

5 3. Resolution:

This is an application by way of chamber summons brought under Order 41 rule 2(1) and (2) of the Civil Procedure Rules and section 98 of the Civil Procedure.

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The grounds of the application are contained in the affidavit of Ikinu Deborah but briefly are;

- i) That the suit land belongs to the estate of the late Brigadier David Livingstone Ogwang who is the registered proprietor of the land.
- 15 ii) That the hearing of the suit was concluded and is only pending locus after the same failed on the two occasions it was fixed since the Registrar was indisposed.
- iii) That locus is pending and a date has not been fixed.
- iv) That the respondents have embarked on hiring out the suit land to
20 third parties, cultivating and cutting down trees with a view of altering the topography and face of the suit land and before the determination of Civil Suit No. 29 of 2014.
- v) That the respondents and their agents have intentions of defeating the suit pending before this court and interests of the Application
- 25 vi) That the suit land is in imminent danger of being alienated, sold, leased, the vegetation and trees destroyed and status quo changed before conclusion of the main suit pending before this honorable court.
- vii) That there is a pending main suit vide Civil Suit No. 29 of 2014
30 before this honorable court with a high likelihood of success in favor of the applicant.

5 viii) That if the respondents are not restrained, the main suit shall
 be rendered nugatory and applicant will suffer irreparable loss and
 damage.

 ix) That it is the interest of justice to preserve the status quo and
 preserve the suit property until the main suit No. 029 of 2014 is
10 resolved.

The Applicant seeks the following orders;

 i) That a temporary injunction doth issue restraining the
15 respondents, their agents, legal representatives, assignees,
 successors, servants or any other persons acting on behalf
 restraining them from hiring out, selling, cutting down trees,
 cultivating, constructing or dealing in any way with the suit land
 comprised in LRV 1186 Folio 17 land at Omatenga, Owogoria,
20 Kumi District, Teso measuring approximately 191.46 hectares
 until the final determination of the main suit.

 ii) Costs of this application be provided for.

25 **Order 41 rule 2(1) & (2) of the Civil Procedure Rules** provides as
 follows;

**(1) In any suit for restraining the Defendant from
 committing a breach of contract or other injury of any
30 kind, whether compensation is claimed in the suit or
 not, the Plaintiff may, at any time after the
 commencement of the suit, and either before or after
 judgment, apply to the Court for a Temporary**

5 **Injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.**

10 **(2) The Court may by order grant such Injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.**

15 **Section 98 of the Civil Procedure Act** provides as follows;

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse
20 **of the process of the court.**

Issue: Whether the applicant is entitled to the grant of a temporary injunction:

25 According to *Noor Mohammed V Jamma Hussein (1953)* 29 *EACA* a temporary Injunction is a remedy which aims at protecting the status quo until the matter to be determined by court is disposed of.

Section 38 (1) of the Judicature Act empowers the High Court to grant an injunction, it provides as follows;

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Injunctions The High Court shall have power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.

Section 64(c) of the Civil Procedure Act permits the High Court to grant a temporary injunction and it provides as follows;

In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed

10 **(c)grant a temporary injunction and in case of disobedience commit the person guilty of it to prison and order that his or her property be attached and sold.**

The law on granting of temporary injunctions in Uganda is now well as it was settled in the classic case of *E.L.T Kiyimba Kaggwa V Haji Abdu Nasser Katende [1985] HCB 43* where Odoki J (as he then was) laid down the rules for granting a temporary injunction; thus: -

20 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. The conditions for the grant of the interlocutory injunction are;

- Firstly that, the applicant must show a prima facie case with a probability of success.
- 25 - 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.
- Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

30 Therefore, first and foremost, in considering of a grant of a temporary injunction it is necessary to identify the *status quo*.

“Status quo” as defined as in **Black’s Law Dictionary at page 4418** means the existing state of things existing before the particular point in

5 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 Ssekitoleko & Ors Vs Seezi Mutabaazi & Ors [2001 – 2005] HCB 80** as cited **Emorani v Nakendo & 2 Ors (Misc. Application No. 478 of 2014) [2014]**

10 **UGHCLD 131** made the position clear as it stated that;

“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.”

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The conditions for grant of a temporary injunction include the following:

a. Prima facie case with a probability of success:

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A *prima facie* case with a probability of success was defined in the case of **Kigongo Edward Nakabale Vs Kakeeto and Anor MA 144 of 2017 [2017] UGHCCD 146** as no more than that the court must be satisfied that the claim is not frivolous or vexatious. In other words, that there is a serious question to be tried.

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The applicant is required at this state in trial to show a *prima facie* case and a probability of success but not success itself.

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In proving this point, the applicant stated in her affidavit in support of this application that there is a pending main suit vide Civil Suit No. 29 of 2014 wherein she has sued the respondent for land titled in LRV 1186 Folio 17 land at Omatenga, Kumi, Teso measuring approximately 191.49 Hectares after having acquired the same by way of inheritance from her late father.

5 That the 1st defendant is an administrator of the estate of her father the late Brigadier David Livingstone Ogwang but who was included into the administration of the estate without the plaintiff's consent and even went on to obtain a certificate of title from the second defendant way back in 1982.

10 That the 2nd defendant is sued for causing the inclusion of names of the 1st defendant's late father into the title and failed or neglected to notice alleged glaring irregularities and halt the issuance of title.

Accordingly, from the averments of the applicant, proof is available that the main suit does exist and has triable issues with a likelihood of success.

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b. Irreparable injury:

In ***Giella v Cassman Brown & Co Ltd [1973] 1 EA 358 (CAK)*** it was stated by Spry V.P that an interlocutory injunction will not normally
20 be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Irreparable injury is therefore that which cannot be compensated by damages.

According to the applicant, the respondents had embarked on hiring out
25 the suit land to third parties, cultivating it and cutting down trees with a view of altering the topography and face of the suit land and before the determination of Civil Suit No. 29 of 2014.

She further stated that the respondents and their agents have intentions of defeating the suit pending before this court and interests of the
30 Application generally.

That the suit land is in imminent danger of being alienated, sold, leased, the vegetation and trees destroyed and *status quo* changed before conclusion of the main suit which is pending before this honorable court.



5 According to the applicant, with the above at play, if this application is not granted, she will suffer irreparable damage which cannot be compensated in monetary terms. This is because the suit land shall have been tampered with which action is not in her best interest.

From the averments herein, I am satisfied that the applicant is likely to
10 suffer irreparable damage the respondents had embarked on hiring out the suit land to third parties, cultivating it and cutting down trees with a view of altering the topography and face of the suit land and before the determination of Civil Suit No. 29 of 2014.

15 c. Balance of Convenience:

In *Jover Byarugaba Vs Ali Muhoozi and Anor (Misc. Application 215 of 2014) [2014] UGHCCD 173*, Hon. Lady Justice Elizabeth Ibanda Nahamya stated that,

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“It is trite law that when Court is in doubt on any of the above principles, it will decide the application on the balance of convenience. The term balance of convenience literally means the if the risk of doing injustice is going to make the applicant suffer then probably the balance of convenience is favorable to him /her and court would most likely be inclined to grant to him or her the application for a temporary injunction.”

30 According to the applicant, if the application is granted, the applicant will be in position to secure her interests in the suit land, however, if it is not granted, the most inconvenienced person would be herself and not the

5 respondent since the suit land would have been already tampered with.
That it was then in the interest of justice that this application is granted.
From the averments herein, I am tended to believe that the applicant faces
the risk of injustice being meted unto her and thus suffer immensely if this
application is not allowed as seen from the averments of the fact that ,
10 though the respondents denies that no status quo has changed in any way
since the video and pictures relied on by the applicant does not reveal that
the respondents had hired any part of the suit land to third parties, I am
persuaded that the interests of justice would require the maintenance of
the status quo as at this stage this court is not required for proof on a
15 balance of probability but assertions which are persuasive and which tips
the balance of convenience.

In this application, I would find that the balance of convenience favours
the applicant.

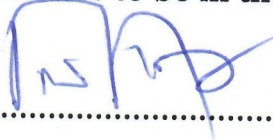
Arising from all the above, and given the fact that the applicant has
20 satisfied all the grounds required for the grant of the orders sought herein,
I would thus find that this application is meritorious and grant it
accordingly.

5. Orders:

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- A temporary injunction is hereby issued against the respondents,
their agents, legal representatives, assignees, successors, servants or
any other person(s) acting on their behalf restraining them from
hiring out, selling, cutting down trees, cultivating, construction or
30 dealing in any way with the suit land comprised in LRV 1186 Folio
17 land at Omatemg, Owogoria, Kumi District measuring
approximately 191.46 hectares until the final determination of the
main suit.

5 - The costs of this application is to be in the cause.
I so order.



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Hon Justice Dr Henry Peter Adonyo

Judge

18th August 2022

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