

2. The respondents pay the costs of this application

Further, this application is based on the following grounds; that:-

- 1. The application is the registered proprietor and beneficial owner of the suit land.**
- 2. The suit land was granted under Crown Grant No. 10782 and was acquired and owned at various times by companies related to and predecessors in title to the applicant.**
- 3. The applicant and its predecessors in title have at all material times been carrying on the business of a tea estate including tea planting and tea processing and other ancillary businesses.**
- 4. On or about the 26 day of November, 2012, the respondents jointly and/or severally together with their numerous servants and/or agents and workmen descended upon the suit land started to demarcate it, construct thereon roads, buildings, grading, slashing and parcel it into small plots and carried on various other activities.**
- 5. The activities of the respondents continued and in addition on the 28th day of November, 2012, the respondents together with their servants and/or agents have threatened and continue to threaten the applicant's officers and employees with physical harm and eviction.**
- 6. The acts of trespass of the respondents jointly and/or severally were and are without any colour of right and are clearly unlawful.**
- 7. On diverse dates the respondents jointly and /or severally attempted in complete violation of the law to survey the suit land and to obtain a parallel certificate of title for the suit land notwithstanding that a certificate of title already exists in the names of the applicant.**
- 8. The applicant has filed a suit against the respondent in which it seeks orders of permanent injunction which suit has a prima facie case with very high chances of success.**
- 9. If the acts of the respondents are not restrained the respondents will evict the applicant from the suit land and stoop it from lawfully carrying on its tea planting and processing business which will cause it irreparable injury.**

- 10. The acts of the respondents if allowed to continue will amount to compulsory acquisition of the applicant's property in violation of its constitutional rights thereby occasioning it irreparable injury.**
- 11. The balance of convenience is in favour of maintaining the status quo and allowing the applicant who is in possession with a certificate of title to so continue.**
- 12. It is in the interest of justice and equity that the orders sought herein be granted.**

On 11th January, 2013, the parties appeared before me. However, the respondents by that time had not yet filed their respective affidavits in reply. By consent of the parties, the matter was adjourned to 18th January, 2013 for hearing. The interim order that was issued by the Assistant Registrar of the Court was extended, by Consent, to that date. The respondents were to file their affidavits in reply by the 16th January, 2013, and serve the applicant's lawyers on that same date.

The 1st and 2nd respondents did not file any affidavits in reply to the application. Instead Counsel for the 1st and 2nd respondents Mr. Frank Kanduhlo made an oral application to Court to cross-examine K.P. Eswar the deponent of the affidavit in support of this application and an affidavit in rejoinder and reply to the affidavit in reply by the 3rd respondent. The reason advanced by Counsel for the 1st and 2nd respondents is that he wants to test the truthfulness of the said deponent's statements on oath. That the adverse party has to be accommodated by Court notwithstanding that he/she has not filed an affidavit in reply. He promised to file his authorities in support of his submissions in Court and serve the same on to Counsel for the applicant by 21st January, 2013. Surprisingly or /and interestingly Mr. Frank Kanduhlo, Counsel for the said respondents has to date not filed his authorities nor served any authorities on to Counsel for the applicant.

Counsel for the applicant, Mr. Paul Kutesa, on 23rd/1/2013, filed in Court the applicant's submissions in reply. He relied on a number of authorities in support of his client's case. Counsel for the applicant vehemently opposes the oral application that was made by Counsel for the 1st and 2nd respondents, Mr. Frank Kanduhlo. As I have already stated hereinabove, Counsel for the 1st and 2nd respondents did not cite any law or decided cases to support his oral application. Despite his promise to file authorities in Court by the 21st January, 2013,

none has been filed in Court. May be, Counsel for the 1st and 2nd respondents abandoned his oral application.

In his oral application, Counsel for the 1st and 2nd respondent, Mr. Frank Kanduh, did not provide a basis and/or the reasons why the cross-examination of K.P Eswar is necessary for achieving justice in this matter. Counsel for the said respondents made a bare application; no reasons were given for insisting to cross-examine Mr. P.K Eswar on his affidavits in support of this application. Mr. Frank Kanduh did not in his submissions point out any peculiar facts or circumstances necessitating the cross-examination of the said deponent in this particular case. In such regard, I failed to trace the basis of his oral application in the circumstances of this case.

Further, the 1st and 2nd respondents did not file any affidavits in reply to the application and its supportive affidavits. On 18th/1/2013 Counsel for the 1st and 2nd respondents submitted to Court that his clients did not intend, and that they will not file affidavits in reply to the application. In that regard, therefore, the 1st and 2nd respondents are deemed to have admitted the statements of fact contained in the affidavit in support of this application. In the case of **Makerere University vs St. Mark Education Institute Ltd & Ors [1994] KALR 26**, my senior brother Judge, Lugayizi J, held that:

“In an application proceedings by evidence supplied by affidavits, where there is no opposing affidavit, the application stands unchallenged. And this was the case here.”

Again in the case of **Shelton Okabo vs Standard Chartered Bank (U) Ltd, Miscellaneous Application no.51 of 1992 (High Court at Kampala, 7/08/92), Before Okello, J**, as he then was, held that:-

“since the respondent/plaintiff nor his Counsel filed an affidavit in reply to the supporting affidavit filed by Counsel for the applicant, the statements of facts contained therein remained uncontroverted”.

Wherefore, from the authorities cited above and my own analysis, it is my finding that the 1st and 2nd respondents having deemed to have admitted the facts contained in the affidavit in support of the application sworn by K.P. Eswar, their Counsel cannot by way of cross examination seek to challenge or controvert the facts already admitted by the said respondents. Therefore, Counsel for the 1st and 2nd respondents does not have the right to

cross-examine Mr. K.P Eswar on the contents of his affidavit in support of this application when his clients willingly conceded to its contents.

It should be noted and emphasized that Counsel for the 1st and 2nd respondents cannot cross examine the said deponents on points of law. The said deponent did not depone the affidavit in issue as an expert on the law of temporary injunctions. The law is the preserve of lawyers and Court to be determined upon submissions by both Counsel, in the circumstances of this case, by Court.

In the result and for the reasons given hereinabove, the 1st and 2nd respondents' oral application to have K.P. Eswar cross –examined on his affidavit in support of this application lacks merit. It ought to be dismissed. And it is accordingly dismissed with costs in the cause.

Consequently, since I have hereinabove held that the 1st and 2nd respondents never challenged or controverted this application; the said Miscellaneous Application no. 1160 of 2012 between the parties is allowed as against the 1st and 2nd respondents in the terms and orders being sought therein.

As for the 3rd respondent, I have perused and evaluated the affidavits evidence of both parties and came to the conclusion that the applicant established a prima facie case against the 3rd respondent. Moreso, the affidavit in rejoinder and in reply to the 3rd respondent's affidavit in reply sworn by K.P. Eswar contains vital evidence both factual and documentary which is not challenged by all the respondents. That evidence touches on the roots of the main suit, HCCS No. 615 of 2012 between the parties. I urge the respondents to carefully study that evidence, before embarking to the scheduling conference of the main suit.

In addition, on 7th January, 2013, the respondents and their respective Counsel consented to the grant of an interim order of injunction in Miscellaneous Application no.1161 of 2012 between the parties, which arises from this instant application. I have looked at that said application and the affidavits evidence by the parties and noted that the wordings and affidavits evidence and orders that were being sought therein are the same with the wordings and affidavits evidence in this instant application. Wherefore, I do not see any necessity not to grant this instant application, when the parties had earlier on in the said application

consented to similar facts and orders. To me, the respondent's Counsel were opposing this application for the sake of ti.

The orders that are contained in the interim order of injunction granted by Court by consent of the parties ought to be maintained within the orders being sought in this application. If this application, gathering from the tone of the evidence statements by the 3rd respondent, the applicant shall suffer irreparable loss and damage.

In the final analysis of this application, I hold that this main application has merit. In the result, therefore, and for the reasons given hereinabove this application is allowed in the orders and terms being sought therein with costs.

Dated at Kampala this 25th day of January, 2013.

sgd

Murangira Joseph
Judge