

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC APPLICATION No 154 of 2016
(Arising From Civil Suit No. 55 Of 2018)**

- 1. HAMZA MBAGO**
- 2. MURISHO SHAFI**
- 3. KISAKYE YAHAYA**
- 4. MULOOKI HENRY**
- 5. LUMBASI MUHAMED
MUSTAPHA**
- 6. NGARONSA JOAN**
- 7. MUKWAYA JOSEPH**
- 8. HAJJI BALIKOOWA**
- 9. MUSIKO BASHIR**
- 10. MUHAMMAD SEKANDI**

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APPLICANTS

VERSUS

- 1. JINJA MUNICIPAL COUNCIL**
- 2. THE COMMISSIONER LAND
REGISTRATION**

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RESPONDENTS

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This application is filed under Section 98 of The Civil Procedure Act, Section 38 Judicature Act and Order 41 Rules 1, 2 and 9 of The Civil Procedure Rules.

The applicant seeks orders that:

- a. A temporary injunction doth issue restraining the respondents, their agents assignees, personal representatives, attorneys, licensees, successors, and any

other persons from undertaking any dealings or hearings in respect to the suit property pending determination of the main suit.

There are two affidavits in support of the application. The first is deposed by Kisakye Yahaya and the other by Mulooki Henry.

In sum, the averments are that the applicants filed a suit against the respondents seeking to restrain them from hearing and dealing with the suit land and that the application for this temporary injunction was to restrain the respondents from undertaking any farther dealings in the suit property.

It is deposed that in October 2001, the 1st respondent applied for and was granted a conditional lease on Plot 24 Kyabazinga Way which was to run for 25 years. That the lease had several conditions listed which the 1st respondent breached.

Amongst the breached terms was the sub lease of the land where the 1st Respondent subleased to Tirupati Development Uganda Ltd who had in turn obtained mortgages against this land.

That during the pendency of the lease the Uganda National Roads Authority compulsorily acquired part of the land for the construction of a road connecting to the new River Nile bridge. Following this acquisition there was a mutation of the land from Plot 24 to Plot 24A and 24B.

As stated earlier there was a breach of terms of the lease. As a result, the lessor, The Jinja District Land Board, wrote to the Commissioner Land Registration requesting him to cancel the lease. On the 17th of May 2016 the Commissioner wrote to Bank of Baroda (the Mortgagee) and Tirupati notifying them of the lessor's re-entry.

That on the 11th of February 2014 the 3rd applicant and one Buyinza Ashraf applied for a freehold certificate of title for Plot 24B which was issued on the 15th of February 2017 by the 2nd respondent. On the 18th of January 2017 the squatters on

the land were compensated by Buyinza Ashraf and the 3rd applicant. The 1st respondent subsequently sub divided the land into plots ranging from 1 – 29 which they sold to several persons. That when the purchasers registered with the 1st respondent as owners under the Property Rating Act they did not object.

That the 1st respondent has not responded to an application for approval of building plans made by the applicants and other registered proprietors, which was lodged in accordance with the Physical Planning Act.

Instead a complaint was lodged by the 1st respondent with the 2nd respondent alleging fraud in the manner the applicants were granted their freehold title. That acting on that complaint the 2nd respondent wrote to the 3rd applicant and Buyinza Ashraf requiring them to appear and defend themselves as to why changes should not be made with regard to Plot 24B well knowing that the said land was already subdivided into various plots owned by the applicants and several others. That the 2nd respondent in fixing the hearing for a complaint against a decision it made is illegal as it has no jurisdiction to hear a complaint against its own decision. That it would also be against natural justice to cancel the applicants titles without giving them a hearing. That for the above reasons a temporary injunction should issue to restrain the respondents and maintain the status quo on the land pending the final determination of the main suit. That if the application is not granted the applicant will suffer irreparable damage.

The respondents oppose this application and have filed two affidavits in reply.

It is deposed in the first affidavit that the applicants affidavits in support are defective because the applicants averred to matters which are not in their knowledge. That as they were not parties to the lease they cannot properly plead to its alleged breach. It is stated that the 3rd applicant and Buyinza Ashraf acquired title to Plot 24B in a process marred by illegalities and irregularities prompting an application to the 2nd

respondent to consider rectifying the title. That the Commissioner Land Registration is empowered by law to make the requested changes. For that reason the 2nd respondent invited the Kisakye Yahaya and Buyinza Ashraf for a hearing. That their lawyers, the 1st respondent's lawyers and other representatives appeared on the 28th of June for the first hearing which was then adjourned to the 20th of July 2018. That the titles of the other applicants are subject to the title of the Kisakye Yahaya and Ashraf Buyinza. It is also averred that the proceedings before the Commissioner Land Registration, who is yet to make a decision, preceded the head suit. This application is therefore premature, irregular and baseless. That it is intended to frustrate the above administrative process.

At the hearing, the applicants were represented by Asuman Nyonyintono and the Respondents by Ms Nakanaaba Babra.

The detailed submissions are on record. Counsel for the applicant reiterated his pleadings and stated that the grounds for a grant of a temporary injunction have been made out since the Commissioner Land Registration cannot sit to review his own decision and therefore a prima facie case is made out in favour of the applicants. That the status quo is in favour of the other 9 title holders waiting for court to dispose of their matter once and for all. In the same way the balance of convenience is in their favour as cancelling their titles without a hearing will only lead to piecemeal litigation.

For the respondents, Counsel outlined the affidavits in reply. That there is no case made out as the Commissioner Land Registration has not made a decision one way or another. That his inquiries which they seek to fetter would inform whatever decision is taken with regard to the land title. That under Section 91 of **the Land Act** this Court has appellate jurisdiction from a decision of the Commissioner Land Registration. If they were dissatisfied at this stage the remedy should have been

judicial review. Otherwise the suit is presumptive as it stands. There is also no damage established as no decision has been made by the Commissioner Land Registration. That even if it was found that damage had been occasioned, the land in itself has value and can be used to compensate for those damages. Lastly the balance of convenience is in favour of the respondents who have already started on the hearings before the Commissioner Land Registration which he is fully mandated to handle.

After carefully evaluating the pleadings and submissions above, this court will start with the grounds for grant of the order of temporary injunction which have been laid out in a number of cases as:

- That there is a serious issue to be tried or investigated.
- That there would be irreparable damage or injury which cannot be adequately compensated by damages to the applicant if the relief is not granted.
- The Court would have to weigh where the balance of convenience lies.
- That where the other factors are balanced the Court would order that the status quo is preserved (See: **Kiyimba Vs Katende [1985] HCB 44**).

From the pleadings the evidence appears to show that the manner in which the applicants obtained their freehold title is contested by the respondents. The applicants on the other hand disagree and contend they followed the lawful procedure. The head suit is filed to resolve this dispute. For that reason I find that there is indeed a serious question to be investigated by the court.

The second leg is the question whether there would be serious injury or damage which cannot be atoned for with damages.

The suit was filed on the 23rd of May 2018. The Commissioner Land Registration had on the 4th of May 2018 called Kisakye Yahaya and Buyinza Ashraf with several

other stakeholders for a hearing on the 12th of June 2018. That hearing did not take off and was adjourned to the 28th of June 2018. In that period, an application for an interim injunction to stop the hearing had been dismissed by the High Court Deputy Registrar. As it stands, there is no decision that has been arrived at by the Commissioner Land Registration as his intended inquiry has not been done.

There is also a complaint that the other applicants have been left out of the hearing. The land on purchase by Kisakye Yahaya and Buyinza Ashraf was sub divided into plots 1-29 and sold off. Some of those purchasers are also applicants here. The complaint is that they have not been invited for the Commissioners hearings.

As I understand it, the hearing was intended to begin with the original purchasers. I have seen nothing to suggest that the other applicants would be completely shut out of the process. I therefore agree with the submission of the respondent's attorney that there was no initial cause to invite them for the preliminary meetings. However there is a possibility of hearing them if at any later stage the need arises.

It is an overarching submission by the applicants that the actions of the Commissioner Land Registration in calling for and conducting an inquiry in this matter is ultra vires. That his actions and decisions will lead to a multiplicity of actions. Lastly that he is sitting in appeal of his own decision.

There is no basis for the argument that the actions of the Commissioner are ultra vires. Section 91 of **The Land Act** is the relevant provision here and it clearly gives him the statutory mandate to make the inquiry he intends to carry out. I have found that he has not made the inquiry nor taken a decision. I therefore do not see how he has caused a multiplicity of suits. That argument, as indeed submitted by the Respondents, is presumptive and speculative and cannot be relied on by Court. Lastly Section 91 provides for appeal where any party is dissatisfied by the outcome of the inquiry.

As the Commissioner is exercising a mandate given to him by law this court has not been persuaded that it can stop him, as an administrative organ, from properly executing a lawful statutory mandate.

In light of the above there is no danger of damage demonstrated where no decision has been taken and at this preliminary stage I can see no danger of the risk to the applicants if the application is not granted.

For the reasons given, and after making an evaluation of where the balance of justice or convenience would fall, it is the view of this Court that the weight tilts towards allowing the administrative body (the Commissioner Land Registration) to execute its statutory mandate as provided in **the Land Act**.

For the above reasons this application shall fail and be dismissed with costs to the respondents.

A handwritten signature in black ink, appearing to read 'Michael Elubu', is written over a horizontal dotted line.

Michael Elubu

Judge

25.7.18