



THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI

LAND MISCELLANEOUS APPLICATION NO. 0019 OF 2015

(ARISING FROM CIVIL APPEAL NO. 0062/2014 & LAND SUIT NO. 0025 of 2012)

BYARUHANGA JOSEPH ::: APPELLANT

VERSUS

NALONGO ELIZABETH WANDERA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON

RULING

The application was brought under the provisions of the law cited in the Notice of Motion seeking for orders, inter alia, that the respondent's acts of forcefully occupying, fencing and taking possession of the suitland without following execution proceedings was illegal, null and void and was an illegal execution.

The grounds are that:-

1. The respondent has carried out an illegal execution to the prejudice of the applicant/appellant.
2. The applicant has a pending appeal before this Honourable Court with high chances of succeeding on the balance of probability.
3. That the respondent's acts are a threat to the rule of law and dictates of order and civility.
4. The respondent, through an illegal execution has caused extensive damage to the applicant's property.

5. If the respondent's acts are not nullified and an order of restitution issued, it will amount to condoning an illegality.
6. It is only fair, just and equitable that this application be granted.

The applicant swore an affidavit in support of the application and the affidavit in opposition was deposited by the respondent.

The applicant was represented by Mr. Tugume Moses while Mr. Kasangaki Simon appeared for the respondent.

Briefly, the facts are that the respondent obtained judgment against the applicant in the Grade I Magistrate's Court at Masindi. It was decreed, inter alia, that the plaintiff/respondent was the lawful owner of the suitland and is entitled to quiet enjoyment thereof; the defendant/applicant is a trespasser and an order of eviction was issued against him.

The applicant lodged an appeal before this court against the said decree which is pending determination.

The gist of this application as can be discerned from the supporting affidavit is that, the respondent unilaterally and without following due process invaded the suitland, destroyed the applicant's crops and trees and fenced off the suitland. The total damage was assessed at shs. 974,000/= by the District Agricultural Officer Masindi whose report is annexure 'E' to supporting affidavit. It is contended the respondent's act amounted to an illegal execution and the applicant is entitled to compensation in damages for the destruction to his property.

In the affidavit in reply, the respondent refuted the allegation of destruction of the applicant's property on the suitland. She however conceded in paragraph 3 that she fenced the suitland. Further, according to paragraph 7, she has not initiated execution proceedings against the applicant.

Order 22 rule 7 of the Civil Procedure Rules (CPR) provides that where the holder of a decree desires to execute it, he/she shall apply to the court which passed the decree.

There is no doubt the respondent's act of fencing the suitland was tantamount to evicting the applicant and putting herself in possession thereof. The said act was clearly unlawful. Regardless of the fact that one has a decree granting him/her certain rights, the decree holder does not have the powers to enforce the decree without court's authority.

The applicant seeks compensation for the destroyed property as indicated in the report of the Agricultural officer. Annexure C1 – C4 to his affidavit are photographs showing an area said to have been cleared by the respondent and the fencing poles she erected.

While she admitted fencing the area, the respondent strongly refuted destruction of the crops and trees mentioned in the report. She also denies the existence of some of the mentioned trees like acacia, musizi and coffee trees. In paragraph 6 of her affidavit she averred that the report of the agricultural officer contains falsehoods as the alleged destroyed trees were not on the suitland.

Given that the applicant's claim of the destroyed items is strongly contested, court is unable to make orders for compensation in damages since what was or was not destroyed is a contentious matter that cannot be resolved by mere affidavit evidence. The applicant is at liberty to pursue the matter through a separate claim, if he so wishes.

Accordingly, this application succeeds in part and court declares that the respondent's act of fencing and taking possession of the suitland was illegal. She is ordered to remove the said fence so that the status quo is restored. The costs of this application shall abide the outcome of the appeal. I so order.

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BYABAKAMA MUGENYI SIMON

JUDGE

27-1-2016