

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MAKINDYE**  
**FAMILY DIVISION**  
**MISCELLANEOUS APPLICATION NO. 564 OF 2016**  
***ARISING OUT OF CIVIL SUIT NO. 149 OF 2016***

1. **BYARUHANGA SAMUEL**  
2. **OWOR WILSON**  
3. **OCHENG DAVID.....APPLICANTS**

**VERSUS**

**KABAGAHYA HARRIET.....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 issues restraining the defendant/respondent by herself, her servants/agents or any person acting on her behalf from processing leases in respect of land belonging to the estate of the late Ernest Wanda (“the deceased”) selling, disposing off, and/or alienating the land belonging to the said estate, processing land compensation payments from UMEME due to the estate of the deceased arising from the use of the deceased’s land by UMEME, until final determination of the main suit or further orders of this court; and that costs of the application be provided for.

The application is supported by the affidavits of **Byaruhanga Samuel** the 1<sup>st</sup> applicant, and Ocheng David the 3<sup>rd</sup> applicant. The affidavit of the 3<sup>rd</sup> applicant was filed after the issuing of an initial interim order. It sought the interim order to be widened to include an order restraining the respondent from processing pension and gratuity payments for the deceased. The application was opposed by the respondent who filed an affidavit in reply to the affidavits of the 1<sup>st</sup> and 3<sup>rd</sup> applicants. Counsel filed written submissions within time schedules given by this court.

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; 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 applicants' counsel submitted that there is a *prima facie* case set out by the applicants against the respondent; that if the respondent processes leases in respect of the land belonging to the estate and subsequently sells it as threatened, the applicants who are beneficiaries of the estate shall suffer irreparable injury which cannot easily be atoned for in damages. The respondent's counsel submitted in reply that granting the temporary injunction will be detrimental to the estate since compensation payments from UMEME and the processing of the deceased's gratuity will be put to a standstill which would not benefit the estate; and that the applicants had not indicated how they will be inconvenienced by the actions of the administrator in processing the pension gratuity and the compensation claim.

The pendency of a suit, in this case civil suit no. 149 of 2016 filed by the plaintiffs/applicants against the defendant/respondent, is not in issue.

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 the late Wanda 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 the late Wanda without their knowledge and consent as beneficiaries to the estate and family members of the late Wanda. 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 she distributed the estate to the applicants and that there was no other widow apart from herself.

In my opinion, the situation, on the face of the pleadings, gives raise 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.

On whether there is a *status quo* to be preserved, the legal position is that *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 off, 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 & Another [2001 – 2005] HCB 118; Sekitoleko V Mutabaazi & Others [2001 – 2005] HCB 79.**

The 1<sup>st</sup> applicant avers in his supporting affidavit that he and the 2<sup>nd</sup> applicant commenced the process of applying for letters of administration in respect of the estate of the deceased but were unable to complete the process owing to the fact that without their knowledge, consent and permission of the plaintiffs and other family members, the defendant had unilaterally applied for and obtained letters of administration vide Administration Cause No. 413/2014; that this fraudulent conduct of the defendant/respondent aggrieved the children as beneficiaries of the deceased's estate; that the defendant has started to take over the estate by carrying out or threatening to process leases and compensations regarding the estate as well as cultivating on the family land at Kiryandongo which was given to other members of the family by a will; and that if not restrained by court the respondent shall dispose off most of the family land, appropriate benefits/income due to the estate for her own exclusive benefit to the detriment and loss of the rest of the family.

The 3<sup>rd</sup> applicant, Ocheng David, avers in his affidavit that the respondent is quietly, without the consent or approval of the applicants and other family members, processing pension and death gratuity due to the deceased with the sole aim of receiving the payments alone for her exclusive benefit and use to the detriment of the rest of the family members; and that court should widen the scope of the interim order to cover the respondent's processing and receiving the deceased's pension until disposal of the main suit.

The respondent averred in her affidavit in reply that she distributed the estate of the deceased in accordance with the will and for the benefit of all the beneficiaries including the applicants; that the *status quo* on the suit property is that all beneficiaries are currently occupying and holding the property distributed to them and that as administrator she is responsible for the collection of rent and management of the estate property that has not yet been distributed; and that the applicants will not suffer anything if the order sought is not granted.

The actual state of affairs in this case, as deduced from the affidavit evidence from both sides, is that part of the estate has already been distributed by the applicant. However, the deceased's pension and gratuity has not yet been paid to the respondent, the leases have also not yet been processed in the names of the respondent, nor has the respondent yet received compensation from UMEME for the land which forms part of the estate.

In my opinion, there is a *status quo* to preserve in that the actual state of affairs should remain as they are, that is, that the deceased's pension and gratuity has not yet been paid to the respondent, the leases have also not yet been processed in the names of the respondent, nor has the respondent yet received compensation from UMEME for the land which forms part of the estate. This is the *status quo* that requires to be preserved, that is, that the part of the estate that is yet to be distributed by the respondent to remain undistributed until the main suit is disposed of.

On the question of whether the applicants will suffer irreparable loss not atonable by way of damages if the temporary injunction is not granted, the legal position is that irreparable injury does not mean that there must be physical possibility of repairing injury. The 3<sup>rd</sup> applicant avers in paragraphs 5 and 7 of his affidavit that they will suffer irreparable loss and damage if the injunction is not granted. The affidavit evidence points to a likelihood of the applicants, who are beneficiaries to the estate, suffering irreparable loss and damage in case the respondent continues to process the leases out of the estate or sell the same, or to pursue the compensation due from UMEME to the estate or the deceased's pension and gratuity payments for the deceased.

In the given circumstances, it is my opinion that if the respondent is not restrained by court, the applicants will suffer irreparable loss in the likelihood of the respondent appropriating the estate.

The balance of convenience is in favour of the applicants in that the respondent incurs no inconvenience if the *status quo* remains as it is until the main suit is disposed of. She will proceed to administer the estate from that point, that is, the currently existent state of affairs, should the case eventually be resolved in her favour.

In the premises, I allow this application.

Costs of this application will be in the cause.

**Dated at Kampala** this 07<sup>th</sup> day of December 2017.

Percy Night Tuhaise

**Judge.**