

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 069 OF 2018

Arising from Civil Suit No. 0037 of 2018

5 **Arising from HCT - 01 - CV - AC - No. 0016 of 2017**

Arising from HCT - 01 - CV - AC - MA - 0119 OF 2005

Arising from Administration Cause No. DR MFP 8/1998

1. MOSHE MUJOGYA

10 **2. STEVEN KISUGA MULINDWA**

**3. ESTATE OF THE LATE GERALD KARAGO
MULINDWAAPPLICANTS**

4. EMMANUEL KUSAGIKA MULINDWA

VERSUS

15 **1. SMART BWANGO**

**2. JOHN
MULINDWA
..RESPONDENTS**

3. JENNIFER KAAHWA

20

**BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU
MUSENE**

Ruling

25 This is an Application by Chamber Summons under **Order XLI
Rule 1(a)** of the Civil Procedure Rules and **Section 98** of the
Civil Procedure Act. The Application seeks for the following
orders;

1. That a temporary injunction be issued restraining the Respondents/Defendants by themselves, their servants/agents or any person acting on their behalf from any further construction of buildings on any land belonging to the estate of the late Yakobo. R. K. Mulindwa and not to alienate or effect any transfer or proprietorship of any land belonging to the estate. And also not to sell, dispose off any property belonging to the said estate.

2. That cost of this application be provided by the Respondents herein.

The application is supported by the affidavit sworn by the Applicant and the grounds briefly are as follows;

a. The Applicants have sued the Respondents vide Civil Suit No. 37 of 2018 seeking revocation of Letters of Administration held by the Respondent following abuse of authority and mismanagement of estate.

b. That the property to the estate is in danger of being wasted, damaged, disposed and alienated.

c. That if the application is not granted, the applicants will suffer irreparable damage.

d. That the suit will be rendered nugatory if this application is not allowed.

e. That the applicants have a high chance of success in the main suit.

f. That the justice of the case demands that this amended plaint be rejected by Court.

M/s Bahenzire, Kwikiriza & Co. Advocates represented the Applicants and M/s Mugabe-Luleti & Co. Advocates represented the Respondent. By consent both parties filed written submission.

Counsel for the Applicants submitted that the Respondents without the knowledge and consent of the Applicants and before the distribution of the estate, entered Block 46 Plot 15 land at Buraika, Burahya, Kabarole District measuring 25.6 hectares and proceeded to construct thereon a permanent

house which is complete. That the suit property was allegedly swapped between Dr. Julius Kasande, Jimmy Nkurumah, Mulindwa John and Kagoro Gilbert without any consideration for the Applicants' beneficial interest. That proprietorship of the said property is currently under the names of the Respondents as the Administrators of the estate of the late Yakobo R.K. Mulindwa.

And in the case of **Gapco Uganda Ltd versus Kweesa & Another, M.A No. 259 of 2013, [2013] UGHCLD 47** citing **E.L.T. Kiyimba Kaggwa versus Hajji Abdu Nasser Katende [1985] HCB 43**, where Odoki J. (as he then was) laid down the rules of granting a temporary injunction as thus;

1. The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.
2. The conditions for the grant of the interlocutory injunction are:
 - a. That the Applicant must show a prima facie case with possibility of success.
 - b. That 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.
 - c. Thirdly, if the Court is in doubt, it would decide an application on the balance of convenience.

Counsel for the Applicants added that the matter before this Court is a clear and strong case with serious question to be investigated, tried and determined by this Court. The case concerns mismanagement of authority and the estate by the Respondents in their capacity as Administrators of the estate of the late Yakobo R.K. Mulindwa with issues to determine such as whether there has been a distribution of the estate or not, whether the authority of the Respondents as the Administrators

is still valid. That the Applicants also seek revocation of Letters of Administration and appointment of new administrators.

Further, that a monetary figure may be placed on the financial loss that the Applicant's may suffer by the high handed attempts of the Respondents/Defendants to deprive them of their constitutional right of inheritance on the suit property but; the property which is in dispute may be valued in monetary terms, however, the Applicants' loss of the good will entrenched in the suit land and subsequent dent on its reputation as a result of the illegal activities of the Respondents cannot be adequately atoned by any award of damages.

That it is trite law that if the Court is in doubt of any of the above two principles (establishing a prima facie case and whether the Applicant will suffer irreparable damage that cannot be atoned for in damages), it will decide the application on the balance of convenience. Counsel concluded that the in the instant case, a prima facie case has been established and it has also been shown by the Applicants that no amount of compensation in damages will atone the damage they will suffer if the application is not allowed. Therefore, it is just, fair and equitable that the application is allowed.

Counsel for the Respondents on the other hand submitted that there is no danger posed to the estate warranting the grant of this application since the 1st Applicant already lodged a caveat on the suit land and that alone suffices to stop any alienation or dealing whatsoever on the said land hence rendering this application academic and of no use.

In regard to the house, counsel for the Respondents submitted that the same is currently in the hands of Dr. Julius Kasande, a beneficiary of the estate of Y.R.K. Mulindwa and a biological brother to the Applicants. That the Applicants were being untruthful since there is a will that was annexed to their affidavit in reply in which Dr. Julius Kasande was bequeathed all the land at Kanyamakere on which the deceased's homestead was. That annexure "C" confirmed that the said Julius Kasande

was given the family home and the kibanja at Kanyamakere. That the essence of annexure "C" was for the Respondents to apply for letters of administration to administer the unadministered part of the estate. The Respondents were then
5 to distribute the remaining properties of the estate that is, 62 acres of farm land at Baraika to all the beneficiaries.

Further, that Annexure "C" was voluntarily signed by the Applicants and they now cannot turn around and claim their brother's land in addition to what they are entitled to in the
10 unadministered part. That in the circumstances the will that bequeathed to Dr. Kasande is still valid and he can use it as he pleases. That the estate was distributed by the Respondents to the various beneficiaries who include the Applicants in the
15 instant application who are occupying part of the land at Baraika and have a permanent house therein. That some of the beneficiaries exchanged their respective pieces of land since distribution was effected and that all that is left is the
20 Respondents registering themselves on the land as administrators of the estate of the late Y.R.K. Mulindwa and not alienating the estate. That the Applicants are only intending to frustrate the other beneficiaries from enjoying their respective shares. Thus, the application has been brought in bad faith and intended to waste courts time.

I have carefully considered the submissions of both parties. And
25 as submitted by both parties there are conditions to be satisfied before a temporary injunction can be granted to wit; the applicant must show a prima facie case with the possibility of success; the applicant must otherwise suffer irreparable damage which would not adequately be compensated by an
30 award of damages; and that granting an injunction on a balance of convenience.

The Applicants in the instant case in their submissions stated that the case concerns mismanagement of authority and the estate by the Respondents in their capacity as Administrators
35 of the estate of the late Yakobo R.K.Mulindwa with issues to

determine such as whether there has been a distribution of the estate or not, whether the authority of the Respondents as the Administrators is still valid. That there are various triable issues that this Court needs to determine and if this application is not granted this will prejudice the Applicants.

I do concur with the submissions of the Applicants and find the instant case as one fit for the grant of a temporary injunction since it also touches on land which is a very sensitive subject matter. I accordingly allow the instant application. However, since the main case is pending, I order that cost of this application be in the cause.

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WILSON MASALU MUSENE

JUDGE

07/05/2019