

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-0058 OF 2016
(ARISING FROM CIVIL SUIT NO. 004/2016)**

AMORE INVESTMENTS LTD	::::::::::::::::::	APPLICANT
	VERSUS	
KUNDU J NABIBYA & 50 ORS	::::::::::::::::::	RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application under O. 41 R.1 & 9 of the Civil Procedure Rules for a temporary injunction to preserve the *status quo* pending the determination of the main suit.

The law on temporary injunctions is that per *Kiyimba Kagwa V. Katende [1985] HCB 43*.

1. There must be a *prima facie* case with the probability of success.
2. Applicant might suffer irreparable injury which would not be compensatable by an award of damages.
3. Balance of convenience favors the applicant.

I will now examine the application in view of the submissions to determine if the above conditions are met.

1. Prima facie case

The applicant must show that there is a *prima facie* case with a possibility of success.

The facts of this application are laid out in paragraphs 2, 3, 4 and 5 of the affidavit of **Ramesh Kumar** who stated that he is a registered proprietor of land comprised in LRV 3811 folio 23 Plot 100, Block 4 measuring 7661 hectares (1800 acres) for 99 years from 1st November 2007. The respondents acquired a freehold vide FRV 1530 folio 20 Plot 170 Block 4 measuring 4 055 .72 hectares (10,000 acres) on part of the applicant's land and were registered on 14th April 2015.

In determining this question court considers if there is a serious issue to be tried at the trial.

In the *American Cyanamid V Ethicon Limited case (1975) AC 396*, the discourse by **Lord Diplock**, on *prima facie* case was that *prima facie* is only in the sense that the conclusion of law reached by the court upon that evidence might need to be modified at some later date in the light of further evidence either detracting from probative value of the evidence on which the court had acted or proving additional facts.

Therefore, a *prima facie* case is not a case proved to conclusion, it is just the backbone skeleton of the framed issues upon which a party's cause of action stands.

In the case before me, there are triable issues that have been shown vide the affidavit of **Ramesh Kumar** in paragraph 1,2,3,4,5,11 and also the affidavit of **Kundu J. Nabibya** in reply paragraph 9,11,12, 14, 15 which all raise issues with each other's alleged title to the land.

There is therefore a *prima facie* case proved.

2. Irreparable Injury not Compensatable in Damages

Appellant refers to the case of *Kiyomba Kagwa* and argues that if not granted this remedy, the respondents might alienate the land and even if he got monetary award of damages he would not find the land of suitable equal economic value. He referred to paragraph 8 & 11 of **Kumar's** affidavit.

In opposition the respondents argue that the applicant can be adequately compensated with damages they refer to paragraph 21 of **Kundu J** in reply.

In the *American Cynamid* case(supra):

“If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them no interlocutory injunction should be granted however strange the plaintiff’s claim appears to be at that stage.”

I have examined the pleadings and from the averments of the applicant in paragraph 11 he states that it would be difficult to find expensive land which is vacant for commercial agriculture, for his agro-forestry business which was the main reason for acquiring the suit land.

Coupled with arguments by counsel for applicant, I agree that such a peculiar *status quo* of the suit land that is “Agro-forestry land” in the nature the applicant acquired it might not be quantifiable in damages in case of proof.

The arguments by respondents in rebuttal raise matters which would require a full examination at trial. This ground is therefore proved.

3. Balance of Convenience

In determining this ground court considers whether the balance of convenience would favour the applicant in case the grant is given. The test is whether the risk of doing an injustice is going to make the applicant suffer then probably the balance favours him. See: **Gapco (U) Ltd V Kawesa Badru HCMA 259/ 2013** (unreported).

In considering this, it is important to consider the question of *status quo*. The aim of preserving the *status quo* is to protect the interests of the parties pending determination of the matter. It is to protect the legal rights of the parties (**Godfrey Sekitoleko V Sezzi Mutabazi (2001-2005) HCB 80**).

From the pleadings I notice from both affidavits in support and reply that both parties have obtained legal statutory Title to the suit lands. The applicant in paragraph 9, 10, 11 & 12 states, that respondent s plan to sale and transfer the suit lands. The respondents have in the affidavit in

reply under paragraph 18, 19, 20, 21, 22, 23, deny the same and argue that they will instead suffer irreparable damages if the grant is granted.

From those averments and the arguments by counsel, it is my findings that the balance of convenience tilts in favour of applicant because

1. He has shown that he owns a Title, on which he claims respondents have encroached through obtaining another Title.
2. He has shown that respondents have intentions of sale or alienating the land. In their contention the Respondents have shown that they have a right to deal with their property (paragraph 18-23) of affidavit in reply . Hence as owners, if not restrained they can sale, give or alter the *status quo* to the detriment of the applicant.
3. Applicant has shown that he has a purposeful use of the land as Agricultural land and is interested in maintaining it as one unit. The respondents on the other hand are in occupation and can decide to deal with their holding as they will if not restrained. (Paragraph 9-12 of affidavit in support)

For the aforesaid reasons I hold that the balance of convenience tilts in favour of applicant.

I therefore hold that the applicant has proved the application for grant of a temporary injunction but only limited to the extent of the respondents being restrained from sale, transfer, eviction of the applicant, and preserve the *status quo* from waste.

I grant the application to run for the initial period of 150 days from date of this ruling within which period the main suit should have been heard & determined. I so order.

Henry I. Kawesa

JUDGE

17.03.2017

