

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPEAL NO.17 OF 2019

(ARISING OUT OF MISCELLANEOUS APPLICATION NO.715 OF 2019)

(ARISING OUT OF MISCELLANEOUS APPLICATION NO.93 OF 2019)

(ALL ARISING FROM CIVIL SUIT NO.454 OF 2014)

ANDREW MUWONGE:.....APPELLANT

VERSUS

EDWARD KABUGO SSENTONGO:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

This appeal is brought under the provisions of **section 79 of the Civil Procedure Act** and **Order 50 rules 6, 7 & 8 of the Civil Procedure Rules SI 71-1**, against the decision of **Her Worship Nabakooza Flavia**, seeking orders that the orders issued by the Registrar in respect of **Miscellaneous Application No.715 of 2019** be discharged, varied or set aside; execution of the same be stayed and for the costs of the application to be provided for.

The grounds of the appeal are contained in the affidavit in support by Mr. Andrew Muwonge, the appellant, wherein he states *inter alia* that he is aggrieved with the ruling of the learned Registrar dated 7th October, 2019 in **Miscellaneous Application No.715 of 2019** by which he was found to be in contempt of a court order and ordered to desist from further cultivation of the suit property.

That he has been complying with the court order by maintaining the *status quo* thereof as of 3rd April, 2019 by remaining in possession and utilizing the land, which does not amount to dealing in the land in any manner that is detrimental to his interests.

Further, that the learned Registrar ordered the appellant to pay the respondents compensation of **Ugx 5,000,000/=**, as well as costs of the appeal. According to him, the said orders vary the *status quo* thereby denying him possession and utilization of the same.

In addition, he averred that the Deputy Registrar in the ruling on 3rd April, 2019 issued a temporary injunction vide **M.A No.93 of 2019** maintaining the *status quo* of the suit land comprised in **LRV 1882 Folio 17 Mawokota Block 211-215 plot 2 at Serinya B.**



She however went ahead to review the same on 7th October, 2019 impliedly reversing the order, which resulted in altering the *status quo* of the suit land, clearly defined in the earlier decision. That the subsequent orders varying the earlier order were a nullity as the Registrar has no jurisdiction to vary or review her own judgement.

- 5 Further, that the *status quo* to be maintained was for the appellant to remain in possession and utilizing the suit land without any interference from the respondent, in such a manner that was not detrimental to the respondent's interests.

10 That at the time of the said order, the learned Registrar had knowledge that not only was the appellant the registered proprietor of the suit land, but was also utilizing the same for crop husbandry with others. That it is only just and equitable that the orders sought herein be granted.

In reply, the respondent, Edward Kabugo Ssentongo averred that although the learned Registrar found the appellant in contempt of court, she did not stop him from further cultivation of the suit property as alleged.

- 15 That this court issued a temporary injunction order in **Miscellaneous Application No. 93 of 2019** restraining the appellant, his agents, servants and/or employees as well as any one acting on his behalf or otherwise claiming under him from letting out the suit land, constructing, or dealing with the land in any manner that is detrimental to the respondent's interests. But the appellant together with one Charles Wasswa continued cultivating new crops on the suit land in total disregard of the said order.

20 This prompted prompting the respondent to file contempt proceedings vide **Miscellaneous Application No. 715 of 2019** wherein the learned Registrar held that continuation with the NAADS program and growing new crops on the suit land was contemptuous and the appellant was ordered to pay **Ugx. 5,000,000/= (five million shillings)**, as compensation.

- 25 That the contempt order was intended to maintain the *status quo*. It did not vary the same considering the learned Registrar clearly emphasized that growing new crops was contrary to the temporary injunction order.

30 In rejoinder, the appellant argued that by holding that growing new crops is contrary to the impugned court order meant that the appellant should desist from further cultivation of the suit land yet the deputy Registrar issued a temporary injunction order maintaining the *status quo*.

As at 3rd April, 2019, the *status quo* was that the appellant who was the registered proprietor was not only in possession but was also utilizing the land to grow crops and that the same has been maintained by him, having continued in possession and utilization of the suit land.



Representation:

The appellant was represented by **M/s Asasira & Co. Advocates** while the respondent was represented by **M/s Lukwago & Co. Advocates**.

5 The parties were directed to file written submissions which I have had the occasion of perusing. I have taken the pleadings and submissions by either side into consideration in determining this application.

Resolution of the issue.

The issue for consideration by this court that is: *Whether the learned Deputy Registrar erred in law and fact when she held the appellant was in contempt of a court order.*

10 The respondent in this matter filed **Miscellaneous Application No.715 of 2019** against the appellant herein and one Lubega Charles, seeking a declaration that the two acted in contempt of court orders issued by this court in **Miscellaneous Application No.93 of 2019**.

The position of the law is that for contempt of court to be found, the following principles have to be established: -

- 15
1. *existence of a lawful order;*
 2. *potential contemnor's knowledge of the order; and*
 3. *potential contemnor's failure to comply, that is, disobedience of the order.*

In the instant case, it is not in dispute that there was a lawful court order which the appellant was fully aware of, at the time of the purported act(s) in contempt. The contention however,
20 is whether or not the said act(s) by the appellant constituted contempt of the existing court order, as ruled by the learned deputy registrar.

The acts of trespass complained of in the application for contempt were that the respondents in **Miscellaneous Application No.715 of 2019** continued planting new crops on the suit land, in contravention of the temporary injunction order.

25 The learned Deputy Registrar, **H/W Samuel Emokor** in his ruling in **Miscellaneous Application No.93 of 2019** dated 3rd April 2019, by which he granted the temporary injunction duly held that the *status quo* of the suit land was that the respondent, now appellant, was the registered proprietor and that he continued to be in possession and utilization of the suit property.

30 It was further held that the applicant would suffer irreparable damage if the order for the temporary injunction was not granted because the NAADS programme on the land and the program of establishing a leisure forest park were adverse to each other. The court further noted that the balance of convenience was in favor of the applicant therein.


3

Court then made the following orders;

"1. A temporary injunction is hereby issued maintaining the status quo on the suit property comprised in Mawokota Block 211-215 plot 2 at Serinya.

2. An order is issued restraining the respondent, his agents, servants and or employees and anyone rightfully acting on his behalf or otherwise claiming under him from letting out the suit land, constructing or in any way dealing with the suit land in a manner detrimental to the interests of the applicant.

3. The orders in (1) & (2) above shall remain in force for six months (180 days) from the date of this ruling extended by the Hon. Trial judge."

The Deputy Registrar in her ruling at page 5 acknowledged that:

".....he (learned Registrar) agreed with the Applicant's (now Respondent) averments that the NAADS programme is contrary to his interests and plans for the suit property of establishing a forest park for tourism and leisure; and that the two programmes are adverse to each other and found that the applicant will suffer irreparable injury if the respondent is allowed to proceed with his plans."

The court order in question however and with all due respect, is silent on whether or not the appellant herein could proceed and utilize the land for any other form of cultivation not being part of the NAADS project. Court recognized the fact that the appellant was dealing in crop husbandry.

The respondent in my view, needed to do more, and establish that the appellant as the registered owner had gone beyond crop husbandry, cultivating or doing more and in such manner as would result in substantially altering the future utilization and management of the land, detrimental to the interests of the respondent.

It is trite law that if the *status quo* is to be maintained pending disposal of the suit, it must be done in such a manner not to deny the title holder the right to use or develop the suit property in the meantime, as such denial would amount to contravention of **Section 59 of the Registration of Titles Act. (See: Francis Kisitu v Kide Hardware (U) Ltd (1998) KALR 886.**

Refusing an activity like planting new crops on the land that the occupant/registered proprietor has been utilizing, land which has been a subject of a court case for a period of more than seven years would be an act of injustice against such user. It would not be any different from asking him to abandon the land, leaving it in the hands of unscrupulous users.

The act of cultivating new crops in my view cannot be equated to or accorded the same weight as construction or dealing with the land in a manner detrimental to someone else's interests, a

⁴

meaning which the order in **MA No. 93 of 2019** was intended in the first place. The ejusdem generis rule is applicable in the interpretation of that order: that is, general words must be confined to things of the same kind as those specifically mentioned.

I also hold the view that if anything, cultivation/planting crops of a seasonal nature (pending the decision of court) would be the least wasteful, practical and effective way of preserving the *status quo*.

Thus in attempting to vary or assign to an order a meaning that was different from that which was originally intended, the Registrar sought to review the existing order, which she could not legally do. (Refer: **Attorney General & Uganda Land Commission vs James Mark Kamoga, SCCA No. 8 of 2004.**)

Finally, it is also the practice by this court to conduct prior *locus* visits to establish what is on the ground at the commencement of the hearing so that any temporary orders sought are fair, and based on what court is able to establish on the ground, rather than rely on speculation or mere arguments by litigants/counsel.

In those circumstances, it would be erroneous to hold that the appellant had acted in contempt of the court orders when he planted new crops on the land registered in his names.

I would therefore allow this appeal. The parties shall continue to observe the orders made vide: **Miscellaneous Application No.93 of 2019** until further orders are made by this court.

Costs shall abide the outcome of the main suit.


.....
Alexandra Nkonge Rugadya

Judge

14th December, 2021.

Delivered by email
Ankonge
✓
15/12/2021