THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS APPEAL NO.0020 OF 2023

ARISING FROM MISCELLANEOUS APPLICATION NO.499 OF 2023

ARISING FROM CIVIL SUIT NO.194 OF 2023

DDAMULIRA RONALD SANDE & 61 OTHERS ---------- APPELLANTS

VERSUS

1. LOGIC REAL ESTATES & DEVELOPERS LTD

2. OJAMBO MAYENDE DAVID

3. FRED KAKANDE ---------- RESPONDENTS

4. MUTABARUKA INNOCENT

5. UGANDA LAND COMMISSION

6. ATTORNEY GENERAL

RULING

BEFORE HON. LADY JUSTICE KANYANGE SUSAN

This was an appeal brought under S.98 and 79 (1) and b of the Civil Procedure Act Cap.71 and S.33 of the Judicature Act.

It is for orders

1. The learned Assistant Registrar's Order declining to grant the Temporary Injunction in Misc. Application No.499 of 2023 was contrary to the facts and the law governing temporary injunctions.

2. That the learned Assistant Registrar's order dismissing the application for the temporary injunction be set aside

3. That Misc. Application No.499 be allowed and the orders sought in the terms

   a. A temporary injunction be issued prohibiting the respondents/defendants their agents, employees, contracted companies or any person/ entity acting on their behalf from evicting applicants, any construction, grading, putting demolishing of any house, construction of any perimeter wall, developing, building on the suit land comprised on land falling or comprised in No.7 FHRV WAK532, folio 2 land at Kirinya Wakiso Kyaddondo Block 242 plot 1169 area A 14640 hectares FHRV WAK 552 folio 3 land at Kirinya Wakiso, Kyadondo Block 242 plot 1170 area 75410 hectares FHRV WAK 552 Folio 4 land at Kirinya Wakiso, Kyadondo Block 242 plot 1171 area 19040 hectares, FHRV WAK 552 Folio 6 land Kirinya Wakiso, Kyadondo Block 242 plot 1173 area 1.4850 hectares FHRV WAK 552 folio 7 land at Kirinya Wakiso, Kyadondo Block 242 plot 174 area 1.2780 hectares FHRV WAK 552 folio 8 land at Kirinya Wakiso, Kyadondo Block 242 plot 1178 area 13080 hectares FHRV WAK 552 folio 10 land at Kirinya Wakiso, Kyadondo Block 242 plot 1177 area 8260 hectares and FHRV WAK 552 folio 12 land at Kirinya Wakiso, Kyadondo Block 242 plot 1179 area 18790 hectares which is registered in name os 1st respondent FHRV WAK 552 folio 9 land at Kirinya Wakiso, Kyadondo Block 242 plot 76 area 15620 hectares which is registered in the names of the 2nd respondent. FHRV WAK 552 land at Kirinya Wakiso, Kyadondo block 242 plot 3 area 0.4840 x 2471 hectares which is registered in the names of the 3rd respondent FHRV 1466119 land at Kirinya Wakiso Kyadondo Block 242 plot 118 area 2.415 hectares which is registered in the names of the 4th respondent until the disposal of the main suit

b. Costs of the main suit

The grounds of the appeal are set out in affidavit of the 1st applicant but briefly they are;

They are dissatisfied with the ruling by His Worship Kintu Simon Zirintusa dismissing their application for temporary injunction.

That the Trial Registrar erred in law and fact when he insinuated that the three grounds for grant of temporary injunction must be proved.

Further to this that the appellants failed to prove threat of eviction and that their loss can be atoned in damages and be compensated. That the Assistant Registrar erred when he based on the fact that the appellants failed to prove their possession and developments on the land and refused to preserve the subject matter till conclusion of the case.

That the Assistant Registrar misapplied the facts of the case and law and found in favour of dismissing of the application. He also misled himself about the law governing temporary injunctions and it's in interest of justice that application is allowed.

The 1st and 4th respondents in reply averred that the applicants have no locus to apply for, or obtain any injunction in respect of their respective properties and they failed to prove they have an interest. That they did not prove they are currently being forced to vacate the land. Further to this the Assistant Registrar rightly found that government is capable of compensating them in case they are found to have an interest. The applicants did not prove irreparable loss or injury and mere assertion of possession without proof is unsatisfactory.

That the photos attached do not indicate proof of possession by all the 62 applicants and that also the Registrar never found they are equitable owners or project affected persons but only referred to it.

That it is not certain which part of the land the appellant alleged interest is on, and a blanket order in respect of their entire land would be vague and misused.

While the 5th and 6th respondents averred that there is no evidence to show that the titled plots fall within the project area for construction of Bukasa Inland Port Project nor is there threat of imminent eviction by armed Police Force officials and UPDF soldiers.

Further to this that there is no evidence that all the 62 applicants are residents with structures on the said land. That the government has commenced a multi-billion dollar project of the construction and development of the Bukasa Inland Port and there is no irreparable damage they will suffer if they are genuine project affected persons as they will be adequately compensated.

That the balance of convenience lies in favour of government so as not to cripple the development. Their application did not satisfy the grant of an order of a temporary injunction.

The 2nd and 3rd respondents also averred that the injuction sought is against their land. They have never threatened to evict them in case they are in possession. That at the time of acquisition of land, none of them was in possession and if they have entered they are trespassers. Further to this they are imposters who cut down trees and claimed interest but do not have houses or developments thereon. That balance of convenience is in favour of registered proprietors and government whose project will stall.

The applicants filed rejoinders

Representation

M/s A. Kajubi & Co. Advocates represented the applicants. The 1st and 4th respondents were represented by **M/s Magna Advocates**, the 5th and 6th respondents were represented by the **Attorney General's Chambers** while the 2nd respondent was represented by **M/S Maven Advocates**

Resolution

Preliminary Objection

Counsel for the 1st, 2nd, 4th, 5th and 6th respondents prayed that appeal for struck off as it was filed out of time and no good cause has been advanced for filing out of time. They referred to S.79(1) of the Civil Procedure Act. It provides that,

1. Except as otherwise specifically provided in any other law, every appeal shall be entered

    a. Within thirty days of the date of the decree or order of the court.

    b. Within seven days of the date of the order of a Registrar as the case may be appealed against but the appellant court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

The appellant court may for good reason grant leave to appeal out of time. See case of **Kazira versus Samalie Nassali t/a Kasasa & Co. Advocates HCA No.34 of 2014** and **A.G versus A P K M Lutaaya SCC App No.12 of 2007.**

In the case of **Barclays Bank of Uganda Limited versus Eddy Rodrigues 1987 HCR pg.36** the court is empowered to strike out an appeal if among other things some essential step in the proceedings has not been taken. See also case of **Hannington Wasswa & Anor versus Maria Ochola & others Supreme Court Misc. Application No.12 of 1998**

Counsel for the appellant in rejoinder submitted that time of appeal does not start running until the record of proceedings is availed to the appellant from the court. He refered to case of Ogbuonye versus Kawooya Civil Appeal no 40 of 2016 (2018 Ug Com 58)

In instant case the Assistant Registrar delivered a ruling on the 14th day of April 2023. The notice of motion was filed on 24th April 2023 on ECCMIS by Counsel for the Appellant. The appeal was thus filed out of time by few days.

Counsel for the appellant has not applied for time for extension. In the case of **China Railway No.3 Engineering Co. Ltd versus Muwema & Co. Advocates & Solicitors Misc. Appeal No.40 of 2021 arising from Misc. Applications No.544 & 138 of 2021,** It was held that while rules of procedure are made to be obeyed, where strict observance may lead to injustice on any of the parties, the court should be liberal in interpreting the rules in order to do substantial justice.

In instant case since appeal was filed out of time after few days, I will invoke S.98 of the Civil Procedure Act on courts inherent powers and validate the appeal.

Preliminary objection is therefore overruled.

Consideration of the appeal

Issue 1– Whether the learned Registrar erred in law and facts when he dismissed the appellant's application for temporary injunction.

Order 50 Rule 8 of the Civil Procedure Rules provides that any aggrieved party by the decision of the Registrar has a right to appeal against the same to the Judge.

Order 41 Rule 1 provides for cases in which temporary injunctions may be granted, it states that where in any suit it is proved by affidavit of service;

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 off his or her property with a view to defraud his or her creditors

The court may by order /grant a temporary injunction to restrain such act or make such 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 purpose of temporary injunction is primarily to maintain the status quo of the subject matter pending the final determination of the rights of the parties in order to prevent the ends of justice from being defeated. See case of **Behangana Damaro & Anor versus Attorney General Constitutional Application No.73 of 2010.**

Status quo simply denotes the existing state of affairs before a given particular point in time. See **Erisa Rainbow Musoke versus Ahamada Kezala 1987 HCS pg 81.**

The grounds which must be proved before an injunction is granted were stated in **Kiyimba Kaggwa versus Hajji Abdul Nasser Katende 1985 HCS pg.43** (also relied on by all counsel and the Assistant Registrar.)

a. Firstly that the applicant must show a prima facie case with probability of success

b. Secondly such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for in damages

c. Thirdly if the court is in doubt, it would decide an application on a balance of convenience.

See also **Shiv Construction versus Endesha Enterprises Ltd Civil Appeal No.31 of 1992**

The applicant must show a prima facie case with a probability of success. At this stage, court does not delve deep into the merits of the case to see if the applicant has a plausible case. Rather court determines that the claim is not frivolous or vexations and that there is a serious issue to be determined at the trial. See case of **Gapco (U) Ltd & Anor versus Kaweesa Badru & Anor Misc. Application No.259 of 2013.**

The appellants filed HCCS No.194 of 2023 against the respondents as Bibanja owners on the land registered in the names of the respondents. They claim they bought from former slum dwellers who were settled on the suit public land following the government bid to streamline settlement housing within the city and have built there and they are bonafide occupants and some are doing business.

The 1st, 2nd and 4th respondents averred that the applicants have no interest in their registered land and are not known to them. Further to this that they have not threatened to evict any of the applicants and they

are not the Bibanja owners. The Trial Assistant Registrar found there were triable issues and found it was not necessary to delve into matters of ownership

Counsel for the appellant submitted that the Registrar was wrong to decide application on basis of convenience disregarding the fact that he had already established there was a prima facie case with probability of success. In reply the respondents submitted that merely finding that an applicant has a prima facie case does not entitle the applicants to a grant of an order for temporary injunction.

In the case of **American Cynand Co. Ltd versus Ethico Ltd 1975 IWLK 316** cited by Counsel for the appellant Graham J.
found that the affidavit evidence showed there were serious questions to be tried though the available evidence was incomplete. The Judge then decided matter on a balance of convenience. It thus not true that where court finds a prima facie case it does not consider the other grounds like balance of convenience and the trial Registrar was not wrong to consider the application on all those grounds.

The phrase "if court is in doubt it would decide application on a balance of convenience" does not mean that where a prima facie has been established court does not look at the balance of convenience. In this case the Registrar had found a prima facie case was established but there was no irreparable injury. The court thus had to determine the 3rd test of balance of convenience to see where the scale tilts as it was still in doubt. See case of **Capital Shoppers & others versus URA Misc. Application No.265 of 2020.**

I also find that a primafacie case was established as there are triable issues.

Irreparable injury

Irreparable injury is defined by Black's Law Dictionary 9th Edition page 447 as "Damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement.

In the case of **Kiyimba Kaggwa** (supra) it was held that an injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for in damages.

This 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 damages.

After considering the above definition, the trial Registrar found that there was no proof of threat to evict the applicants. That the applicant only asserted that the respondents have unleashed their uniformed armed police force and UPDF who are currently forcing them to vacate the suit land. There is no enough proof on record to back this assertion. Further to this that the applicants have not proved that in case they are found to have an interest in the suit land government is incapable of compensating them in damages.

In his submissions counsel for the appellants submitted that in para 18 in affidavit of Ddamulira Ronald, he swore that the respondents had engaged armed officials to force them off their land which was adequate proof of the threat of eviction.

That they also proved they were lawful occupants and bonafide purchasers for value of the suit land and court's duty was to protect them. Further to this that the 1st, 2nd , 3rd and 4th defendants are the registered proprietors not government and they have not proved they are capable of compensating the appellants in damages. He referred to Article 26(1) & 2 of the Constitution of Uganda and stated that there is a criteria for government acquisition of land which the respondents have not, complied with. That the land is also not designated for Bukasa Inland Port.

In reply counsel for the 1st and 4th respondents submitted that the applicants did not prove that government is incapable of compensating them in event that they have interest and their plaint has prayers of general and exemplary damages. Further to this they have not adduced evidence to prove interest, developments apart from pictures of one or two houses.

While counsel for the 2nd, and counsel for 5th and 6th respondents submitted there is no evidence to show plots cleared by the applicants fall within the project areas for construction of Bukasa Inland Project. Also there is no evidence of imminent eviction by armed police officials and UPDF soldiers or that the 62 applicants are residents with structures on the said land. That all projected affected persons were fully identified and compensated thus applicants are imposters.

That one cannot invoke doctrine of irreparable damage over a matter like the instant one, where government has already commenced a multi-million dollar project of the construction and development of the Bukasa Inland port. Thus no irreparable damage that cannot be adequately compensated for in damages if they are found to be, genuine project affected persons.

In their annextures to the rejoinder, the appellants put various sales agreements and some photos of their houses. The photos do not contain

houses or developments of 62 people. I therefore agree with the trial Registrar that apart from appellant asserting that UPDF soldiers and policemen were evicting them, it has not been proved who exactly are being evicted. Since government claims it compensated project affected persons, there will be need to bring evidence in the main suit to prove if the appellants are genuine projected affected persons.
The 5th and 6th respondents proved there is a multibillion project at Bukasa inland port for government.

Under Article 26 of the Constitution of Uganda 1995, the government is mandated to acquire land compulsorily for public use and Article 26(3) the constitution provides for prompt, fair and adequate compensation.
If appellants are found genuine affected project persons. I find that government can atone for them in damages for their homes and other developments. There are many cases where courts have awarded damages or ordered government to pay persons for their land that has been compulsorily acquired. See cases of **Annet Zimbiha versus AG HCCS no 109 of 2011.Sheema Cooperative Ranching Society and 31 others versus AG HCCS no 103/2010.**
The trial registrar was thus right to find there was no irreparable damage that could not be atoned to in damages.

Balance of convenience
This is considered when court is in doubt. Having found that the appellants shall not suffer irreparable loss and that registrar found there was a prima facie case, I must consider the balance of convenience.

The Trial Registrar found that the 5th and 6th respondents will be more inconvenienced if the application is granted because there is an ongoing Government Project of constructing of the Bukasa Inland Port, a project which has already commenced. That mere assertion that the applicants are in possession and have developed the land without proof of the same

is unsatisfactory. He dismissed the application as the applicants had not met all the conditions for grant of temporary injunction.

Counsel for the appellant submitted that the Registrar did not consider the appellants were lawfully granted the land and some purchased the same legally and even built houses, homes and some were earning a living from there. That by refusing to grant an injunction they will be inconvenienced he referred to case of **Yefusa Guloba & Proscovia Namusobi versus R L Jain Misc. App. No.334 of 2013** where it held loss of family land cannot be compensated for by damages as it is of sentimental value.

That the appellants have not proved that Bukasa Inland Port project is taking place on the suit land as other individuals have titles over the same land. In reply the 1st and 4th respondents submitted that the Registrar rightly held that the 5th and 6th respondents will be more inconvenienced because of the ongoing government project.

Counsel for 5th and 6th respondents submitted that balance of convenience is in favour of the government which has a multi-million dollar project of the construction and development of the Bukasa Inland Port which is donor funded. That it will unfairly be stalled if an injunction is issued in favour of the applicants thereby crippling the developments of the Bukasa Inland Port and causing collateral collossal loss and damage to government.

Black Law Dictionary defines balance of convenience as 'the question to balance the relief given to the plaintiff against the injury that will be done to the defendant.'

in the case of **Kiyimba Kaggwa versus Hajji A N Katende (supra)** court held that the balance of convenience lies more on the one who will suffer

more if the respondent is not curtained in the activities complained off in the suit

In instant case the 5th and 6th respondents claim there is a multi-million project for Uganda of the Bukasa Inland Port. The appellants refute this saying land is registered in the names of the 1st, 2nd, 3rd and 4th respondents and not part of the government project land for Bukasa Inland Port.

In the case of **Tumukunde versus Attorney General and another Misc. App. No.489 of 2020** Justice Sekaana Musa held that; Courts of law should be slow to grant an injunction when a public project for the beneficiary interest of the public at large is sought to be delayed or prevented by an order, damage from such injunction would cause the public at large as well as to a government is a paramount fact to be considered. Between the conflicting interest, the interest of the public at large and the interest of a few individuals the interest of the public at large must prevail.

Also in **Capital Shoppers versus URA Misc. App. No;265 of 2020**court cautioned itself to granting an injunction against government projects that are meant for the interest of the public at large.

I find that though the land is registered in the names of the 1st,2nd 3rd and 4th respondents, the 5th and 6th respondents have proved it falls in the area where the government is undertaking a multi million project. The balance between private individuals against public interest in this case, lies in favouring public interest of Uganda population that will gain from the inland port.

I thereby find that balance of convenience lies in favour of the 5th and 6th respondents and the trial registrar was right to hold so.

In conclusion all the grounds of appeal fail. The trial registrar's orders are upheld. The appeal is dismissed with costs

DATED AT KAMPALA THIS ------30th----------DAY OF ----August----2023

KANYANGE SUSAN

AG JUDGE LAND DIVISION.