

The brief facts of this application are that the applicant was the registered proprietor of land comprised in Kyadondo block 250 plots 871 and 870 which he developed as a single piece. The applicant on the 13th day of June 2011 leased his land to a Sudanese national Wek Arik Wek Wek and he through his lawyers lodged the said titles with the land registry in order to have the leasee get title. The applicant was shocked when in March 2012 he was informed that the 2nd respondent was inspecting the land for purposes of foreclosing under a mortgage. The applicant contacted his advocates who lodged a caveat on the land.

The applicant's lawyers then wrote to the second respondent seeking details of the alleged mortgage, but the later has not availed the same. A meeting with the second respondent's officials and the valuation report clearly shows that the land the Bank inspected was not developed as opposed to the applicant's land. The respondent has engaged bailiffs who continually harass the applicant. The Applicant filed a suit seeking a permanent injunction against the respondents.

Issue for resolution of this application: Whether the applicant is entitled to the orders being sought in this application.

Counsel for the applicant submitted that by the nature of the case and evidence on record the applicant is entitled to the orders sought in this application. He cited and relied on a number of authorities. In a short reply, Counsel for the 2nd respondent submitted that paragraph 2 of the affidavit in support of the application claims that the applicant is the registered proprietor of the suit property. However, that the applicant has not attached any proof that he is the registered proprietor.

On the other hand, the 2nd defendant is a registered mortgagee. That therefore, the applicant has not shown basis for his claim. That he has not demonstrated a prima-facie case.

He further submitted that, alternatively if Court is inclined to grant the application and stop the sale, the applicant must be ordered to deposit 30 % of the outstanding amount of Shs. 112,705,649 as pleaded in the Written Statement of Defence. That such a deposit is mandatory under Regulation 13 of the Mortgage Regulations, 2012.

I have evaluated the parties' affidavits evidence on record, analyzed each party's submissions and in my considered opinion the applicant has a cause which should be investigated by this Court.

In an application of this nature all that the applicant has to prove to Court is whether there exists a triable issue for Court to traverse in the main suit. Indeed in the instant case the applicant has reported to Court that he was and is the registered proprietor of the 2 plots of land comprised in plots 870 and 871 Block 250 Kyadondo respectively, and that he has developed these two parcels with structures to a tune of Ushs. 1billion. That any transfers or change of proprietorship on any of the above plots by the 1st respondent was fraudulent; see annexure "**B**" to the affidavit in support of the chamber summons.

Alleged fraud in respect of the transfer of Plot 870 is the triable issue for this Court.

There are serious claims of fraud that the plaintiff is alleging which ought to be investigated by this Court; if the 2nd respondent is left to proceed with the sale of the suit property it's likely to jeopardize these investigations and the ultimate remedy of the applicant being that there will be a new owner of the suit land.

This Court granted a temporary injunction in **HERBERT VERSUS HOUSING FINANCE LTD MISC. APPLICATION NO. 923 OF 2010** without requiring the applicant to deposit the 30% deposit. I therefore make a finding that the application for temporary injunction could be granted without the applicant depositing 30% of the mortgage in Court. The applicant is not the mortgagor of the suit lands in the 2nd respondent Bank.

The law on temporary injunction is settled in the various cases which have been decided by this High Court of Uganda. In the case of *E.L.T Kiyimba- Kaggwa – V- Haji Abdu Nasser Katende CS No. 2109 of 1984 reported in [1985] H.C.B at page 43 Odoki J (as he then was)* held that: **the granting of a temporary injunction is a judicial discretion and the purpose of it is to preserve matters in status quo until the question to be investigated in that suit is finally disposed of.**

The status quo was defined to be “*the actual state of affairs on the suit premises prior to the filing of the suit*” in *Viola Ajok and Anor –V-Andrew Ojok and Anor Misc App No.179 of 2007 (arising from CS 63 of 2007)*.

In the same case it was held to the effect that It is court’s discretion whether to grant a temporary injunction and before Court grants a temporary injunction the following conditions must be satisfied. 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. In case the applicant fails to establish one of the said principles, then a temporary injunction can be granted on the basis of the convenience of both parties.

The applicant has developed both plots to a tune of over a billion shillings thus he is in possession of the land and that is the status quo which the applicant seeks to maintain. The applicant pleads fraud on the part of the respondents in transferring and mortgaging his land, his property is threatened by foreclosure in a transaction he had no knowledge of. This is matter where Court honestly believe that the applicant/plaintiff has a high probability of success and therefore it would be in the interest of justice for this Honorable Court to grant the applicant a temporary injunction pending the disposal of the main suit.

As it is indicated in the affidavit in support of the application; the applicant had leased land to a third party, secondly the applicant has developments on the land worth billions, if this Court were to deny the applicant a temporary injunction and the respondent foreclosed the property, this would occasion inconveniences to the applicant which damages cannot adequately be atoned in terms of damages.

Counsel for the applicant asked Court to exercise its discretion judiciously and grant the applicant the temporary injunction sought for. He prayed that the costs of this application be provided for. In total consideration of this application and the affidavit evidence by the 2nd respondent, together with the submissions by each Counsel for the parties, this application has merit. It ought to succeed.

In the result and for the reasons given hereinabove in this ruling, this application has merit. It is accordingly allowed in the terms and orders being sought therein with costs in the cause.

Dated at Kampala this 28th day of May, 2013.

sgd

Murangira Joseph

Judge