

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT NAKAWA  
MISC. APPLICATION NO. 150 OF 2013  
[ARISING FROM CIVIL SUIT NO. 82 OF 2013]

1. MPUNGU PAULO
2. RACHEAL KEMIREMBE:.....:APPLICANTS

VERSUS

1. NAGAWA AGNES
2. SEBINA LAWRENCE:.....:RESPONDENTS

**BEFORE: HON. MR. JUSTICE WILSON MASALU MUSENE**

RULING

The Applicants, Mpungu Paul and Rachael Kemirembe filed this Application by Chamber Summons under O.41 rules 2 and 9 of the Civil Procedure Rules for a Temporary Injunction.

They were represented by M/S Hamidah K.L Associated Advocates. The Respondents were Nagawa Agnes and Sebina Lawrence dully represented by Mr. Okwalinga Moses.

The Application of the Applicants was supported by the affidavit of Mpungu Paul, the 1<sup>st</sup> Applicant in which under Paragraph 3 thereof depones that both Applicants are the Registered Proprietors of the suit land comprised in Block 397 Plots 1604 and 1608. Copies of the Certificates of Title were attached and are on record. It is further avered under paragraph 4 of the supporting affidavit that the Respondents, without any claim of right have trespassed onto the Applicant's land and fenced it off with barbed wire, and that the Applicants are in imminent danger of having their land completely alienated by the Respondents and their agents if they are not stopped.

The Respondents did not file an affidavit in reply but in their Joint Written Statement of Defence, under Paragraphs 4 and 5, they claim that it was their grandfather, Christopher Katumba who was the Registered Proprietor of the land in question. The Respondents' contention is that by the time of the demise of their grandfather in 1974, he had not sold or pledged the said land or any part thereof to the Plaintiffs/Applicants and that the Plaintiffs have no cause of Action against them. Those are issues which will be determined in the main suit. As of now, I wish to state that the law on Temporary Injunction is provided under O.41 r 1 of the Civil Procedure Rules it provides:-

**“1. (a) where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree; Court may grant a Temporary Injunction to restrain such act, or make such order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as Court thinks fit till the disposal of the suit.”**

**In the American Cyanamid CO. Vs Ethicon Ltd [1975] AC 396**, Lord Dip Lock laid down guidelines for the grant of Temporary Injunction, which guidelines have been consistently followed in Uganda in a number of cases including **Supreme Court Civil Appeal No. 8 of 1990, Robert Kavuma Vs M/S Hotel International.**

The Principles are:-

1. The Applicant must show that there is a substantial matter to be investigated with high chances of success (prima facie case).
2. That the Applicant would suffer irreparable injury which damages would not be capable of atoning.
3. That the balance of convenience is in favour of the Applicant.

As far as the issue of Prima facie case is concerned, the Applicants hold a Certificate of Title to the property in dispute. That Certificate of Title is conclusive evidence of ownership as stipulated under the Registration of Titles Act. It can only be impeached by reason of fraud. So without going into the details as held in the case of **Kiyimba Kagwa Vs Katende [1985] HCB;** I am satisfied that there exists a Prima facie case necessitating grant of Temporary Injunction.

There is a serious question of who is the rightful owner of the land, how and when the Applicant acquired the property and how the Respondents claims interests in the land. Even Counsel for the Respondents in their Written Submissions concedes that there is a Prima Facie case. Their only contention is that the likelihood of success is in favour of the Respondent. That is indeed a contentious matter to be decided after hearing of the main case. In the meantime, I find and hold that this is a fit and proper situation where a temporary injunction should issue to preserve the status quo till the case is finally determined. I shall not therefore waste time discussing irreparable injury likely to be suffered by either side.

On the balance of convenience, it was submitted by the Applicants that they have since engaged surveyors, Architects and secured approvals for building plans from the relevant authorities. And that such steps have been expensive and that the balance of convenience be determined in favour of the Applicants who stand to lose an investment of over 5 years that has cost a lot of money and in form of loans.

In the case of **Commodity Trading Industries Vs. Uganda Maize Industries & Another [2001 – 2005] HCB 118**, It was held that the purpose of a Temporary Injunction is to maintain the status quo till the determination of the whole dispute. So despite the half hearted submissions on behalf of the Respondents of conceding that there is a prima facie case, but at the same time opposing the grant of Temporary Injunction, I do hereby overrule the Respondents.

I am satisfied that in the circumstances of this case, a Temporary Injunction is necessary to preserve the status quo and not to sell, alienate or otherwise dispose off the suit land till the hearing and determination of the main case. Costs to be in the cause.

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**W. M. MUSENE**

**JUDGE**

**2/05/2014**

Mr. Musinguzi Joshua for Applicant.

Applicant present.

Counsel for Respondent absent.

One Respondent present.

**Court:** Ruling read out in open Court.

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**W. M. MUSENE**

**JUDGE**

**02/05/2014**