

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO. 141 OF 2013
(Arising from Civil Suit NO. 79 of 2013)**

BUZIRANJOVU DEVELOPMENT COMPANY LTD : : : : : : APPLICANT

VERSUS

NANTABA IDAH ERIOS

: : : : : : RESPONDENT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant through its lawyers M/s Synergy Solicitors & Advocates brought this application against the respondent, by chamber summons under Order 41 Rules 1, 2 and 9 of the Civil Procedure Rules. The Applicant seeks the following orders;

- (a) A temporary injunction doth issue restraining the Respondent whether by herself, or through her authorised agents and/or, servants or any other person from entering the land comprised in LRV 3498 Folio 17 and LRV 3498 Folio 16 at Buziranjovu and/or evicting the Applicant or distributing the suit land to any persons till the disposal of the main suit.**
- (b) Costs of the Application be provided for.**

When the Application came up for hearing on 4th March 2013, the Respondent did not appear and the Applicant was allowed by court to proceed ex parte. In addition, the Applicant was allowed to file supplementary affidavits in support of the Application.

The Application is supported by affidavits deponed by Mr. Jonathan Wright, a Director of the Applicant dated 21st February 2013 and 5th March 2013, an affidavit sworn by Mr, Semussu Richard, the Secretary of the Bibanja Association, Buziranjovu dated 5th March 2013, an affidavit sworn by Mrs Cotilda Nabuso, the Chairperson, Buziranjovu village dated 5th

March 2013 and an affidavit sworn by Mawanda Dick Wasajja, the Chairman LC III, Nakisunga Sub County dated 5th March 2013.

The grounds upon which the application is based are particularised in the affidavits set out above but for purposes of brevity are that;

- On the 16th day of November, 2005, the Applicant purchased a lease hold interest for a period of 99 years on land comprised in Kyaggwe Block 122 Plots 1 and 4 measuring approximately 1423 acres at Buziranjovu in Mukono District from (“the suit land”) from Mugwanya Kabuusu. While the lessor was the registered proprietor of the land, there were over 200 lawful occupants on the suit land. Accordingly, as part of the lease agreement, it was agreed that the Lessor allocates UGX 300,000,000/= (Uganda Shillings Three Hundred Million Only) towards the compensation of all lawful tenants on the said land.
- Unfortunately, the amount that was allocated for the said compensation was not sufficient and the compensation process that was being conducted by the Lessor became contentious requiring the intervention of the President. The President constituted a presidential land task force headed by Lt. Col. Jacob Asiimwe that was charged with ensuring that all lawful tenants were duly compensated and no lawful tenant was forcefully evicted.
- The Committee received both community and local leadership good will and has been overtime responsible for recording all properly compensated lawful tenants and has kept a record of all lawful tenants on the said land. As of the 3rd day of December, 2012, the Applicant has compensated **two hundred seventeen (217)** families, **fifty five (55)** families remain uncompensated and living on the suit land as lawful occupants and an additional **eight (8)** families have been partially compensated.
- The Applicant’s lease on the said land is still running and all tenants on the suit land are happily living on the same with no form of forceful eviction, harassment and/or threats. In addition, the Lessee has built a fully fledged police post on the suit land.

- On the 13th day of February, 2013, the Applicant received a letter directed to the Resident District Commissioner of Mukono District, written by the Respondent stating that the Applicant had denied access to lawful occupants on the said land. In the said letter, it was further stated that the Applicant had evicted the said occupants without compensation and that the Respondent would visit the said land on the 26th day of February, 2013 at 9.00am to ascertain the ownership of land.
- The letter threatened the Applicant's right to property and accordingly, the Applicant filed before this court civil suit 79 of 2013 , this application and Miscellaneous Application No. 142 of 2013. The Applicant was granted an interim pursuant to Application No. 142 of 2013 pending the disposal of this Application against the Respondent to restrain her whether by herself, or through her authorised agents and or, servants or any person from entering the land comprised in LRV 3498 Folio 17 and LRV 3498 Folio 16 land at Buziranjovu and / or evicting the Applicant or distributing the suit land to any person (s).
- The Applicant therefore seeks a temporary injunction to restrain the Respondent whether by herself, or through her authorized agents and or, servants or any other person from entering the land comprised in **LRV 3498 Folio 17, and LRV 3498 Folio 16 land at Buziranjovu** and/ or evicting the Applicant or distributing the suit land to any persons till the disposal of the main suit.

The Law on Injunctions:-

The law on injunctions is contained in Order 41 Rules 1(a) of the Civil Procedure Rules which provides that:-

Order 41 rule1 thereof

Where in any suit it is proved by affidavit or otherwise;

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b)

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale,

removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

In ordinary situations, the principles governing the grant of a temporary injunction are well settled although each case must be considered upon its own peculiar facts. See ***American Cyanamid Co v Ethicon Ltd [1975] AC 396*** where Lord Diplock laid down guidelines for the grant of temporary injunctions that have been followed in Ugandan cases of Francis Babumba and 2 others Vs Erisa Bunjo, HCCS No. 697 of 1990 and **Robert Kavuma Vs M/S Hotel International SCCA NO.8 of 1990**. These principles are that;

- i. The Applicant must show that there is a substantial question to be investigated with chances of winning the main suit on his part;
- ii. The Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained; and
- iii. The balance of convenience is in the favour of the Application;

These issues are discussed in detail below

(i). Whether there is a substantial question to be investigated with chances of winning the main suit

In answering this question, the Applicant is required to show that there must be a prima facie case with a probability of success of the pending suit. A prima facie case with a probability of success is no more than that the Court must be satisfied that the claim is not frivolous or vexatious, in other words, that there is a serious question to be tried. In **Robert Kavuma [Supra], Wambuzi CJ** (as he then was) was emphatic and stated that the Applicant is required at this stage of trial, to show a prima facie case and a probability of success but not success.

In this case, the threats contained in the letter of the Respondent, Ref. MS/L/D dated 13th February, 2013 are very clear. She states that:

“I have received complaints from the Residents of Buziranjovu, Namayiba Parish, Mukono District, that Mr. Jonathan Wright has fenced off their land denying them access yet they are the lawful occupants. He has imprisoned some of them and

demolished their houses. He has also ordered his guards who are armed to shoot the residents and has injured several of them.

I strongly condemn these illegal evictions because the law does not provide room for harassment, imprisonment or eviction of lawful tenants without compensation.

Please, also note that H.E the President directed that the residents be resettled on their land in 2003. This was after threats of eviction by the said Jonathan Wright which had forced several tenants (lawful) to flee their land.

I will visit this area to ascertain the ownership of this disputed land.”

The above statements by the respondent lies have been disputed by the affidavits of Mr. Semussu Richard, the Secretary of the Bibanja Association, Buziranjovu, Mrs Cotilda Nabuuso, the Chairperson, Buziranjovu village and Mawanda Dick Wasajja, the Chairman LC III, Nakisunga Sub County. All these local leaders confirm that the Applicant has never evicted any lawful occupant and most importantly only came unto the land in early 2006.

Counsel for the applicant submitted that, the Respondent has governmental power, meaning the power to interfere with the way in which other citizens wish to conduct their affairs. It is the contention of the applicant that the respondent exercised that power unlawfully and maliciously causing the Applicant material damage. That the respondent is a Minister of State for Lands, Housing and Urban Development and wrote the letter Ref. MS/L/D dated 13th February, 2013 in her capacity as the Minister. That a letter contained glaring lies, heinous and criminal allegations against the applicant and that also threatened the applicant's constitutional right to ownership of property. He further submitted that the applicant contends that the respondent acted with malice or bad faith and should have foreseen that her letter would be subject of public debate, cause unrest on the applicant's land and threaten the applicant's investment.

From the analysis of the affidavits evidence and considering the law applicable as discussed hereinabove, I am of the considered view that the applicant has established that there is a prima facie case in the main suit with high chances of success against the respondent.

(ii) Whether the Applicant would suffer irreparable injury which damages would not be capable of atoning if the temporary injunction is denied and the status quo not maintained; and

Consequent to the above statement, in **Francis Kanyanya V Diamond Trust Bank, HCCS No. 300 of 2008 Hon. Mr. Justice Lameck N. Mukasa** relying on *Kiyimba – Kagwa Vs Haji Nassar Katende (1988) HCB 43*, stated to the effect that irreparable injury means that the injury must be substantial or a material one, that is, one that cannot be adequately compensated for in damages.

The applicant contends that if the temporary injunction is not granted, it will suffer great irreparable injury as the respondent will resettle families on the suit land with no legal known interest on the same. In addition, in the applicant's Managing Director's supplementary affidavit dated the 5th day of March, 2013, the deponent under paragraph 9 states that the insinuations and utterances of the respondent endanger the applicant's development plan on the suit land by providing adverse publicity and **exacerbating** investment risk in the applicant's planned development project.

It is my considered opinion that the said injury will not be able to be compensated for in damages and thus the prayer that the respondent is restrained whether by herself, or through her authorized agents and or, servants or any other person from entering the land comprised in **LRV 3498 Folio 17, and LRV 3498 Folio 16 land at Buziranjovu** and/ or evicting the Applicant or distributing the suit land to any persons till the disposal of the main suit. The applicant as **enunciated** in the supplementary affidavit of the applicant's managing director has invested heavily on the suit land in infrastructure development, feasibility studies and general marketing which investment still continues and if the Respondent interferes with the status quo on the said land, the Applicant will in my view suffer irreparable injury which cannot be adequately compensated for in damages.

(iii) Whether the balance of convenience is in the favour of the Application;

The court will consider where the "balance of convenience" lies, that is, the respective inconvenience or loss to each party if the order is granted or not. The court will consider all the circumstances of the case. Counsel for the applicant submitted that the court should find the balance of convenience in its favor as it is more likely to suffer greater damage if the

temporary injunction is not granted. To date, as gathered from the affidavits evidence on the Court record the applicant has compensated at least two hundred seventeen (217) families, fifty five (55) families remain uncompensated and are living on the suit without any form of interference from the applicant and an additional eight families have been partially compensated by the applicant. The applicant has engaged all the responsible local leaders in the area and all the steps taken on the suit land are sanctioned by all concerned authorities. All these steps, have been at the expense of the applicant.

As the affidavits evidence on record indicate, all discussions with the tenants on the suit land have been handled in a controlled, delicate and progressive manner to the satisfaction of all key stakeholders involved. The respondent's untimely interventions must have cost the applicant money, caused undue unrest on the suit land and may lead to violence, destruction of property on the suit land and possible loss of life. It is indeed, a very grave matter.

The balance of convenience, is therefore, determined in the favour of the applicant which stands to lose an investment of over six years that has cost a lot of money and effort. All the gains made will dissipate if the injunction is not granted and the respondent exercises her threats against the applicant.

In the result and for the reasons given hereinabove in this ruling the applicant demonstrated that this application has merit. It ought to succeed. Accordingly, therefore, this application is allowed in the following orders; that:-

- (a) A temporary injunction is issued restraining the respondent, her authorized agents and/or, servants or any other persons claiming authority from her from illegally entering the land comprised in LRV 3498 Folio 17 and LRV 3498 Folio 16 at Buziranjovu and/or evicting the applicant or distributing the suit land to any persons till the disposal of the main suit, HCCS NO. 79 of 2013.

- (c) Costs of this Application are in the cause.

Date at Kampala this 25th day of March, 2013.

sgd
Murangira Joseph
Judge