

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**CIVIL APPLICATION NO. 03 OF 2018
(Arising from Civil Application No. 02 of 2018)**

CORAM: HON. JUSTICE R. BUTEERA, JSC (SINGLE JUSTICE)

BETWEEN

PATRICK KAUMBA WILTSHIRE:.....:APPLICANT

AND

ISMAIL DABULE:.....: RESPONDENT

(An application arising from Civil Application No. 02 of 2018)

RULING OF THE COURT

The applicant instituted this application by Notice of Motion seeking for orders that;

- 1. An interim order to restrain the respondent, his agents, servants or anyone claiming under him or under the judgment in Court of Appeal Civil Appeal No.130 of 2015 from obtaining a grant of freehold or leasehold from Kampala District Land Board, acquiring or processing a certificate of title, alienating or in any way dealing with the property known as LRV 194 Folio 13 at plot 21 Kampala Road (hereafter called the suit property) until the determination of the substantive application for a temporary injunction pending before this court.**
- 2. The costs abide the outcome of the substantive application.**

This application was brought under the provisions of Rules 2(2), 41(2), 42 and 43 of the Judicature (Supreme Court) Rules.

The application is supported by an affidavit by sworn by the applicant, Patrick Kaumba Wiltshire. It is opposed by the respondent, Ismail Dabule who swore an affidavit to support his objection to the Application.

Background

From the record, the background facts of this application are that the respondent is a stepfather to the applicant married the applicant's mother, Jane Kogere Wiltshire (the deceased) in 1973. In 1976, the respondent purchased the suit property from Georgia Pantelakis and deposited the Certificate of Title thereof with the then Libyan Arab Bank for safe custody before he went into exile in 1979. While in exile, the respondent gave Powers of Attorney to his wife to manage his properties. In due course, the wife discovered that the duplicate Certificate of Title of the suit property was missing and could not be traced. She applied for special Certificate of Title and she was registered thereon as proprietor of the property.

Upon his return from exile, the respondent applied for Letters Of Administration for the estate of his late wife and was registered on the special Certificate of Title as Administrator of the estate of the late Jane Kogere Wiltshire. In due course, however, the respondent's duplicate Certificate of Title which was lost was recovered. The respondent sought to have the special Certificate of Title cancelled but the Registrar of Titles declined to do so because the applicant had lodged a caveat on the suit property as beneficiary in the estate of his late mother.

The trial Court gave judgment in favour of the respondent. Being dissatisfied, the applicant appealed to the Court of Appeal, which also ruled in favour of the respondent. The applicant was dissatisfied with the Court of Appeal's decision and filed a Notice of Appeal on 31st January 2018. On 2nd February 2018, he filed Civil Application No. 02 of 2018 (main Application) for a temporary injunction and Civil Application No. 03 of 2018 for an Interim Order to restrain the respondent from alienating the disputed property as his personal property. The Appeal and the main Application for a temporary injunction are pending before this Court.

Grounds

The grounds in support of the Application are contained in the Notice of Motion and the affidavit in support deponed by the applicant. The grounds are as follows:

- 1. The applicant is a son and beneficiary of Alice Kogere Wiltshire who was the registered proprietor of the suit property.***
- 2. The respondent is registered on the Title as Administrator of the estate of Alice Kogere Wiltshire.***
- 3. The applicant lodged a caveat on the suit property to protect his interest as a beneficiary.***
- 4. The respondent filed HCCS No. 155 of 2010 against the applicant for removal of the caveat claiming the suit property was his personal property and not forming part of Jane Kogere Wiltshire's estate.***
- 5. The High Court held that the property belongs to the respondent in his personal capacity but not as administrator and ordered the cancellation of Jane Kogere Wiltshire's Title and the applicants caveat.***
- 6. The Court of Appeal has confirmed the decision of the High Court.***

- 7. If the application is not granted, the suit property will be alienated and the main application and appeal will be rendered nugatory.*
- 8. The subject matter of the appeal is a prime family property in the central business District of Kampala Road and once it is alienated, it will be impossible to get it back.*

Representation

At the hearing of the application, the applicant was represented by learned counsel, Mr. Nelson Nelima and Mr. Alex Chandia while the respondent was represented by learned counsel, Mr. Richard Omongole. The applicant was present in Court while the respondent was absent.

Submissions of counsel for the applicant

Counsel for the applicant submitted that there is a dispute between the applicant and the respondent regarding Plot 21 Kampala Road. The property is registered in the name of the respondent as the Administrator of the estate. He argued that the estate property is not the respondent's personal property.

Counsel submitted that when this matter was before the Court of Appeal, there was a communication from the Land Board addressed to the respondent, notifying him that the Board would not act in relation to the disputed property until Court pronounced its position. According to counsel, there is a serious threat that since the High Court and the Court of Appeal pronounced their position and cancelled the applicant's caveat, there is nothing to prevent the respondent from getting title in his personal capacity rather than on behalf of the estate.

He further contended that if the estate property is titled in the name of the respondent, there would be nothing to litigate about and the main application and the appeal would then be rendered nugatory.

He prayed that Court grants this application so that the status quo can be preserved and the costs to be in the cause.

Submissions of counsel for the respondent

In response, counsel for the respondent submitted that the application is speculative and has no merit. He contended the applicant's complaint stems from obtaining a grant of freehold or leasehold from the District Land Board and processing/acquiring a Certificate of Title alienating the property known as LRV 194 Folio 13 at Plot 21 Kampala Road. He explained that the freehold was granted long ago in 2009. According to counsel, there is no leasehold to be renewed because the property was already converted to freehold in 2009 before the suit was filed in 2010. That what the applicant is seeking is overtaken by events carried out in 2009.

Counsel contended that the applicant was trying to bring in a completely new cause of action in the application. The issue of grant of freehold or leasehold by the Land Board was never in contention in the High Court and the Court of Appeal.

Counsel further submitted that there is no threat as contended by the applicant. According to counsel, there has been no injunction for stay since 2015 and nothing has been attempted by the respondent that the applicant is trying to injunct now. There are no developments and no intended sale of the suit property. The respondent is running a restaurant on the suit property and does

not intend to sell it. That the letter written in January 2017 by the Land Board cannot be a threat now and it is not a letter from the respondent in anyway.

He contended that there is no sale going on to dispose of the property as contended by the applicant and there is no evidence that has been adduced to that allegation. Counsel relied on the **Rukikaire vs. Incafex Ltd (Civil Application No.11 of 2015) UGSC** where the position of a threat was emphasised. He submitted that the applicant has not shown any threat warranting the interim order.

Counsel prayed that the Court dismisses the application for being speculative and offering no threat that warrants an injunction.

Submissions of counsel for the applicant in rejoinder

Counsel for the applicant conceded that the Land Board granted the conversion to freehold in 2009 but explained that the grant was to Mr. Ismail Dabule as Administrator of the estate and not for him as his personal property. He contended that the letter from the Land Board was cited because the respondent moved to the Land Board to give him grant in his personal name when he won the case of the High Court. That this is the reason why the Land Board wrote to the respondent's lawyer to tell him that the Land Board would not act until court pronounces itself on the matter.

He submitted that since the respondent won the case in the Court of Appeal, there is nothing to prevent him from acquiring title as Mr. Dabule but not as Mr. Dabule the Administrator of the estate. If the land changes from the estate to Mr. Dabule as a person, the applicant shall have nothing to litigate about.

Counsel further conceded on the respondent's contention that the applicant is raising an issue that was not litigated but argued that under rule 2 and rule 6 of the Judicature (Supreme Court) Rules, Court has power to grant an injunction either for stay of execution or an injunction and there is no limit. He contended that the applicant therefore has a right to seek an interim order to preserve the status quo. He prayed that the Court grants an interim order to preserve the disputed property as it is now.

Consideration of the merits of the application

This court has inherent power to make such orders as may be necessary for achieving the end of justice or to prevent abuse of the process of Court under rule 2 (2) of the Judicature (Supreme Court) Rules.

Rule 2(2) provides:

“Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay.”

This Court has had occasion to state the law as to when the Court will be empowered by rule 2(2) of the rules of Court above quoted issue interim orders in order “to achieve the ends of Justice” in **Zubeda Mohamed & Anor vs. Laila Wallia & Anor, Civil Reference No.07 of 2016** where it was held;

“The principles followed by our courts were clearly stated in the celebrated case of Hwang Sung Industries Limited v Tajdin Hussein & Others, SC Civil Application No. 19 of 2008 where Okello JSC, as he then was said:

“For an application for an interim stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the substantive application. It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”

We also found an instructive summary by this Court in Hon. Theodore Ssekikuubo and others v The Attorney General and others, SC Constitutional Application No. 04 of 2014 where this Court said:

“Rule 2(2) of the Judicature Supreme Court Rules gives this Court very wide discretion to make such orders as may be necessary to achieve the ends of justice. One of the ends of justice is to preserve the right of appeal. In the cases of Yakobo Senkungu and others vs Cerencio Mukasa, SC Civil Application No. 5 of 2013 and Guliano Gargio vs Calaudio Casadiothis Court stated that ‘the granting of interim orders is meant to help parties to preserve the status quo and then have the main issues between the parties determined by the full court as per the Rules”

Considerations for the grant of an interim order of stay of execution or interim injunction are whether there is a substantive application pending and whether there is a serious threat of execution before hearing of the substantive application. Needless to say, there must be a Notice of Appeal. See Hwang Sung Industries Ltd vs. Tajdin Hussein and 2 Others (SCCA NO. 19 of 2008

In summary, there are three conditions that an applicant must satisfy to justify the grant of an interim order:

- 1. A Competent Notice of Appeal;***
- 2. A substantive application; and***
- 3. A serious threat of execution.”***

In the instant Application, it is established that a Notice of Appeal was lodged by the applicant on 31st January 2018 in accordance with rule 72. There is a pending substantive Application for a temporary injunction in Civil Application No. 02 of 2018 filed on 2nd February 2018. According to counsel for the

applicant, there is a threat that the respondent may alienate or dispose of the property in question before the disposal of the substantive application.

The threat stems from the letter dated 10th January 2017 from the Kampala District Land Board which was addressed to counsel for the respondent notifying them that the Land Board would not act until the pending appeal in the Court of Appeal is resolved. Now that the Court of Appeal resolved the appeal in favour of the respondent, the Land Board is free to act in relation to the property as there is no current Court Order stopping it from acting.

The fact that the Court of Appeal upheld the trial Court's decision that the property belongs to the respondent in his personal capacity but not as administrator indeed creates a threat as the respondent could deal with the property as he wishes.

I do find that if the respondent alienates or disposes of the property, it would render the main application for a temporary injunction order nugatory.

The Interim Order sought by the applicant is to necessarily preserve the status quo until the substantive application for a temporary injunction is heard and determined. See **Guiliano Gariggio vs. Claudio Casadio (Civil Application No. 03 of 2013)**.

In the circumstances of the instant application, I do find that the grant of an interim order to restrain the respondent from alienating or disposing of the disputed property as his personal property pending the determination of Civil Application No. 02 of 2018 would be in the interest of justice.

I do hereby grant the interim order as prayed for.

An interim order to restrain the respondent, his agents, servants or anyone claiming under him or under the Judgment in Court of Appeal Civil Appeal No. 130 of 2015 from alienating or in any way disposing of the disputed property known as LRV 194 Folio 13 at plot 21 Kampala Road is granted pending the hearing and disposal of Civil Application No. 02 of 2018.

Dated at this day.....27TH.....of.....MARCH.....2018.

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Hon. Justice Richard Buteera
JUSTICE OF THE SUPREME COURT