

The Republic of Uganda
In The High Court of Uganda at Soroti
Miscellaneous App No. 189 of 2021
(Arising out of High Court Misc. App. No. 40 of 2021)

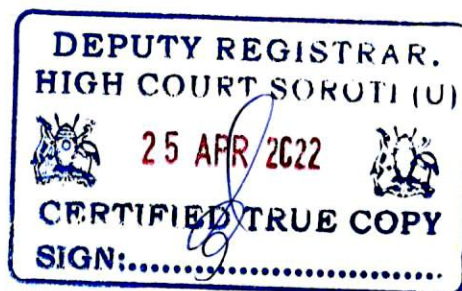
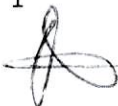
Imede Kevin Applicant

Versus

1. Commissioner Land Registration
2. Esamij David
3. Odeke Valdo
4. Ikabat Charles
5. Oumo Filbert
6. Odaka Martin
7. Olinga George William
8. Ongole James
9. Okiror James
10. Okubu John Peter & 3562 Others
11. Katakwi District Land Board Respondents

Before Hon Justice Dr Henry Peter Adonyo

Ruling



1. Back ground:

This is an application is for the remedy for a temporary injunction. It is brought under Order 41 rules 1 and 9 of the Civil Procedure Rules and Section 33 of the Judicature Act.

There is a pending suit filed by the Applicant against the Respondents.

The Respondents are stated to be customary owners of the suit land which the applicant is stated to have been registered in error as FRV SOR 39 Folio 4, Plot 28, Block 3 land at TAPAR.

The Applicant came to be registered as the proprietor after a transfer to her name by the allocation by Katakwi District Land Board to the people to Akubal John, Okubu Emmanuel and Titin Grace from whom the Applicant derives her title.

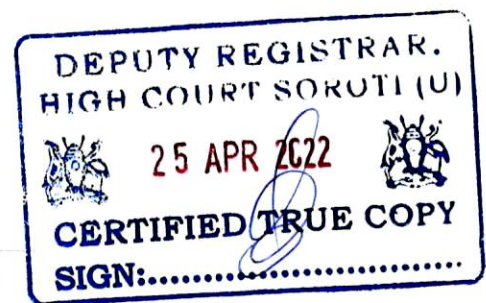
The 11th respondent is said to have recalled the allocation minute and intends to cancel the title entered in error hence this Application.

2. Issues for determination:

1. Whether the Applicant satisfies the grounds for the grant of an Injunction against the Respondents

3. Law Applicable:

1. Constitution of the Republic of Uganda 1995 as amended
2. Land Act Cap 227 as amended
3. Civil Procedure Act Cap 71
4. Civil Procedure Rules SI 71-1
5. Case law



4. Decision of Court:

Black's Law Dictionary at **Page 855** defines a temporary injunction as an injunction issued before or during trial to prevent an irreparable injury from occurring before the court has a chance to decide the case.

The jurisdiction to grant an injunction is derived from **Section 38(1) of the Judicature Act Cap 13** which empowers the High Court to grant an injunction restraining any person from doing any act as may be specified by the court when it invokes its inherent powers to make orders that are necessary for the ends of justice or prevent abuse of court process as per **Section 98 of the Civil Procedure Act**.

This application is for the remedy for a temporary injunction is governed by **Order 41 Rule 1(a) of the Civil Procedure Rules SI 71-1** which is to the effect that where in any suit it is provided by affidavit or otherwise 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, the court may by order grant a temporary injunction to restrain such or make such other order for the purpose of staying or preventing the alienation, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

However, such power is discretionary as was held in the case of ***Francis Kayanja v Diamond Trust Bank (U) Ltd HCMA 0300 of 2008*** where court noted that the law in respect to granting of a temporary injunction is a judicial discretion which court exercises judiciously upon considering certain conditions.



The main purpose of a temporary injunction is to keep or maintain the status quo till the final determination of the issues in controversy.

This is established in the case of ***P.K Sengendo v James Ndaula HCMA No. 546 of 2013*** it was held that the main purpose of granting of a temporary injunction is to preserve the status quo pending the determination of the head suit.

“Status quo” as defined as in Black’s Law dictionary at Page 4418 simply denotes the existing state of things existing before the particular point in time; and in determining whether or not to maintain the status quo other surrounding circumstances have to be taken into account.

The Court of Appeal in ***Godfrey Sekitoleko & Ors Vs Seezi Mutabaazi & Ors [2001-2005] HCB 80*** made the position clear by stating as follows;

“The court has a duty to protect the interests of parties pending the disposal of the substantive suit. The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal right to the property from irreparable or serious damage pending the trial, the court does not determine the legal rights to property but merely preserves it in its actual condition until legal title or ownership can be established or declared.”

Before a court grants a temporary injunction, there have to be conditions to be satisfied.

The conditions were elaborately discussed in the case of ***Kiyimba Kaggwa vs Hajji Nasser Katende [1985] HCB 43*** and they include;



- a. The applicant must show a *prima facie* case with a probability of success.
- b. Such injunction is only granted where the Applicant might otherwise suffer irreparable injury which will not be adequately compensated by the award of damages.
- c. If the court is in doubt, it will decide the application on a balance of convenience.

The Applicants in regard to the above conditions state as follows;

a. Prima facie case:

For a court to grant a temporary injunction, an applicant must show that there is a *prima facie* case in the substantive suit with a probability of success.

A *prima facie* case was defined in the case of ***Basude Nalongo v Tereza Mwewulize MA 402 of 2002*** as that evidence placed before the court, by way of affidavit or otherwise, which shows that there exists a genuine triable issue in the main suit pending between the parties and the court must be satisfied that the dispute presented in the main or head suit is not a sham but a genuine dispute and that the Applicant has probabilities of succeeding in the main suit.

It is not in contention that there is a pending suit filed by the Applicant against the Respondents. However, it is the argument of the respondents that the suit has been prematurely brought before this honourable court to defeat the statutory powers of the office of the Commissioner Land Registration as provided for by **Article 42 of the Constitution of the Republic of Uganda 1995** as amended provides that any person appearing before any

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administrative official / body has a right to be treated justly and accorded a fair hearing.

Further, according to the respondents, **Section 91(8) of Registration of Titles Act Cap 227** as amended gives the Registrar the power to conduct hearings in accordance with the rules of natural justice in instances where a title has been issued in error among others.

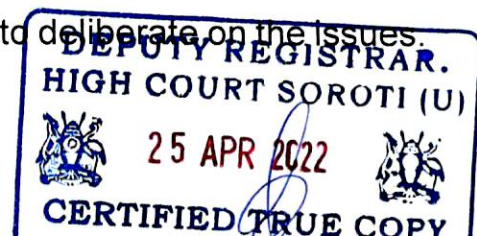
At paragraph 3 of the affidavit in reply sworn by one Odeke Valdo on behalf of the respondents, it is averred that a complaint had been lodged to the Commissioner Land Registration against Okubo Emmanuel, Akubal John and Okubo Emmanuel who had wrongfully surveyed their land with the intention of grabbing the same from the community and arising from the complaint Katakwi District Land Board acting on the said complaint and several others under its mandate recalled the allocation minute to Okubo Emmanuel, Akubal John and Okubo Emmanuel whom the current applicant derives title basing on the District Council Minute 04/16/10/2019. This is as per paragraph 4 of the affidavit in opposition of this application.

In addition, at Paragraph 5, it is further averred that the title issued to the to Akubal John, Okubu Emmanuel and Titin Grace applicant was issued in error yet the allocation had already been withdrawn.

Furthermore, at paragraph 6 of the affidavit in reply, it is averred that another entry was made in error on the 12th day of August 2021 when a transfer was made into the Applicant Imede Kevin.

Paragraph 7 of the Affidavit in reply; the deponent testifies that the Commissioner Land Registration in exercising his powers under the Land Act convened a meeting of all the affected parties to deliberate on the issues.

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This evidence is supported by the evidence of Bamwiite Emmanuel in Paragraph 10 of the 1st Respondent's Affidavit in reply where he stated that in order to investigate the matter to finality, the office of the Commissioner Land Registration invoked its statutory powers and issued a notice of intention to effect changes in the register dated the 30th day of November 2021.

However, the Commissioner Land Registration was precluded from further carrying on his statutory mandate **Section 91 of the Land Act Cap 227** as amended when an interim order was issued halting any further investigations concerning the land in dispute.

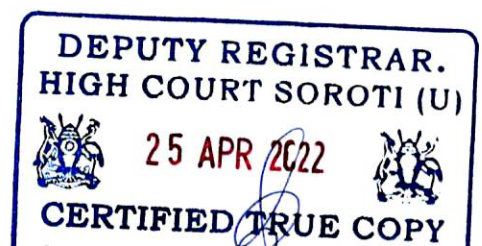
It was the submission of the respondents that if the Applicant is granted a temporary injunction it would deny the respondents the right to be accorded a fair hearing that is guaranteed by **Article 28 and 42 of the Constitution of the Republic of Uganda** as amended and **Section 91(8) of the Land Act Cap 227** as amended. It would further render the statutory powers of the office of the Commissioner Land Registration which have not been declared unconstitutional redundant.

b. Irreparable damage:

Justice Stephen Mubiru in respect of this issue defined irreparable injury in the case of ***Rashida Abdul Hanali and Anor v Suleiman Adrisi MA No. 008 of 2007*** as loss that cannot be compensated.

The question as to the existence or not of irreparable injury means that the injury must be substantial or immaterial one, that is, one that cannot be adequately compensated for in damages.

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Abuse of court process was defined in ***Uganda Land Commission v James Mark Kamoga & Anor SCCA 08 of 2004*** where J Mulenga (As he then was) said that it '***involves use of process for improper purpose.***'

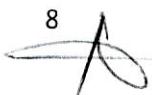
The Applicant having been summoned by the Commissioner Land Registration following a complaint raised, sought the court's order for stay for the improper purpose of defeating the statutory mandate of the Commissioner to accord a fair hearing to the Complainants.

The Applicant submitted that if the application is not granted, there is a likelihood that her title will be illegally cancelled by the respondent. That she purchased the said land with an interest to own the same and thus an award of damages in lieu of title cannot be adequate to put her in her "***original position as the proprietor of the land.***"

At Paragraph 7 of the affidavit in reply, the deponent testified that the Commissioner in exercising his statutory mandate issued a notice of intention to effect changes in the register. The purpose of this notice was to inform the Applicant of the complaint received and require the Applicant to respond to the same within 21 days.

However, the Applicant went ahead and obtained an interim order from the court stopping the Commissioner Land Registration from dealing with the land in dispute.

The respondents submit that this Application and the interim order sought are an abuse of court process and that the Applicant shall not suffer any irreparable damage if the Commissioner Land Registration exercises his statutory mandate to hear the complaint raised by the Respondents against her for the Commissioner Land Registration has that statutory powers in the

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first instant to handler such matter before such a dispute can be entertained by court.

The Applicant claims that an award of damages in lieu of the title cannot be adequately atoned in damages. The respondents state that this is rather speculative as the Commissioner Land Registration has not yet made any pronouncements on the same and neither have both parties yet appeared before the Commissioner to accorded a hearing and as a result a decision made.

According to the respondents, given this position, then the act of the applicant applying for an injunction is clearly an abuse of court process intended to defeat the powers of the Office of the Commissioner Land Registration and the Applicant shall not suffer irreparable loss if the complaint raised is heard by the Commissioner Land Registration.

c. Balance of Convenience:

The court is under the duty to weigh the convenience of complying with the injunction on the part of the respondent against the damage that the Applicant would suffer if the injunction is not granted.

If the damage outweighs the convenience, then the Applicant would be granted the injunction.

This was the position of court in the case ***Francis Kayanja v DTB (U) Ltd HCMA No. 0300 of 2008*** where court held that the last test is that in case of doubt court should decide whether or not to grant a temporary injunction on the balance of convenience. This test is resorted to when Court is in doubt on any of the first two issues.



In *Kiyimba Kaggwa v Hajji A.N Katende [1985] HCB 43*, the court held that the balance of convenience lies more on the one who will suffer more if the respondent is not restrained in the activities complained of in the suit.

In this Application, the Applicant seeks to restrain the Respondents from effecting any changes in the Register and / or cancelling the Applicant's title comprised in FRV SOR 39 Folio 4, Plot 28 Block 3 land at TAPAR.

The respondents are stated to be customary owners of the land in dispute and to grant the Applicant the temporary injunction sought would mean the denial to the respondents their right to property enshrined under **Article 26 of the Constitution** and render them homeless as currently they are in occupation of the suit land and would thus be open to an eviction by the Applicant who is stated to be the legally registered owner.

I would agree with the submissions of the respondents that this application has been brought in bad faith given the clear statutory powers of the Commissioner for Lands. It is true that the applicant is currently the registered owner of the suit land which is disputed. It is not disputed that though the applicant has title to the suit title, the respondents are in occupation of the suit land and would be rendered homeless since the grant of the orders sought herein would empower the applicant to use such powers including the seeking of the eviction of the respondents from the suit land. That act would render the respondents homeless yet the issue of the title is a subject to its handling by the Commissioner Land Registration given the fact that there is allegation that the same had been issued in error after its having been recalled.



The balance of convenience in this matter lies in the favour of the respondents who shall be rendered homeless the Applicant's registration as title owner is a matter of contention and which is yet to be resolved as has been pleaded that it was obtained in error.

From the facts before me, I am satisfied that by this application, the applicant seeks to prevent the Commissioner Land Registration from effecting its statutory duties by seeking for orders of a temporary Injunction which act is clearly an abuse of the court process as it has the intention of circumventing clear statutory powers of the Registrar Land Registration.

In conclusion, I am inclined to agree with the respondents that this application is premature as the orders sought by the Applicant are misconceived and indeed an abuse of court process as they would defeat and render the statutory obligation granted to the Office of the Commissioner Land Registration redundant. whose details are reproduced herein below;

Section 91 of the Land Act: Special Powers of Registrar.

(1) Subject to the Registration of Titles Act, the registrar shall, without referring a matter to a court or a district land tribunal, have power to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise.

(2) The registrar shall, where a certificate of title or instrument—

(a) is issued in error;

(b)



(c)

(d)

(e) or

(f),

call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.

(Emphasis Mine)

(3) If a person holding a certificate of title or instrument referred to in subsection (2) fails or refuses to produce it to the registrar within a reasonable time, the registrar shall dispense with the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner.

(4) The registrar may—

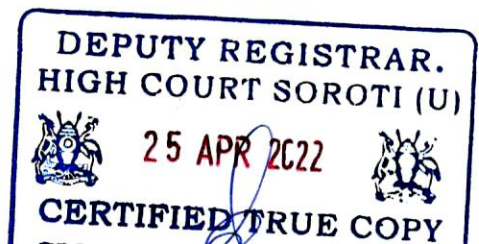
(a) correct errors in the Register Book or in entries made in it;

(b) correct errors in duplicate certificates or instruments; and

(c) supply entries omitted under this Act.

(5) The registrar may make amendments consequent upon alterations in names or boundaries but in the correction of any such error or making of any such amendment shall not erase or render illegible the original words.

(6) Upon the exercise of the powers conferred on the registrar under subsection (5), the registrar shall affix the date on which



the correction or amendment was made or entry supplied and shall initial it.

(7) Any error or any entry corrected or supplied under this section shall have the same validity and effect as if the error had not been made or entry not omitted.

(8) In the exercise of any powers under this section, the registrar shall—

(a) give not less than twenty-one days' notice in the prescribed form to any party likely to be affected by any decision made under this section;

(b) provide an opportunity to be heard to any such party to whom a notice under paragraph (a) has been given;

(c) conduct any such hearing in accordance with the rules of natural justice but subject to that duty, shall not be bound to comply with the rules of evidence applicable in a court of law;

(d) give reasons for any decision that he or she may make.

(9) The registrar shall communicate his or her decision in writing to the parties and the committee.

(10) Any party aggrieved by a decision or action of the registrar under this section may appeal to the district land tribunal within sixty days after the decision was communicated to that party.

(11) Where the registrar has cancelled a certificate of title or an entry in the Register Book, a party in whose favour the

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cancellation is made shall not transfer the title until the expiry of the time within which an appeal may be lodged; and where an appeal is lodged against the cancellation, he or she shall not transfer the title until the determination of the appeal.

(12) The party who lodges an appeal under this section shall take steps to ensure that the registrar and the other party are served with the notice of appeal.

(13) Where the person who appealed under this section fails to prosecute the appeal, the tribunal shall, on application by any other party to the appeal, strike out the appeal.

The Commissioner Land Registration has a statutory mandate given by **Section 91 of the Land Act Cap 227** to summon parties before him / her to resolve a complaint of land registration done in error.

That function is mandatory and must be carried out first. Thereafter, any party who is aggrieved with the decision of the Commissioner Land Registration in respect of such functions then would be in a position to seek remedies as provided for by **Section 91 subsections 10, 11 ,12 and 13 of the Act** as indicated above.

Arising from the above clear provisions of the law, I am inclined to find that this application is brought here with the intention to defeat the clear statutory duties imposed upon the Commissioner Land Registration by law. I would find that it is an abuse of the court process to do so for this court being a court of law cannot entertain such abuse of its process where parties are given clear legal provisions of how to remedy any act under the law from which a complaint arises.



I would thus find that this application has been brought before this court to circumvent the clear provisions of the law. The remedy for the applicant is elsewhere and is yet to be exhausted.

Let the applicant first exhaust those remedies provided for under the Land Act before coming to this court so as to invoke this court to exercise its powers as provided for under **Section 33 of the Judicature Act**.

I would, therefore, find that this application and the earlier interim application premature.

Consequently, this application is dismissed with costs to the Respondents.

Subsequently, by this decision, the interim order earlier issued halting any further investigations concerning the land in dispute by the Commissioner Land Registration is hereby vacated.

Parties must appear before the Commissioner Land Registration in terms of **Section 91 of the Land Act** and must first exhaust all the remedies provided therein before coming before this Hon Court for any other reliefs.

I so order.



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Hon Justice Dr Henry Peter Adonyo

Judge

25th April, 2022

