

5 2. Issue

a) Whether the applicant can be granted a temporary injunction.

3. Law applicable

a) The Constitution of the Republic of Uganda, 1995 as Amended

10 b) The Civil Procedure Act Ca 71

c) The Civil Procedure Rules S.I 71-1

d) The Judicature Act Cap 13

e) Case law

4. Resolution of the issues

15 a. Whether the applicant can be granted a temporary injunction

Black's Law Dictionary at Page 855 defines a temporary injunction as an injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case.

20 According to **Ssekaana M. and S. Ssekaana on Civil Procedure and Practice in Uganda, 2nd edition at page 257**, an injunction as an order of court directing a party to the proceedings to do or to refrain from doing a specific act.

25 The power of the High Court to grant an injunction is derived from **Section 38 (1) of the Judicature Act Cap 13**. It empowers the High Court to grant an injunction restraining any person from doing any act as may be specified by the court when it invokes its inherent powers to make orders that are necessary for the ends of justice or to prevent abuse of court process as per **S.98 of the Civil Procedure Act**.

30 Such power is, however, discretionary as was held in the case of **Francis Kayanja Vs Diamond Trust Bank U LTD HCMA 0300 of 2008** where court noted that the law in respect to granting of a temporary

5 injunction is a judicial discretion which court exercises judiciously upon considering certain conditions.

Additionally, **Section 64 of the Civil Procedure Act** empowers court to grant a temporary injunction in order to prevent the ends of justice from being defeated

10 The instant application for a temporary injunction is provided for under **Order 41 (1) (a) of the Civil Procedure Rules** which provides that where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree, the court may
15 by order grant a temporary injunction to restrain such or make such other order for the purpose of staying or preventing the alienation, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

In ***Re Kikoma Saw Millers Ltd [1974] EA 487*** it was held that where
20 property is in danger of being wasted, an injunction can issue.

b. Conditions for the grant of a temporary injunction:

For a party to apply for a temporary injunction there must be a main suit which must be proved by affidavit or otherwise.

In the case of ***Mwine Nyakaima & Company Advocates Vs Departed
25 Asians Property Custodian Board [1987] HCB 91*** Court observed that the right to obtain an interlocutory injunction is not a cause of action, it is dependent upon there being a preexisting cause against the defendant, arising out of the invasion, actual threatened by him of legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable
30 to the jurisdiction of the court.

5 Thus, the right to obtain a temporary injunction is merely ancillary and incidental to the existing cause of action.

According to the facts at hand there is a pending suit that is **Civil Suit No 63 of 2019** between **Ecetú Vincent (applicant) and Obirai Charles & 2 Ors (defendants)**. So this limb is satisfied.

10 c. Purpose of Temporary Injunction:

The most important aspect of a Temporary Injunction is to keep or maintain the status quo till the final determination of the issues in controversy this is established

15 In the case of ***P.K Sengendo Vs James Ndaula HCMA No. 546 of 2013***, it was held that the main purpose of granting of a temporary injunction is to preserve the status quo pending the determination of the head suit.

20 “Status quo” as defined as in **Black’s Law Dictionary at page 4418** simply denotes the existing state of things existing before the particular point in time; and in determining whether or not to maintain the status quo other surrounding circumstances have to be taken into account.

The Court of Appeal in ***Godfrey Sekitoleko & Ors Vs Seezi Mutabaazi & Ors [2001 – 2005] HCB 80*** made the position clear by stating as follows; -

25 ***“The court has a duty to protect the interests of parties pending the disposal of the substantive suit. The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal rights to the property from irreparable or***
30 ***serious damage pending the trial, the court does not determine the legal rights to property but merely preserves***

5 ***it in its actual condition until legal title or ownership can be established or declared.”***

In conclusion therefore, this application is brought pending the disposal of Civil Suit No.63/2019 and therefore, it is rightly before court and the court
10 has power to determine accordingly.

d. Preconditions for the grant of a temporary injunction

Before court grants a temporary injunction, there have to be conditions to be satisfied. These conditions were elaborately discussed in the case of ***Kiyimba Kagwa Vs Haji Nassar Katende [1985] HCB 43*** and they
15 include: -

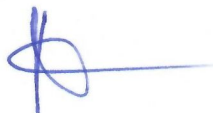
- i. The applicant must show a prima facie case with a probability of success
- ii. Such injunction is only granted where the applicant might otherwise suffer irreparable injury which will not be adequately compensated by
20 the award of damages.
- iii. If the court is in doubt, it will decide the application on a balance of convenience.

The above principles in relation to the matter at hand are discussed below comprehensively.

25 e. Prima facie case

For court to grant a temporary injunction, the applicant must show that there is a prima facie case in the substantive suit, with a probability of success.

A *prima facie* case was defined in the case of ***Basudde Nalongo Vs Tereza Mwewulize MA 402 of 2003*** as that evidence placed before the
30 court, by way of affidavit or otherwise that show that there exists a genuine triable issue in the main suit pending between the parties and the court must



5 be satisfied that the dispute presented in the main or head suit is not a sham but a genuine dispute and that the applicant has probabilities of succeeding in the main suit.

The applicant herein under paragraphs 2, 3, 4, 5, 6, 7 and 8 of the affidavit in support of this application contend that he has at all material times been
10 the owner of the suit land measuring 50 acres (32 gardens) which he inherited from his father Ongwec Samwiri and had even obtained letters of administration. That the respondents on or about 2018 to 2019 trespassed on the applicant's land which prompted the applicant to file a suit for a permanent injunction restraining the respondents, their agents etc. from
15 alienating the applicant's property. however, the respondents have continued trespassing on the applicant's land and have no plausible defence to his claim whatsoever.

The respondents under paragraphs 5, 6, 7, 8, 9, 10 and 11 of the affidavit in reply state that the suit land does not measure 52 acres (gardens) and the
20 inherited land by the applicants is merely adjacent to the land in dispute, that the land they were using was inherited from their forefathers and that there can be no trespass after the dismissal of Kaberamaido Civil Suit No.08 of 2011.

The respondents further in their submissions cited **Section 7 of the CPA**
25 which states to the effect that, no court shall try any suit or issue in which has been directly and substantially in issue in the former between parties under whom they are or any of them claim litigating under the same title, in a court of competent to try the subsequent suit or suit in which the issue has been subsequently raised and had been heard and finally decided by the
30 court.

5 The respondents also submit that since the applicants concede that there was a previous suit between him and the respondent over the same subject matter which according to the applicant was erroneously dismissed, the applicant's remedy was not to file a fresh suit but rather to appeal against the alleged erroneous dismissal and so far as the said appeal has not been resolved, the
10 present suit is incompetent and legally does not exist and no application can rise from a nonexistent suit. In making this assertion, the respondents relied on the holding in the case of ***Tumusiime Robert V Busobozi Stephen Civil Appeal No.38 of 2016.***

The applicant in his submissions in rejoinder reiterated his earlier
15 submissions but further submitted that the allegation that his case was *res judicata* is based on any law as a creature of statute as per **Section 7 of the Civil Procedure Act** quoting the case of ***John Semakula V Pope Paul Social Club, C.A.C.A 67 of 2004*** in support of his assertion.

He also submitted that in the present case the applicant filed **Civil Suit
20 No.08 of 2011 in the Chief Magistrate's Court of Kaberamaido** for *inter alia* trespass of the applicant's land measuring approximately 12 gardens /acres and the same was dismissed.

That in 2018/2019, the respondent further trespassed on the appellant's land measuring more than 50 acres (12) gardens prompting him to file **Civil Suit
25 No.63 of 2019** which is still pending in the High Court of Soroti. That the two suits that of Kaberamaido Suit No.8 of 2011 and High Court Civil Suit No.63 of 2019 were distinctively different and therefore does not give rise to *res judicata* since in the former, the claim was on 12 gardens/acres and in the latter was on 50 acres/32 gardens.

5 Justice Byamugisha as she then was noted in the case of **Daniel Mukwaya Vs Admin. General HCCS 630 of 93** that *an applicant for a temporary injunction has to satisfy court that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit.*

10 Under paragraph 14 of the respondents' affidavit in reply acknowledge the existence of civil suit No.63 of 2019. This acknowledgment means that there are in existence of two distinct different suits with distinct quantities of land with rise to the differences in quantities not explained off by the respondents. The (applicant) further have attached photos of continued destruction of the
15 suit land.

Arising from the above I am satisfied that the applicant has established the existence of a prima facie case in which he has reasonable chance of success. The first element is therefore decided in the affirmative.

f. Irreparable injury:

20 Stephen Mubiru J defined irreparable injury in the case of **Rashida Abdul Hanali and Another Vs Suleiman Adrisi M.A No.008 of 2007** as loss that cannot be compensated for with money

From paragraphs 4, 6, 7, 8 and 9 of the affidavit in support, it is stated that the respondent's trespassed on the applicant's land by entering thereupon
25 constructing new houses thereon, clearing bushes and forests, cutting trees some of which are boundary marks to the suit land well knowing that the suit land belongs to the applicant and that the actions of the respondents have greatly interfered with the applicant's quiet possession of the suit land.

The respondents under paragraphs 4, 7, 9, 11 & 12 deny trespassing on the
30 applicants land, arguing that they could not have trespassed where the applicant's case had been dismissed by the Kaberamaido court on the same

5 subject matter now forming the basis of this application and that for this reason they had done nothing to interfere with applicant's quiet possession of the land and so the applicant had failed to demonstrate that the damage or injury complained of cant be remedied or atoned for by way of damages. The applicant in rejoinder reiterated that he had demonstrated that in the unlikely event that this application is not granted he would suffer irreparable damages not capable of being atoned in monetary value because his land was being completely alienated. He relied in the case of *Takiya Kashwahiri and Anor vs Kajungu Denis CACA No 85 of 2011* conternding that the acts of the respondents were a continuing trespass and encroachment on the his land by extending into the applicant's land well knowing that the same was not theirs and they just wanted to wrongly take possession of it with intention of totally alienating it away from the applicant before disposal of the main suit thereby in the face of it intending to injure the feelings and attachment of the plaintiff to the land thereby causing irreparable loss that cannot be adequately be compensated for by way of damages.

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20 The existence or not of irreparable injury is a question of fact. In the case of *Kiyimba Kaggwa Vs Haji Nassar Katende [1988] HCB 43 Odoki J (As he then was)* held that irreparable injury means that the injury must be substantial or immaterial one, that is, one that cannot be adequately compensated for in damages.

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30 Whereas the respondents contend that they have not done anything to interfere with the applicant's quiet possession and used the dismissal of a case by Kaberamaido in support of their case, I am satisfied that for the case which pending before this Honourable Court, the quantity of land differs substantially the one which was dismissed by Kaberamaido court and as such , I would conclude that the cause of actions in the suits differ and after having



5 resolved the first element in the affirmative, it is therefore, I would conclude that the applicant has truly demonstrated that he will suffer irreparable loss if this application is not granted and so for that reason, the second element is resolved in the affirmative.

g. Balance of Convenience:

10 A court is under the duty to weigh the convenience of complying with the injunction on the part of the respondent against the damage that the applicant would suffer if the injunction is not granted. If the damage outweighs the convenience, then the applicant would be granted the injunction. This was the position of court in the case ***Francis Kayanja Vs***
15 ***DTB U Ltd HCMA 0300 of 2008*** where it was held that the last test is that in case of doubt, a court would decide whether or not to grant a temporary injunction on the balance of convenience. This test is resorted to when Court is in doubt on any of the first two issues.

This application under paragraphs 11 and 14 of the affidavit in support read
20 together with the applicant's submissions show that if the application is not granted, the applicant will be most convenience because he will lose his land, plantations and numerous developments on the suit land before determination of the main suit.

The respondents in reply quoted the authority of ***American Cyanamid v***
25 ***Ethicon [1975] AC 396*** and concluded by saying that this present case is frivolous and vexatious.

Taking into account the instant matter where the respondents seem to be
mixing one cause of action with another and thus trying to stall this one, I
would be persuaded by the applicant's submissions that the balance of
30 inconvenience in this matter weighs more on his side than to those of the



5 respondents and as such I would find and resolve that this element equally
in the affirmative on the side of the applicant.

h. Status quo

The applicant under paragraphs 6,7,9,11,12,13, and 14 of the affidavit in
support and this submissions state that the temporary injunction should be
10 granted to main the status quo, prevent further encroachment in the
applicant's land by the respondent so that the applicant can preserve their
interests in the suit land until the main suit is heard to its logical conclusion.
The respondents in their written submissions in reply submit that the
complaints in the head suit are the same complaints in the application and
15 this can only be determined at the conclusion of the suit which suit does not
exist in this particular matter. That the state of affairs which were obtained
at the time of filing the suit is what should be maintained as the status quo.
In rejoinder, the applicant reiterates his earlier submissions and further
submits that it is a misrepresentation of the law for the respondent to assume
20 that the complaints made in the head suit should be different from an
application for grant of a temporary injunction given the fact that this
application arises from the head suit and it is meant to maintain the status
quo on the suit land until the main suit is finally disposed of.

"Status quo" as defined as in **Black's Law Dictionary at page 4418**
25 simply denotes the existing state of things existing before the particular point
in time; and in determining whether or not to maintain the status quo other
surrounding circumstances have to be taken into account.

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Given the facts of this application and my adoption of the consideration in the holding in **Sekitoleko** (above), I would conclude that the fact of the status quo is proved and so element is resolved in the affirmative.

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In conclusion therefore, this application would on the aforementioned findings be found to have been proven.

5. Order:

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A temporary injunction is thus issued accordingly in the terms of this application only in regards to the suit land being disputed in **HCCS No 63 of 2019** with costs to be in the cause.

I so order



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Hon Justice Dr Henry Peter Adonyo

Judge

7th June ,2022