

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-193 OF 2016
(ARISING FROM CIVIL SUIT NO. 15 OF 2016)**

WETAYA CHRISTOPHER **APPLICANT**
VERSUS
1. MBALE DISTRICT LAND BOARD
2. CHARLES WANASI **RESPONDENTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

Applicant filed High Court Land Suit No.15/2016 for temporary injunction under O.41 r.1, 3 and 5 of the Civil Procedure Rules.

According to *Kiyimba Kagwa v. Katende 1988 HCB 45*, the conditions to be satisfied before court grants such an application are:

1. That the applicant must show the existence of a prima facie case with a probability of success.
2. Applicant is likely to suffer irreparable injury which would not adequately be compensated by an award of damages.
3. That the balance of convenience tilts in favour of the applicant.

I will now review the pleadings and submissions to determine if the above conditions were satisfied.

1. Prima facie case with high probability of success.

The applicant by Notice of Motion and affidavit in support has shown that he filed CS.15/2016. Under paragraph 6 of the plaint he lists the factors constituting the cause of action and challenges the Respondent's title to the land. He pleads fraud and illegality. Under paragraph 7 he states in the plaint that he is disgruntled by the illegalities mentioned and in paragraph 8 thereof contends that the issuance of LRV 4238 Folio 15 Plot 36 Mbale Municipality Block

North Road Northern Division by 1st Defendant to 2nd Defendant is an illegality which is brought to the attention of this court.

Arising from the above, Respondents' Counsel argued that these facts were denied in the written statement of defence and affidavit in reply. He argued that applicant has led no evidence in proof that his suit has a possibility of success.

To determine what amounts to a prima facie case with great chances of success, this court in **Departed Asians Property Custodian Board v. Charles Wanasi HCCA 154/2014**. Relying on superior decisions of other courts cited the case of ***Re Theresa Kaddu (1980) HCB 115***.

The principle here is that to determine whether a prima facie case exists courts have to inquire as to whether there is a serious issue to be tried at the trial. The same principle was followed in the case of ***Daniel Mukwaya v. Administrator General HCCS 630/1993*** (unreported).

I have examined the pleadings and I notice that the case before court raises issues of fraud, illegalities, repossession etc all of which need evidence in court to be led so as to determine the rights of these parties. These are serious questions which

court will investigate at the trial. Prima facie (on face) there is a case and this ground has been satisfied.

2. Irreparable damage/injury.

Irreparable damage has been defined to mean that it is so substantial and cannot be adequately compensated for in damages. (See: *Kiyimba Kagwa v. Katende [1985] HCB 43*.)

The applicant and respondents are both claiming that they are rightful owners of suit property. From the pleadings and submissions it appears the injunction is aimed at stopping eviction and its attendant consequences. The Respondent argues that if evicted applicant can be compensated; but adds that the applicant's suit is a non starter.

From facts the rights of the applicant are hinged on possession. This is crucial to the entire case since both parties came to court claiming title to the property vide actions attributed to D.1 who does not object to the application.

I therefore find it equitable to find that to allow D.2 to dispossess the plaintiff by eviction on premises that he can always be compensated would be injurious to him. Such pain, injury and loss cannot be adequately quantified by an award of damages. I therefore find that plaintiff/applicant has proved that he would suffer irreparable damage if the injunction is denied.

3. Preservation of status quo

The courts grant the temporary injunctions partly to preserve the status quo so that the remedies parties are seeking should not be in vain. The aim is to protect the interest of the parties pending disposal of the substantive suit. In *Godfrey Sekitoleko v. Seezi Mutabazi (2001-2005)*. It was held that:

“ the subject matter of a temporary injunction is primarily to preserve the ‘status quo’ of the subject matter of the dispute pending the final determination of the case; and to prevent the ends of justice from being defeated.”

In this case we have the applicant who is in occupation, and the Respondent who holds a certificate of title which appellant wishes to annul for illegality and fraud. The status quo to preserve according to ***Legal Brains Trust Ltd v. Attorney HCMA 638/2014***

“is purely a question of fact and simply denotes the existing state of affairs existing before a given particular point in time and the relevant consideration is the point in time at which the acts complained of as affecting or likely to affect or threatening to affect the existing state of things occurred.”

The plaintiff/applicant has shown that he has been in possession since 1st September 1994(paragraph 6 of plaint), and paragraphs b, c, d, e, f, g, h, I, j, of the affidavit in support of the application. The Respondent challenges this vide affidavit in reply by **Charles Wanasi** under paragraph 2, 3, 4, 5. In paragraph 6 and 7 acknowledge the fact of occupation and eviction.

There is therefore evidence that applicant is in possession and under threat of eviction. The status quo must be preserved to enable applicant remain un-evicted till the matters herein are determined. The condition is therefore satisfied.

4. Balance of convenience

There is no doubt that having decided that status quo needs preserving to protect the rights of the parties as at time of the civil suit, the balance of convenience must naturally favour the party who would bear more risk if the grant is denied. In this case the balance favours applicant, who is at risk of eviction even before the suit is determined according to paragraph f of applicant’s affidavit in support and paragraph 7 of affidavit by **Charles Wanasi** in reply.

Given the fact that the applicant has satisfied all the necessary conditions for the grant of a temporary injunction order, I find that the application succeeds. It is granted. Costs in the cause.

I so order.

Henry I. Kawesa

JUDGE

23.02.2017