 3. LULE**

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**FURUGYENSIO :::::::::::::::::::::::::::::::::::APPLICANTS**  
(Administrators of the Estate of  
the Late Paul Mutakomaga)

**VERSUS**

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**MARY**  
**KITOOKE :::::::::::::::::::::::::::::::::::RESPONDENT**  
(Administrator of the Estate of  
the late Ssemu Sensuwa)

**NALWADDA**

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**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**RULING**

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This Application is brought under section 33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 41 Rules 1 and 9 of the Civil Procedure Rules.

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It seeks orders for a Temporary Injunction to restrain the Respondent, agents, servant, employees from further selling,

transferring, subdividing, dealing or interfering with the land comprised in Block 198 Plots 35, 434, 445 and 443 or carrying out any harmful activities on it which affects its future usage until final determination of the suit land.

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The Grounds are laid out in the Notice of Motion and the supporting affidavit.

The Respondent also filed an affidavit in reply opposing the  
10 Application.

In summary, the Applicants filed the head suit No. 35/2015 seeking a permanent Injunction and other remedies. They claim they are administrators and lawful Beneficiaries of 21  
15 acres out of the suit land (described in the Application).

The Respondent has refused to transfer the 21 acres which were part of the Estate of one Paul Mutakomaga. At the same time they have subdivided the suit land into Plots with  
20 intentions of selling them.

These actions are detrimental to the Applicants' interests and those of other Beneficiaries. They therefore seek orders to maintain the status quo by halting all the activities  
25 laid out in this Application.

The Respondent filed an affidavit in reply basically denying the Applicants' claims. The respondent claims the interests of the Estate claimed were given to one John Kizito (as legal  
5 representative) who in turn transferred to various people and hence there is no interest accruing to the Applicants.

The submissions of Counsel for both parties have revealed that both parties are all members of one family (extended)  
10 who by lineage or otherwise were beneficiaries of late Ssemu Sensuwa whose Estate is managed by the Respondent.

It is the distribution of that Estate which has given rise to the instant suit and Application.

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The Applicants deny in the submissions that John Kizito had any right to the 21 acres and that if at all he was given the land as legal representative it only amounts to about 4 hectares or 10 acres short of the 21 acres.

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All these are triable issues that need to be investigated by Court in a trial. The principles for granting Interlocutory Injunctions are now settled in various authorities which include **Giella Vrs. Gasman Brown (1973) EA**. They are:

25 1. There must be a suit with a probability of success.

2. There must be demonstrable likelihood of irreparable injury not capable of being adequately compensated in damages.

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3. If there is doubt then the Court will decide based on the balance of convenience.

10 Generally, the object of Interlocutory Injunctions is to protect the Plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at trial.

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This must however be weighed against the corresponding need of the Defendant to be protected against injury resulting from being prevented from exercising his or her own rights. The Court must weigh one need against another  
20 to determine where the balance of convenience lies.

In the instant case, this is a dispute about sharing of an Estate a complicated and touchy issue in most cases. One party thinks the other has no claim and is probably disposing  
25 of that which they claim is theirs.

I cannot determine the veracity of the claims without a full hearing of the matter.

5 The balance of convenience is that the property should be preserved so as to enable Court to investigate the competing claims and come up with a decision.

10 This application is granted. The Respondent is restrained from carrying out the activities stated in paragraph 1 of the Applications until the head suit is determined.

For clarity, the Respondent is restrained from;

15 a) Selling, transferring, subdividing or dealing in the suit land comprised in Block 198, Plots 35, 434, 445 and 443.

b) Carrying out any harmful activities on the land which may affect its future usage e.g. Excavation of murrum or soil, laying bricks, cutting trees, or charcoal burning.

20 The order will be in force until the determination of the head suit.

**Godfrey Namundi**

25 **JUDGE**

**10/04/2015**

10/04/2015:

5 Munyamasoko on brief for the Applicants.

2<sup>nd</sup> Applicant present

1<sup>st</sup> and 3<sup>rd</sup> Applicants absent

Respondent present

10 Court: Ruling read.

**Godfrey Namundi**

**JUDGE**

15 **10/04/2015**