

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

**MISC. APPLICATION NO. 0152 OF 2016
[ARISING FROM CIVIL SUIT NO. 065 OF 2016]**

**1-SSERWANGA NANYEMBA ABISAGI
2-MWANGA SOLLY
3-ROSE ZALWANGO KAFEERO
4-KATEREGGA SULAIMAN
5-JANE NASSUNA KAWUKI.....APPLICANTS**

VERSUS

**1-HERBERT MUSOKE SSEMBIRO
2-OCHIENG MARTIN
3-AGENONGA GODFREY.....RESPONDENTS**

RULING

BEFORE: THE HON. LADY JUSTICE EVA K. LUSWATA

This is an application brought by way of chamber summons under Order 41 r.1, 2 and 9 of the Civil Procedure Rules seeking the following orders:-

- a. A temporary injunction do issue against the respondents and their assignees/agents/servants/employees restraining them from making any transaction or doing any activity on the suit land at Namumira, Mukono District Block 116 Plots 4599, 4600, 4601, 4602, 4603, 4604, 4605, 4606, 4607, 4608 and 4609 till determination of the main suit
- b. Costs of this application be provided for.

The grounds of this application as set out in the motion and supporting affidavit are briefly that the suit land forms part of the estate of the late George Wilson Musoke (hereinafter referred to as the deceased) of which the applicants are beneficiaries. That the 1st respondent also being a beneficiary of the said estate, had himself fraudulently registered as sole proprietor and then proceeded to subdivide and sale part of the suit land to the 2nd and 3rd respondents the latter who have also shown interest to dispose of their interests.

The respondents did not respond to the application and on 13/9/16, having satisfied myself that there was effective service upon them, I allowed *ex parte* proceedings. Counsel Nakakande who represented the applicants invited Court to adopt the pleadings of both the application and the main suit.

According to Order 41 Rule 1 (a) CPR, the primary purpose of a temporary injunction in these circumstances would be the preservation of the suit land and protecting it from being wasted, damaged, alienated, and/or wrongfully sold by the respondents, pending resolution of the main suit. In the decision of **American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396**, Lord Diplock laid down guidelines for the grant of temporary injunctions that have been continuously followed in our jurisdiction, particularly in the case of **E.L.T Kiyimba Kaggwa Vs Hajji Katende [1985] HCB 43**.

The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it, is to preserve the matters in *status quo* until the question to be investigated in the main suit is finally disposed of.

The conditions for the grant of the temporary injunction are;

- i. Firstly that, the applicant must show a *prima facie* case with a probability of success.
- ii. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
- iii. Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

Further in considering the above principles, the court should bear in mind the following guidelines:-

- a) That temporary injunctions are discretionary orders and therefore all the facts of the case must be considered and balanced judiciously.
- b) That the same being an exercise of judicial discretion, there are no fixed rules and the vetting may be kept flexible.

c) The court should not attempt to resolve issues related to the main suit:

See: **Prof. Peter Anyang Nyo & Ors Vs. The Attorney General of Kenya & Ors; East African Court of Justice Case Ref. No. 1 of 2006** (unreported).

A *prima facie* case with a probability of success is no more than that the court must be satisfied that there is a serious question to be tried. In the case of **Robert Kavuma Vs M/S Hotel International SCCA No.8 of 1990**, Hon. Wambuzi C J (as he then was) stated that the applicant is required at this stage of trial to show a prima facie case and a probability of success but not success. The rationale given in the per-curium of **Kiyimba Kaggwa (supra)**, is that the evidence at this point (being affidavit evidence) is incomplete and not contested by arguments and cross examination.

According to Mwanga Solly in his affidavit in support of the application, the suit land was at some point part of the property of the deceased's estate. That the applicants being some of the beneficiaries of the estate of the deceased were issued with a certificate of no objection to pursue formal administration of his estate. That in that capacity, they did file HCCS No. 065 of 2016 [hereinafter referred to as the main suit] to contest the registration of the 1st applicant on the suit land and his subsequent transfer of the same into the names of the 2nd and then, 3rd respondent who are deemed not to be *bona fide* purchasers for value.

In my view, it would be legitimate for any beneficiaries to file a suit to protect their interests in a deceased's estate. A triable issue would arise to determine whether the respondents' proprietorship is valid or not, and whether such proprietorship infringes upon on the applicants' right to estate property. I am thereby satisfied that a *prima facie* case is raised.

On the same note, the applicants would suffer irreparable damage if sub-divisions and even transfer of the suit land continues unabated before the main suit is determined. An inheritance should be considered as a unique entitlement for which monetary damages may not be adequate compensation. Further, I consider the balance of convenience tilts strongly in favour of the applicants, especially when the application was uncontested.

I would thereby allow the application and order that a temporary injunction doth issue in the terms prayed. The order is made with one condition that my order remains in force until 17th April, 2017 and shall be renewed once every three months thereafter, in the hope that the main suit shall be seriously and expeditiously pursued to completion.

The costs of the application shall abide the final outcome of the suit. I so order.

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EVA K. LUSWATA

JUDGE

17/01/2017