

in rebuttal, the applicant filed an affidavit in rejoinder to this application and reply to the affidavit in reply by the 1st respondent. In essence, the affidavit evidence adduced by both the applicant and the 1st respondent made this application contentious.

The 2nd respondent never filed in an affidavit in reply, to this application. This application, therefore, stands unchallenged by the 2nd respondent. To that extent, this application succeeds as against the 2nd respondent, the Commissioner Land Registration.

1.3 This application is seeking the following orders; that:-

(a) A temporary injunction be issued against the respondents and their agents/servants/anyone claiming title there under to restrain them from altering the status-quo of the suit land, and further restraining them from evicting the applicant/plaintiff and her agents and any persons claiming under the estate of the late Kevina Ajeru Nataya from the suit land, entering and /or interfering with the applicant's/plaintiff's occupation of the suit premises, disposing of, transfer or alienation of the suit land pending the disposal of the main suit.

(b) The costs of this application be provided for.

1.4 This application is based on the following grounds; that:-

- (a) The applicant is a biological daughter of the late Kevina Ajeru Nataya who died in 1993 and as such she is a beneficiary of the estate of the late Kevina Nataya.**
- (b) The letters of Administration of the estate of the late Kevina Ajeru Nataya were granted by the High Court to the Administrator General vide High Court Administration Cause No. 204 of 2000.**
- (c) Among the properties comprising the estate of the late Kevina Ajeru Nataya is unregistered rights in part of the property comprised in Mailo Register Kibuga Block 244 plot 54 land at Kisugu (hereinafter referred to as the suit land/suit property) which the applicant purchased from Ms Nabaggala Christine who held a certificate of succession to the estate of the late Allen Walusimbi, the then the registered proprietor thereof.**
- (d) Before her demise, the late Kevina Ajeru Nataya had occupied the suit land since 1962 and to date her estate is still in possession of the said suit land.**
- (e) The late Nabagala Christine died before she could transfer the said portion of the suit land to the late kevina Nataya.**
- (f) The 2nd respondent wholly transferred the suit land into the names of the 1st respondent, including the portion of land belonging to the estate of the late Kevina Ajeru Nataya without the applicant's knowledge and consent.**
- (g) The applicant has filed in the High Court Suit No...of2013 challenging the registration of the suit land into the names of the 1st respondent by the 2nd respondent.**

- (h) The 1st respondent, upon acquisition of the certificate of title, filed summary suit No. 53 of 2013 in the Chief Magistrate Court of Makindye against the tenants of the plaintiff apparently to recover vacant possession of the suit land and mesne profits and obtained summary judgment and is threatening execution of the said judgment against the applicant's names**
- (i) The applicant has filed a civil suit in this Court which has a prima facie case against the respondents with a high possibility of success.**
- (j) The applicant is at a great risk of losing the premises and if the orders sought in this application are not granted and it will render the applicant's case nugatory, which will be a miscarriage of justice.**
- (k) The balance of convenience is in favour of the applicant whose family and her siblings, children of the late Kevina Ajeru Nataya derive sustenance from the suit land and the issuance of a temporary injunction is not in any way prejudicial to the respondents.**
- (l) The application for a temporary injunction is brought in good faith and without unreasonably delay.**
- (m) It is just and equitable that an interim injunction be issued, pending the hearing and disposal of the main suit.**

2. Facts of the case/application

2.1 Applicant's facts

The applicant is one of the beneficiaries of the estate of the late Kevina Ajeru Nataya, the owner of an equitable interest on land comprised in

plot 541, Block 244 at Kisugu. The late Kevina Ajeru Nataya acquired the said interest, first as a kibanja interest from the late Nabagereka Christine in 1962, and she later paid for the value of the legal interest of the said kibanja which payments were made to the then registered proprietor through her lawyers, Mpungu & Co. Advocates. The late Kevina Ajeru Nataya and her children occupied the suit premises since 1962 until her demise and to date the property is still under the possession and custody of the beneficiaries of the estate of the late Kevina Ajeru Nataya.

In the year 2003, the beneficiaries of the estate of the late Kevina Nataya under the title “Nataya Property” executed a tenancy agreement with Johnrich Cheap Stores Limited to whom the Commercial Building on the premises was let until today. The 1st respondent however, purports to have acquired proprietorship of the suit land comprised in Block 244 plot 241, and to consequently have purchased the equitable interest in the said land from one Auma Caroline Nataya, a widow to the late Peter Nataya who she claims is the lawful owner of the same. The 1st respondent now seeks to take vacant possession of the suit premises and to take over Landlordship from the estate of the Kevina Nataya in respect of the estate’s tenants on the suit premises, hence this application.

2.2 1st respondent’s facts

The 1st respondent is the registered proprietor of all that land comprised and known as Kyadondo Block 244 Plot 541, land at Kisugu-Gaba Road (hereinafter referred to as the “suit land”).

The unregistered equitable interest claimed by the applicant forms part of the suit land.

The 1st respondent acquired the suit land by purchase on 08.12.11 from the Administrators of the late Christine Nabbagala (Ssewanyana John, Kawalya Dorah and Walusimbi Allen) who handed her a clean title on 01.08.12.

On 03.08.12, the 1st Respondent was accordingly registered proprietor of the suit land.

On 07.03.2012, the 1st respondent purchased from Auma Caroline Nataya (Peter Nataya's Administrator), the said unregistered (equitable) interest affecting her land after establishing beyond reasonable doubt that the same belonged to the estate of the late Peter Nataya.

The applicant doubles as a beneficiary for the late Ajeru Kevina Nataya (mother) and the late Peter Nataya (father).

JohnRich Cheap Stores Limited, a tenant to whom the applicant let the said claimed space and who afterwards erected a commercial building on the said land was compensated on 15.06.13 by the 1st respondent.

The 1st respondent is also the rightful owner of the suit premises and the possibility of evicting herself is an understatement, which cannot arise.

3. Issue for determination

Whether the applicant is entitled to the orders being sought in this application.

4. Resolution of this application

The grounds for the grant of a temporary injunction were clearly set out in the case of **Kiyimba –Kagwa vs Hajji Abdu Nasser Katende,**

[1985] HCB 43 by His Lordship Odok J (as he then was,) to include the following:-

- (i) The applicant must show a prima facie case with a probability of success.**
- (ii) Such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated for by damages.**
- (iii) Thirdly, if the Court is in doubt, it will decide the matter on a balance of probabilities.**

I wish to note that both counsel for the parties in their respective written submissions went deep into the merits of the main suit, HCCS No. 243 of 2013 between the parties. This application is for a temporary injunction order which does not require either party to discuss the merits of the said main suit. Counsel for the 1st respondent raised serious issues both on points of law and facts to show that the applicant has no cause of action against the respondents.

In the instant case, Counsel for the 1st respondent in his submissions argued that this application has no merit. He relied on a number of authorities. On the other hand, Counsel for the application maintained his arguments that this application has merit. He, too, relied on a number of authorities. The objections and issues raised by the 1st respondent in her affidavit in reply and her submissions in reply and the affidavit evidence and submissions by the applicant make the entire application contentious. Hence, the need to investigate the said issues during the trial of the main suit, HCCS No. 243 of 2013 between the parties. I am mindful of the consent judgment between the 1st respondent and the alleged tenants of the applicant in Civil Appeal NO. 31 of 2013; John Sekibuule, Richard

Wetaye T/A Johnrich Supermarket and Johnrich Cheap Stores Ltd vs Teopista Nabbale (1st respondent in the instant case) whereby the said appellants were sorted out and compensated by the 1st respondent. This may be act as an eye opener to the applicant, if she may wish to revisit her case against the 1st respondent in an amicable settlement of the matter. The choice in that regard lies with the applicant.

In the matter of **Kiyimba –Kaggwa vs Hajji Abdu Nasser Katende**, Court observed that:-

“ The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed of”.

Regarding a prima face case, Court have found that it is at this stage not necessary for the parties to go into the merits of the case and satisfy themselves on the probability of success. However, that it is enough for the court to satisfy itself that there is a serious question to be tried. In the case of Kiyimba-Kaggwa vs Hajj Abdu Nasser Katende (supra) Court held that:-

“considering the object of an interim injunction and the nature of proceedings at which it is considered, a more realistic and fair condition would be to satisfy the Court there is a serious question to be tried rather than a prima facie case with a probability of success.”

The 2nd condition is that it must be proved that the applicant will suffer irreparable injury not adequately compensatable in damages. In the case of Kiyimba Kaggwa vs Hajj Abdu Katende (supra), **irreparable injury**

was defined and said not to mean that there must be not be physical of repairing injury, but to mean that the injury must be a substantial or material one, that is, one that cannot be adequately compensated for in damages. The applicant in her affidavit evidence and this application asserted that if this application is not granted she will suffer an irreparable injury. I do not wish to doubt her as that would lead to speculation by Court. I gave the applicant the benefit of doubt in her claims in this matter.

The 3rd condition related to the balance of convenience which Counsel for the applicant submitted that in this case is in favour of granting relief to the applicant and the beneficiaries of the estate of the late Kevina A. Nataya who are in possession and the likely to suffer more damage if the land in question was interfered with. So be it.

5. Conclusion

In the result and for the reasons given hereinabove in this ruling, this application has merit. The submissions by both counsel for the parties raised matters regarding the ownership of the equitable interest, matters regarding the true proprietorship of the suit land are yet to be investigated and finally determined by this Court. Again it is noted that the 1st respondent is the registered proprietor of the suit land. Further there is need to have the main suit, HCCS No. 243 of 2013 between the parties fast trucked by the Court.

In that regard, the main suit is fixed for scheduling and hearing before any of the new in-coming judges in the August-September, 2013, Civil Session of the High Court of Uganda, Land Division.

In the premises, therefore, this application is allowed in the terms and orders being sought therein with costs in the cause.

Dated at Kampala this 27th day of June, 2013.

sgd

Joseph Murangira

Judge