

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLENEAOUS APPEAL NO.3389 OF 2023
(ARISING MISC.APPLICATION NO.2629 OF 2023)

1. MUSISI STEVEN
2. KADDU VINCENT
3. IMELDA NALWANGA **APPELLANTS**
4. CAROLINE NAMIREMBE
5. NAZZE ANNET
6. TEOPISTA KYOLABA

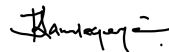
VERSUS

1. JOHN BOSCO MAYANJA
2. DAVID LUBANGA **RESPONDENTS**

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

1. MUSISI STEVEN, KADDU VINCENT, IMELDA NALWANGA, CAROLINE NAMIREMBE, NAZZE ANNET AND TEOPISTA KYOLABA (*hereinafter referred to as the Appellants*) brought the present appeal against **JOHN BOSCO MAYANJA AND DAVID LUBANGA** (*hereinafter referred to as the Respondents*) by way of notice of motion under Section 79(1)b of the Civil Procedure Act

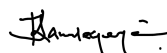


Cap.71 and Order 50 Rule 8 the Civil Procedure Rules S.I.71-1 for orders that;

- i)** The Orders dismissing HCMA No.2629 of 2023 dated 27th October, 2023 be set aside.
- ii)** Miscellaneous application No.2629 of 2023 be heard on its merit.
- iii)** Costs of the application be provided for.

Background;

- 2.** On the 15th day of August 2023 the Appellants instituted H.C.C.S No.911 of 2023 against the respondents for orders for wrongful and unlawful eviction from Block 243 Plot 880 at Kitintale.
- 3.** Following the institution of the H.C.C.S No.911 of 2023, the Appellants applied for a temporary injunction vide H.C.M.A No. 2629 of 2023 to restrain the Respondents and their agents from encroaching, disturbing, constructing alienating or mortgaging or further mortgaging, disposing of and dealing with the suit Land comprised on Block 243 Plot 880 at Kitintale.
- 4.** The Respondents demolished the Appellants properties on the suit land. The 2nd Respondent opposed the temporary injunction



application by way of a preliminary objection challenging the jurisdiction to entertain the suit. On the 27th day of October, 2023, Court made its ruling and dismissed the application for a temporary injunction. Appellants were dissatisfied with the decision of the learned Assistant Registrar, hence this appeal.

Applicant's evidence.

5. The application is supported by an affidavit deposed by **Mr. Musisi Steven** the 1st appellant which briefly states as follows;

- i) On the 15th August 2023 the Appellants instituted H.C.C.S No.91 I of 2023 against the respondents for orders of wrongful and unlawful eviction from Block 243 Plot 880 at Kitintale.
- ii) The Appellants applied for a temporary injunction vide H.C.M.A No. 2629 of 2023 to restrain the Respondents and their agents from encroaching, disturbing, constructing alienating or mortgaging or further mortgaging, disposing off and dealing with the suit Land comprised on Block 243 Plot 880 at Kitintale.
- iii) The 2nd Respondent opposed the application by way of a preliminary objection challenging the jurisdiction to


entertain the H.C.C.S No. 91 I of 2023 which the application for a temporary injunction arises.

- iv) On the 27th day of October, 2023, Court made its ruling and dismissed the application for a temporary injunction.
- v) The appellants being dissatisfied with the decision of the learned Registrar brought this appeal.

Respondent's evidence;

6. The application is responded to by an affidavit in reply deposed by **Mr. David Lubanga** the 2nd respondent which briefly states as follows;

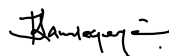
- i) That the 2nd respondent instituted civil suit No.367 of 2019 against the 1st respondent which suit was fully determined via a consent Judgement executed between the parties.
- ii) That later on the appellants instituted Misc. Application No.742 of 2023 to review and set aside the consent Judgement in the said suit.
- iii) That the application for review and setting aside the consent Judgement is still pending determination before Court.



- iv) That the appellants subsequently instituted civil suit No.911 of 2023 under the same facts and seeking the same remedies as in Misc. Application No. 742 of 2023.
- v) That the Learned Assistant Registrar dismissed Misc. Application No. 2629 of 2023 for temporary injunction on grounds that the suit under which the application arises violated the lis pendens rule.
- vi) That the facts in civil suit No.0911 of 2023 where Misc. Application No.2629 of 2023 arises are similar to those in Misc. Application No.742 of 2023 and the later is still pending determination by Court.
- vii) That it is just and equitable that this appeal is dismissed with costs.

Representation;

7. The appellants were represented by Mr. Mugisha Hashim of M/S Tumusiime,Irumba & co. advocates where as the 2nd respondent was represented by Mr. Kavuma Kabenge of Kavuma ,kabenge & co. advocates. There was no representation from the other respondents, the 1st appellant and the 2nd respondent filed their



affidavits and the 2nd respondent filed his submissions which I have considered in the determination of this application.

Grounds for determination;

8. The appellants are aggrieved by the decision of the Assistant Registrar hence this appeal on the following grounds;

- i) The Assistant Registrar had no jurisdiction to entertain the preliminary objection.***
- ii) The Assistant Registrar ignored and neglected the provisions of order 41 rule 1 of the Civil Procedure Rules.***
- iii) The learned Assistant Registrar misconstrued and misapplied the conditions of the provisions of order 50 rule 7 of the Civil Procedure Rules.***

Resolution and determination of the grounds;

- i) The Assistant Registrar had no jurisdiction to entertain the preliminary objection.***

9. The powers of Registrars are clearly enumerated under order 50 of the Civil Procedure Rules and specifically rule 3 which states that

all formal steps preliminary to the trial and all interlocutory applications may be made and taken before the Registrar, rule 8 of order 50 is to the effect that the person aggrieved by the decision of the Registrar may appeal to the High Court.

10. The Registrar has powers to handle matters governed by specific rules and orders of the Civil Procedure Rules and the Registrar while determining the preliminary and interlocutory matters shall be deemed to be a civil Court. **(See; order 50 rule 6 AG Vs James Mark Kamoga, CA No.8 of 2004)**

11. In the instant appeal, the 1st appellant under his affidavit in support states that the Registrar had no powers to determine the preliminary objection raised by the 2nd respondent in the application of a temporary injunction since the objection stretched to the merits of the suit.

12. The 2nd respondent in his affidavit and submissions clearly states that the preliminary objection raised in Misc. Application No.2629 of 2023 for a temporary injunction which is an interlocutory application was within the ambits of order 50 of the Civil Procedure Rules that provide for the powers of the Registrar.



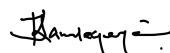
13. The Learned Assistant Registrar determined the preliminary objection raised by the 2nd respondent in Misc. Application No.2629 of 2023 for a temporary injunction which applications fall within interlocutory matters that are under the docket and powers of the Registrar as provided for under the Civil Procedure Rules.

14. I am of the view that the preliminary objection disposed of the temporary injunction application not Civil Suit No.911 of 2023, further a preliminary objection can be raised at any stage of the suit.

15. The reading of the provisions of order 50 rules 3 and 6 of the Civil Procedure Rules take me to the finding that the Learned Assistant Registrar had the power to determine the preliminary objection raised in the application for a temporary injunction, thus this aground is answered in the negative hence ground 1 fails.

ii) The Learned Assistant Registrar ignored and neglected the provisions of order 41 rule 1 of the Civil Procedure Rules.

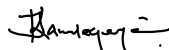
16. The 1st appellant in his affidavit in support under paragraph 6 states that the Assistant Registrar did not consider the provisions



of order 41 rule 1 of the Civil Procedure Rules while determining the temporary injunction application.

17. The provisions of order 41 rule 1 of the Civil Procedure Rules state that; where in any suit it is proved by affidavit or otherwise that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any part to the suit or wrongfully sold in execution or that the defendant threatens or intends to remove or dispose of 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 orders for purposes of staying and preventing, wasting, damaging, alienation, sale or removal of the property as the Court thinks fit until the disposal of the suit.**(See; Kiyimba Kagwa vs Katende, CS No.2109 of 1984)**

18. The Learned Assistant Registrar first determined the preliminary objection raised by the 2nd respondent in the application for temporary injunction before dwelling into the merits of the said application. This is something that is within her discretion as a civil Court and the fact that she was handling the interlocutory application for temporary injunction.

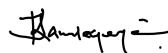


19. Court may make a ruling on a preliminary objection at any stage, upholding or rejecting the same. It is a matter of discretion and no hard and fast rules should be laid to fetter the Court's discretion. The exercise of such discretion depends on the facts and circumstances of each case. **(See Crane bank Limited v Sudhir Ruparelia & Meera Investments Limited Civil Appeal No. 252 of 2019)**

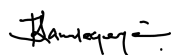
20. Therefore, I find the terms neglecting and ignoring as alleged by the 1st appellant misplaced since there was no law ignored nor neglected by the Learned Assistant Registrar , hence ground 2 is answered in the negative thus the same fails.

iii) The Learned Assistant Registrar misconstrued and misapplied the conditions of the provisions of order 50 rule 7 of the Civil Procedure Rules.

21. Order 50 rule 7 of the Civil Procedure Rules provides that if any matter appears to the Registrar to be proper for the decision of the High Court the Registrar may refer the matter to the High Court and a Judge of the High Court may either dispose off the mater or refer it back to the Registrar with such directions as he or she may think fit.



- 22.** The word “reference” as used in the mentioned provision means that the Registrar may when he or she deems it proper that a matter he or she is seized with should be handled by a Judge rather than the Registrar then he or she shall refer it to the Judge to handle the same and the Judge may handle it or refer it back to the Registrar with such directions as the Judge deems fit.
- 23.** This makes perfect sense as the Registrar through her enhanced powers is acting on behalf of the Judge to whom the file would have been allocated, in other words the Registrar has to act judiciously (since it is not automatic) when deciding whether or not it is proper to hear the matter under the enhanced powers, this allows harmony and good order within the judiciary.
- 24.** If the Registrar decides to hear the matter as it was in the instant case and one of the parties is aggrieved by the Registrar’s decision he or she may appeal to the Judge as stated under order 50 rule 8 of the Civil Procedure Rules. ***(See; Mohammed Kalisa vs Gladys Nyangire and ors, civil reference No.166 of 2013)***
- 25.** It is to my humble finding that the Learned Assistant Registrar acted judiciously in determining Misc. Application No.2629 of



2023 therefore ground 3 is answered in the negative as well thus the same fails.

26. In the result, it is to the findings of this Court that the appeal against the decision of the Learned Assistant Registrar holds no merit and the same is dismissed with costs to the 2nd respondent.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

29th/01/2024

