

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO .2109 OF 1984

E.L.T Kiyimba-kaggwa ;;;;;;;;;;;;;;PLAINTIFF

VERSES

Hajji Katende AbduNasser:;;;;;;;;;;DEFENDANT

Civil proceedings-Temporary injunction- Conditions of Grant-Application to show Prima facie case with probability of success and irreparable injury not adequately compensated for by damages-if Court in doubt to decide application on balance of convenience.

Civil Procedure- temporary injunction- purpose of grant- purpose to preserve matters in status quo until question to be investigated in suit is finally disposed off.

This was an application under 0.37 rr.1 and 9 of the Civil Procedure rules (S.1, 65-3) for a temporary injunction to be issued restraining the Defendant/ Respondent from carrying out any work on the suit premises.

The applicant/plaintiff was the registered proprietor of the suit premises, having been granted to leases on the land. Although they had expired, the title had not been cancelled. The applicant /plaintiff applied for renewal of his lease and was likely to succeed.

In the mean time, the defendant claimed that he had been offered lease for five years by the Uganda Land Commission.

The commissioner of land and Surveys inspected the land and listed the developments made by the plaintiff and wrote a letter to the District Commissioner in which he stated as follow;

”It is also infirmed (sic) that the lease (sic) has formally applied for an extension of the lease to enable him complete his developments he has undertaken so far, I am recommending the Uganda Land Commission that an extension of another 5 years be granted from the above facts, I consider that there’s no reason this plot should be a subject of land dispute at all, It has never

been the policy of Government to encourage anybody to lease land on which there's somebody else's property/properties to an entirely different person as that is the contrary to Natural Justice and indeed to the provision of the Constitution of the Republic of Uganda.”

As regards the damage that was being caused to the plaintiffs land by the Defendants activities; the defendant had brought a tractor which was cultivating the land. The development plans of the Defendant were different from those of the Plaintiff.

Held.

1. The granting of a temporary injunction is an exercise of Judicial Discretion and the purpose of the granting-It is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed off.

2. The conditions for the grant of an injunction are first that; the applicant must show a Primafacie case-with a probability of success

Secondly, such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.

Thirdly if the court is in doubt, it will decline an application on the balance of convenience.

3. Irreparable injury does not mean that there must not be physical possibility of repairing injury, but means that the injury must be a substantial or material one, that is, one that cannot adequately be compensated for in damages.

4. There was a serious question of ownership of the land in question. The plaintiff had proved a Primafacie case with a probability of success; and was likely to suffer irreparable damages which could not be sufficiently atoned for by damages. Moreover, the balance of convenience in this case was in favor of granting relief to the plaintiff who was in possession and was likely to suffer more damages if the land in question was interfered with.

Application granted-costs of application to be costs of the cause.

Dated this 23rd April 1985

Odoki,J

Percuriam;

“Before I take leave of the application, I wish to express my dissatisfaction with the rule that the plaintiff must show Prima facie case with a probability of success.

I say so because as pointed out by Lord Diplock in *American Cyanamid Co Vs Ethicon Ltd* (1975) 1 ALL ER 504, In those cases where the legal cases were rights of parties depend on facts that are in dispute between them, the evidence available to the court at the hearing of the application for an interlocutory injunction is incomplete.

It is given on affidavit and has not been tested by or on cross examination. It seems to me that purpose has to be achieved by giving court the discretion to grant such injunction would be stultified if the discretion was clogged by a technical rule forbidding its exercise if on that incomplete, untested evidence the court evaluated the chances of the plaintiffs ultimate success in the action at 50 percent or less, but permitting its exercise if the court evaluated his chances at more than 50 percent.

Moreover, it is not part of courts function at this stage of litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend, nor to decide difficult question of law which call for detailed argument and mature considerations, these are matters to be dealt with at the trial, and it is therefore wrong in principle to require the court to undertake such considerations which may be necessary in order for it to find Prima facie case or probability of success in favor of the plaintiff.

It is my humble view that considering the object of an interim injunction and the nature of proceedings at which it is considered, more realistic and fair condition would be to satisfy the court that there's a serious question to be tried rather than Prima facie case with the probability of success, for as Lord Diplock pointed out in the *American Cyanamid* case (supra) in the house of Lords

The use of such expression as a “probability”

“A Prima facie case or a strong prima facie case”. In the context of the exercise of discretion of any power to grant an interlocutory injunction leads to confusion as to the object of this form of

temporary relief, The court no doubt must be satisfied that the claim is not frivolous or vexatious in other words that there's a serious question to be tried;

I hope that at an appropriate time the court of appeal will take opportunity to reconsider this rule in light of the observation I have made above,”

Legislation considered

Civil Procedure rules (S.1-65-3)0.37 rr.1 and 9

Registration of titles Act (CAP .205)

Cases cited:

1. Buikwa Estate Coffee Works Ltd Vs Lutabi HCCS no 700 of 1961 MB.44 of 1961
2. East African industries Vs Trufoods (1972) EA.420
3. Giolla Vs Cassman Brown co. Ltd. (1973) EA 358
- 4.Noormohamood Jammohamood Vs Kassamli Virji Madhani(1953) 20 EACA 24
5. Nsubuga Vs Mutawe (1974) EA 487
6. Rwenzori tea Co Ltd Vs. Kolsall(1956-57) 8 U.LR 204
7. Seargent Vs Partel (1949) E.A.C.A 63

