

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
MISCELLANEOUS APPLICATION NO. 83 OF 2020
(Arising out of Misc. Application No. 269 of 2017)
(Arising out of Civil Suit No. 025 of 2017)

JOYCE BYEHONDOZO ::: APPLICANT

VERSUS

1. THE ATTORNEY GENERAL
2. LYANTONDE DISTRICT LOCAL GOVERNMENT ::::::::::::::::::::::: RESPONDENTS

Before; Hon Justice Victoria Nakintu Nkwanga Katamba

RULING

This application is brought under Section 98 of the Civil Procedure Act, Order 41 rr 4, 9, Order 52 rr 1,2,&3 Civil Procedure Rules seeking the following orders;

1. The temporary injunction issued by this honorable court on the 14th day of February 2018, be varied/atoned;
2. Costs of the application be provided for.

The grounds of the application as contained in the Applicant’s affidavit are that;

- a. On the 14th of February, 2018, this court granted an injunction restraining the Parties from interfering with each other until the main suit was disposed of;
- b. The Applicant filed an application for contempt of court orders to issue against the Respondents’ agents against spraying the grass which would affect her cattle;
- c. The contempt of court orders application was dismissed and during Covid19 lockdown, the Respondent took advantage and sprayed the grass which affected the Applicant’s cattle;

- d. The terms of the injunction are vague and unclear, and need to state the exact boundaries that have been left to the Applicant so that the Respondent's officials do not continue to disturb her peace;

Kanyago Anna of the 1st Respondent's Chambers opposed the application and stated in her affidavit that it is a blatant lie and falsehood to allege that the officials of the 1st Respondent have violated the court order for temporary injunction. That the Respondent has continued to respect the court order and the Applicant is merely bringing the instant application as a form of appeal against the Misc. Application No. 88 of 2019 for contempt of court orders, which was dismissed.

Ssebowa Maurice of the 1st Respondent's Chambers, on behalf of the 2nd Respondent opposed the Application and stated that the 2nd Respondent does not know the identities of the person alleged to have sprayed the grass and that the terms of the injunction are against both Parties. He stated that the 2nd Respondent has continued to respect the orders of this court and that the Applicant is using this application as a waste of court's time instead of fixing the main suit.

Determination of the Application;

The Applicant seeks for an order varying the temporary injunction granted by this court on grounds that the Respondent's officials have interfered with her occupation in breach/contempt of the said order. I should note however that the Applicant's application for contempt of court orders was dismissed by this court for lack of proof of contempt.

Order 41 rule 4 of the Civil Procedure Rules allows the court to vary injunctive orders. It provides that;

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made to the court by any party dissatisfied with the order.”

The Supreme Court in the case of ***Robert Kavuma v Hotel International Limited SCCA No.08 of 1990*** cited in ***UNBS V Ren Publishers Limited & Anor Miscellaneous***

Application No. 635 of 2019 held that an application to set aside, vary or discharge an interlocutory injunction may be granted upon evidence of *sufficient cause*.

Black's Law Dictionary 8th Edition at Page 231 defines "*sufficient cause*" to be analogous to "good cause" or "just cause", which simply means "legally sufficient reason." Sufficient cause is often the burden placed on a litigant by court rules or order to show why a request should be granted or action or inaction excused.

It is the Applicant's contention that the ruling and orders of this court in the application for a temporary injunction are vague and as such this court needs to clearly specify the boundaries in accordance with the status quo to be maintained.

I have carefully perused the record and the ruling and orders of this court in Miscellaneous Application No. 269 of 2017 and the trial Judge ordered that the Parties maintain the status quo and do not interfere with each other's possession until the determination of the main suit. It was not necessary at the time of determining the application for the temporary injunction to establish boundaries as that is to be determined in the main suit therefore the ruling and orders of this court ordering both Parties to not interfere with each other's occupation of the suit land, is not vague.

I have also perused the record of Miscellaneous Application No. 88 of 2019 filed by the Applicant seeking contempt of Court orders which were not granted upon court finding no sufficient evidence to prove that the Respondent was in breach of the injunctive orders of court. It is very clear from the pleadings of both applications that the Applicant is fishing for a remedy for which she has not adduced sufficient evidence to prove that the Respondent is not adhering to the temporary injunction.

As already stated, for this court to grant an order varying the temporary injunction the Applicant has to adduce sufficient cause favoring the grant. The evidence adduced by the Applicant in the instant case is not sufficient to prove that the Respondent is not respecting the temporary injunction and therefore there is no sufficient cause favoring the grant of this application.

The Applicant was advised to prosecute the main suit in order to have the dispute finally settled. I am in agreement with the advice of the trial Judge that the Applicant needs to prosecute the main suit and have this matter finally settled. Filing various applications seems like a fishing expedition yet the Applicant already has a suit to address the dispute.

The Applicant has therefore failed to adduce sufficient cause for the grant of this application and it is hereby dismissed.

Costs will be in the main cause.

Dated, signed and delivered by email at Masaka this 5th day of August, 2021.

Signed; **VICTORIA NAKINTU NKWANGA KATAMBA**

JUDGE