

3. ***An order forbidding the vacation of the caveat lodged on properties comprised in Block 274, Plots 768, 737, 736, 735, 744, 745, 747, 748, 749, 752, 756, 767, 750, 758, 761, 762, 763, 764 and 765.***
4. ***Costs of this application be provided for.***

The grounds of the application are supported by the affidavit of P.K. SENGENDO the Applicant herein, but briefly are that:-

- (a) ***The Applicant has failed a Civil Suit No. 234 of 2013 for inter alia an order for a permanent injunction restraining the Defendant's jointly and/or severally from claiming the suit land, trespassing thereon either by themselves or through their agents, employees, servants, workmen or any persons claiming under them.***
- (b) ***The Applicant is the equitable owner of the land comprised in BUSIRO BLOCK 274, PLOTS 768, 737, 736, 735, 744, 745, 747, 748, 749, 752, 756, 757, 767, 750, 758, 761, 762, 763, 764 and 765 measuring 2.085 hectares being part of land formerly comprised in Busiro BLOCK 274 Plot 7 having purchased the same and obtained duly executed transfer forms together with the duplicate certificate of title from the 1st Respondent and the Respondents are wrongly disenfranchising the Applicant of his quiet enjoyment and possession of the suit land.***
- (c) ***The fraudulent actions of the 1st Respondent obtaining a special certificate of title to the suit land and selling the same off to the 2nd Respondent has greatly interfered with the Applicant's legal possession of the suit land and carrying out the intended development on the land.***
- (d) ***The fraudulent actions of the 2nd Respondent purchasing the suit land well knowing and aware of the existence of the Applicant's development and structures on the land prior to his purchase and embarking on the***

mutation and subdivision of the suit land have deprived the Applicant of his rightful possession and ownership of the land.

- (e) That the fraudulent actions of the 3rd and 4th Respondent purportedly purchasing the suit land from the 2nd Respondent on which there already existed developments and ignoring the said developments despite the existence of the Applicant's tenants on the suit land.*
- (f) That if the Respondents are not restrained, the Applicant shall suffer irreparable loss and damage as there are still ongoing subdivisions and selling of the suit land.*
- (g) That it would be just and fair that this application is granted as the suit land is under threat of being wasted, damaged and or alienated to the detriment of the Applicant lawful interests in the land.*
- (h) That the main suit has a high likelihood of success and it is in the interest of justice that this application is allowed.*
- (i) The Respondents stand to lose nothing if the orders sought are granted by this honourable Court, and in any case the Respondents can be compensated in damages.*
- (j) That the application is of an urgent nature as any delay will defeat the main cause.*

All the four Respondents filed affidavits in reply opposing the application. I need not go into details of each, save to point out that the depositions largely tended to argue the merits of the main suit rather than confine specifically to the application for temporary injunction beforehand. For a better part of their depositions and submissions, Counsel and the parties themselves were off the point.

Counsel for the parties filed written submissions. I will not reproduce them in this short ruling, but I must commend those who elaborately cited and availed hard copies of authorities regarding the legal principles that govern temporary

injunctions. The principles upon which a temporary injunction should be granted are well settled. I will only re-state them. They 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 or her part.

See: ***Daniel Mukwya v. Administrator General, H.C.C.S. No. 630 of 1993 per Byamugisha J. (as she then was) R.I.P.***

- (ii) That the Applicant will suffer irreparable injury which damages would not be capable of atoning if the application is not granted and the *status quo* is not maintained. See: ***Kiyimba Kaggwa v Haji N. Katende [1985] HCB 43.***

- (iii) The balance of convenience is in favour of granting the application. See: ***Buzirenjovu Development Co. Ltd v. Nantaba Idha Erios Misc. App. No. 141 of 2013, per Murangira J.***

The main purpose of granting of a temporary injunction is to preserve the *status quo* pending the determination of the head suit. “*Status quo*” simply denotes the existing state of things existing before the particular point in time; and in determining whether or not to maintain the *status quo* other surrounding circumstances have to be taken into account. See: ***Erisa Rainbow Musoke v. Ahamed Kezala [1984] HCB 81.***

On the issue whether there is a serious question to be investigated with high chances that the Applicant will succeed in the instant case, I have considered the Applicant’s depositions in the affidavit in support of the application that he purchased land formerly comprised in ***Busiro Block 274 Plot 7 land at Mugunga*** from the 1st Respondent in 1997. This was not rebutted by the Respondents. The Applicant, however, also contends that part of the suit land has since been re-sold by the 1st Respondent to the 2nd Respondent who has subdivided it and also sold to other third parties. It so happens that apart from the 3rd and 4th Respondents who were joined to the main suit as Defendants by order of court, none of the other

third parties are parties to the main suit. The question thus becomes; what *status quo* ought to be maintained?

In my view, *status quo* being the existing state of things existing before a particular point in time, the point in time that ought to be taken into account in the instant matter should be as at the time of filing the application. It is presumed that it is when the acts complained of by the Applicant either occurred or he became aware of them. Short of that he would be guilty of laches.

If that be the case that the *status quo* is as at filing of this application, it would mean that an application seeking orders restraining the Respondents from claiming title in the suit land would be unobtainable. This is because the Respondents obtained title to the respective pieces of land to which they lay their respective legal proprietary claims way back in 2010. Even for those titles which the Applicant alleges are still owned by the 1st Respondent for which he seeks the orders in this application, they predate the filing of this application. The issue whether the titles were obtained fraudulently and/or illegally cannot be determined in an application for temporary injunction but the main suit. I find that it would not be legally and or practically feasible to restrain the Respondents from claiming titles to the suit land - which titles they already have.

Regarding the issue whether the Respondents have trespassed on the suit land for which the Applicant seeks restraining orders, this too is matter that cannot be determined at this stage. It is trite law that where a party genuinely, even though mistakenly, claims proprietary interest in a property believing that he/she owns that property the party cannot be a trespasser until the legal rights of parties are fully resolved. The net effect is that the *status quo* that ought to be preserved is that which is currently obtaining on the suit land. The Respondents cannot be stopped from laying claim to the title to land nor can they be restrained as trespassers until the contrary is determined.

Regarding the principle of irreparable injury the Applicant states, in paragraph 16 of his affidavit in support of the application, that he will suffer “*irreparable damage and loss if the caveat is vacated.*” On clear analysis, however, this deposition is quite speculative and unrealistic. There is no evidence showing that the caveat referred to in the application is about to be vacated. Needless to state that the procedure for vacation of the caveat under **Section 140 RTA** is such that the Applicant would be notified of the same and be heard in the matter before vacation is effected. If indeed the Applicant honestly and genuinely lodged the caveat, he should have no reason to fear if called upon to defend the same by the Registrar of Titles or Court in the event that an application for its vacation is made. There is therefore no merit in this ground.

I also find that the depositions that the Applicant will suffer irreparable damage, lack merit based on the facts of the case. The Applicant in his plaint in the head suit, specifically in paragraph 3(j) thereof, states *inter alia* that his claim is for general damages from the Defendants. Further, in his main prayers in the plaint particularly item (k) the Applicant reiterates the prayer for the award of general damages. This means that the Applicant is acutely alive to the fact that whatever the loss, it would not be impossible to atone for by the award of general damages. Otherwise he would not have claimed for the same in the main suit. It would follow that this application fails the test of irreparable damages or loss. On the whole the Applicant has not met the criteria for the grant of an order for temporary injunction. The application is dismissed with costs.

BASHAIJA K. ANDREW
JUDGE
08/04/2014

Court: The ruling is read in open court

Ms. Angella Kobel Counsel for the Applicant.

Applicant: present.

Counsel for the Respondents: absent.

Respondents: absent.

Court Clerk: Namusoke Justine present.

Transcriber: Hasipher Nansera present.

BASHAIJA K. ANDREW
JUDGE
08/04/2014