THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION NO. 1555 OF 2023

(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 179 OF 2022)

(ARISING FROM CIVIL SUIT NO. 102 OF 2022)

1. **MULUMBA SHAFIQUE SSEBUGWAWO …… APPLICANT**

VERSUS

1. **BUGINGO ANDREW NGANDA**
2. **KYAKUWA CLARE**
3. **NALONGO COTILDA KASOZI**
4. **FLORENCE ARYEMO SSERUNKUMA-OBOL**
5. **ROSEMARY ARYEMO SSERUNKUMA-OBOL**
6. **PAULINA KWONGA SSERUNKUMA (Suing through her lawful attorney KASSIM LULE**
7. **SSERUNKUMA CHARLES**
8. **MBABAZI SHAMIM ……. RESPONDENTS**

BEFORE: HON. LADY JUSTICE ALICE KOMUHANGI KHAUKHA

RULING

Introduction

This Application is brought by way of Notice of Motion under Sections 98 and 82 of the Civil Procedure Act, Cap. 71 and Order 46 Rules 1 and 8 and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1 for Orders that: . . .

1. The Ruling and Order in Miscellaneous Application No. 179 of 2022 be reviewed and the temporary injunction Order be set aside; and
2. Costs of the Application.

Appearance and Representation

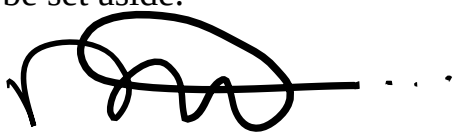
When the Application came up for hearing on 20th March 2024, the Applicant was represented by Mr. Sseggwanyi Saakka of Ssegwanyi Ssakka & Co. Advocates; the 1st to 6th Respondents were represented by Mr. Ambrose Tiishekwa of M/S Tiishekwa. A. Rukundo & Co. Advocates while the 7th and 8th Respondents were represented by Mr. Sewanonda Isaac of M/S Wetaka, Bukenya & Kizito Advocates.

The Application

The grounds upon which this Application is premised are contained in the Affidavit in support of Mulumba Shafiq Ssebuggwawo (**Applicant**), to wit:

1. that the 1st-6th Respondents initially filed Civil Suit No. 102 of 2022 against the 7th and 8th Respondents together with Miscellaneous Application No. 179 of 2022 of which the Applicant was not a party;
2. that the learned Deputy Registrar granted an Order of a temporary injunction vide Miscellaneous Application No. 179 of 2022 against the 7th and 8th Respondents;
3. that at the time of granting the Order for a temporary injunction, the 7th and 8th Respondents had already parted with the possession of property comprised formerly in LRV 985 Folio 8 Land at Rubaga Kibuga Block 1, Plot 580 (**suit property**) and it was in the hands of the Applicant who was in possession and occupation of it;
4. that the temporary injunction ordered the then Respondents or their transferees, among others, not to occupy the suit property;

5. that the 1st-6th Respondents have used the Order of the temporary injunction to evict the applicant from the suit property by putting padlocks on the house in the suit property making it inaccessible to the Applicant and his agents;
6. that at the time of the grant of the temporary injunction, the Applicant was not a party to the main suit and the Application but the status quo was that he was already in possession of the suit property; and
7. that the said grounds constitute sufficient reasons for grant of an Order for review of the temporary injunction and that it is in the interest of justice that the Ruling and Order in Miscellaneous Application no. 179 of 2022 be reviewed and the temporary injunction be set aside.

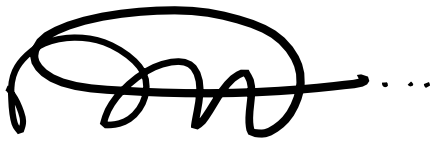


Respondents' Reply

The 7th and 8th Respondents' made no response to the Application as they intended not to oppose it while the 1st -6th Respondents' reply was contained in the Affidavit of one Kyakuwa Claire (**2nd Respondent**) to wit:

1. that on 30th March 2022, the Deputy Registrar of this Court renewed an interim Order against the 7th and 8th Respondents, their agents and anybody working on their behalf prohibiting them from selling the suit residential holding of the late Philomena Arombo Obol (**suit property**) and this Order bound the Applicant from buying and registering the suit property into his name, with or without his knowledge of the said Order;
2. that the said interim Order was cleared by Police and read in the presence of all residents surrounding the suit land including the Applicant who was present on 26th April 2022 and that the Applicant never questioned the Order;
3. that by 6th May 2022 when the Applicant got registered as a lessee on the suit land, he already had actual knowledge of the above Order prohibiting the sale and purchase of the suit property as he all along knew about the main case and the Application and the grant of the temporary injunction;

4. that the Application does not satisfy any ground for review of the temporary injunction dated 12th May 2022 as there is no error apparent on it or any mistake in its grant and that the Applicant, if aggrieved by the said Order can appeal the same;
5. that the Order of the temporary injunction ever since it was granted has served its purpose of preserving the status quo prohibiting the Respondents therein, their transferees, agents, land brokers and any other person acting on their behalf from selling, marketing, occupying, pledging as security of the suit residential holding and that the family members of the late Philomena Arombo Obol in occupation of it, prior and after the grant of the temporary injunction;
6. that the Applicant, apart from being a lessee to the suit property, he has never been in physical occupation of the residential holding prior to and after the grant of the temporary injunction and that the respondents have never evicted him from the residential holding which they occupy; and
7. that the application is a nullity because it is supported by an incurably defective Affidavit by the Applicant who swears instead of affirming his Affidavit in support of the Application; the Affidavit contains obvious falsehoods such as the Applicant being in physical possession of the same; the Application being time barred; and that it is in the interest of justice that the Application is dismissed with costs.



Consideration of the Application

In resolving this Application, I shall begin with the preliminary objections raised by Counsel for the 1st -6th Respondents that he raised in his submissions to wit:

1. That the Application for review is a complete nullity for being supported by an incurably defective Affidavit which was sworn by the Applicant who is a Moslem instead of him affirming to it;

2. That the Applicant's Affidavit contains obvious falsehoods particularly paragraphs 4, 6 and 8; and
3. That the Application is time barred.

P.O. 1: <u>Swearing versus Affirming an Affidavit by a Moslem.</u>

Counsel for the 1st-6th Respondents while relying on the case of ***Makula International Ltd versus His Eminence Cardinal Nsubuga & Anor [1982] HCB 11,*** submitted that the Application is incurably defective because the Applicant who is a Moslem affirms in paragraph 1 of his Affidavit while in paragraph 13 of the same Affidavit, the Applicant swears and yet he is not a Christian. That these two contradictions of affirming and swearing renders the Affidavit a nullity and an illegality for which he prayed that it is dismissed with costs.

Counsel for the Applicant on the other hand, while relying on Article 126 of the Constitution of the Republic of Uganda, 1995 (as amended), Section 5 of the Oaths Act, Cap.19 and the case of ***Payless Supermarket Ltd versus Dembe Trading Enterprise Ltd, Miscellaneous Application No. 101 of 2011***, submitted that the Applicant having affirmed and sworn did not in any way render his Affidavit fatally defective as it is a mere technicality and prayed that the point of law raised against the Applicant's Affidavit be overruled.

Court's Consideration

Having considered the arguments of both Counsel, it is my finding that the Applicant's use of the words "affirm" in paragraph 1 of his Affidavit and the word "swear" in paragraph 13 of his Affidavit is a mere technicality that does not render the Affidavit defective or a nullity or an illegality. Clearly, the intention of the Applicant was to demonstrate that he stands by what he was deposing to and that whatever information he had given therein was true and correct to his knowledge.

Section 5 of the Oaths Act, Cap. 19 is clear and elaborate on the form and manner in which an oath may be taken. The same provides for the following:

"(1) Whenever any oath is required to be taken under the provisions of this or any other Act, or in order to comply with the requirements of any law in force for the time being in Uganda or any other country, the following provisions shall apply, that is to say, the person taking the oath may do so in the following form and manner—

(a) he or she shall hold, if a Christian, a copy of the gospels of the four evangelists or of the New Testament, or if a Jew, a copy of the Old Testament, or if a Moslem, a copy of the Koran, in his or her uplifted hand, and shall say or repeat after the person administering the oath the words prescribed by law or by the practice of the court, as the case may be;

(b) in any other manner which is lawful according to any law, customary or otherwise, in force in Uganda.

(2) For the purposes of this section, where a person taking the oath is physically incapable of holding the required copy in his or her uplifted hand, he or she may hold the copy otherwise, or, if necessary, the copy may be held before him or her by the person administering the oath."

From the reading of the above provision of the law, it is silent on which specific words should be used while taking oath by either a Moslem or a Christian. The law does not show that a Moslem should use the word "affirm" and that a Christian should use the word "swear" while taking oath.

I find that the specific use of the word "affirm" as per Section 8 of the Oaths Act, Cap. 19 are to be applied to a person who has objected to taking oath and not necessarily on whether the person taking oath is a Christian or a Moslem. This provision of the law provides thus:

"Any person who objects to the taking of an oath and desires to make an affirmation in lieu of the oath may do so without being questioned as to the grounds of that objection or desire, or otherwise; and in any such case the form of the required oath shall be varied by the substitution for the words of swearing, the words, "I solemnly, sincerely and truthfully affirm that ...", and such other consequential variations of form as may be necessary shall thereupon be made;

except that in any case where the Oath of Allegiance is taken, for the words "truthfully affirm" in this section there shall be substituted the words "truly declare and affirm", and the words "So help me God" shall be omitted." **[Emphasis Mine]**

I also find that Counsel for the 1st- 6th Respondent did not furnish Court with any evidence that the Applicant did not intend to take oath or rather objected to taking oath which would qualify him to fall under the category of people who should use the word "affirm".

In light of the above and in agreement with Counsel for the Applicant, the first preliminary objection is overruled because I find it to be a mere technicality and it does not in any way prejudice and/or jeopardize the Respondents.

P.O 2: <u>Applicant's Affidavit containing falsehoods.</u>

Counsel for the 1st-6th Respondents, while relying on the case of ***V.G Keshwala T/A V.G Keshwala & Sons versus MM Sheik Dawood HCMA No. 0543 of 2011 (Arising from HCCS No. 0043 of 2010)*** contended that the Applicant's Affidavit specifically paragraphs 4, 6 and 8 contained falsehoods as to who was in occupation of the suit premises. That the respondents are the ones in possession and occupation of the suit premises to date, locking the same when they move out. That an Affidavit riddled with falsehoods remains suspect and incurably defective and the Application it supports must fail on that account.

On the other hand, Counsel for the Applicant argued that by the time the Respondents obtained the temporary injunction Orders, the Applicant was already in possession of the suit land having bought the suit kibanja on 2nd December 2021. That the Respondents were not in possession neither was the Applicant an agent of the 7th and 8th Respondents. That the ground for the Application arose when the Respondent evicted the Applicant from the suit property and put padlocks on it and

that it is a lie that the Respondents put padlocks on the premises and normally occupy it when they come back.

Court's Consideration

Considering the evidence from the Affidavits of both the Applicant and the Respondents and the submissions of both Counsel, I find that there is a need to find out which parties are in actual possession of the premises on the suit property since both the Applicant and the Respondents claim to be in actual possession of the premises. This can only be done through a locus visit. As such, this is an issue to be resolved in the main suit. This preliminary objection is therefore overruled on that basis.

P.O.3: <u>The Application is time barred.</u>

Counsel for the 1st-6th Respondents while citing Rule 5 (1) of the Judicature (Judicial Review) Rules S.I No. 11 of 2009 submitted that the Application was made out of the prescribed time of 3 months without first seeking extension of time hence a nullity and prayed for the Application to be dismissed with costs.

On the other hand, Counsel for the Applicant made no submission on this preliminary objection.

Court's consideration

Having considered Counsel for the 1st-6th Respondents' submissions, I find that Counsel misconstrued the nature of this Application. Counsel cites the Judicature (Judicial Review) Rules to back up his argument that the Application is time barred. However, it is worth noting that the said law is applicable only for Applications of Judicial Review which is different from review as provided for in the Civil Procedure Act, Cap. 71 and the Civil Procedure Rules, S.I 71-1 (as amended).

The remedy being sought in the Application at hand is that of review and not Judicial Review. The remedy of review is provided for in Section 82 of the Civil Procedure Act, Cap. 71 and Order 46 Rule 1 of the Civil Procedure Rules, S.I 71-1 and it is different from Judicial Review. Judicial Review is concerned with challenging public bodies for acts which are illegal, irrational and procedurally improper (**See:** ***Sande Akuzewo versus Jinja Municipal Council Miscellaneous Cause No. 0006 of 2020***) while review is concerned, among others with correcting an apparent error or omission on the part of the Court. (**See:** ***Farm Inputs Care Centre Limited versus Klein Karoo Seeds Marketing (Pty) Ltd Miscellaneous Application No. 0861 Of 2021***)

The Application at hand is one seeking for review having been brought by way of Notice of Motion under Sections 98 and 82 of the Civil Procedure Act, Cap. 71 and Order 46 Rules 1 and 8 and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1. As such, this is not an Application for Judicial Review and the law cited by Counsel for the Respondents is not applicable in the circumstances. The Application is not time barred.

Therefore, this preliminary objection too, is overruled for reasons cited above.

Having overruled all the preliminary objections, I shall go ahead to resolve the issues raised by Counsel for Applicant, to wit:

1. ***Whether the Applicant is an aggrieved party;***
2. ***Whether there is a mistake manifest or error apparent on the face of the record; and***
3. ***Whether there is any other sufficient reason that warrants review by the Court.***

Issue 1: ***<u>Whether the Applicant is an aggrieved party.</u>***

Counsel for the Applicant while relying on the case of ***Busoga Growers Co-operative Union Ltd versus Nsamba & Sons Ltd (Commercial court) Miscellaneous Application No. 123 of 2000*** submitted that the Applicant falls within the ambits of an aggrieved person because he is currently the owner of the suit property which he legally acquired by way of purchase from the 7th and 8th Respondents. That the 1st-6th respondents filed a suit where the Applicant was never a party while challenging his ownership and the sale transaction and that an Application for a temporary injunction was made which this Honourable Court granted denying the Respondents any dealing in the suit property be it occupation of the same. As a result, the Applicant was evicted from the suit land; the Respondents took possession of the suit property and put padlocks on the house hence denying the Applicant and his agents access to the same.

On the other hand, Counsel for the Respondents while relying on the same court decision submitted that the Applicant has not suffered a legal grievance to qualify for review because the nature of a temporary injunction is designed to preserve the status quo. That the preserved status quo on the suit residential holding where he is a lessee has not deprived him of his questioned lease, has not cancelled his leasehold title yet because it is not a Decree, the Applicant is not seeking to sale and transfer the lease title to a third party and neither was he in occupation of the suit residential holding yet at the time the temporary injunction was granted.

Court's consideration

The question I have to answer is whether the Applicant has suffered a legal grievance as a result of the Order arising out of the grant of the Application for a temporary injunction.

Section 82 of the Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules (as amended) both provide that **any person considering himself or herself aggrieved** may apply for a review of judgment to the Court which passed the decree or made the Order. [Emphasis Mine]

In the case of ***Mohammed Allibhai versus Bukenya SCCA No. 56 of 1996*** it was held that:

"*A person considers himself aggrieved if he has suffered a legal grievance. A person suffers a legal grievance if the Judgment given is against him or affects his interest."*

In the case of ***Tullow Uganda Ltd and Tullow Uganda Operators versus Jackson Wabyona and Uganda Revenue Authority HCMA No. 0197 of 2017***, Justice Madrama (as he then was) defined an aggrieved person as:

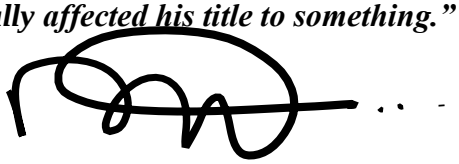
"***a person who has been injuriously affected in his rights or has suffered a legal grievance."***

In the case of ***Re Nakivubo Chemists (U) Ltd [1979] HCB 12,*** it was held:

"…that the term any person considering himself aggrieved under Section 82 of the Civil Procedure Act meant a person who has suffered a 'legal grievance'…an aggrieved person must have a legal right or interest in the matters and that person must have suffered damage to the right or interest as a result of a court's order or decree."

In the case of ***Busoga Growers Co-operative Union Ltd versus Nsamba & Sons Ltd (Commercial Court) Miscellaneous Application No. 123 of 2000*** which was cited by Counsel for both parties, it was held that:

"…for an Application for review to succeed, the party applying for review must show that he/she suffered a legal grievance and the decision pronounced against him/her by the Court has wrongfully deprived him/her of something or wrongfully affected his title to something."



Upon considering the submissions of both parties, the law applicable and the case law cited above, I find that the Applicant is not an aggrieved party. Whereas it is true that the Applicant is currently the lessee of the suit property and has a legal right or interest in the matter and on the face of it should be considered as an aggrieved party, I find that he is not one in light of the facts of this case. This is because the Order for a temporary injunction is not a final decision of the Court that is meant to deprive or affect the Applicant's title or interest in the suit property. As Counsel for the 1st-6th Respondents rightly put it, the Order for a temporary injunction is designed to preserve the status quo until the matter in the main suit is resolved. [**See:** ***Kiyimba Kaggwa versus Hajji Abdul Nasser Katende Civil Suit No. 2109 of 1984 [1985] HCB 43***] Nothing from the suit premises is going to be altered, the Applicant to date is the owner of the suit property as per the copy of the Leasehold Title availed to Court.

Moreover, the Applicant did not furnish Court with any evidence as to what prejudice or injury or damage he has suffered as a result of the Order of the temporary injunction. As such, he cannot be considered to be an aggrieved party simply because he is currently the leasehold owner of the suit property if he has not furnished Court with evidence of what kind of injury he has suffered as a result of the said Order.

In light of the above, issue 1 is resolved in the negative. The Applicant is not an aggrieved party.

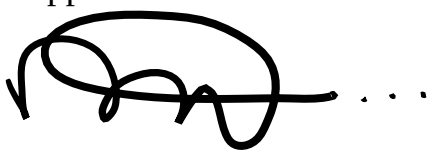
Issue 2: ***<u>Whether there is a mistake manifest or error apparent on the face of the record.</u>***

Counsel for the Applicant while relying on the cases of: ***Attorney General & Others versus Boniface Byanyima HCMA No. 1789 of 2002, Levi Outa versus Uganda***

Transport Company [1995] HCB 340, MK Creditors Ltd versus Owara Patrick HCMA No. 0143 of 2015, Moses Kasozi versus Muhammad Batte & Others Civil Appeal No. 0024 of 2020 and ***Kiyimba Kaggwa versus Hajji Abdul Nasser katende [1985] HCB 43*** submitted that Court in issuing a temporary injunction is an error on the face of the record because it was issued against the Applicant and ordering the Respondents to take possession of the suit property which was already in possession of the Applicant. That the Respondents thus locked the suit house which denied the Applicant access to the property. That this decision changed the status quo of the suit property and served as an eviction which was the main purpose of the main suit hence defeating the purpose for which the temporary injunction serves.

On the other hand, Counsel for the 1st-6th Respondents while relying on the cases of: ***Attorney General & Others versus Boniface Byanyima HCMA No. 1789 of 2002, Levi Outa versus Uganda Transport Company [1995] HCB 340, MK Creditors Ltd versus Owara Patrick HCMA No. 0143 of 2015, FX Mubuuke versus U.E.B HCMA No. 98 of 2005 and Busoga Growers Co-operative Union Ltd versus Nsamba & Sons Ltd (Commercial Court) Miscellaneous Application No. 123 of 2000,*** submitted that, there is no manifest mistake or error apparent on the face of the record to justify the Applicant's claims because the main suit was filed in Court before the Applicant acquired actual physical occupation of the suit premises, the interim order was secured before the Applicant got occupation, a temporary injunction too was granted on 12th May 2022 when the Applicant had no occupation yet and that, that is the status quo preserved to date. That the Applicant caused registration of the suit land into his names well aware of a floating charge/lien/encumbrance on the same. That the Applicant has never been in occupation of the suit premises from the beginning to date and it is a false allegation by him that the temporary injunction was used to evict him from a house he has never occupied.

In rejoinder, Counsel for the Applicant submitted that the Applicant was in possession of the suit land and the 7th and 8th Respondents were no longer in possession of the suit land; that the Respondents lied to Court that the Applicant bought the suit land when there was an ongoing case because the first suit was filed in March 2022 and amended in February 2023 yet the Applicant bought the suit land in 2021; that there was no purchase of the suit land during the hearing of the suit before Court as alleged; that it was an error for Court's Order to maintain status quo to be used to evict the Applicant who was in possession through his agent; that the defined status quo was that the Applicant was the one in possession of the suit land at the time of the said Orders; that the ground for this Application arose when the Respondents evicted the Applicant from the suit property and put padlocks on it, not when the Order was delivered; and that there are errors as highlighted above that were made during the hearing and grant of the temporary injunction and the Respondents made further errors when they evicted the Applicant.



Court's consideration

Order 46 Rule 1 of the Civil Procedure Rules provides that:

"Any person considering himself aggrieved

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) By a decree or order from which no appeal is hereby allowed

and who, from the discovery of new and important matter or evidence, which after due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for review of judgement to the court which passed the decree or made the order."

In the case of ***Farm Inputs Care Centre Limited versus Klein Karoo Seeds Marketing (Pty) Ltd Miscellaneous Application No. 0861 Of 2021*** which cited with approval the case of ***Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173,*** it was held by Hon, Justice Stephen Mubiru that:

"Order 46 rules 1 of The Civil Procedure Rules, is not that wide. It empowers this court to review its own decisions where there is an "error apparent on the face of the record." The error or omission must be self-evident and should not require an elaborate argument to be established. <u>This means an error which strikes one on mere looking at the record, which would not require any long drawn process of reasoning on points where there may conceivably be two opinions.</u> <u>An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under order this Order and rule.</u> In exercise of the jurisdiction under this provision, it is not permissible for an erroneous decision to be reheard and corrected. An application for review, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise. A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court." **[Emphasis Mine]**

Court further held that:

"The case of Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173 defined an error apparent on the face record, thus: An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. <u>Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out.</u> An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal. <u>A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not</u>

require an elaborate argument to be established. ***It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. That the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law is not a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favour of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground for appeal but not for review otherwise the court would be sitting in appeal on its own judgment which is not permissible in law.*** ***A review should not seek to challenge the merits of a decision but rather irregularities in the process towards the decision. Some instances of what constitutes a mistake or error apparent on face of record are: where the applicant was not served with a hearing notice; where the court has not considered the amended pleadings filed or attachments filed along with the pleadings; where the court has based its decision on a ground without giving the applicant an opportunity to address the same; and violation of the principles of natural justice.*** **" [Emphasis Mine]**

I have had the opportunity of looking at the copy of the Order of the temporary injunction that was granted by this Honourable Court on 12th May 2022 and is marked as Annexure A on this Application. I shall reproduce the relevant parts of the same below:

"**TEMPORARY INJUNCTION**

This application coming up before **Her Worship Katushabe Prossy** this **12th** day of **May 2022** in the presence of Tishekwa Ambrose counsel for the Applicants, 2nd Applicant present, 1st, 3rd, 4th, 5th and 6th Applicants absent and in the absence of the Respondents and their Advocate;

IT IS HEREBY ORDERED THAT:

1. A Temporary injunction is hereby issued prohibiting the Respondents, their transferees, agents, land brokers and any person acting on their behalf from selling, marketing, occupying, pledging as security, of the suit residential holding of the family of the late **Philomena Arombo Obol** located at Bulwa zone, Rubaga Division Kampala formerly in **LRV 985 Folio 8 land at Rubaga Kibuga Block 1, Plot 580**; until the disposal of the main suit.

2. Costs be in the cause.

GIVEN under my hand and seal of this Honourable Court this …….. day of …… 2022.

…….

DEPUTY REGISTRAR"

In light of the above law cited regarding an error apparent on the face of the record or rather a mistake manifest on the face of the record, it is my finding that there is no error or mistake in the above Order. The Order is clear on whom it applies to and that is, the Respondents who then were: Sserunkuma Charles and Mbabazi Shamim. The said Order goes ahead to prohibit the Respondents' transferees, agents, land brokers and any other person acting on behalf of the Respondents from selling, marketing, occupying, pledging as securing, of the suit residential holding…until the disposal of the main suit. (Emphasis added)

The above therefore means that the said Order is applicable to the Applicant who falls within the category of a transferee since he acquired the suit property from the Respondents. As such, he is also among the people that were prohibited by this Order from selling, marketing, occupying, pledging as securing, of the suit residential holding…until the disposal of the main suit.

I have found no error in this Order which strikes one at a glance. Instead, I find that the error which the Applicant seems to insinuate is not self-evident and has to be detected by a process of reasoning and adducing of evidence. The Applicant claims that the error is when Court granted the Application for a temporary injunction to the Respondents to take possession of the suit property which was already in possession of the Applicant and the Respondents used the said Order to evict the Applicant's agent and also lock the suit residence/house. From the reading of the Order, I find no such thing to support the Applicant's assertion to wit, that the Order granted permitted the Respondents to evict him and/or his agent from the house and

to lock his property therein. Instead, I find the real issue in contention to be, "who was in actual or physical possession or occupation of the suit property at the time the Order was granted?"

It is my informed view that the issue of who was in possession of the suit property at the time the said Order was granted is a matter that can be resolved by both parties adducing evidence and/or by Court visiting the locus since both parties are claiming to have been in possession and/or occupation of the suit property at the time the Order was granted. This issue has nothing to do with the Order of temporary injunction that was granted by this Honourable Court and it is therefore not one that can be resolved by way of review.

As earlier stated, review is concerned with correcting an apparent error or omission on the part of the Court and I have already found that there is no apparent error or omission on the part of the Court regarding the Order of the temporary injunction that was granted. The Order that was granted is very clear and as has always been the purpose of all Orders of temporary injunctions, the said Order's purpose was to preserve the status quo of the suit property prohibiting either party from carrying out any activities thereon such as: selling, marketing, **occupying**, pledging as security, of the suit residential holding until final disposal of the main suit.

Therefore, issue 2 of this Application also fails. There is no mistake manifest or error apparent on the face of the record. 

Issue 3: ***Whether there is any other sufficient reason that warrants review by the Court.***

In light of my finding in issue 2 above, I find that this issue has been resolved in the previous one. As such, it also fails because I find no other sufficient reason that warrants review by the Court.

Conclusion

In light of the above, I find that:

1. there is no error apparent on the face of the record regarding the Order granted on 12th May 2022 in an Application for temporary injunction;
2. there is a question to be investigated by Court in the main suit and there is need for the status quo to be maintained;
3. the temporary injunction granted by this Honorable Court on the 12th day of May 2022 therefore still subsists until the final disposal of the main suit;
4. this Application wholly fails and is hereby dismissed;
5. Costs shall be in the cause.

Dated at Kampala this 24th day of April 2024.

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Alice Komuhangi Khaukha

JUDGE

24/04/2024