

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO. 107 OF 2012
ARISING OUT OF CIVIL SUIT NO. 52 OF 2012

1. PIARA SINGH JHASS
2. HAVINDER SINGH JHASSAPPLICANTS

VERSUS

SUKHVEER KAUR (Administrator of the estate of the late TALOCHAN SINGH JHASS).....RESPONDENT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by chamber summons brought under Order 41 rules 1, 2 & 9 of the Civil Procedure Rules (CPR). It seeks orders that a temporary injunction be granted restraining the respondent from selling, leasing, transferring, alienating and or disposing any properties of the estate of the late Tarlochan Singh Jhass and from evicting and or harassing the applicants until the main suit is heard and disposed of.

The application is supported by the affidavit of **Havinder Singh Jhass** the 2nd applicant. It was opposed by the respondent who filed an affidavit in reply. Counsel filed written submissions but the respondent's counsel did not avail court with photocopies of the authorities he cited though court had so requested. The submissions by both counsel were filed after the deadlines set by this court which

caused the ruling date to be adjusted. The court however, for the sake of dispensing substantive justice, addressed the applicants' counsel's submissions on the application and the respondents' submissions in reply though they were filed after the dates set by this court. This court however declined to address the applicants' counsel's submissions in rejoinder filed in this court on 23/01/2015 because they were filed very late, long after the date initially set for the ruling.

The gist of a temporary injunction is the preservation of the suit property pending disposal of the main suit. In addressing this, courts have set out conditions to be fulfilled before the discretion of granting the temporary injunction is exercised. These are that the applicant must show that there is a *prima facie* case with probability of success; and that the applicant might otherwise suffer irreparable damage which would not easily be compensated in damages. If court is in doubt, it will decide the question on the balance of convenience. In addition, Order 41 of the CPR requires the existence of a pending suit. It provides that where it is proved to court that in a suit the property in dispute is in danger of being wasted, damaged or alienated by any party to a suit, the court may grant a temporary injunction to restrain, stay, and prevent the wasting, damaging and alienation of the property. See **Kiyimba Kaggwa V Haji Katende [1985] HCB 43**.

The pendency of a suit, in this case civil suit no. 52 of 2012 filed by the plaintiffs/applicants against the defendant/respondent, is not in issue.

On whether there is a *status quo* to be preserved, the 2nd applicant avers in his supporting affidavit that the respondent petitioned for and was granted letters of administration in respect of the estate of the late Tarlochan Singh Jhass without the knowledge and consent of the

deceased family members; that she has since mismanaged the estate, harasses and threatens the applicants with eviction, is vending estate properties to land brokers, and is likely to dispose of it thereby causing irreparable loss to the respondents as beneficiaries of the estate. The applicants' counsel submitted that the applicants are in possession of some of the properties forming part of the estate and that *status quo* is not about legal rights of parties but preservation of what the parties possess.

The respondent averred in her affidavit in reply that the applicants have no proprietary interest in the deceased's estate and as such are not likely to suffer loss, that the letters of administration were legally granted to her and that there is no immediate threat to the estate. Her counsel submitted that the applicants were not dependant on the deceased and the fact that they are in possession of part of the deceased's estate shows that the *status quo* has not been upset.

The *status quo* is not about who owns the suit property but the actual state of affairs on the suit premises. The *status quo* does not have to be upset first, otherwise the grant of a temporary injunction would be overtaken by events, in which case it should not be granted. The subject matter of a temporary injunction is the preservation of the existing state of affairs pending litigation. It is aimed at protecting property from being wasted, damaged, alienated, sold, removed, or disposed of, regardless of the litigant's rights or claims to such property. 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 to property but merely preserves it in its actual condition until legal title or ownership can be established or declared. See **Commodity Trading Industries V Uganda Maize**

Industries & Anor [2001 – 2005] HCB 118; Sekitoleko V Mutabaazi & Ors [2001 – 2005] HCB 79.

In the instant case, the actual state of affairs, as deduced from the affidavit evidence is that applicants are threatened with eviction from some of the estate properties. The respondent maintains that the applicants have no proprietary interest in the deceased's estate and as such not likely to suffer loss, and that the letters of administration were legally granted to her. This touches the merits of the main suit. It is not for court at this stage to delve into the merits of the case.

In my opinion, there is a *status quo* to preserve in that the actual state of affairs should remain as they are, that is, the applicants to remain in possession of part of the estate they are in possession of until the main suit is disposed of.

As to whether the suit establishes a *prima facie* case with probability of success, case law is that though the applicant has to satisfy court that there is merit in the case, it does not mean that one should succeed. It means the existence of a triable issue or a serious question to be tried, that is, an issue which raises a *prima facie* case for adjudication. See **Kiyimba Kaggwa, supra.**

The application states that the applicants have filed a civil suit for revocation letters of administration to the estate of their late son Tarlochan Singh Jhass challenging the respondent's purported illegal actions. In the main suit they allege the respondent fraudulently applied as widow and sole beneficiary and obtained letters of administration to the estate of Tarlochan Singh Jhass. They pray this court to revoke the said letters, among other things. The defendant/respondent denies the allegations contending she lawfully

obtained the letters of administration as a widow of the deceased, that the applicants were not dependants of the deceased as to qualify as beneficiaries to the estate.

In my opinion, the foregoing situation gives rise to serious triable issues pointing to a *prima facie* case for adjudication. It is not for court at this stage to go into the merits of the main suit. This will be done when the main suit is heard on the merits. Thus this court has refrained from addressing all that affidavit evidence and submissions on the legal rights of the parties regarding the estate.

The 2nd applicant avers in paragraphs 5 and 7 of his affidavit supporting the application that they will suffer irreparable loss and damage if the injunction is not granted. It has been held that irreparable injury does not mean that there must be physical possibility of repairing injury.

The applicants are in possession of part of the estate they seek not to be evicted from. There is, as is apparent from the affidavit evidence, a likelihood of the applicants' suffering irreparable loss and damage in case they are evicted before the main case is disposed of. The reclaiming of their claims or status on the estate, in my opinion, would be irreparable in terms of regaining possession of the part they occupy should the case be eventually resolved in their favour.

The balance of convenience is also in favour of the applicants who are in possession of that part of the estate they seek not to be evicted from. The respondent on the other hand, who is not in possession of the same part of the estate occupied by the applicants, incurs no inconvenience if the *status quo* remains as it is until the main suit is disposed of.

In the premises, I allow this application.

Costs of this application will be in the cause.

Dated at Kampala this 27th day of January 2015.

Percy Night Tuhaise

Judge.