

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC. APPLICATION NO. 262 OF 2014**

(ARISING OUT OF MISCELLANEOUS CAUSE NO. 16 OF 2014)

DAVANTI UNION LIMITED APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION..... RESPONDENT

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

This is an application for a temporary Injunction presented by Peter Walubiri proceeding *ex parte* against the respondent who after being served on 20/3/14 failed to oppose the application or to appear for the hearing of 24/06/14. I allowed the application to proceed *ex parte* after being satisfied that service by Okotcho an agent of the Mr. Walubiri's firm had made effective service.

The grounds of the application are contained in both the chamber summons and affidavit of Joseph Kamusiime the managing director of the applicant. He stated that the applicant brought property comprised in Block 107 Plot 1016 (hereinafter called the suit property). That after paying the purchase price, he lodged the transfer instrument with the office of titles in Mukono. That the transfer was not entered on the title and instead, on 19/12/13 he discovered that the land was encumbered by a caveat lodged by one R.L. Jain.

On 10/1/14, through their lawyers, the applicant formerly requested for the removal of the caveat. Their request was declined and instead, the Registrar of Titles in Mukono informed Mr. Kamusiime that she had handed over all the records and titles for the suit property to the respondent for cancellation. On 20/2/14, the applicant, again through their advocates wrote to the respondent objecting to her continuous custody of the register of the suit property and refusal to act on their formal application to remove the above caveat. The respondent declined to respond to that correspondence which led the applicant to fear that she will go ahead to cancel the title with respect to the suit property, in a manner they deem as illegal. They thereby filed Miscellaneous Application No. 16/14 seeking an order to summon the respondent before this

court to show cause why she declined to carry out her duties as requested by them and then filed the present application seeking a temporary injunction restraining the respondent by herself, her agents or subordinates from cancelling the applicant's registration in respect of the suit property until disposal of the substantive application.

The law on temporary injunctions is contained in **Order 41 rules 1(a)** of the **Civil Procedure Rules**. The principles governing the grant of a temporary injunction are now well settled. For example in the case of **American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396** Lord Diplock laid down guidelines for the grant of temporary injunctions that have been followed in the Ugandan cases of **Francis Babumba and 2 others Vs Erisa Bunjo HCCS No. 697 of 1999** and **Robert Kavuma Vs M/s Hotel International SCCA No.8 of 1990** they include:-

1. The applicant has to show that he has a prima facie case with a probability of success in the main suit.
2. The applicant has to show that he is likely to suffer irreparable damage if the injunction is denied.
3. If court is in doubt as to the above considerations, it will decide the application on a balance of convenience

In considering the above principles, the court should also bear in mind that that temporary injunctions are discretionary orders and that the court should not attempt to resolve issues related to the main suit: See: **Prof. Peter Anyang Nyongo & Others Vs The Attorney General of Kenya & Others; East African Court of Justice Case Ref. No. 1 of 2006 (unreported)**.

It is not in dispute that the applicants have filed Miscellaneous Application No. 16 of 2014 against the respondent and it is from that cause that this application originates. The claim in the main application is that the respondent has through her subordinate, the Registrar of Titles in Mukono made known her intention to cancel the title in respect of the suit property without giving the applicant a reason for that action or a hearing in defence to her intended action. She has also declined their formal request to remove the caveat filed by one R. L Jain or to respond to any of their correspondence.

Attached to the affidavit of Kansiime is an agreement of sale dated 21/8/13 showing that it is the applicant who purchased the suit property from one Tony Kipoi Nsubuga. The purchase price was paid in full at the execution of the agreement and there is no indication of an adverse claim by the vendors. This is a prima facie indication that the applicant obtained the suit property for valuable consideration. Also attached is proof that registration fees and stamp duty were paid in respect of the instrument of transfer and that the suit property is currently registered in their name.

There is no proof attached to the application that the suit property is encumbered by a caveat or that the respondent has communicated her intention to cancel the title. However, it is the contention of the applicant that the respondent's intentions and the fact that the register in respect of the suit property is now in the hands of the respondent were communicated to them through Ms. Atoro, a Registrar of Titles stationed at the Mukono title office. What is evident though are several correspondences by the applicant's lawyers dated 10/10/14 and 20/2/14 requesting the registrar to communicate her reasons for refusal to withdraw a caveat and an unwarranted holding of the register in respect of the suit property in Kampala.

In my view, a prima facie case is not necessarily a tight case. It is a case in which the court need only be satisfied that there is a serious question to be tried. Wambuzi C J (as he then was) in the case of **Robert Kavuma (supra)** explained it well when he 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. (Emphasis mine)

Under Section 91 Land Act, the Commission land Registration is empowered to carry out actions (including cancellation of certificates of title) in order to give meaning to the Act. However, she must exercise such powers with due regard to the principles of natural justice after for example, giving notice and reasons for such cancellation and giving the affected proprietor the right to be heard. She also has powers under Section 140(2) to remove a caveat on land after being so moved by the registered proprietor against whose land the caveat is encumbered. There is proof that the office of the applicant has received all three communications from the applicant's

advocates in which their varying complaints and requests are contained. It appears she has not bothered to reply to any.

I have shown that *prima facie*, the applicant has proved ownership of the suit land and also shown that he has moved the respondent for certain actions to be taken and safe guards given but in vain. It is for those reasons that they filed the substantive suit. In my view, their complaints in the main suit are worth investigation by this court. I am thus satisfied that the applicant have raised a prima facie case.

Mr. Walubiri also argued that should the respondent go ahead to cancel the title in respect of the suit land, then the applicant will stand to lose valuable land. I agree, and as I have already said, the respondent can only cancel a title through procedures that ensure that the proprietor is given notice and heard on that cancellation. This is valuable land and there is evidence that the application paid valuable consideration for its acquisition and also obtained its registration through lawful means. None of this has been controverted by the respondent who chose to keep herself out of the application.

In principle, the purpose of an injunction is to preserve the status quo in respect of the matter in dispute until determination of the whole dispute: See for example **E.L.T. Kiyimba Kaggwa Vs Haji A.N. Kateride (1985) HCB 43 and Commodity Trading Industries Vs Uganda Maize Industries and Another [2001-2005] HCB 118**. I believe that this principle is key because it is important for the court and the litigants to be given time and space to exhaustively handle the matters in issue in the main suit with no interference by the respondent or her agents to disrupt the current status of proprietorship of the suit land on the ground. This application presents facts that would entitle the applicant the right to be heard on the main application without interference of their title by the respondent.

I accordingly allow the application and order that a temporary injunction issues restraining the respondent, whether by herself or subordinates or agents from cancelling the applicant's registration as proprietor of Kyaggwe Block 107 Plot 1016 until final disposal of Miscellaneous

Application No. 16 of 2014. I further order that costs of this application shall abide the outcome of the main application.

I so order.

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EVA K. LUSWATA
JUDGE
24/6/2014