

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-0080-2016  
(ARISING FROM CIVIL SUIT NO. 13 OF 2016)**

- 1. PAMELA ASEKENYE MALLINGA  
2. RACHEL KATEU MALLINGA  
3. STEPHANIE TINO MALLINGA :::::::::::::::::::::::::::APPLICANTS**

**VERSUS**

- 1. BEATRICE ASIRE MALLINGA  
2. ATWOOKI SARAH (ADMINISTRATORS OF  
THE ESTATE OF THE LATE  
DR. STEPHEN OSCAR MALLINGA)::::::::::::::::::::::::::RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

I have gone through all arguments as raised. I make findings as herebelow.

**1. Prima facie case**

Am satisfied that CS.13/2016, has been filed. It is subject of a full trial. Court will not at this stage comment on its suitability.

**2. Status quo**

I have noted from the record that already Letters of Administration have been granted. I note that both applicants and Respondents are beneficiaries to the will as annexed. I find that there is no evidence to satisfy court that any status quo is in danger of being alienated or has been

alienated. Originating summons 2/2016- is a mere application in court and not evidence of change in status quo.

### **3. Irreparable injury**

I did not find evidence of the dangers posed to this estate by the holders of the Letters of administration leading to irreparable injury. Applicants did not place before court any evidence of Respondent's use of the letters to dispose off, alienate or deal with the estate in any manner contrary to the interests of the testator or the Estate.

It is impossible for court to speculate what action the Respondents will do to the estate which is not compensatable by an award of damages. No irreparable injury was proved.

### **4. Balance of Convenience**

The inconvenience pointed at by Applicants is the fact that Respondents have not filed any inventory and so Respondents are left in the dark. They were of the view that no action should be taken until the anomaly is rectified.

In the case of ***Kiyimba Kagwa v. Katende (1985) HCB***, it was held that:

*“if the court is in doubt it will decide the application for temporary injunction on the balance of convenience.”*

I have examined all matters as argued and pleaded. At this stage the balance of convenience is in favour of the one who suffers if this application is granted. The applicants have argued that “they fear” that Respondents may waste/alienate the estate, on account of “fraud” as alleged. However applicants have been in the exercise of these rights as administrators and no beneficiary, save applicants has expressed similar fears. I am of the view that granting this application might cause more harm than good to this estate as it would lead to a stalemate.

The affairs of this estate need accountable administration. In the meantime the holders of the letters are to be held accountable by law and such the balance of convenience is in their favour.

All in all I find that there is no merit in the prayer raised for the application for a temporary injunction. The application is not granted. It is dismissed with costs to the Respondents.

**Henry I. Kawesa**

**JUDGE**

**23.11.2016**