

IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: MANYINDO, D.C.J., ODOKI J.S.C., & PLATT, J.S.C.)

CIVIL APPEAL NO. 1/1994

BETWEEN

RESTY NANTONGO::: APPELLANT

VERSUS

DAVID KAYONDO::: RESPONDENT

REASONS FOR ORDERS:

At the hearing of this appeal, the conclusion reached was that the appeal should be allowed, and the interim injunction should be discharged, with costs both in the Supreme Court and High Court. The Court announced that it would give its reasons later and these are the reasons for the orders given.

The plaintiff Kayondo had sued the Defendant Resty Nantongo, hoping to secure the title to land, known as Kibuga Block 7 plot No. 67 at Ndeeba. Both the plaintiff Kayondo and the Defendant Resty had negotiated for the purchase of this land. Kayondo had entered into an agreement to buy the land and the owner Segujja had executed a transfer, which Kayondo presented for registration on 26th August, 1993. But registration was not possible because by his time the Defendant Resty had lodged a caveat on the title to this land, because she had entered into an agreement on 30th July, 1993 to buy the land from the owner Segujja. A transfer was executed but not registered. So the situation was that both Kayondo and Resty were hoping to buy the land, and neither had registered title.

However, by what appears to have been a very astute move, Resty obtained a lease of the land registered on 10th September, 1993. Hence, whoever finally obtained the reversion in the year 2006 was immaterial to the present dispute, because Resty had a registered interest in the land. The lease gave Resty the right to enter the land and make such building developments as the lease allowed. Moreover another Judge of the High Court extended the caveat.

In these circumstances, it is surprising that the learned Judge granted the Plaintiff Kayondo the injunctions he had sought; namely, that Resty should be restrained from encroaching upon

the said premises (presumably) that denied her right to enter upon the land); and secondly, Resty was, not permitted to carry out any developments upon the land. Resty was granted permission to build upon the land by the Kampala City' Coucj1 on 1st November, 1993.

The salient feature of this matter is that Resty has a registered lease and permission to build. That ensures that Resty must be allowed to continue to occupy the land and develop it. It is her risk if after the lease has come to an end, she has not acquired full title to the property. But she cannot be denied the right to her lease, unless the lease is set aside for some reason. It is a registered interest, indeed, the only registered interest held by these parties.

In his ruling, the learned Judge discussed the dispute concerning the purchase of the land. But he made no mention of the lease. That is the burden of this appeal. Counsel for the plaintiff has not entered a reply challenging the validity of the lease. In his reply to the Defendant's argument opposing the injunction application, the plaintiff's Counsel noted that the lease had been registered on the September, 1993. But for some reason which was not explained, it appears that Counsel argued that the submission of the Plaintiff's executed transfer must have priority over the Defendant's claims. As no objection has been taken to the lease, it must be acknowledged and given its proper weight. The operation of the lease side-steps the dispute as to which of these parties purchased the land. The present position is that as stated in Halsbury's laws of England 3rd Ed. 21 p 3.66:-

“When the application is to restrain the exercise of an alleged right, the Plaintiff should show that there are substantial grounds for doubting the existence of the right. It requires a very strong case indeed, to induce the Court to interfere with the admitted right upon an alleged equity.”

The Plaintiff was unable to show such a strong case as is referred to in the above quotation.

It is not necessary therefore, to seek the balance of convenience in this case. It is simply a case where the Plaintiff has not attempted to defeat the leasehold title, and consequently, no

injunction could or should have been granted. The Plaintiff could not succeed in preventing the Defendant entering into possession, on the evidence before the Court. In the result, the appeal had to be allowed.

We would like, however, to point out that in granting a temporary injunction, it is a wise precaution to make some provision requiring the Plaintiff to prosecute his case within a reasonable period, subject to the Courts further Orders. It might be suitable to limit the injunction to three or four months. Secondly, it is essential to require the Plaintiff to enter into an undertaking as to damage in the event that he fails to establish his claim. See HATERS V. AKIRA BRANCH (HO.. 2) (1972) E.A. 347, 350. The wisdom of these orders is obvious. They tend to prevent abuse of the press of the Court.

Delivered at Mengo this 18th day of October 1994.

S.T. MANYINDO
DEPUTY CHIEF JUSTICE.

J.B. ODOKI
JUSTICE OF THE SUPREME COURT

HG. PLATT.
JUSTICE OF THE SUPREME COURT.