

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC APPLICATION NO.244 OF 2018
(ARISING FROM CIVIL SUIT NO.142 OF 2018)

- 5 **1. JOHN MUBIRU**
- 2. COTILDA NAMUBIRU**
- 3. MALITA NAKIBUUKA**
- 4. DESIRANT NAKYEJUSA**
- 5. ROSA NTENTE**
- 10 **6. ANNA BATUKA**
- 7. MERCY KAYIWA MUWANGUZI**
- 8. THERESA ZAWEDDE**
- 9. PAUL MUBIRU**
- 10. CHARLES SSEMBAJJWE**
- 15 **11. NAMUDDU ROSE=====APPLICANTS**

VS

- 1. CHRISTINA KAYAGA**
- 2. MUSA WAKAYIMA**
- 3. LUKWAGO ROBERT**
- 20 **4. BILARO BOSCO**
- 5. KAWUNGU HASSAN**
- 6. DDUMBA GODFREY**
- 7. MPAGI ROGERS**

8. KAYE MADINAH MUKIIBI

9. SSALI JOHN

10. KAVUMA PETER

11. MASEMBE RICHARD

5 **12. KALYANKOKO RONALD**

13. KASEVENI DAVIS

14. KIKU JOHN

15. NAMUSISI SHAKIRA

16. SOZI BERNARD

10 **17. SSEYIGA JOSEPH**

18. NANYANZI CHRISTINE

19. KATUMBA JOHN=====RESPONDENTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

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RULING

This application is brought under Order 41 Rules 1, 2 and 9 of the Civil Procedure Rules SI 71-1 and Section 98 of the Civil Procedure Act Cap 71. The applicants are seeking orders that:-

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- a) A temporary injunction issue restraining the 1st respondent, her agents, workers and any person claiming after the 1st respondent from selling off or in any way dealing with the estate property of the late Yilaliyo Kulazikulabe to the beneficial detriment of the applicants.
 - b) A temporary injunction issue restraining the respondents, their agents and or servants or any person acting on their behalf from interfering with the applicants' quiet use,

enjoyment and possession of estate property comprised in Mawokota Block 26 Plot 115 land at Mudduma until the determination of the main suit.

c) Costs of this application are provided for.

5 This application is supported by the affidavit of Mr. Mubiru John, the 1st applicant which affidavit he swore on behalf of the 6th to the 11th applicants. The application is further supported by supplementary affidavits sworn by the 2nd to the 5th applicants. Counsel for the respondents submitted that the 1st applicant had no authority to swear the affidavit on behalf of the 6th to 11th applicants, but that authority is attached to the application and dated 27th 10 May 2018 and duly signed by; Charles Ssembajjwe, Namuddu Rose, Anna Batuka, Paul Mubiru, Theresa Zawedde and Mercy Kayiwa Muwanguzi, the 6th to 11th applicants, not necessarily in that order.

In response to the application, the 1st, 2nd, 3rd, 4th, 8th, 12th, 13th, 17th and 19th respondents filed affidavits in reply.

15 Further, counsel for the applicants and counsel for the 1st, 2nd, 3rd, 4th, 12th, 17th, 19th and 13th respondents filed written submissions within time schedules set by court.

The gist of this application is that the applicants are all descendants of the late Yilaliyo Kulazikulabe and so is the 1st respondent. The late Kulazikulabe died in 1974 and letters of administration to his estate have never been obtained. The 1st applicant averred that he was the second generation heir to the late Kulazikulabe which title was bestowed on him upon the 20 death off the 1st generation heir, Joachim Kambagira, a son to the late Kulazikulabe. It was in this capacity that that he was conversant with all family and estate matters.

In his affidavit, the 1st applicant stated that the estate of the late Kulazikulabe comprised of family land in Mawokota Block 26 Plot 115 land at Muduuma which is registered in the name of the 7th applicant, Mercy Kayiwa Muwanguzi, in trust for the entire family. The 25 certificate of title was attached and marked 'A'. On the 4th April 2018, the 1st applicant discovered that the family land including the burial grounds had been sold by the 1st respondent to the 2nd- 19th respondents. The 1st respondent claimed in the sale agreements to have sold on behalf of the children and of the late Kulazikulabe which fact was denied by the 2nd to 5th applicants who are children to the late Kulazikulabe. The 2nd to 19th respondents

obtained interest in part of the land comprising the estate of the late Kulazikulabe primarily from the 1st respondent on different dates between 2011 and 2015. They have been utilizing the land (as kibanja holders) since then.

5 It is the contention of the applicants as averred in their affidavits that the 1st respondent had no authority to sell to the 2nd to 19th respondents since she had no letters of administration and had no authority to manage or in any way deal with his estate. One of the prayers sought in the main suit by the applicants is that the interests acquired by the 2nd to 19th respondents are null and void. The 1st respondent maintained that she was the daughter of the late
10 Kulazikulabe and whatever interest she passed on to her co-respondents was derived from her beneficial interest in his estate as his daughter.

At this stage however, it was the duty of this court to determine whether the applicants were entitled to the interlocutory prayers sought. In Kiyimba Kaggwa v Katende 1985 HCB 43, 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
15 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
20 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.

As to whether the applicants have shown that there is a prima facie case in the main suit, that
25 there is a triable issue and that it is not frivolous or vexatious; it is a fact that the applicants and the 1st respondent are descendants the late Yilaliyo Kulazikulabe who died intestate in 1974. No letters of administration have been granted in respect to his estate and yet the 1st respondent states in paragraph 16 of her affidavit that she is rightly on the suit kibanja, 'as the only beneficiary to that kibanja with the rest having interest on the Kibanja at Kyondo'.

30 This statement points to dealings in the land in her capacity as a beneficiary to the estate of

her late father, a fact which gives rise to the cause of action according to the applicants since the point of contention is that the property of the deceased has never been legally distributed since 1974 when he died. This court finds that the applicants have shown there is a triable issue.

5 Turning to whether the applicants shall suffer irreparable injury if the application is not granted, this application as far as this court could determine is in respect to family land comprised in Mawokota Block 26 Plot 115 land at Muduuma, which according to the 1st applicant, is registered in the name of the 7th applicant, Mercy Kayiwa Muwanguzi, in trust for the entire family. The certificate of title, 'A', states that the 7th applicant is the sole
10 proprietor of the land and the connection of this land to the estate of late Kulazikulabe is only explained in haste by the 1st applicant in his affidavit, that it was purchased by the 7th applicant on behalf of the family and converted from a kibanja to a registered interest to save it from being disposed of. The certificate of title is dated 19th October 2016. By this time, the 2nd to 19th respondents had obtained kibanja interests the suit kibanja having derived their
15 interests by purchase from the 1st respondent between 2011 and 2015, if their sale agreements are to be relied on.

The 1st respondent has been on the land uninterrupted since 1986. The 1st applicant is currently constructing a family house on the 7th applicant's land, which he calls family land. This court is extremely curious as to what constitutes the estate of the late Kulazikulabe
20 which the applicants seek to preserve, because the registered interest in the name of the 7th applicant cannot by any stretch of the imagination constitute such. In fact, the very act of converting the kibanja on which the family land sat into a registered interest for in the sole proprietorship of the 7th applicant, constituted dealing in the estate when it is a fact that there no letters of administration authorizing the 1st applicant and the 7th applicant and whoever
25 else was involved to make the said conversion. There were fears relayed in the affidavits of the applicants that the respondents had threatened to exhume the dead as they forcefully took over the family land, but these allegations were not substantiated. The respondents have been on that land for 7 to 3 years and the burial grounds have not been disturbed, As it stands, this court finds that the applicants have not proved that they will suffer irreparable injury to
30 justify a grant of this application.

On one hand the sale of land by the 1st respondent to her co-respondents is not denied, on the other hand the conversion of the kibanja into the sole proprietorship of the 7th applicant is admitted. This court must hear the main suit to ascertain the rights and obligations of the parties by first investigating exactly what has been transpiring with the estate of the late
5 Kulazikulabe for the last 44 years since 1974 when he died intestate. On a balance of convenience, this court shall leave matters as they are and shall not grant this application, which is misleading and devoid of crucial facts.

Application is denied.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 8th day of October 2018

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