

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HODERN AT ARUA
MISC. APPLICATION NO. 0070 OF 2013**

HAJJI MOHAMUD RAMADAN

LAMBE

APPLICANT

=VERSUS=

AJIGA NURU MARJAN

RESPONDENT

RULING

BEFORE HON. JUSTICE OKWANGA VINCENT

The application by summon in chambers was brought under S.98 CPA, 64(c), SS 38 & 33 JA and 0.41 rr.1, 2 & CPR for orders that a temporary injunction doth issue to restraint the respondent, his agents, servants or workmen or successors in title from erecting any buildings, cutting down trees or any other development howsoever described, damaging, wasting or alienating the suit land pending the determination of civil suit No. 0003 of 2013 and costs of the application. The main grounds are that the applicant will suffer substantial and irreparable loss if the application is not granted and further that its on the balance of convenience, it is fair and just that this application is allowed so as to maintain the status quo on the suit land pending the final disposal of the main suit pending before this court.

It was supported by the affidavit of the applicant, Hajji Mohamud Ramandan Lambe dated 12/12/2013.

At the hearing of the application Mr. Jimmy Madira for the respondent raised a preliminary point arguing that this application has already been taken care of by an order

that was issued by the Grade I Magistrate Arua, his worship John Kategaya issued on 22/08/2009 in Civil Land claim No. DLT/YU/CL/0003 of 2004 which order, counsel argues is still in place and the purpose was basically to maintain the status quo on the suit land.

A copy of the said order/decreed is attached on the affidavit in reply by the respondent dated 15/05/2015, and marked or annexure 'A'.

In reply Mr. Henry Odama, submitted that as the order of the G.I Magistrate, of 22/08/2007, has become very difficult to implement by the applicant for the reasons that;- That order was issued by a court without competent jurisdiction to hear and determine this matter conclusively. This Hon. Court is now the court with the requisite competent jurisdiction.

That the respondent has since violated the orders of that counsel with more/various activities forbidden by the said order on the suit land as shown by the photographs attached and annex 'B' – which shows that it has been impossible to implement that order of the Grade I Magistrate, in order to maintain the 'status quo' on the suit land. Such activities are being carried out by the respondent on the applicant's land yet the latter is in possession of the suit land. It would not be superfluous to issue another court order when the earlier court order has not been varied or set aside by any court.

The appellant cannot therefore sit and watch all these illegal activities take place on his land as he awaits for the respondent who filed suit No. 0003 of 2013 in the directives of the lower court appear reluctant to prosecute his said case in court.

It is true this Hon. Court has inherent powers to make orders to meet the ends of justice and prevent any abuse of Court process.

From the records and as can be gathered from the supporting affidavit and that in reply, I find that the grade I Magistrate's Court had on **22/08/2007**, issued an order maintaining the status quo on the suit land with further directive guiding the respondent to file a suit in this Hon. Court as this is the only court of justice with power to cancel or order cancellation of any title obtained by fraud, should the court finds so, and that the

applicant doth remain on 313 ha of the suit land which he occupied under customary tenure till now.

That order has never been varied or cancelled since it was issued by that court and no appeal has been preserved against it by any of the parties herein.

I am also satisfied and fully aware that His Worship, John Kategaya Mag. Grade I, who issued that order on 22/08/2007, had the competent jurisdiction to issue the orders he did which order herein been varied or cancelled by any competent court.

In the premises I am in total agreement with the respondent's submission that the orders sought from this Hon. Court has already been taken care of by a court order in civil land claim No. DLT/YU/CL/0003 of 2004 issued by His Worship John Kategaya in Arua on 22/08/2007, which is basically to maintain the status quo on the suit land.

Where a subsisting court order issued by a court of competent jurisdiction exists, it would be an abuse of court orders in the same subject matter for the same purpose.

It would be a serious case of duplication of orders which would go along way to clog the already congested court systems. We are already facing serious backlog on an land and civil matters in this country. The applicant has not shown before this Hon. Court that he endeavoured to implement the court orders of 22/07/2007 and failed or that he has met undue hardships in implementing them. He should exercise to his rights granted in the said order to ensure that the status quo is maintained or that any violations of inch a court order is promptly aloined for or arrested by enforcing the invoking authorities of the relevant court and civil agencies responsible for ensuring that court orders are implemented.

As a valid court order issued by a Grade I Magistrate's Court on 22/08/2007 has not been cancelled or varied, I feel that it would be a waste of court's time and a clear abuse of court process to issue a parallel court order to govern the position and maintain the status quo in the suit land as prayed. In the end this application collapses as it has not advanced any merits to convince this Hon. Court to grant it. It is accordingly dismissed with costs, it is hereby ordered!

VINCENT OKWANGA

JUDGE

11/06/2015