

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISCELLANEOUS APPLICATION NO.1405 OF 2021
ARISING OUT OF CIVIL SUIT NO.163 OF 2019

1. NANKOOMI PROSSY

2. KASOZI JOHN BAPTIST:.....APPLICANTS

VERSUS

1. ONWUVUCHE AUSTIN NNAMDI

2. ONWUVUCHE NAKIBUUKA SARAH

3. ONWUVUCHE JORDAN (MINOR)

4. ONWUVUCHE ARTHUR (MINOR)

5. ONWUVUCHE ABRAHAM (MINOR):.....RESPONDENTS

RULING

BEFORE HON. MR. JUSTICE HENRY I. KAWESA

This application was brought by chamber summons under **Sections 98 & 64(e) of the Civil Procedure Act Cap 71, section 33 of the Judicature Act Cap 13, and O.41 rr.1, 2, & 9 of the Civil Procedure Rules SI 71-1.**

The application seeks orders that:

1. An interlocutory mandatory injunction be issued compelling the Respondents to remove the temporary iron sheet structures constructed on the Applicants' land comprised in **Kibuga Block**

12 Plot 789 land at Mengo pending the final determination of Civil Suit No.163 of 2019.

2. A temporary injunction restraining, stopping and/or preventing the Respondents, their agents, employees, servants, workers and/or any person claiming and/or working under their authority/or directive from in any way trespassing and/or destroying, alienating, disposing of the suit property comprised in Kibuga Block 12 Plot 789 land at Mengo or in any way dealing with the suit land in a manner detrimental to the interests of the Applicants and from interfering with the Applicants' possession and use of the suit property until the final determination of Civil Suit No.163 of 2019.

The application is supported by the affidavit of Kasozi John Baptist and is opposed by the affidavit in reply of Onwuvuche Nakibuuka Sarah. When the application came up for hearing, Court gave schedules within which submissions were to be filed by Counsel as follows:

- 1) Applicants files by 22nd October 2021.
- 2) Reply by 5th November 2021.
- 3) Rejoinder by 12th November 2021.
- 4) Mention, to fix a judgement date on 19th November 2021 at 2.00 pm.

On 19 November 2021 when matter was called out, only Counsel for the Applicant, Moses Kabega and his client Kasozi John B was in attendance. Counsel went ahead to inform this Court that whereas

he had filed submissions as required by Court following the given timelines, none of the Respondents had filed a reply. He prayed that in the circumstances, Court should consider his submissions on file and go ahead to fix the matter for Ruling as there is nothing on record to indicate a contrary position, this Court will consider that the Respondents have nothing useful to add and hence I now determine the application on the basis of pleadings and submissions on record as here below:

This is an application for an interlocutory mandatory injunction, to compel the Respondents to remove the temporary iron sheets structures constructed on the Applicant's land **comprised in Kibuga Block 12 plot 789 land at Mengo**, pending the final determination of Civil Suit No. 163 of 2019.

A temporary injunction to issue restraining the Respondents from trespassing or alienating the suit property, until the final determination of cs 163/2019.

The law is that as quoted by Counsel for the Applicants under O41 r 1, 64 of the Civil Procedure Rules, Section 98 Civil Procedure Act, and Section 33 of the Judicature Act. These provisions have been translated into a principles of law enunciated in the holding of the cases of ;-

EL KIYIMBA KAGWA VS HAJI ABDU KATENDE (1985) HCB 43 by *J Odoki* that;

“An Applicant for the grant of a templatary injunction must fulfill the following conditions:

- 1) The Applicant must show a *prima facie case* with a possibility of success.
- 2) Proof that unless granted the Applicant will suffer irreparable injury, which would not adequately be compensated by an award of damages.
- 3) That the balance of convenience tilts in their favour.

Having gone through the application and the affidavits in support, reply and rejoinder, and having internalized the submissions by the Applicants, I am satisfied that Applicant has proved on the balance of probabilities that:

- The Applicants are still the registered proprietors of the suit land as per annexes “A”, “B” “C” and “D”. The Applicants are also the Plaintiffs in Civil suit No.163 of 2019 between the Applicants, the Respondents and the Commissioner Land, challenging his intended cancellation of their Certificate of Title to the suit land. They therefore have a *prima facie case* against the Defendants with a possibility of success.
- The Applicants are in possession of the suit land since the year 2007, on which they have legal interests vide title on Kibuga Block 12 Plot 7899 Mengo. The activities of the Respondents of putting up temporary structures indicate an intent to further alienate the suit land unless stopped which may result in injury

which the Respondents are not likely to compensate them with damages, (*see par 12 Annexure 17 Annex M, of the affidavit in support, and paragraph 25 Annex G of the affidavit in rejoinder*).

- The Applicants being the registered proprietors of the suit land comprised in **Kibuga Block 12 Plot 789 land at Mengo**, the balance of convenience favours them to ensure that their possession is protected.

In light of the findings above, I am of the opinion that Applicants have proved all three ingredients necessary to be proved before such an interlocutory injunction is granted.

This application succeeds and is granted as prayed.

Each party to bear their own costs of the application.

I so order

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Henry I. Kawesa

JUDGE.

26/11/2021.

26/11/2021:

Moses Kabega for the Applicants.

1st Applicant present.

2nd Applicant absent.

Respondents absent.

Counsel: Mater for Ruling.

Court: Ruling communicated to the parties present.

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Henry I. Kawesa

JUDGE.

26/11/2021