

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPEAL NO.03 OF 2023
(ARISING FROM MISCELLANEOUS APPLICATION NO.1164 OF 2022)
(ARISING FROM CIVIL SUIT NO.394 OF 2022)

SEWAYA MUHAMMAD----- APPELLANT/PLAINTIFF

VERSUS

1. KIKONYOGO INVESTMENTS LTD
2. HABA GROUP (U) LTD ----- RESPONDENTS/DEFENDANTS
3. DAMANICO PROPERTIES LTD
4. COMMISSIONER LAND REGISTRATION

RULING

BEFORE HON. LADY JUSTICE KANYANGE SUSAN

This appeal was brought under S.98 Civil Procedure Act. S.33 Judicature Act cap13, Order 50 Rules 6 and 8 Civil Procedure Rules.

It seeks for orders that;

1. The ruling and Orders issued by the Learned Assistant Registrar on 05th October 2022 in HCMA No.1164 of 2022 dismissing the same be reversed and or set aside.
2. HCMA No.1164 of 2022 be granted)
3. Costs of this application be provided for.

The appeal was supported by Affidavit of Sewaya Muhammed but briefly the grounds are;

- a. The learned Registrar erred in law and fact when she deliberately failed to follow the established tests required in granting of Interim Order thereby dismissing appellants' application and occasioning a miscarriage of justice.

- b. The learned Registrar erred when she despite having found that there was evidence of threat on usage of disputed land and houses under construction on suit land dismissed the appellants' application.
- c. The learned Registrar erred in law when she deliberately ignored the description of the appellants kibanja and or equitable interest on subject land originally Kyadondo LRV 135 folio 17 Block 270 that was unlawfully sub-divided to create among others FRV 429 folio 5 plot 103 Busiro Block 537 Wakiso, FRV 356 Folio 12 plot 1073 Lubowa Mpigi, folio 432 folio 23 plot 102, Busiro Block 537 Wakiso, FRV 380 folio 6 plot 697 at Lubowa Estate Mpigi, a fact admitted by respondents but instead delved into current registration.
- d. The learned Registrar erred in law and fact when she ignored the overwhelming evidence on record and admissions by the respondents over the disputed land under threat and based on issues of current registration though duly admitted by the 3rd respondent and ownership a reserve of the Judge.
- e. The learned Registrar erred when she deliberately ignored the 1st and 2nd respondents' admissions both in their replies to the application for an interim order and their respective submission on subject land claimed by the appellant and the threat thereon, thereby occasioning a miscarriage of justice.
- f. The learned Registrar erred when she ignored that appellants' interest stems from his unregistered kibanja occupation and forceful dispossession on part of the subject land that was originally comprised on LRV 135 Folio 17 from which the 5 acres at Lweza B and 154 acres at katiko- Birongo are and admitted by the respondent from which he was disposed in 2020, and not registration which interest continues to be under threat of further subdivision by the respondents.
- g. The learned Registrar erred by delving into procedural technicalities against subsistence thereby occasioning a miscarriage of justice.

The 1st and 2nd respondents filed affidavits in reply. They averred that the appellant did not show proof of possession of the 154 acres of

kibanja and also did not show current registration status of suit land. That he states he was evicted in 2020 from the 5 acres thus no imminent threat requiring grant of Interim Order. The 1st respondent also averred he took over 96 acres of land out of 291 acres, subdivided it and disposed it off to 3rd parties who have since developed. It while the 2nd respondent also averred he took over 195 acres got registered and is embarking on development of a multibillion housing estate with various persons and entities.

Further to this that it also has residential houses on its land where some workers reside and the applicant had never been in possession on any part of his land. There is thus no imminent threat to warrant grant of an interim order. They prayed ruling and orders of learned Registrar be upheld and the Appeal be dismissed with costs.

Representation

M/s Tumusiime, Iumba & Co. Advocates represented the appellant while **M/s Tumushimbise & Co. Advocates** and **Obed Mwebesa & Associated Advocates** represented the 3rd and 1st respondents respectively.

It is the duty of the appellate Court to subject the evidence presented to the trial court to a fresh and exhaustive scrutiny and reappraisal before coming to its own conclusion. See case of **Father Venensio Begumisa & 3 Others versus Eric Tiberaga SCCA No.17 of 2000 (2004) KALR 236.**

Resolution

Preliminary objection

The 1st respondent objected to the grounds of Appeal on grounds that they are argumentative and not precise. It prayed the grounds of appeal are struck out. Counsel relied on cases of **Kitgum District Local Government and Another versus Angella High Court Civil Appeal No.08 of 2015.**

M/s Tatu Naiga & Co. Emporium versus Vajee Brothers Ltd SCCA No.08 of 2000 and case of **Margaret Shagi & Another versus Komuhangi Aret & 3 Others HCMA No.126 of 2022.**

Order 43 Rule 1(2) of the Civil Procedure Rules provides that the memorandum of appeal shall set forth, concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or on narrative.

The Black's Law Dictionary 8th Editions on page 1191 defines an argumentative pleading as a pleading that states allegations rather than facts and thus forces the court to infer or hunt on supporting facts. It has been held that grounds of appeal ought to be (a) as clear as possible (b) as brief as possible (c) as persuasive as possible without descending into narrative and argument. See case of **Kitgum District Local Government and Another versus Angella Odoch, Jimmy Joel HCCA No.08 of 2015**.

I have perused the impugned grounds of Appeal and found they are argumentative and not concise. Even Counsel who framed them is forced to submit on them jointly like grounds 3, 4, 5 and 6.

However, it would be unfair to strike out the appellants' appeal because of mistake of counsel who did not draft the grounds well. In the case of **John Ken Lukyamuzi versus Attorney General and Electoral Commission Supreme Court Constitutional Appeal No.21 of 2017**, Court did not strike out the grounds of appeal for lack of conciseness as they were understood by counsel on the opposite side.

Similarly I won't strike them out but warn counsel not to repeat it next time. I will proceed to determine the appeal on its merits.

Grounds 1 and 2

1. The learned Registrar erred in law and fact when she deliberately failed and ignored to follow the well-established principles required in the granting of interim orders thereby dismissing the appellant's application for interim order occasioning a miscarriage of justice on the appellant.
2. The learned Registrar erred in law and fact when she despite having found that there was evidence of threat on usage of disputed land



and houses under construction on the subject land, dismissed the appellant's application for an interim order prejudicing the appellant.

The principles followed by courts for grant of interim order were stated in the case of **Hwang Sung Industries Limited versus Tajden Hussein and Others SC Civil Application No.19 of 2008** where Okello JSC as he then was said for an application for interim order, it suffices to show that a substantive application is pending and that there is a serious threat.

In case of **Yakobo Senkungu and other versus Cerecino Mukasa, SC Civil Application No.5 of 2013** it was held that granting of interim orders is meant to help parties to preserve the status quo.

The grant of an injunctive order is discretionary. The exercise of judicial discretion shall not be interfered with by the appellate court unless it is shown the trial court exercised its discretion wrongly and arbitrary. See **Misc. Appeal No.37 of 2021 Frank Malungumu Gashumba versus Deborah Amany Civil Division.**

In his submissions counsel for the appellant submitted that the applicant filed an application for a temporary injunction. Further to this that the appellant demonstrated threat on usage of disputed land and houses under construction. That the 1st respondent subdivided the suit land into several plots and disposed them off to several persons which is a threat and construction ensued.

That despite the Registrar finding imminent threat of construction of houses after the unlawfully subdivision she dismissed the applicant's application.

The 3rd respondent submitted that it is a registered proprietor in occupation and appellant did not prove his registerable interest and neither is he in possession.

He has thus not proved any need for issuance of interim order and the Registrar was correct.

In the 1st respondent's submissions it is stated that it acquired 96 acres of registered land and sold it off after subdividing it in different plots. That the several persons have transacted on land and developed it. Grant of an interim order would have resulted in inconvenience to third parties who have taken possession.

The Assistant Registrar in her ruling found that the Applicant/Appellant had filed an application for temporary injunction. She also found he furnished pictorial evidence showing the usage of land to wit houses under construction on main road and undeveloped plots of land.

That he failed to show current registration status of the suit land and the nexus between the respondents and the ownership of the suit land. That possession following the death of the owner of the kibanja is not shown. He also took possession of the five acres and he was evicted in 2020. She thus found the applicant had not proved there was imminent danger.

I find that the appellant was claiming the land 154 acres at kitiko and 5 acres at Lweza B as a kibanja equitable /owner. His pleadings did not show he was in possession of the said bibanja as he had also been evicted from Lweza B in 2020. The 1st respondent who acquired 96 acres has since sold them off to third parties who have developed the land. Indeed applicant/appellant showed pictures of construction going on. The 3rd respondent is also in possession of part of the land and it's not in dispute Its undertaking construction works.

Therefore, the appellant is not in possession of the land and it has already been subdivided to different people who are not even parties to this appeal. There is thus no threat. Further to this by the 3rd respondent constructing on the land it shows he is in possession, and it does not extinguish the appellant's claims of his equitable interest if any.

There was thus no eminent threat on the disputed plot and the registrar followed the established principles.

Grounds 1 and 2 fail.

Grounds 3, 4, 5

3. The learned Registrar erred in law and fact when she deliberately ignored the description of the appellant's kibanja and or equitable interest on subject land originally comprised kyadondo LRV 135 folio 17 block 270 that was unlawfully subdivided to create among others FRV 429 folio 5 plot 103 Busiro Block 537 Wakiso. FRV 380 folio 6 plot 697 at Lubowa estate Mpigi a fact duly admitted by the respondents but instead delved into current registration thereby occasioning a miscarriage of justice on the appellant.
4. The learned Registrar erred in law and fact when she ignored the overwhelming evidence on record and admissions by the respondents over the disputed land under threat and based on issues of current registration though duly admitted by the 3rd respondent and ownership which is a reserve of trial Judge.
5. The learned Registrar erred in law and fact when she deliberately ignored the 1st and 2nd respondents admission both in their replies to the application for an interim order and their respective submissions on the subject land claimed by the appellant and threat thereon thereby occasioning a miscarriage of justice.

Counsel for the appellant submitted that the 3rd respondent admitted being in possession of the registerable interest in the suit land and the 2nd and 3rd respondents admitted alienating the land and the Registrar ignored the imminent threat by questioning the current registration of the disputed land.

In reply counsel for the 3rd respondent submitted that the Registrar found that the registration status was not ascertained by the appellant and it was risky for court to issue orders against the third parties as appellant sought interim order on a chunk of land where he does not have and whose ownership is not proved.

The Registrar found that the applicant failed to show current registration status of the suit land and nexus between the respondents and the ownership of the suit land.

In the application No.1164 of 2022, applicant was seeking a) an interim order on kibanja measuring 154 acres land at kitiko Birongo and about 5 acres at Lweza B that was originally comprised in kyadondo LRV 135 folio 17, Block 270 that was unlawfully subdivided to create among others FRV 429 folio 5 plot 103 Busiro Block 537 Wakiso FRV 356 folio 12 plot 1073 Lubowa Mpigi FRV 432 folio 23 plot 102 Busiro Block 537 Wakiso FRV 380 folio 6 plot 697 at Lubowa estate Mpigi that were further subdivided in whatsoever manner pending the determination of the main application until the final disposal of the main application for temporary injunction.

b)The Commissioner Land Registration be directed to register the temporary injunction order on all plots that issued as a result of subdivision of land that comprised originally on kyadondo LRV 15 folio 17 where the applicant's equitable interest kibanja comprise.

In that application its clear the claimed kibanja by the appellant of 154 acres does not cover the whole of the registerable land. There was thus need for the applicant to show on which exact registerable title encompasses his kibanja so that the registrar makes clear orders.

The registrar was thus not wrong to state that the applicant failed to show current registration status of the suit land and nexus between the respondent and the ownership of the suit land.

Grounds 3,4 and 5 fail.

Grounds 6 and 7

- 6. The Registrar erred in law and fact when she ignored the fact that the appellant's interest stems from his unregistered /equitable/kibanja occupation and forceful, unlawful dispossession of part of the suit land that was originally comprised on LRV 135 folio 17 from which the 5 acres at Lweza B and 154 acres at kitiko-Birongo are admitted by the respondents from which he was disposed in 2020 and not registration**

which interest continues to be under threat of further subdivision by the respondents.

7. The learned Registrar erred in law and fact when delved into typographical procedural technicalities against substance thereby occasioning miscarriage of justice on the appellant. Trial Magistrate erred in law and fact in ruling that the appellant has not demonstrated sufficient cause to warrant reinstatement.

Counsel for the applicant submitted that the substituting status quo is that the respondents are in the process of carrying out further subdivision and developments on the suit land and erecting up structures. That appellant clearly demonstrated there was imminent threat of construction of houses which the 3rd respondent admitted but register failed to follow the established principles in granting interim orders.

While in reply counsel for the 3rd respondent submitted that is the 3rd respondent in possession and registered proprietor. The appellant admits claim of 154 acres which he has never possessed and was also evicted on the 5 acres in 2020. That there is thus no threat or danger imposed on land.

While Counsel for the 1st respondent submitted that he bought 96 acres disposed them off after subdivision and several persons have transacted on land or further developed it. That grant of interim order would inconvenience the third parties yet the appellant is not in possession.

Black's Law Dictionary define **status quo** as a latin phrase that means without change and in the same situation as is was, or present existing state of affairs.

Legal position on Status quo is not about who owns the suit property but the actual state of affairs on the suit premises. Court's duty is only to preserve the existing situation pending the disposal of the substantive suit. In exercising this duty, court does not determine the legal rights to property but merely preserves it in its actual condition until legal title on ownership can be established or declared. See

case of **Ndema Emanzi Rukandema versus Mubiru Henry MA. No.225 of 2013**

The current status quo as stated by the 1st respondent is that he subdivided land and sold off to third parties who have since transacted and or developing the same. The 3rd respondent is also in possession constructing thereon. This status quo was confirmed by appellant in his affidavit and in submission. It's clear the appellant is not in possession of the 154 acres and the 5 acres he claims. The status quo which this court is enjoined to preserve is in favour of 3rd respondent and other 3rd parties in possession but not the appellant. The registrar was thus correct to find that the applicant did not prove eminent threat to grant the order and the applicant did not show possession following the death of the kibanja owner.

Grounds 6 and 7 fail.

In conclusion the appellant has failed to prove all the grounds.

This Appeal hereby fails.

The orders of the Assistant Registrar are upheld.

Costs are awarded to the respondents.

DATED AT KAMPALA THIS 21st DAY OF August 2023


KANYANGE SUSAN

AG JUDGE LAND DIVISION.