



Counsel submitted that all conditions for such a grant have been satisfied; in that that property in dispute is under threat of being wasted, damaged or alienated and that it's necessary to preserve the *status quo*.

By an affidavit in reply by Sam Kulabako, the Respondent opposed the application. He averred that the land was pledged as security for a credit facility by Aoogon Silver Emudong; who had an agreement with George D. Musoke to use the land as collateral. The loan has since been paid off and the Bank no longer has any interest in the property. The Respondent argues that there is no danger or alienation being occasioned by them to this property and they are in the process of handing over the agreement and title to Silver Emudong the borrower. They pray that the application is misconceived and ought to be dismissed.

**In Kiyimba Kagwa versus Nasser Katende (1985) HCB 43** an Applicant for an injunction must show that the Applicant;

1. *Has a prima facie case*
2. *Would suffer irreparable damages not capable of adequate compensation by an award of damages*
3. *Balance of convenience favors them.*

I now hold as follows:

a) *prima facie case*

From the pleadings, it is clear that the Plaintiff/Applicant has a cause of action against the Bank (Respondent) who in their reply concede that they indeed are currently holding the title in issue. The evidence reveals that there are triable issues relating to the applicant's rights regarding this title as part of the estate of the late George D. Musoke.

b) *Irreparable damage*

As per the **American case of the American Cynamid Co. versus Ethonicon Ltd. (1975) I ALLER 504**, the governing principle is that if an Applicant's remedy can be met by an award of damages, then the injunctive relief would be halted. In the case before me, the subject matter is land. It has already been subjected to the process of being alienated, having been mortgaged, and now its revealed the same is likely to change hands to another party who is not party to the suit. Damages hence may not adequately remedy the mischief.

An injunctive relief would in the circumstances be the best stop gap measure. This condition is satisfied.

c) *Balance of convenience*

In this consideration, the *status quo* is always balanced within the limits of equity so that Court finds out in whose favour it would be best to tilt the balance of favour. In this case, it has been shown by paragraph 9 and 11 of the affidavit in reply that the Respondent is already dealing with a 3<sup>rd</sup> party (Silver Emudong), who the Applicant, under Paragraph 7 called ‘*unknown people dealing with the Respondent*’

This dealing could greatly alter the *status quo* and can even, if not halted lead to alteration of the *status quo* or could end up rendering the suit nugatory.

I do find that the balance of convenience tilts in favour of Applicants. I do find that the Applicant has successfully proved this application and I do hereby grant the Application as prayed.

I so order.

Costs be in the cause.

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**Henry I. Kawesa**  
J U D G E  
22/09/2017

After 30 minutes.

Court: as before.

Ruling communicated to parties as above.

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**Henry I. Kawesa**

J U D G E  
22/09/2017