THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT KAMPALA

Misc. Application No. 0402 of 2003.

IMELDA GERTRUDE BASUDDE

NALONGO::

APPLICANT.

vs.

1. TEREZA MWEWULIZE]
2. JOHN TIBYASA

MATOVU::
::::::::::::RESPONDENT.

BEFORE: V.F.MUSOKE-KIBUUKA (JUDGE)

RULING.

The applicant and the second respondent are legally husband and wife. They were married at Lubaga Cathedral on 30th November, 1963. It appears that bad luck caught up with them quite early during their marriage. For in 1968, the applicant left the second respondent and the couple has never co-habited ever since.

The first respondent is a sister to the second respondent and, therefore, a sister-in-law of the applicant.

In this application, the applicant seeks an order of this honourable court issuing a temporary injunction restraining both respondents, their workmen, servants, employees or agents, from evicting the applicant from the property situate at Lungujja, in Kampala, and known as Kibuga Block 1, plot 558.

The applicant has presented five grounds upon which she bases this application. They are:

a) that the applicant is in eminent danger of eviction from the property in question;

b) that the applicant has filed HC Civil Suit No 410 seeking a permanent injunction and that the suit is pending hearing in this court;

c) that the applicant is likely to suffer irreparable injury once she is evicted, as she has no alternative accommodation;

d) that it is fair and just that the status quo be preserved pending the determination of the head suit; and

e) that the head suit has high chances of success.
The application is supported by an affidavit deponed by the applicant. In reply, each of the two respondents has deponed an affidavit.

As a matter of law, the granting of an order for an injunction is within the discretion of the court. The discretion, of course, must be exercised judicially. **Edward Sargent vs. Chotabhai Jhaverbhai Patel (1949-1950) EACA 63.**

Again, as a matter of law, the main objective for the issuance of a temporary injunction is to preserve the status quo pending the hearing and final determination of the controversy involved in the head suit. See:
NoorMohamed Vs. Jammohusein Vs. Kassamli Madhan *(*1953*)* 29 EACA, 8. The judicial analysis to be carried out by the court when considering whether or not a temporary injunction

should issue in any given case must cover the following three important conditions or elements. That is to say, that the court must consider:

a) Whether the applicant has a prima facie case with a probability of success.

b) Whether, if the injunction is not granted, the applicant is likely to suffer, irreparable injury which the award of damages may not be adequate to atone; and

c) If, the court is remains in doubt, after analysing the above two conditions, it will consider the question, in whose favour, of the two parties to the head suit, the balance of convenience tilts. In other words, which of the two parties is more likely to be placed at mere disadvantage or inconvenience if the injunction is denied by the court.

This court has discussed those conditions again and again in several decisions. Some of those decisions are: **E.I.L. Kiyimba-Kagwa Vs. Hajji Abdul Katende (1985) HCB 43.**

- **J.K. Ssentongo And Another Vs. Shell (U) Ltd. [19951 11995] II KALR, 43 and**
- **Daniel Mukwaya vs. Administrator General. HCCS** No. **630 of 1990.**

Prima Facie Case.

What is normally meant by **a** prima facie case is that the evidence placed before the court, by way of affidavit or otherwise, in the application for the injunction must show that there exists a genuine triable issue, in the main suit pending between the parties. The court must be satisfied that the dispute presented in the main or head suit is not a sham but a genuine dispute and that the applicant has probabilities of succeeding in the main suit.

Now, in the application before me, the main remedy which the applicant seeks in the head suit is a declaration that the property at Lungujja known as Kibuga Block 1, Plot 558, is a matrimonial home for her and the second respondent and that she should not be evicted from that property upon that ground.

The evidence before me, however, shows that the property in dispute was first brought under the Registration of Titles Act, way back in 1975 when it was registered under the proprietorship of Sarah Ndagire, the mother of the respondents. The property is currently registered in the names of Tereza Mwewulize, the first respondent. There is no evidence to show that the second respondent either owns the property or is in possession of it. In the terms of the provisions of section 56 of the Registration of Titles Act, this court must conclude that the person whose name appears on the certificate of title is the owner of the property in question.

It has been argued, on behalf of the applicant, that the property was bequeathed to the second respondent by his mother Sarah Ndagire and that the first respondent who is the administrator of the estate of the late Sarah Ndagire is registered merely as the administrator of the estate of Sarah Ndagire. To support this argument, a copy of the last will of Sarah Ndagire has been presented produced before this court

I have perused the will of Sarah Ndagire. I find that it was clearly an invalid will. It was invalid because it did not comply with the provisions of section 51 of the Succession Act, Cap 139. The will was never attested to, by at least two witnesses, as required under that provision of the Succession Act. That fact clearly appears to have constituted the reason why, in Administration Cause No. 117 of 1987, the will of Sarah Ndagire was never probated. Instead, letters of administration for the estate of Sarah Ndagire were granted to the late Rev. Fr. Boniface Mubiru and Tereza Mwewulize, the first respondent. That meant that the late Sarah Ndagire died intestate. She did not leave a valid will. The terms of the document presented before this court as the will of Sarah Ndagire and to show that the property in dispute was bequeathed by her the second respondent, has, thus no probative value. Its contents are of no effect in law and cannot

be acted upon.
For that reason, this court must believe the averment of second respondent in paragraph 9 of his affidavit in reply and that of the first respondent in paragraph 5 of her affidavit in reply-to the effect that the first respondent is registered as proprietor in her own personal right and not as administrator of the estate of Sarah Ndagire or on behalf of the second respondent. That means, of course, that the claim by the applicant that the property in dispute is her matrimonial home has no basis whatever. The second respondent has never either owned that property or has he ever been in possession of it.

I also agree with the submission made by Mr. Ssendege, learned counsel for the respondents that the position of the law seems to be that even if it were true that the property in Kibuga Block 1, plot 558, was the matrimonial home of the applicant and the second respondent, the applicant would have no right to possession superceding that of the registered owner. The applicant having no apparent right to ownership of the property would at best have claimed to reside in the property merely as a licence of her husband. Her rights as a wife to the second responded for entitlement to a matrimonial home are personal rights. They are rights in personam. They do not extend against third parties. They would not constitute a genuine triable issue as against the registered proprietor. The decision in **National Provincial Bank Ltd. Vs. Ainsworth (1965) 2 All E.R, 472**, which Mr. Ssendege has relied upon in advancing this submission appear to me to constitute a good persuasive authority on this point.

For those reasons, therefore, I find that the pleadings of the applicant as well as the submissions which have been made on her behalf, in this matter, have not disclosed a *prima facie* case with any probability of success as far as Civil Suit 410 of 2003 is concerned.

Having found that to be the case, I do not need to extend this analysis beyond that point to cover whether or not the applicant will suffer any irreparable injury or whether the balance of convenience hits in her favour.

In the result, the application must b e and is hereby dismissed. It has no merit in it. Costs to abide by the outcome of the main cause.

V.F.MUSOKE-KIBUUKA (JUDGE)

28.8.2003.

Court: Delivered in the presence of:

Mr. Farrah Patrick- for the applicant.

Mr. Ssendege- for respondents.

Mr. Wakulira- court clerk.

V.F.MUSOKE-KIBUUKA (JUDGE)

28.8.2003.