

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.1777 OF 2020

(Arising out of Civil Suit No.557 of 2020)

NANONO SHAMIM:.....APPLICANT

VERSUS

NAKINTU FARIDAH:.....RESPONDENT

Before: Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

The applicant, Ms. Nanono Shamim brought this application under **section 33 of the Judicature Act Cap. 13, sections 64 (e) & 98 of the Civil Procedure Act Cap. 71, Order 51 (8) & (9) and Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1** seeking orders that the rent collected from the suit property (*kibanja*) be deposited in court until the final determination of the main suit and that the costs of the application be provided for.

Grounds of the application.

The application is based on seven grounds, the details of which are contained in the affidavit in support of Ms. Nanono Shamim, the applicant wherein she stated *inter alia* that she was sued by the respondent in **Civil Suit No.557 of 2020** for orders that the suit *kibanja* situated in **Bwebajja Mawanyi Wakiso district** is jointly owned by the plaintiff (respondent) and the defendant (applicant); and an order of subdivision of the suit *kibanja*.

That the suit *kibanja* is developed with rental houses which are occupied by tenants who remit rent to the respondent, whose continued collection of rent is detrimental to the applicant's interest on the suit land and that if this court finds that the applicant is the rightful owner of the land, she will not be able to recover all the said rent from the respondent who is not economically strong enough to pay back all the money.

That not only is it the only reason the applicant seeks that the rent collected from the suit property be deposited until final determination of the main suit, but that it is fair, just and in the interest of justice that the applicant's application be granted.



The respondent filed an affidavit in reply opposing the application. That not only is the application irregular, frivolous and vexatious, but it is also unfounded in law and is a gross abuse of the machinery of justice and that it ought to be dismissed.

5 That the application discloses no sufficient grounds warranting this court to grant an order directing the respondent to deposit the rent collected in court since the applicant hired an estate manager that took control of the rental premises and started collecting rent from the premises.

10 In addition, that while the applicant without the respondent's knowledge evicted all the tenants from all the rental units which are now currently unoccupied, the respondent used to share a portion of the rent collected with the applicant until she took over the premises.

15 Further, that she (respondent) has the financial muscle to compensate the applicant in the event that she is found to be the rightful owner of the premises and that there is no justification for depositing the said rent in court since all the tenants were evicted by the applicant who is aware that the houses need maintenance costs which have always been paid in time.

From the record, the applicant did not file an affidavit in rejoinder to the respondent's affidavit in reply rebutting the averments therein.

Representation.

20 The applicant was represented by **M/s Kabega Bogezi & Bukenya Advocates** while the respondent was represented by **M/s Tuhimbise & Co. Advocates**. Both counsel filed written submissions in support of their respective clients' cases as directed by this court.

Decision of Court.

25 I have carefully read and considered the submissions of both counsel, the details of which are on court record and which I have taken into account in determining whether or not this application merits the orders sought.

From the pleadings and submissions, it is clear that the applicant seeks court to direct the deposit of the money into court until **Civil Suit No.1777 of 2020** is disposed of.

This application is brought under the enabling provisions of **section 98 Civil Procedure Act Cap.71** and **Section 33 of the Judicature Act Cap. 13**.

30 Under **section 33(supra)**, the High Court is vested with very wide general powers to grant remedies. It provides:

35 *"The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the*

parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."

Under **Section 98 CPA**, the inherent power of court is saved in the following terms;

5 *"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."*

It is not in dispute that the suit *kibanja* is developed with rentals. The applicant however alleges that the respondent who continues to collect rent from the premises will not be able to pay back all the monies, thereby making her unable to recover the same.

10 The respondent's claim in *paragraph 6* is that the applicant evicted all the tenants from all the rental units which are now unoccupied and that she has since hired an estate manager to wit; **M/s Magma Associates** to manage the suit property and start collecting rent. She did so without her knowledge. The respondent further claims that she was also served with *notice of eviction*.

15 True to form, **Annexure "F"** of the affidavit in reply, which is a notice of termination of tenancy dated 8th July, 2020, authored by **M/s Crane Associated Advocates** addressed to the respondent by the said firm on behalf of the applicant.

There is no documentary proof however to show whether or not there is rent being collected and if so, to whom it is being paid. However what is clear is that applicant hired an estates
20 Manager between 2018 and 2019 and who according to the respondent started collecting rent from the suit premises.

Her claim in this application is that there was no justification for depositing the rent in court. This is however confusing, as well as self-defeating. While she contends that the tenants were evicted by the applicant implying that there is no rent to be collected, she fails to explain the
25 contents of the letter for the rent increase, dated 27th February, 2020. (**Annexure F**).

The respondent also argues that **M/s MAGMA ASSOCIATES Ltd** acting for the applicant are in control of the premises, yet on the other hand she objects to the application on the basis that the premises are vacant, and at the same time maintains they require maintenance.

30 Such line of argument lends credence to the assertion made in the applicant's affidavit in support, *paragraphs 4 and 5* thereof, that the suit property is occupied by the tenants who are remitting rent to the respondent.

In the view of this court the reasons advanced by the respondent seem to be rather in support of the decision by this court to have an independent (escrow) account, to be opened and operated by the counsel for the two sides, until the issue of ownership is finally concluded.

Since the issues of accountability for the proceeds from rent collections and all such matters pertaining to ownership and management as well as sharing of the income (which prominently feature in this application) are also the subject in the main suit, they will remain pending the full trial.

5 In the premises, this court, in exercise of its inherent powers under **section 98 (supra)** and **Section 33 (supra)**, grants this application in the terms below:

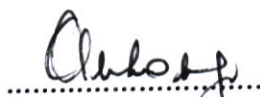
10 **1. 100% of the proceeds from the suit premises shall be directly deposited to an escrow account jointly opened and to be managed by respective firms representing the parties in this application, and managed in consultation with the parties, until determination of the main suit.**

15 **2. The two respective counsel will determine, upon consultation with their respective clients what percentages are to be remitted/reserved for maintaining or repairing the premises; and this should remain the position until further orders are issued by this court.**

3. No orders issued on costs.

I so order.

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Alexandra Nkonge Rugadya

Judge

25 **18/05/2022**

Delivered through email
Alexandra
18/5/2022