

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC. APPLICATION NO. 478 OF 2014
(Arising from Civil Suit No. 474 of 2012)**

EMORANI YUSUFU WAISWA..... APPLICANT

VERSUS

- 1. NAKENDO HAJIRAH**
- 2. BALINGIRIRA ABDUL NAKENDO..... RESPONDENTS**
- 3. DAMALIE SARAH NAKENDO NAMUSOKE**

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

The application was brought by Chamber Summons under Order 41 rules 1, 2, 7, 8 and 9 of the CPR and Section 98 CPA seeking for orders that:

1. A temporary injunction does issue restraining the defendants/Respondents by themselves, their assignees, transferees, servants, agents, and/ or workers from selling, disposing off or alienating or dealing with the suit land comprised in Kyaggwe Block 115 Plots 3324 and 3243 formerly part of Plot 2985 land at Mukono in anyway, until the determination of the main suit or until further orders of court.
2. The respondents be stopped from making further surveys and subdivisions in the suit land formerly comprised in Plot 2985.
3. The certificates of title for all subdivisions be deposited in court so as to preserve the suit property.
4. Costs of this application be provided for.

The grounds of the application were contained in the affidavit of the **Applicant Emorani Yusufu Waiswa** where he briefly stated that Emorani Investments Ltd in which he is the Managing Director bought land comprised in Block 115 Plot 2985 land at Mukono Kyaggwe measuring 6 acres (hereinafter called the suit land) from Stephen Kazooba Kutonga and immediately thereafter, orally assigned the benefit of the contract to the applicant and a transfer was made in his favour. That the applicant entrusted the work of preparing the agreement,

coordinating the survey and obtaining a certificate of title with the 1st respondent. That before the survey to mutate off 6 acres for the applicant was completed, he sold 3 acres to the 2nd and 3rd respondents, (parents to the 1st respondent).

He further stated that without the knowledge and consent of the applicant, the 1st respondent surveyed off 3 acres out of the 6 acres for herself and further subdivided them into plots of one and two acres respectively and transferred one acre into the names of Catherine Wechuri (1st respondent's sister in law) and 2 acres in the names of the 1st respondent and Anthony Wekesa (1st respondent's husband). That when the applicant reported these unauthorized developments to the 2nd and 3rd respondents, they showed no concern and instead asked him to deliver the 3 acres he had sold to them. That the respondents have since remained with the certificates of title and have sold diverse plots of the suit land to 3rd parties thus changing the status quo instead of preserving it.

The 1st respondent contended in an affidavit in reply that this application cannot be decided without the registered proprietor Stephen Kutonga Kazooba being a party to the proceedings. That the applicant has no chance of succeeding in the main suit since the claim lacks merit in as far as the land in dispute was transferred to the 1st respondent by the registered proprietor. That the application is not sustainable in as much as it seeks to maintain status quo on the land in the names of 3rd parties who are not party to the proceedings.

The 3rd respondent also contended in an affidavit in reply that the applicant has never passed title in the land he sold to her and as such, the application is redundant against her since she is not a registered proprietor and cannot pass title or make subdivisions on the suit land. That the applicant will not suffer irreparable damage if the application is not granted.

Order 41 Rule 1(a) CPR provides grounds to consider before granting a temporary injunction. However, each case must be considered upon its own peculiar facts. In the case of **American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396** Lord Diplock laid down guidelines for the grant of temporary injunctions and 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 damages if the injunction is denied.
3. If court is in doubt as to the above considerations, it will decide the application on the balance of convenience.

1) The applicant has to show that he has a prima facie case with a probability of success in the main suit.

I noted from submissions of both sides that much time was spent in discussing the merits of the main suit. This is not necessary at this point for the remedy being sought is only interim to safe guard the status quo until the rights of the parties are determined in the main suit. In my opinion, it is incumbent on the applicant to present a case with a probability of success but not necessarily a water tight case.

Counsel for the parties were directed and filed written submissions. In the case of **Godfrey Sekitoleko and others VS Seezi Mutabazi [2001-2005] HCB Volume 3 at 80** the Court of Appeal made the position clear by stating as follows;

“The court has a duty to protect the interests of parties pending the disposal of the substantive suit. The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal rights to the property from irreparable damage pending the trial, the court does not determine the legal rights to property but merely preserves it in its actual condition until legal title or ownership can be established or declared.”

Therefore aspects which relate to the rights to the suit property are premature and will only be addressed when the case is heard on its merits.

The claim in the main suit is for declarations that the respondents have no proprietary interest in the residue of the suit land measuring 3 acres, transfer of land to non Ugandans was illegal, null and void, general damages for fraud, misrepresentation and inconvenience. The applicant further alleged that having purchased the suit land (measuring six acres) through Emorani Investments Ltd where he is the Managing Director, he entrusted the work of preparing the agreement, coordinating the survey and obtaining a certificate of title with the 1st respondent. However, without his knowledge and consent, the 1st respondent in connivance with the 2nd and 3rd respondents to whom the applicant had sold 3 acres of the suit land surveyed off three acres for herself and further subdivided them into two plots that she transferred to third parties. The

respondents on the other hand denied the claim, and the 2nd and 3rd respondents counterclaimed against the applicant for specific performance of the contract.

In so much as both the applicant and 1st respondent alleged have a claim in three acres out of the suit land, and a claim (still to be proved) that there was an agreement in which the 1st respondent would settle the 2nd and 3rd respondent claim of three acres out of the suit land, the applicant has raised issues that merit trial. He has therefore raised a prima facie case.

2) The applicant has to show that he is likely to suffer irreparable damages if the injunction is denied.

In **Francis Kanyanya Vs Diamond Trust Bank HCCS No. 300 of 2000** Hon Justice Lameck .N. Mukasa relying on **Kiyimba Kaggwa Vs Hajji 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.

In the instant case, the applicant in his affidavit evidence stated that the acts of the respondents are causing him mental pain, anguish together with irreparable loss and damage since he may lose the entire suit land to the respondents as the 2nd and 3rd respondents still claim the 3 acres he had sold to them. Counsel for the applicant in submission stated that the applicant's land is big and located in a prime area and not easily obtainable elsewhere in the suburbs of Kampala. Counsel for the respondents however contested that the applicant stands not to suffer irreparable injury.

I do agree with counsel for the applicant that six acres in Mukono is prime and valuable property and an adequate or fair replacement or alternative may not be easy to come by. Previous authority has considered similar facts to be sufficient as proof of loss that cannot be atoned for by damages alone. I am therefore satisfied that the applicant will suffer irreparable injury if the temporary injunction is not granted.

3) Preserving the status quo.

It is now settled law that when court is considering the application for a temporary injunction, it must bear in mind that its purpose is to preserve the status quo in respect of the matter in dispute until determination of the whole dispute; see for example **Commodity Trading Industries Vs Uganda Maize Industries and Anor [2001-2005] HCB 118.**

Further in the case of **Faridah Nantale vs. AG and 5 other HCMA No.630 of 2013** Justice Bashaija K. Andrew observed that “...*status quo ought to be interpreted to mean and refer to the state of affairs existing during the period immediately preceding this application and not after and this is what ought to be preserved...*”

In the case in point, preserving the status quo would mean preserving the situation as it is on the suit land. The undisputed facts are that the 1st respondent has transferred 1 acre of the suit land into the names of Catherine Wechuri and 2 acres of the same in her names and that of her husband Anthony Wekesa. The residue of three acres as still in the names of the registered proprietor Stephen Kutonga Kazooba. This therefore should be the status quo to be maintained. No further subdivisions and alienation of the suit land by the respondents or their agents is allowed.

Suffice to note that issues to do with ownership will be determined in the main suit and not at this stage. Thus, the claim by the 1st respondent that the suit land was transferred into her names by the registered proprietor and people who are not party to the suit will not suffice.

4) If court is in doubt as to the above considerations it will decide the application on the balance of convenience.

It is trite law that if court is in doubt on any of the above principles, it will decide the application on a balance of convenience. This court is not in doubt given the fact that the applicant has established in his pleadings that he has a prima facie case with a probability of success and that he will suffer irreparable damage if the application is not granted. I have also found that there's need to preserve the status quo to stop any further dealings and in the suit land.

This application is accordingly allowed with orders that;

1. A temporary injunction order does issue against the respondents restraining them, their assignees, servants or agents from selling, disposing off, alienating or any other dealings in Kyaggwe Block 115 Plots 3242 and 3243 (formerly part of Plot 2985) at Mukono until final determination of the main suit.
2. The certificates of title for all subdivisions out of Block 115 Plot 2985 should be deposited with the Registrar of this court for the duration of the temporary injunction order within five days of this order.
3. The applicant is granted costs of this application.

I so order.

EVA K. LUSWATA
JUDGE
12th December, 2014