

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
MISCELLANEOUS APPLICATION. NO. 66 OF 2018
(ARISING FROM CIVIL SUIT NO. 32 OF 2017)

1. KITEKERE DAUDI
2. MBUBI DANIEL

Administrators of the estate of the APPLICANTS
Late Namuyimba Yokana Ssenkungu

VERSUS

1. SALONGO LUTAAYA KIBANDWA
2. JOHN SSEBALAMU
3. GRAPES LIMITED RESPONDENT
4. COMMISSIONER LAND REGISTRATION
MASAKA ZONAL OFFICE

Before; Hon. Lady Justice Victoria Nakintu Nkwanga Katamba

RULING

The Applicant through his lawyers of M/S Alert & CO Advocates brought this application by chamber summons under Order 41 rule 1 and 9 of the Civil Procedure Rules seeking orders that;-

- a) An order of Temporary injunction doth issue restraining the Respondent/defendants, their servants or agents from transferring or issuing certificate of titles, selling, disposing, or in any way creating third party interests all properties forming part of the estate of the late Yokana Ssenkungu Namuyimba to wit, i.e. Ssesse Block 58 Plot 1 land at Bufumira, Ssesse Block 111 Plots 11 & 15, land at Bwamba, Bugere Block 102 Plots 6-7, 8 & 9 (formally plot 1) land at Bungilo, Kibuga Block 16 Plots 1095, 1096, 1098 & 1097 (formerly plot 83) land at Rubaga in Kampala until final determination of H.C.C.S No. 32 of 2018.
- b) Costs of this application be provided for.

The application is supported by the affidavit of Mbubi Daniel the 2nd Applicant while the affidavits in reply were sworn by 1st Respondent and John Sebalamu. I will consider the affidavit evidence of both Parties and their submissions in my determination of the application.

Consideration of the application;

Section 38 of the Judicature Act, empowers court to grant an injunction to refrain a person from doing an act.

The general considerations for the granting of a Temporary Injunction under *Order 41 Rule (2) (1) and (2) of the Civil Procedure Rules* are that;

(1) In any suit for restraining the Defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the Plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a Temporary Injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such Injunction on such terms as to an inquiry as to damages, the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

For a temporary injunction to be granted, court is guided by some principles as it was noted in the case of *Shiv Construction V Endesha Enterprises Ltd S.C. Civil Appeal No. 34 of 1992* that;

“The applicant must show a prima facie case with a probability of success. An injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which could not be compensated in damages. When the court is in doubt it will decide the application on the balance of convenience.”

The law on granting of temporary injunctions in Uganda was well settled in the case of ***E.L.T Kiyimba Kaggwa V Haji Abdu Nasser Katende [1985] HCB 43*** where ***Odoki J*** (as he then was) laid down the rules for granting a temporary injunction as follows;-

1. *The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.*
2. *The conditions for the grant of the interlocutory injunction are;*
 - i. *Firstly, that, the applicant must show a prima facie case with a probability of success.*
 - ii. *Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.*
 - iii. *Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.*

In the case of ***R v Secretary of State for Transport ex.p Factor tame Ltd [1990] 2 AC 85*** court held that;

“The main rationale for courts being reluctant in restraining public bodies is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation. ”

An order for a Temporary Injunction is granted so as to prevent the ends of justice from being defeated. See: ***Daniel Mukwaya v. Administrator General, H.C.C.S No. 630 of 1993; Erisa Rainbow Musoke v. Ahamada Kezala [1987] HCB 81.***

Prima Facie Case with a probability of success;

With regard to the 1st principle whether there has been established a prima facie case with a probability of success, the Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. (*See American Cynamide versus Ethicon [1975] ALL ER 504*).

The matter before this Court concerns an administration of an estate of the late Namuyimba Yokana Ssenkungu which is administered by the Applicants. They allege in the plaint and in the application that the 1st Defendant/Respondent gained access to the estate by forging a certificate of no objection and relying on the same to falsely obtain letters of administration and accessed the estate property which he partly disposed of to the 9 defendants named in the plaint.

Matters of fraud and serious allegations and the same amount to a triable issue to warrant court's determination in a full hearing. I accordingly find that the Applicant made out a prima facie case.

Whether the Applicant will suffer irreparable injury which cannot be atoned for by award of damages;

In *Kiyimba Kaggwa versus Hajji Abdu Nasser Katende*, *supra*, Court observed that irreparable injury does not mean that there must not be physical possibility of repairing the injury but means that the injury must be a substantial or material one that is one that cannot be adequately compensated for in damages.

This is a matter that involves registered land in the estate of the late Namuyimba Ssenkungu Yokana, the 1st Respondent allegedly obtained letters of administration and started transferring titles into third parties' names according to the Applicant. The Applicants claim to be beneficiaries in the estate of the deceased yet the 1st Respondent was a mere friend.

The 1st Respondent did not contest the fact that he gained access to the estate and is an administrator of the same. In fact, in paragraph F of his affidavit in reply he states that most of the land has been developed by him and has his farms. He did not deny transferring part of the estate to third parties.

It is therefore my finding that the 1st Respondent being armed with letters of administration, if not restrained, he may further transfer the estate into other people's names thereby creating third party claims which will drain the estate. In no doubt this will cause irreparable damage to the Applicants who claim to be beneficiaries in the estate.

Balance of convenience;

It is trite law that if the Court is in doubt on any of the above two principles, it will decide the application on the balance of convenience. The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicants suffer then probably the balance of convenience is favorable to him/her and the Court would most likely be inclined to grant to him/her the application for a temporary injunction.

In the case of *Victoria Construction works Ltd Versus Uganda National Roads Authority HMA No. 601 of 2010* the High Court while citing the decision in *J. K. Sentongo vs. Shell (U) Ltd [1995] 111 KLR 1*; by Justice Lugayizi observed that if the applicant fails to establish a prima facie case with likelihood of success, irreparable injury and need to preserve the status-quo, then he/she must show that the balance of convenience was in his favour.

I must say that the Applicant has sufficiently proved the principles cited herein above. I will accordingly allow this application and issue an order for temporary injunction on the terms sought by the Applicants.

Costs will follow the outcome of the main suit.

I so order.

Dated at Masaka this 12th day of November, 2021

Signed;



Victoria Nakintu Nkwanga Katamba

Judge