

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPEAL NO. 001 OF 2021
(ARISING FROM MISCELLANEOUS APPLICATION NO. 1167 OF 2020)
(ARISING FROM CIVIL SUIT NO. 499 OF 2020)

NSOJJE CHRISTOPHER:..... APPELLANT

VERSUS

NATIONAL WATER AND SEWAGE CORPORATION:..... RESPONDENT


BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

JUDGMENT

This is an application brought by way of Notice of Motion under **Section 33 of Procedure Act Cap 71, Order 41 Rule 4, Order 44 Rule 1(q) and (u), Order 50 Rule 8 of the CPR SI 71-1.**

The appellant is seeking for orders that:

1. The Ag. Deputy Registrar erred in law and fact when he granted an injunction order on mere averments of the respondent that it was intending to construct a water reservoir on the suit land without any evidence in support.
2. The Ag. Deputy Registrar erred in law and fact when he granted an injunction order without proof to denote the threat of waste, damage or alienation of the suit property.
3. The Ag, Deputy Registrar erred in law and fact when he failed to properly evaluate and consider the evidence as a whole on the Court



12/08/2022

record and thus arrived at an erroneous decision occasioning a miscarriage of justice.

4. The Ag. Deputy Registrar erred in law and fact when he granted an injunction that alters the status quo of the suit land.
5. The Ag. Deputy Registrar erred in law and fact when he granted an injunctive order that conclusively determines the rights of the parties and not preserving the parties' rights.
6. The Ag. Deputy Registrar erred in law and fact when he granted an injunctive order dispossessing the appellant from the suit land even before the substantive suit is determined.
7. An order setting aside the injunctive order of the Ag. Deputy Registrar.
8. Costs of the application be provided for.

The application is supported by the affidavit of the applicant who deposes inter alia:


1. That the appellant is legally aggrieved in so far as the injunctive orders by the Ag. Deputy Registrar were issued without regard to exercising his discretion judiciously.
2. That the Ag. Deputy Registrar granted an injunction order on mere averments by the respondent intending to construct a water reservoir on the suit land without any evidence in support.
3. That the Ag. Deputy Registrar granted an injunction order without proof to denote the threat of waste, damage or alienation of the suit property.
4. That the Ag. Deputy Registrar granted an injunction that alters the status quo of the suit land contrary to the concerns of preventive injunctive orders.


12/08/2022

5. That the Ag. Deputy Registrar granted an injunctive order that conclusively determines the rights of the parties and not preserving the parties' rights hence resolving the issues in controversy even before the substantive suit has been determined.
6. That the Ag. Deputy Registrar granted an injunctive order dispossessing the appellant from the suit land even before the substantive suit was determined and yet he was in physical possession of the suit land since his time of purchase in 1992.
7. That there is good cause and sufficient reason to set aside the injunctive order vide **Miscellaneous Application No. 1167 of 2020**.
8. That leaving the said injunctive order to stand will be condoning an abuse of court process and discretionary powers of the Court.
9. That it is in the interests of justice that the injunctive order be set aside.

In his affidavit in reply sworn on behalf of the respondent, Barigye Craven deposes inter alia:

1. That she is an Advocate of the High Court and the Principal Legal Officer of the respondent.
2. That she is informed by the respondent's lawyers that the application is incompetent, frivolous, an abuse of court process and supported by a fatally defective affidavit.
3. That the respondent filed before this court a Civil Suit vide **No. 499 of 2020** seeking for orders and declarations that a permanent injunction doth issue restraining the applicant his servant and his agents from further trespassing on the applicant's land which is situate on **Block 232, Plot 1053, Kireka measuring approximately 0.484 hectares**.
4. That the respondent then filed **Miscellaneous Application No. 1167 of 2020** seeking for a temporary injunction restraining the appellant herein

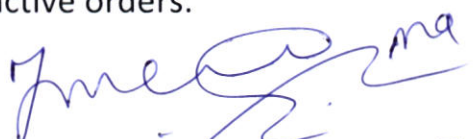

12/08/2022

from trespassing and or further interfering with the respondent's land comprised in **Block 232, Plot 1053 in Kireka measuring 0.484 hectares.**

5. That the applicant filed his reply on the 22nd day of December 2020 and this court found that there were triable issues to be determined in the main case.
6. That on various occasions prior to the filing of the aforementioned plaint and miscellaneous application by the respondent herein, the appellant had on various occasions encroached and trespassed on the respondent's land digging holes and erecting poles on the suit land which is the subject of **Civil Suit No. 499 of 2020.**
7. That the injunctive order was issued to maintain the status quo on the suit property pending the determination of the main suit and the injunctive order did not in any way determine the ownership rights of the suit property as alleged by the appellant.
8. That the application is a nullity in law and there is no plausible cause of action to warrant court to issue the orders sought.

In his affidavit in rejoinder, the appellant deposes inter alia:

1. That he has been informed by his lawyers that the affidavit in reply is full of deliberate untruthful statements and is incurably defective and not properly before this court.
2. That the suit land does not belong to the respondent as the question of ownership has not been determined.
3. That he has been informed by his lawyers that the ruling and order issued by the Court did not maintain the status quo which is one of the grounds of appeal.
4. That the respondent through its authorised agents and or officials is using the same order to alter the status quo contrary to the principles governing preventive injunctive orders.


12/08/2022

5. That he is informed by his lawyers that the injunctive order was issued in disregard of the principle of irreparable injury as the respondent in the main suit and in particular under paragraph 3(d) and (e) of the amended plaint pleaded for an award of damages which prayers show that there is a possibility of compensation in case of damage or injury.
6. That the actions of the respondent through its agents and or officials are contrary to the averments in paragraph 12 of the affidavit in reply intended to mislead court as its actions pertaining the suit property alters the status quo and does not maintain the status quo as the respondent alleges.
7. That he is informed by his lawyers that the court order which is the subject of the appeal determined ownership rights of the suit property even before the determination of the substantive suit as it decreed that the suit land belongs to the respondent which renders the substantive suit nugatory.


Counsel for the appellant and counsel for the respondent filed written submissions the details of which are on record and which I have considered in determining this appeal.

In determining this appeal, I will consider the grounds as laid out in the Notice of Motion.

Ground one: The Ag. Deputy Registrar erred in law and fact when he granted an injunction order on mere averments of the respondent that they were intending to construct a water reservoir on the suit land without any evidence to support it.

There was affidavit evidence in *Miscellaneous Application No. 1167 of 2020-National Water and Sewerage Corporation versus Jjuko Joseph and Nsojje Christopher* where it was deposed on behalf of the respondent that the respondent intended to construct a water reservoir on the suit land to supply water to the surrounding areas.

An affidavit is not a mere averment as the appellant submitted. An affidavit is a voluntary declaration of facts written down and sworn to by the


12/08/2022

deponent before a Commissioner of Oaths. It is evidence which if not rebutted is taken as the truth.

In applications for a temporary injunction an applicant is required to show that there is a prima facie case with a probability of success, see ***Sugar Corporation of Uganda Limited versus Mohamed Tejan-H.C.C.S No. 39 of 1993***. The detail of that evidence is to be adduced in the main suit. Applications of this nature are by affidavit evidence.

I therefore find no merit in this ground of appeal.

Ground two: The Ag. Deputy Registrar erred in law and fact when he granted an injunction order without proof to denote the threat of waste, damage or alienation of the suit property.

In their supportive affidavit to an application for a temporary injunction, the deponent averred that the respondent (the appellant in this application) and their agents have been masquerading as land owners and have dug holes on the suit land as well as attempted on several occasions to illegally fence a portion of the land without the consent of the applicant (see paragraph 3 of the affidavit in support vide Miscellaneous Application No. 1167 of 2020).

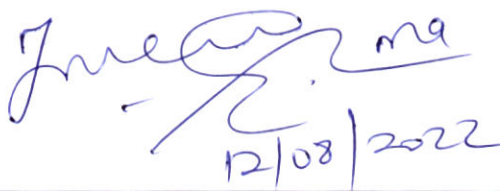
The alleged acts of the respondent in the said application of digging holes on the suit land amounted to waste. The acts of fencing off the land amounted to alienation. Therefore by affidavit evidence the applicant then was able to show that the suit land was under threat of waste, damage or alienation.

I therefore find no merit in this ground of appeal.

Ground three: The Ag. Deputy Registrar erred in law and fact when he failed to properly evaluate the evidence as a whole on court record and thus arrived at an erroneous decision occasioning a miscarriage of justice.

Order 41 rule 1 of the Civil Procedure Rules provides that “Where in any suit it is proved by affidavit or otherwise-

- (a) that any property in dispute in a suit is in danger of being wasted , damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or**
- (b) that the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors, the court may**

A handwritten signature in blue ink, followed by the date '12/08/2022' written below it.

by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders”.

The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the status quo until the the question to be investigated in the suit is finally disposed of.

It was held in the case of ***Kiyimba Kaggwa versus Hajji A.N Katende*** –[1985] H.C.B 43 that:


- i. the applicant must show a prima facie case with a probability of success;***
- ii. the injunction will not be normally granted unless the applicant might suffer irreparable injury which would not be adequately not be compensated or atoned for by an award of damages;***
- iii. if the court is in doubt, it will decide an application on the balance of convenience.***

The Ag. Deputy Registrar put into consideration all the above factors before he arrived at the decision he made. On the balance of convenience, the Ag. Deputy Registrar held that the intended activity on the suit land by the respondent was to construct a water reservoir that was meant to supply water to the public. In other words the intended project by the respondent was for the public good and interest.

The rights of the parties will be conclusively determined in the main suit and the Ag. Deputy Registrar could not determine the ownership of the suit land as he had no jurisdiction to determine those rights more so in an application for a temporary injunction.

I therefore find that the Ag. Deputy Registrar basing on affidavit evidence properly evaluated the evidence on record and arrived at a correct decision. This therefore disposes off the entire appeal as resolving the remaining grounds would be superfluous.

The appeal will therefore be dismissed with costs to the respondent.


12/08/2022



Hon. Justice John Eudes Keitirima

12/08/2022.