

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT NAKAWA

MISC.APP. NO.692 OF 2014

KILIZESTOMU MUJABI .....APPLICANT

VERSUS

1. J.H MUKALANZI KIWUTTA
2. BESWERI MULONDO
3. REGISTRAR OF TITLES/ COMMISSIONER  
LAND REGISTRATION

RESPONDENTS

**BEFORE HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**RULING**

This Application was brought under section 98 of the CPA and Order 41, rules 8 and 9 of the Civil Procedure Rules (“CPR”) for orders that a Temporary Injunction doth issue restraining the Respondents, their agents and or servants from trespassing on the suit property described as Singo Block 123 Plot 82 and 83, land at Tanda, Busimbi Sub-County, Mityana District. The grounds of the Application are that the Applicant has instituted land claim **No. 205 of 2014 *Kilizestomu Mujabi vs J.H Mukalazi and 2 Others.*** The Respondents fraudulently transferred the suit property in their names and if not stopped are likely to dispose or sell it off before the determination of land claim *No. 205/2014.*

The Application was supported by the Affidavit of Kilizestomu Mujabi, the Applicant. He deponed that he is the Administrator and heir to the Estate of the late Lewo Kato who was the registered proprietor of the suit land. The Respondents fraudulently transferred the suit property in their names and are likely to sell it off.

## SUBMISSIONS

Mr. Okong Innocent of KOB Advocates & Solicitors held brief for Counsel Kusiima of Kusiima & Co. Advocates. Lukwago Boniface of Ahimbisibwe & Co. Advocates, held brief for Mr. Anthony Ahimbisibwe appearing for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Mr. Okong submitted for the Applicants that the Respondents did not file a Written Statement of Defence or Affidavit in Reply to the Application and thus have no *locus standi* in the Application. He cited the case of ***Samwiri Massa vs Rose Achen [1978] HCB 297*** where it was held that Affidavit evidence not replied to is deemed to have been accepted by the other party. Learned Counsel submitted further that the Respondent was served on 20<sup>th</sup> June 2014 but has not taken any action. I agreed with the Applicant's Counsel Submissions that the Respondent's Counsel could not participate in the proceedings.

Mr. Okong submitted that the Respondents, who fraudulently transferred the suit property into their names, are likely to dispose of it if not stopped. Further that the Applicants will suffer irreparable damage. Thus, it was in the interests of justice that the Application be granted.

## RESOLUTION

In ***American Cyanamid Co. vs Ethicon Ltd [1975] AC. 396 Lord Diplock*** laid down principles that guide the grant of a Temporary Injunction.

These principles are that;

1. **The Applicant must show that there is a prima facie case with a likelihood of success.**

On this principle, the Court should be satisfied that the Applicant's claim is not frivolous or a waste of court's time. There must be triable issues for consideration by the Court, which raise a prima facie case. ***See Robert Kavuma vs. M/s Hotel International SCCA No. 8 of 1990.***

1. **The Applicant would suffer irreparable injury which cannot be atoned by damages if the temporary injunction is denied and the *status quo* not maintained;**

Irreparable harm must be such that the Applicant will suffer material or substantial harm that cannot be compensated by damages. See *Giella vs. Cassman Brown & Co. [1973] EA 358*.

In *Francis Kanyanya vs. Diamond Trust Bank HCCS No. 300 of 2008*, Hon. Justice Lameck N. Mukasa cited the case of *Kiyimba Kaggwa (supra)* and held that:

*“Irreparable damage does not mean that there must not be physical possibility of repairing injury but means that the injury must be a substantial or material one, that is one that cannot be adequately compensated for in damages”*

1. **Whether there is a status quo to be maintained**

The main purpose of a temporary injunction is to preserve the *status quo* of the subject matter until final disposal of the main suit. Here, the issue is not determination of the legal rights to the property but merely preservation of the property in its actual condition until legal title or ownership can be established or declared.

### **Balance of Convenience**

Where the Court is in doubt of the three principles mentioned above, it will determine the application on a balance of convenience. The term balance of convenience means that the court should determine if the Applicant would suffer if the Application were not to be granted. Where refusal to grant the Application would make the Applicants suffer, then the balance of convenience would be favourable to him /her and the court would most likely be inclined to grant to him/her the application for a Temporary Injunction. Additionally, the Court must consider where the balance of convenience lies. In other words, where the respective inconvenience or loss to each party lies, if the order is granted or not. The Court will further consider the circumstances of each case.

Having taken into account all the available evidence, I am convinced that there are serious and triable issues in this matter, to be resolved by the Court. There is a suit, *H.C.C.S NO. 205/ 2014*, pending before this Court where the Court will have to determine who the real owner of the suit land is. Further, Counsel for the Applicant submitted that the Respondents, if not stopped, are likely to sell off the suit property, which loss, in my considered opinion would not be adequately compensated by an award of damages. I also find that the balance of convenience is in the Applicant's favour.

The Applicant, through his Affidavit, has showed that he has an interest in the suit land and if the Respondents are not stopped, the Applicant is bound to lose. In my view, all the four ingredients exist. This application, therefore, ought to succeed. I therefore grant the Order sought in this Application. Costs shall follow the event. I So Order.

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**HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**JUDGE**

**24<sup>th</sup> MARCH 2015**