

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION NO.255 OF 2018

5 **(ARISING FROM CIVIL SUIT NO.155 OF 2018)**

1. NAKANJAKO FRANCIS

2. NAMUGAMBE JOSEPHINE

3. NAKILYOWA TEOPISTA

4. BENA NAKIBUNGO =====APPLICANTS

10

VERSUS

PETER SSEKUBUNGE=====RESPONDENT

15 **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

RULING

This application is brought under Order 41 Rules 1(a) and 9 of the Civil Procedure Rules SI 71-

1. The applicants are seeking orders that:-

- 20
- a) A temporary injunction issue to restrain the respondent and his agents or any person deriving authority or interest from him from undertaking any further dealings or interfering or intermeddling in the Estate of the Late Jakana Valentine until the hearing and determination of the main suit.
 - b) Costs of this application are provided.

This application is supported by the affidavit of Namugambe Josephine, the 2nd applicant. The respondent filed an affidavit in reply to the application to which the 2nd applicant filed an affidavit in rejoinder. Counsel for both the applicants and respondent filed written submissions as directed by Court.

5 The background of this application is that the applicants in the main suit are suing the respondent in their capacity as daughters and widow of the late Jakana Valentine. In her affidavit, the 2nd applicant stated that the respondent in 2009, obtained letters of administration from this Honourable court vide HCT-00-FD-331 of 2009 to the deceased's estate without any authority or consent from the beneficiaries. The 2nd applicant averred that
10 the respondent disposed of land comprising part of the estate of the deceased situate in Bulemezi Block 567 Plot Land at Kabunyata measuring approximately 95 acres and Kyadondo Block 159 Plot 8 Land at Balita measuring 8.00 acres.. A copy of the search report was attached to the application. The 2nd applicant further averred that the respondent is in the process of sub-division and disposing off the remaining part of the estate comprised in
15 Kyadondo without distributing any share to the beneficiaries.

The respondent in his affidavit in reply averred that he is the legally appointed administrator of the estate and was taken through all the lawful steps and processes of acquiring the said letters of administration with no objection from the applicants. It was in this capacity that he got involved in legal battles to recover estate properties with no time to make proper
20 distribution to the beneficiaries. He further stated that the applicants just appeared years later after the death of the Late Jakana Valentine and introduced themselves to the family as relatives which fact is still under investigation but that nevertheless the 2nd applicant, Namugambe Josephine is personally occupying part of the suit land which was initially allocated to them while analysing the fact whether or not the applicants are rightful
25 beneficiaries to the deceased's estate. In his affidavit in reply, he further denied having any intention of disposing of the suit land or having done so since there is a grave yard where his grandparents were buried and other family members who are in occupation and utilising part of the suit land.

It is the contention of the applicants as averred in the affidavit of the 2nd applicant that the
30 respondent had no authority to sell or dispose of part of the estate of the deceased since he

had acquired the letters of administration fraudulently by making false allegations and without the authority or consent from them as beneficiaries to the said estate. Further that the respondent has failed to distribute to the beneficiaries their rightful share in the estate for the past nine years therefore one of their prayers in the main suit is that the letters of administration granted to the applicant on the 26th of June 2009 are revoked and annulled and that a grant is made in their favour.

The respondent maintained that there is a high chance that the plaintiffs are not family members of the late Jakana Valentine and therefore are not rightful beneficiaries to his estate.

It was the duty of this court to determine whether the applicants were entitled to the interlocutory prayers sought. In Piara Singh Jhass and Another Vs Sukheer Kaur (Administrator of the Estate of the Late Tlochan Singh Jhass) M.A NO.107 OF 2012, the court noted that the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in the status quo until the question to be investigated in the main suit is finally disposed of. The court further laid down conditions for the grant of an interlocutory injunction;

1. Firstly, the applicant must show that a prima facie case with a probability of success exists;
2. 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;
3. Thirdly if the court is in doubt, it would decide an application on the balance of convenience.

Order 41 of the CPR under which this application was instituted before this Honorable Court 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.

It is not disputed that there is a pending main suit filed by the applicants/plaintiffs in this application against the respondent which is Civil Suit no.155 of 2018.

As to whether the applicants have shown that there is a prima facie case in the main suit, that there is a triable issue and that it is not frivolous or vexatious; this in essence means 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. The applicants have filed a suit for revocation and annulment of letters of administration granted to the respondent which they claim he acquired fraudulently and challenging the respondent's disposal of the estate of the Late Jakana Valentine among other prayers.

In the main suit, they contend that the respondent fraudulently applied for the said letters claiming to be the son to the deceased and stating that he and his siblings were the only surviving relatives to the deceased whereas not. The respondent denies these allegations and asserts that he lawfully obtained the letters of administrations since the Late Jakana Valentine was the biological parent of the late Joseph Kiwanuka who was his father. It is also his contention that he doubts whether the applicants are rightful beneficiaries to the deceased's estate as they claim to be and as such not entitled to a beneficial interest in his estate.

In my opinion, the foregoing circumstances reveal triable issues which are an indication of the existence of a prima facie case for adjudication.

Turning to whether the applicants shall suffer irreparable injury if the application is not granted; it has been held in various cases that irreparable damage or injury does not mean that there must be a physical possibility of repairing the injury but that the injury must be substantial and cannot be atoned for by damages.

The 2nd applicant in her supporting affidavit and in the submissions filed by applicant's Counsel, contends that the suit property is family land and home which if lost cannot be compensated for in damages. The respondent has not denied transacting in the estate land without having distributed the same to the beneficiaries of the deceased's estate however he contends that it was an act of preservation of the estate. This assertion is an issue in the main suit and does not allay the fears of the applicant. The balance of convenience is in favour of the grant of this application.

The Application is allowed with costs to the applicant.

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Olive Kazaarwe Mukwaya

5 JUDGE

Dated at Kampala this 12th day of November 2018