

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISC. APPLICATION NO. 001 OF 2016**  
**[ARISING FROM CIVIL SUIT NO. 869 OF 2015]**

1. **BYENSI JAMES**
2. **SANYU CATHERINE**
3. **ACUNGWIRE MINASON**
4. **BEOART LIMITED :::APPLICANTS**

**VERSUS**

1. **THE COMMISSIONER FOR LAND REGISTRATION**
2. **SIKANDER LALANI**
3. **DRAGOMIR LAKIC::: RESPONDENTS**
4. **BEOART LIMITED**
5. **THE UGANDA REGISTRATION SERVICES BUREAU**

**BEFORE: HON. JUSTICE HENRY I. KAWESA**

**RULING**

This is an application for a temporary injunction. The application is supported by the affidavit of Byensi Jameson the 1<sup>st</sup> Plaintiff and Director for the 4<sup>th</sup> Respondent.

The application is opposed vide the affidavits in reply sworn by Sikander Lelani (*see paragraphs 9, 10, 11,12,13, 14 – 20*). No affidavit in rejoinder was filed.

From the submissions by the Applicant, the law was well articulated as per **Kiyimba Kaggwa versus Hajji Abdu Nasser Katende [1985] HCB 43.**

This is that, to prove this application, the Applicant must prove that;

1. *There is a prima facie case with a probability of success.*
2. *There is irreparable injury that cannot be adequately compensated for in damages.*

3. *The balance of convenience is in favour of the Applicants.*

The Applicant by the affidavit in support of Byensi Jameson which states under Paragraphs 4, 5, 6 and paragraphs 7; that the Respondents intend to transfer ownership of the suit property to an unknown person or entity. However, the affidavit of the Respondents in opposition Sikander Lalani under paragraphs by 8 – 15, shows that these matters are contentious and have been already considered under Misc. Cause No. 789/2014; arising from Originating Summons No.232 of 2014.

The issues deponed to thereunder, are not controverted.

With the above in mind, I now make findings as herebelow;

1. *Prima facie case*

The plaint in paragraph 8 shows that there is a *prima facie* case, with triable issues raised between the parties, for Court's determination.

2. *Irreparable damage/injury not compensatable by an award of damages*

The Applicant claims in his application that the '*Respondents intend to dispose of the suit property by simply transferring ownership to unknown person or entity*'. (See submissions)

The above was denied by the Respondents in the affidavit in reply. No independent evidence was led to prove these allegations. They remained merely speculative. There is no *scintilla* of evidence upon which this Court can evaluate the alluded to injury to determine if there can be atonement by an award of damages. There is therefore no basis for finding in favour of the Applicants on this ground, as the test was not proved.

3. *Balance of convenience*

According to the affidavit in reply under paragraph 11, it is stated that the suit property being land, has a value that is capable of ascertainment and any loss arising from its disposal or transfer is capable of being atoned for by way of damages.

I do agree with that position especially since the Applicant has not provided any evidence to show how this damage may arise.

The Applicant has also not shown how the balance of convenience favours him. Paragraphs 4,5,6 and 7 of the Applicant's affidavit relate to either actions which are in speculation or which have already occurred. The above evidence show that the injunction if granted it, will drastically change the *status quo* by affecting the the Respondent's occupation of the suit land, yet the Applicant has not yet established his rightful claims thereto. This Court cannot issue orders to stop a speculation which has not yet occurred.

The balance of convenience therefore favours the Respondents.

For all the reasons above, this application fails and is dismissed.

Costs to abide in the main cause.

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Henry I. Kawesa

JUDGE

5/3/2018

5/3/2018

Andrew Kibaya for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

No Applicant present.

I am on brief for Kagumire – for 2<sup>nd</sup> and 3<sup>rd</sup> Respondent absent.

4<sup>th</sup> Respondent – Sheikh Sharif and Babra Mashale present.

Kibaya: (for Ruling).

Court: Ruling delivered to parties above.

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Henry I. Kawesa

JUDGE

5/3/2018