

**REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**LAND DIVISION**

**MISCELLANEOUS APPLICATION NO. 546 OF 2011**

***(ARISING FROM MISCELLANEOUS APPLICATION NO.43 OF 2011)***

***( ARISING FROM CIVIL SUIT NO.26 OF 2006)***

**UGANDA RAILWAYS CORPORATION.....APPLICANT**

**VERSUS**

**SSALONGO LUTAAYA KIBANDWA.....RESPONDENT**

**BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE**

**RULING**

This was an application brought under section 98 of the Civil Procedure Act, cap 71; Order 9 rules 12 & 29; Order 50 rules 2, 6, & 8, and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that:-

- 1. The interim order issued against the applicant by the Registrar His Worship A. G Opifeni on 1<sup>st</sup> February 2011 be set aside.***
- 2. The above order was at all times null and void.***
- 3. The costs of this application be provided for.***

The grounds of the application are set out in two affidavits of **Mr. Emmanuel Lyamulemye** the acting Chief Executive Officer for the applicant. There is also an affidavit sworn by **Steven**

**Musisi** an Advocate and Commissioner for Oaths. The application is opposed by the respondent **Ssalongo Lutaaya Kibandwa** who filed an affidavit in reply, to which the applicant filed an affidavit in rejoinder.

The background is that the applicant is the defendant in HCCS No. 026 of 2006 where the plaintiff alleges that he has been denied the use of plot 83 having been fenced and occupied by the defendant corporation.

Counsel filed written submissions on the application. In the application, affidavits and submissions of Counsel, references were made to miscellaneous application nos. 42 and 43 of 2011. The said applications, as well as the record of proceedings, including the relevant interim order allegedly issued by the registrar of this court, which the applicant seeks to have dismissed, were not on the file. This court's efforts to have Counsel in this matter avail copies of their records for purposes of opening a duplicate file which this court could use as a basis to write the judgment proved futile . Counsel did not respond despite the cause listing of the matter several times to accord them an opportunity to avail their copies. Section 98 of the Civil Procedure Act empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

In the premises, I have no option but to dismiss this application as incompetent without addressing its merits. It is impracticable to address the merits of the case without accessing a copy of the challenged order or record of the application where the order challenged by the applicant was issued.

Each party will bear their own costs.

**Dated at Kampala** this 20<sup>th</sup> day of December 2012.

Percy Night Tuhaise

**JUDGE.**