

occupying the same or carrying out any activities and or otherwise interfering with her possession and use of the suit land until the determination of the main suit and the counter claim and costs of taking out the application. The application was dismissed by the Assistant Registrar, His Worship Matenga Francis Dawa on ground that the applicant was in possession and there was no actual threat of evicting her from the suit land. Court also noted that there was no irreparable damage that the applicant was likely to suffer in case the application was not allowed and that the balance of convenience favored the Respondent.

10 The Applicant then filed this appeal under Order 50 Rule 8 of the Civil Procedure Rules. The grounds were outlined in the Notice of Motion and particularized in the supporting affidavit of the Appellant / Applicant. The Appellant / Applicant contended that she had served the application for a temporary injunction on 6th April 2022 and when the matter came up on 13th April 2022, the Respondent had not filed any affidavit in reply in opposition of her application. That the Applicant had filed her submissions and the Respondent was directed to file his affidavit in reply by close of business on 13th April 2022 and the matter was adjourned to 4th May 2022. That by the 21st April, the Respondent had not filed or served any affidavit in reply opposing her application and her lawyers informed her about this default. That on the 4th May 2022, she received a ruling from the Assistant Registrar where her application was dismissed with costs in the cause. That she had presented evidence of the threat of eviction and the suit land being in danger of being wasted and damaged but that her evidence was ignored by the Assistant Registrar. That in his ruling, the Assistant Registrar found that the Appellant / Applicant was in possession of the suit land but declined to preserve the status quo in her favour and as such her crops were uprooted by the agents of the Respondent since there was no order to stop them. That the agents of the Respondent have



continued to excavate part of the suit land to get aggregate and murrum amidst protests from her in vein and she has thus suffered damages and the land is being wasted. That she presented enough evidence about the irreparable injury she was likely to suffer in the event that the order was not granted but her evidence was ignored by court. It was contended that the Assistant Registrar erroneously held that the balance of convenience was in favour of the Respondent without any supporting evidence on record. That the ruling of the Assistant Registrar has occasioned an injustice to her and thus the said riling should be set aside and an injunction is granted as sought in Miscellaneous Application No. 26 of 2022.

The Respondent opposed the Appeal/Application through an affidavit in reply by Bylon Mugarura where he contended that contrary to the claim that the application had been unopposed, he had filed his affidavit in reply on 3rd May 2022 together with the submissions. That the Respondent was legally in occupation of the suit land by virtue of the order of Court dated 15th July 2016; that the Respondent was placed in possession by an order of Court on the 5th day of October 2016. That the learned Assistant Registrar rightly dismissed the Application since it lacked merit. It was asserted that the appellatant was neither registered as the proprietor nor in occupation of the suit land. That if a temporary injunction was issued by the Assistant Registrar, it would have the effect of setting aside the judgment and order of the High Court in HCCS No. 001 of 2015. That there is a pending appeal involving the same suit land and the applicant is aware of the same thus he is a trespasser on the suit land. It was contended that there is no irreparable injury that the appellatant will suffer since she is a trespasser to the suit land. That the Appellant has not presented any evidence of occupation of the suit land and that the decision by the Assistant Registrar that she was in possession is erroneous. It was the position of the Respondent that the Applicant is in contempt of the order of Court



issued by the court in HCCS NO. 001 of 2015 and her application ought to be disallowed.

Issues:

- 5 1. Whether the Appellant's appeal has merit?
 2. Remedies available to the parties.

Representation:

10 M/s Tusasirwe & Co. Advocates and M/s Bagyenda & Co. Advocates represented the Appellant while M/s Akampurira & Partners and Legal Consultants Represented the Respondent. I have considered the pleadings and the submissions on file.

Resolution:

Issue one: Whether the Appellant's appeal has merit:

- 15 Order 50 Rule 3 of the Civil Procedure Rules empowers a registrar to hear interlocutory applications. Order 50 Rule 8 allows any person aggrieved by any order of a registrar to appeal from the order to the High Court.

20 In this case, the Appellant asserts that she had presented evidence of the threat of her eviction and that the suit land was in danger of being wasted and damaged but that the same was ignored by the Assistant Registrar. On the other hand, the Respondent contends that he was the one in possession; that he was legally in occupation of the suit land by virtue of the order of Court dated 15th July 2016; that the Respondent was placed in possession by an order of Court on the 5th day of
25 October 2016. There was conflicting evidence as to who was in possession, which

was not independently verified by court through a locus vist before determining Miscellaneous Application No. 26 of 2022.

Applications for a temporary injunction are governed by order 41 of the Civil
5 Procedure Rules. The main import of a temporary injunction was stated by Justice
Night Tuhaise (High Court Judge as she then was) in **Ndema Emanzi
Rukandema v Mubiru Henry, Family Division MA No. 225 of 2013**, thus:
*'Court's duty is only to preserve the existing situation pending the disposal of the
substantive suit. In exercising this duty, Court does not determine the legal rights
10 to property but merely preserves it in its actual condition until legal title or
ownership can be established or declared.'*

It therefore follows that before a temporary injunction is granted maintaining the
status quo the court must have clear evidence of the prevailing status or ascertain
15 the prevailing status of the subject matter before the injunction is granted. In this
case, as there was no clarity as to who was in possession, it was desirable to
conduct a pre-trial locus visit to inform the decision of court.

In the premises I find it just and equitable that the ruling of the learned Assistant
20 Registrar in Miscellaneous Application No. 26 of 2022 and the orders therein be
and are hereby set aside:

Issue two: Remedies available to the parties.

I grant the following orders:

- 25 (a) That Miscellaneous Application No. 26 of 2022 shall be heard afresh
between the parties.



(b) The learned Assistant Registrar should conduct a pre-trial locus to independently establish the status-quo before re-hearing and determining the application for a temporary injunction.

5 (c) Each party shall bear their own costs.

I so order.

10 
Vincent Wagana

High Court Judge

Fort-portal

7-11-2022