

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS APPLICATION NO. 035 OF 2023
(ARISING FROM CIVIL SUIT NO. 045 OF 2021)

MARGARET TIBULYA J. ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. KUSASIRA PEACE KANYESIGYE MUBIRU

2. DDIBYA HENRY WAGABA ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HONOURABLE JUSTICE DAVID MATOVU

RULING

Introduction

1. Margaret Tibulya J. (hereinafter referred to as the “Applicant”) filed Miscellaneous Application No. 035 of 2023 against Kusasira Peace Kanyesigye Mubiru and Ddibya Henry Wagaba (hereinafter referred to as the “Respondents”) seeking a temporary injunction restraining the Respondents from further construction, trespass, cultivation or in any other way dealing with the suit land at Kyaggwe Block 94 Plot 470 Land at Buddugala until the determination of Civil Suit No. 045 of 2021.

Background facts

2. On the 24th February, 2021 the Applicant filed Civil Suit No. 045 of 2021 against the Respondents seeking to annul any transactions of sale between the Respondents relating to land at Kaggwe Block 94 Plot 470 land at Buddugala (hereinafter referred to as the “suit land”) and the Applicant sought to be declared the owner of the suit land.
3. One of the orders sought by the Applicant in Civil Suit No. 045 of 2021 was a permanent injunction against the Respondents, their agents or anyone claiming under them from trespassing, using or occupation of the suit land.
4. Hearing of Civil Suit No. 045 of 2021 commenced on 7th April, 2022 and the Applicant has already closed their case and hearing of the defence case commenced on 23rd January, 2023 and is to continue on the 15th March, 2023 at 9:30 am.
5. On the 27th January, 2023 the Applicant filed the instant application seeking a temporary injunction to restrain the Respondents, their agents and all those claiming through them

from further construction, trespass, cultivation, selling or in any other way dealing with the suit land.

6. Counsel appeared before Court on 6th February, 2023 whereupon they were given timelines to conclude pleadings and also file written submissions.

Legal representation

7. Mr. Raphael Gideon Masaba represented the Applicant while Mr. Samuel Sebaduka represented the 1st Respondent. The 2nd Respondent did not file an affidavit in reply despite the fact that he was duly served with the instant application on 31st January, 2023 by Mr. Egau Alfred a Court process server and an affidavit of service was filed on 1st February, 2023.

Evidence of the Applicant

8. According to the affidavit in support of the application deponed on 27th January, 2023, the Applicant is stated to be the registered owner of the suit land having purchased the same from the 2nd Respondent when it was vacant.

9. That she filed Civil Suit No. 045 of 2021 against both Respondents and obtained a default Judgment against the 2nd Respondent.
10. That while Civil Suit No. 045 of 2021 was progressing as against the 1st Respondent, the Applicant found someone constructing a structure on the suit land on 25th January, 2023 and she attached photographs marked "A" to her affidavit.
11. That she verily believes that whoever is constructing structures on the suit land is doing so under the instructions of the Respondents.
12. That unless the Respondents are stopped from further acts of construction and trespass she will suffer more as opposed to the Respondents who have nothing to lose.
13. That the interests of justice demand that an order of a temporary injunction be issued against the Respondents until Civil Suit No. 045 of 2021 is heard and determined.

Evidence of the 1st Respondent

14. According to the affidavit in reply by the 1st Respondent deponed on 31st January, 2023 she contends to be the 1st

Defendant in Civil Suit No. 045 of 2021 who owns a Kibanja interest measuring 3.6 Acres on the suit land.

15. That at the time she acquired her Kibanja interest in the suit land in 2008 a one Ddibya Henry was the registered owner of land at Kyaggwe Block 94 Plot 151 land at Buddugala.
16. That she later in 2013 purchased the mailo interest of 3.6 Acres from the 2nd Respondent.
17. That the suit land was part of the land that was erroneously and illegally sub divided into Plots 470 and 472 on Kyaggwe Block 94 pursuant to a vesting order relating to a different piece of land and against a different person not a party to the suit and this land was registered in the names of the Applicant/Counter Defendant.
18. That the Applicant used her influence in Jinja High Court Civil Suit No. 101 of 2013 which suit related to land at Kyaggwe Block 94 Plot 18 and also related to a different party called Ddibya Henry Wagaba but not Ddibya Henry and this is how the suit land at Kyaggwe Block 94 Plot 470 came into existence.
19. That the fraud herein above is the subject of a counter claim in Civil Suit No. 045 of 2021.

20. That the 1st Respondent only occupies 3.6 Acres of the suit land and she denies carrying out any construction.
21. That the status quo to be preserved is that of a Kibanja in her physical possession where she has a banana, maize and eucalyptus trees.
22. That since she has been using the 3.6 Acres of the suit land since 2008 this application should be disallowed or in the alternative the status quo of the suit land as elaborated be maintained till the conclusion of Civil Suit No. 045 of 2021.

Law applicable

23. The Constitution of the Republic of Uganda
24. The Registration of Titles Act Cap 230
25. The Civil Procedure Rules

Applicant's Legal arguments

26. In his written submissions filed on 7th February, 2023 Counsel for the Applicant argued that without delving into the merits of Civil Suit No. 045 of 2021 the Applicant under paragraphs 3 and 4 of her affidavit in support had proved a

prima facie case with a probability of success and implored Court not to hold a mini trial at this stage.

27. Counsel also argued that the forceful and illegal entry of the Respondents on the suit land has caused the Applicant untold anguish, anxiety and frustration that cannot be atoned for in damages he referred to the case of **SHIV CONSTRUCTION CO. LTD SCCA NO. 34 OF 1992** where **PLATT JSC** held that **“in the case of dispute over land, damages are not usually sufficient compensation”**

28. On the balance of convenience Counsel referred Court to paragraphs 15 and 18 of the Applicant’s affidavit in support of this application to argue that if this application is granted the Respondents would not be prejudiced.

Counsel for the 1st Respondent’s Legal arguments

29. Counsel in his written submissions filed on 9th February, 2023 argued that according to paragraphs 5 and 6 of the 1st Respondent’s affidavit in reply she is in actual possession of part of the suit land measuring 3.6 Acres and this the status quo that should be maintained.

30. Counsel argued that the 1st Respondent is not constructing anything on the suit land and it appears that the Applicant seeks to stop 3rd parties without a hearing which is Contrary to Article 28 of the Constitution.

31. Counsel argued that the Applicant did not adduce evidence to prove irreparable damage.

Decision of Court

32. The principles to be considered in granting a temporary injunction was well settled in the celebrated case of **E.LT KIIYIMBA KAGGWA VERSUS HAJI ABDU NASSER KATENDE (1985) HCB 43** and they are the following:-

- i) The applicant must show the existence of a prima facie case with a possibility of success
- ii) That the applicant might suffer irreparable injury which would not adequately be compensated by an award of damages.
- iii) If the Court is in doubt, then the application would be decided on the balance of convenience.

33. As to the existence of a *prima facie* case with a possibility of success Court finds that Civil Suit No. 045 of 2021 is part heard and the Applicant/Plaintiff closed her case and the defence has commenced. From the evidence on record Court needs to investigate how the title for Kyaggwe Block 94 Plot 470 land at Buddugala came into existence and also the true identities of Ddibya Henry Wagaba and Ddibya Henry.
34. Court is satisfied that from the available evidence the Applicant has a *prima facie* case with a possibility of success for purposes of this application.
35. The Applicant bought the suit land for a purpose known to her and it would therefore be improper for Court to later discover that while hearing of the suit was going on, some other people were constructing structures on the suit land. Therefore, the Applicant will suffer irreparable damage if the suit land is put to a different use not intended by her.
36. Finally, considering the fact that Civil Suit No. 045 of 2021 is in advanced stages of hearing, the grant of a temporary injunction to stop further construction of structures on the suit land would be a proper decision and will not prejudice the 1st

Respondent who should produce all her remaining witnesses on 15th March, 2023 so that hearing of Civil Suit No. 045 of 2021 is concluded.

37. This Court therefore issues a temporary injunction to restrain the Respondents or their agents from any further construction of structures on the suit land at Kyaggwe Plock 94 Plot 470 land at Buddugala until the determination of Civil Suit No. 045 of 2021.

38. The costs of this application shall abide the final outcome of Civil Suit No. 045 of 2021.

Dated this 10th day of February 2023.



David Matovu
Judge