

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO.1344 OF 2020
(ARISING FROM CIVL SUIT NO. CIVIL SUIT NO. 459 OF 2020)

WASSWA BIRIGWA SEKYONDA:::APPLICANT

VERSES

TUMUSIIME FESTUS:::RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought under section 98 of the Civil Procedure Act Cap 71, and O.41 r4 of the Civil Procedure Rules SI No.71-1.

The application seeks orders that;

Elton Mugabi

1. The order of Court issued on the 1st day of September 2020 vide; Misc. Application No.833 of 2020, changing the *status* quo be varied.
2. Costs of the application be provided for.

The grounds of the application which I shall not reproduce are supported by the affidavit of the Applicant and opposed by the affidavit in reply of the Respondent.

I have ably ready and appreciated the averments in both affidavits upon which the application is to be determined. It is indicated therein that the parties are neighbours and their dispute concern an area used for accessing their respective plots of land.

Whereas the Applicant claims that the area as his private property, (*the suitland in the main suit*), the Respondent contends that it is an access road, and is used in common with other residents in the area.

Both Counsel filed submissions, which I have considered, but shall not reproduce. The temporary injunction order sought to be varied provided that;

1. That both parties continue to have access to the access road.
2. The Respondent is prohibited from further damage to the Applicant's property and from selling any portion of the disputed part of the land till the hearing and determination of the suit or till further orders of this honourable Court.
3. The order for a temporary injunction is granted on the above terms.
4. That costs shall be in the cause.

Considering the affidavit in support and the Applicant Counsel's submissions, I have ably observed that the application only lies against the 1st order above, and the contention is that it altered the *status quo* instead of preserving it and also granted the Respondent his final prayers in the head suit. Particularly, it is stated in ground (r) and (s) that:

(r). That the effect of that order was that; inspite of having full access to the main road, the Respondent was going to use the Applicant's property during the pendency of the suit.

(s). That based on the Applicant's evidence and submissions in Misc. Application No.833 of 2020, and further confirmed by paragraph 7 of the Respondent's affidavit in reply in Misc. Application No.833 of 2020, the status quo of the suit land as of 1st September 2020, when the ruling and orders were issued was that the Respondent was not using the Applicant's access road, but was interested in using the said access road by any means.

Counsel for both parties agree rightly that the purpose of a temporary injunction order is to preserve the *status quo*. So before thinking of varying the impugned order, I need to establish what the *status quo* on the suit land was at the time of issuing the impugned order.

According to **Jakisa & Others versus Kyambogo University; Misc. Application No. 549 of 2013**, *status quo* denotes the existing state of affairs before a given point in time at which the acts complained of as affecting or likely to affect the existing state of things occurred. The Court in its ruling applied a similar definition and found that the *status quo* was that both parties had access to the disputed area, a reason why it ordered that they continue to have access to the same.

Relying on the averments in the affidavit in support, the Applicant's Counsel submitted that;

'it was ONLY and UNTIL 1st September 2020 when the impugned order was issued, that his (the Applicant's) exclusive user of his gated private access road was removed from him'

In paragraph 6 and 7 of his affidavit in support of Misc. Application No.833 of 2020, the Applicant averred that;

'in mid July 2020 while the Respondent's agents were carrying out-out construction works, unlawfully encroached...' On disputed area, and went further to break his gate which they later stopped him from re-installing.

This has been reiterated in paragraphs 4,8 and 9 of the affidavit in support of this application. The Applicant also averred in paragraphs 14,15, and 15 of the same affidavit that the Respondent's encroachment onto the suitland continued, necessitating his deployment of security personnel at the entrance and later filing the main suit.

In the main suit, the Applicant, among others, seeks a permanent injunction against the Respondent and his agents to restrain the “*continued trespass on his land*”.

In my opinion, this implies that the Respondent was using the disputed area at the point of filing the main suit, which is why the Applicant sought for a permanent injunction therein, and a temporary injunction in Misc. Application No.833 of 2020. To add a little clarity to this, I shall refer to some paragraphs in the Respondent’s affidavit in reply to Misc. Application No.833 of 2020, that is:

7. *That in response to paragraph 5, the Applicant alleges that he has been in occupation of the land with a clear access for many years and this is true, but now it’s time for him to share the access road with the people he sold the land to, that includes me and others.*

8. *That in paragraph 7, the Applicant alleges that he was stopped from re-installing the broken gate, but this is not true because he was blocking access to my gate and others he sold to.*

I have also ably looked at the practical evidence exhibited during the hearing of Misc. Application No.833 of 2020 and these show that the disputed area had been probably used by both parties as an access road for some time prior to the main suit.

Going by the definition of a *status quo*, and the above observations, I am as well convinced that the *status quo* at the point of hearing the temporary injunction application was that both parties had access to the disputed area. This is what the temporary injunction was intended to preserve and to vary it would derogate from its purpose.

I do note the Applicant’s plea that the impugned order prematurely granted the Respondent one of his final prayers under his written statement of defence. This however, is not true since the pleadings show that the Respondent did not seek any such reliefs in his written statement of defence against the Applicant.

For these reasons, I find no fault in the said ruling under Misc. Application No.833 of 2020 to necessitate a variation of the order arising therefrom.

Accordingly, the application is dismissed with costs to the Respondent.

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Henry I. Kawesa

JUDGE

15/12/2020.

15/12/2020:

Martin Mubanda Kalemera for the Applicant present.

Prossy Namilindwa for the Respondent.

Parties absent.

Court: Matter for Ruling.

Ruling delivered to the Counsel above.

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Henry I. Kawesa

JUDGE

15/12/2020.