

The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Application No. 0142 of 2022

(Arising out of Civil Suit No. 23 of 2021)

Kisakye Suzan :::::::::::::::::::::::::::::::::::::: Applicant

Versus

1. Ameu Zadok Olokos

2. Ogwang Mary Lily ::::::::::::::::::::::::::::::::::::::: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Background:

This is an application by chamber summons brought under Order 41 rules 1 & 2 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that;

1. The respondents be restrained from carrying out any activity, constructing, taking over the applicant's gardens on part of the suit property comprised in Free Hold Register SOR10 Folio 16 known as plot 617 Block 8 located at Odukai Cell Mpingire Sub-county, Kidetok Town Council, Serere District, from disposing it off and interfering with the applicant's occupation and utilization of the same till the disposal of the main suit.
2. The status quo of the suit property described above be maintained till the disposal of the main suit.
3. Costs of the application be provided for.

5 The grounds of the application as set out in the application and supporting affidavit sworn by the applicant are briefly that the applicant filed Civil Suit No. 23 of 2021 which is pending before this Honourable court with a high likelihood of success.

10 That the respondents have poured construction materials on the suit property up to the applicant's doorstep to the extent that she has no way of accessing her home.

Tat the respondents are also threatening to demolish the respondent's house and also dispose of the property which is part of the suit property. That the respondents have taken over the applicant's gardens and thus
15 denying her and her children a source of livelihood.

That if the respondents are left to demolish the applicant's house and gardens she will suffer irreparable damage.

The respondents in their affidavit in reply stated that they intended to raise a preliminary objection on the competence of this application and
20 invite court to strike it out with costs.

That the applicant did not file Civil Suit No. 23 of 2021 rather it was filed the respondents themselves.

25 That the respondents deny threatening to demolish the applicant's house and further contend that after purchase of the suit land in 1994 they developed it by cultivation and construction of a house and stopping them from utilizing the suit land would condemn them to death by starvation, the same being their source of livelihood.

That they are the registered proprietors of the suit land having legally acquired it from its original owners by purchase while the applicant is a
30 trespasser without any claim.

5 That they have never informed the applicant that they wish to dispose of the suit property and they are merely utilising the suit land for cultivating seasonal crops for daily livelihood and grant of this applicant will condemn them to irreparable injury.

That the acts of the applicant have caused psychological torture and
10 mental anguish to the respondents and that the grant of this application will worsen their suffering as the applicant has gone ahead to weed their maize after the interim order was issued on the 5th of October 2022.

That the balance of convenience is in their favour as they are the registered proprietors of the suit land and cultivating seasonal crops thereon.

15 2. Submissions:

M/s Bwenene Kambedha & Co. Advocates for the applicant submitted on the grounds for grant of a temporary injunction. He stated that the conditions for grant of a temporary injunction as laid out in ***E.L.T Kiyimba Kaggwa v Hajji Abdu Nasser [1985] UGHCD*** include
20 proof of a *prima facie* case, that the applicant will suffer irreparable damage and if court is in doubt it decide the matter on a balance of probabilities.

With regard to a *prima facie* case counsel submitted that this means that there is a triable issue and in the instant case both parties are claiming
25 ownership of the suit property which is a triable issue and thus the existence of a *prima facie* case is proved.

With regard to irreparable injury counsel submitted that the acts of the respondents in pouring huge stones in front of the applicant's house as well as threats to demolish the applicant's house is a great inconvenience
30 to the applicant and her children and if the respondents are left to continue with these activities the applicant will suffer irreparable loss

5 which cannot be atoned by damages as she will not have shelter for her family. That the respondents have forcefully taken over the applicant's gardens which she planted for food and her livelihood and if the respondents are left she will have no food to survive on.

Counsel further submitted that the main purpose of granting a temporary
10 injunction is to maintain the status quo which was defined in **Nantale vs Attorney General and 5 Ors MA 630 of 2013** to mean the state of affairs existing during the period immediately before the application and not after.

That the *status quo* preceding this application was that the applicant had
15 her home on the suit land as well as gardens and there was no construction by the respondents.

With regard to the balance of convenience counsel submitted that it is in the favour of the applicant who is occupation and utilization of the suit land. Counsel finally prayed that this honourable court be pleased to grant
20 the temporary injunction.

M/s Ewatu & Co. Advocates for the respondents in reply submitted that injunctive relief is a discretionary power of court, upon deciding that the plaintiff's rights are being violated, balances the irreparability of injuries and inadequacy of damages if an injunction was not granted against the
25 damages granting an injunction will cause. See: **Jover Byarugaba vs Ali Muhoozi & Another HCMA No. 215 of 2014.**

With regard to the conditions for grant of a temporary injunction counsel submitted that the applicant has no prima facie case with a likelihood of success against the respondents. That this has been demonstrated by the
30 Respondents who stated in the affidavit in reply that the applicant did not file Civil Suit No. 23 of 2021 and that the applicant in her written

5 statement of defence and counterclaim has not properly demonstrated a *prima facie* case.

With regard to irreparable injury counsel submitted that the applicant is misleading court that the respondents have threatened to demolish her house and dispose of the suit property.

10 That the respondents on the other hand have utilized the suit land over time for cultivation and there is no threat to dispose of the same.

That the respondents were planting on the suit land seasonal crops like cassava and maize from which they derive their livelihood and this right will be prejudiced if this application is granted.

15 Accordingly, Counsel contended that the applicant has not shown this court how she will suffer irreparable injury.

On the balance of convenience counsel submitted that it is in favour of the respondents who are the registered proprietors of the suit land assured under the Torrens system. That the respondents are cultivating the land
20 and will be greatly inconvenienced if the injunction is granted. Counsel prayed that this application be dismissed with costs.

3. Determination:

The law relating to the grant or not of injunctive powers of courts is found in Section 38 (1) of the Judicature Act which empowers the High Court to
25 grant an injunction to restrain any person from doing any act as may be specified by the High Court. Further, Section 64 (c) of the Civil Procedure Act permits the High Court to grant a temporary injunction in order to prevent the ends of justice from being defeated, the court may, if it is so prescribed.

30 Order 41 rule 2 (1) & (2) of the Civil Procedure Rules also provides that;

5 **(1) In any suit for restraining the Defendant from**
committing a breach of contract or other injury of any
kind, whether compensation is claimed in the suit or not,
the Plaintiff may, at any time after the commencement of
the suit, and either before or after judgment, apply to the
10 **Court for a Temporary Injunction to restrain the**
defendant from committing the breach of contract or
injury complained of, or any injury of a like kind arising
out of the same contract or relating to the same property
or right.

15 **(2) The Court may by order grant such Injunction on**
such terms as to an inquiry as to damages, the duration of
the injunction, keeping an account, giving security or
otherwise, as the Court thinks fit.

Section 98 of the Civil Procedure Act provides as follows;

20 **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.

The law on granting of temporary injunctions in Uganda was well settled
25 in the classic case of *E.L.T Kiyimba Kaggwa V Haji Abdu Nasser*
Katende [1985] HCB 43 where Odoki J (as he then was) laid down the
rules for granting a temporary injunction, thus: -

1. The granting of a temporary injunction is an exercise of
judicial discretion and the purpose of granting it is to preserve
30 *the matters in the status quo until the question to be*
investigated in the main suit is finally disposed of.

5 **2. The conditions for the grant of the interlocutory injunction are;**

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

10 **ii. Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.**

iii. Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

15 Therefore, firstly it is necessary to identify the existence of the *status quo* in a matter before court for “*Status quo*” as defined in **Black’s Law Dictionary at page 4418** means the existing state of things existing before the particular point in time.

20 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** as cited **Emorani v Nakendo & 2 Ors (Misc. Application No. 478 of 2014) [2014] UGHCLD 131** made the position clear when it stated that;

25 **“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.”**

- 5 In the instant case both parties claim to have been cultivating the suit land prior to this application and additionally the applicant is stated to have a home on the suit property.

The applicant further claims that the respondents have taken over her gardens and she attached a picture of a weeded garden to this application.

- 10 The respondents on the other claim it is the applicant who is weeding their gardens.

They also attach photographs of the gardens showing them cultivating various crops.

It would appear that both parties are using the suit land at the moment.

- 15 In law, the conditions for grant of a temporary injunction include the following:

a. Prima facie case with a probability of success:

- A prima facie case with a probability of success was defined in the case of **Kigongo Edward Nakabale Vs Kakeeto and Anor MA 144 of 2017 [2017] UGHCCD 146**, as no more than that the court must be satisfied that the claim is not frivolous or vexatious. In other words, that there is a serious question to be tried.

- In **Robert Kavuma Vs M/S Hotel International SCCA NO. 8 of 1990**, as cited in **Kigongo Edward** (supra) Wambuzi CJ, as he then was, was emphatic and stated that an applicant is required at this stage in trial to show that he or she had a *prima facie* case with a probability of success but not success itself.

In this instance, the respondents filed Civil Suit No. 23 of 2021 for a declaration that they are the rightful owners of the suit property and the

5 applicant is a trespasser. They base their claim of ownership on a purchase agreement of the suit land.

The applicant on the other hand filed a written statement of defense and counterclaimed that the suit land belongs to her and the Bawanga clan and that the respondents had never legally owned the same and seeks orders
10 cancelling the respondents certificate of title as it was fraudulently acquired.

From these averments and submissions of parties in this application, I would find and conclude that there are serious questions to be tried and accordingly the first condition has been met.

15 b. Irreparable injury:

In ***Giella v Cassman Brown & Co Ltd [1973] 1 EA 358 (CAK)*** it was stated by Spry V.P that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages.

20 An irreparable injury was defined to be injury which cannot be compensated by damages.

The applicant herein claims that the respondents are threatening to demolish her house and dispose of the suit land, however, she led no evidence to substantiate these claims. I would find no substance in this
25 argument and agree with the averments and submissions of the respondents that they have no intention of doing so.

The applicant similarly states that she has her home on the suit land where she stays with her children as well as gardens from which she derives her livelihood and it will cause her irreparable injury if a temporary injunction
30 is not granted.

5 The respondents on the other hand denied this fact and stated that they are using the gardens for cultivation and it is the applicant who weeded their maize.

I find that both parties are deriving a livelihood from this suit property and the applicant has a home in which she stays with her children.

10 Accordingly, the applicant would be deemed to have proved irreparable injury in regard to the risk of her losing her home should this order not be granted given the fact that the respondents have not denied pouring huge stones at her doorstep which the photograph attached to her application proves. The denial of a temporary injunction to the applicant seem to add
15 insult to injury for it is likely that the respondents might take this further the act of pouring huge stones at the doorsteps of the applicant which would likely cause irreparable injury. This should be stopped by the grant of the orders sought herein. Accordingly, I would find that the applicant has proved irreparable injury.

20 c. Balance of Convenience:

In *Jover Byarugaba Vs Ali Muhoozi and Anor (Misc. Application 215 of 2014) [2014] UGHCCD 173*, Hon. Lady Justice Elizabeth Ibanda Nahamya (MHSRIP) stated that,

25 *"It is trite law that when Court is in doubt on any of the above principles, it will decide the application on the balance of convenience. The term balance of convenience literally means the if the risk of doing injustice is going to make the applicant suffer then probably the balance of convenience is favourable to him /her and court would
30 most likely be inclined to grant to him or her the application for a temporary injunction."*

5 Relating the above to the instant matter it is true that, the applicant is relying on the averment that she has her home and her livelihood from the suit land.

The respondents on the other hand are relying on being the registered proprietor of the suit land as well as seeking livelihood from the land to
10 tilt the balance of convenience in their favour.

From the averments of parties supported by the ocular observations of the pictures attached in support to or against this application, I would find and conclude that since the applicant has her home wherein she resides with her children on the suit land, the balance of convenience would
15 favour her.

However, both parties are claiming to be use the land for cultivation and so it would only be fair that the *status quo* be maintained as such so as not to deprive any party of their livelihood until final determination of the suit.

20 I accordingly would allow this application for a temporary injunction with the following orders;

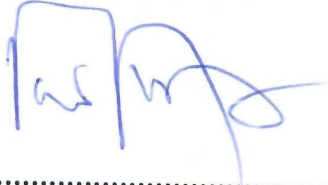
- i. This application for a temporary injunction is allowed.
- ii. The applicant and her children shall continue to live in the house which is found on the suit land till the determination and
25 issuance of final orders in Civil Suit No. 23 of 2021.
- iii. Both parties are ordered to continue cultivating the parts of the suit land they did before the filing of Civil Suit No. 23 of 2021.
- iv. The respondents are hereby restrained from carrying out any construction works on the suit land and further ordered to
30 remove the building materials poured on the suit land at own cost within seven (7) days hereof with any failure to do so would amount to contempt of this court orders.

5 v. Both parties are further hereby restrained from carrying out or
dealing with the suit land in any way until further orders of this
court.

vi. Each party to this application to bear own costs.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

1st March 2023

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