

country and to ensure that no person or entity occupies or remains in any Forest reserve under the care of the Respondent.

Under Paragraph 10 of Mr. Ouna Jimmy's affidavit, it is stated that he has perused the documents attached by Olyomoki Fred in support of Applicant's claim. He adds that the documents show that Government was proposing to settle slum dwellers from Kisenyi, Mulago, Katanga and other areas of Kampala on the request of slum dwellers international. In the same affidavit, Para. 13, Ouna Jimmy depones that the Applicants chose to prematurely occupy the disputed land which is still a Forest reserve without waiting for the Government to degazette. He adds under Para. 15 that the Applicant's claim of interest is only speculative, anticipatory vague and misconceived and their continued occupation contravenes the law.

The Advocates on both sides, Mr. Gilbert Baguma together with Augustus Sewankambo for the Plaintiff/Applicants, and M/S Kisakye Ruth for the Defendant/Respondent filed written submissions in support and against the grant of a temporary injunction. The same are on record and very detailed. I have had the opportunity of studying and internalizing all those written submissions and the respective supporting authorities. I hasten to state that most of the issues raised in those submissions are pertinent but will be very helpful during the hearing and determination of the main suit. So this Court will not go into the detailed submissions from both sides at this stage. However, I wish to point out that Section 64 (c) of the Civil Procedure Act provides that in order to prevent the ends of Justice from being defeated, the Court may grant a temporary injunction. Section 38 (1) and 13 (a) of the Judicature Act are to the effect that the High Court has power to grant an injunction restraining any person from doing any specified Act, whether the claim under which such application is brought are in respect to legal or equitable estates.

This is not to mention O.41 (1) and (2) of the Civil Procedure Rules which is very elaborate on grant of Temporary Injunctions. So Paragraph 22 of the affidavit of Ouna Jimmy in reply is misconceived because the Jurisdiction of the Courts in such instances cannot be said to have been ousted by the statute creating National Forestry Authority. Otherwise, the law and practice is that where a party seeks an order of a temporary injunction, such a party has to show that:-

- a) The purpose of such an injunction is to maintain the status quo.

- b) That there is a prima facie case in the suit with a possibility of success.
- c) That the party stands to suffer irreparable damage/loss/injury if the order is not granted.
- d) In case of doubt, the matter is resolved on the balance of convenience.

As far as the present case is concerned, and as far as paragraphs 2, 9, 14, 15 and 17 of the affidavit in support are concerned, the Applicants are in possession or occupation of the disputed premises. That is conceded to under Paragraphs 13 and 21 (c) of the affidavit in reply save for the contention that the Applicants are in occupation prematurely and have settled thereon illegally.

Those, as I have already noted, are issues of the main suit. Otherwise the status quo to be maintained is that the Applicants are in occupation/possession.

On the second principle of prima facie case, reference is hereby made to the case of **Kiyimba Kagula Vs Haji Abdul Nasser Katende [1985] HCB 43**, where prima facie case was held to mean that the applicant must show that there is a substantial question or questions to be investigated.

Needless to emphasize, the suit in the present case raises many issues to be investigated. They include what is raised in Mr. Ouna Jimmy's affidavit in reply that whereas Government may have allowed the Applicants to occupy the suit land, they occupied it prematurely and should sue the Government. That is a big issue to be investigated in the main suit among many others. On the balance of convenience, it has been submitted on behalf of the Respondent that since the Applicants have no interest in the suit land by grant, donation or otherwise, and that a grant of injunction will be encouraging illegal settlement. With respect, I disagree with the above submissions because those are the very matters to be investigated and resolved in the main suit. And given the nature of dispute, in that it involves very many people and is rather explosive, the Court will fast track the case.

Otherwise, all in all, in view of what I have outlined, I am inclined to allow the Application and grant the Temporary Injunction as prayed. Since the main suit is still pending, each party to meet their own costs.

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W. MASALU MUSENE

J U D G E

4/12/2013

Mr. Baguma Gilbert for Plaintiffs.

Plaintiffs present.

Defendant absent.

Aida Mayobo, Court Clerk present.

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W. MASALU MUSENE

J U D G E

Court: Judgment read in open Court.

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W. MASALU MUSENE

J U D G E