

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISCELLANEOUS APPLICATION NO. 490 OF 2019
ARISING FROM MISCELLANEOUS APPLICATION NO. 776 OF
2015
AND
MISCELLANEOUS APPLICATION NO. 933 OF 2017
(ALL ARISING FROM CIVIL SUIT NO. 433 OF 2015)

1. JUSTINE NAMBI KASOZI

2. MUWEESI

**ISMA:.....APP
LICANTS**

VERSUS

1. EDITH NAKANDI

2. KAMADA BUKENYA

3. COMMISSIONER LAND

REGISTRATION:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by way of notice of motion under Section 98 of the Civil Procedure Act Cap 71, O.41 rr4 & 9 & O.52 r1 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. The temporary injunction issued by this Court on the 16th September, 2015, affecting the Applicants' properties comprised in **Kyadondo Block 223 Plots 4971, 4972 and 4974** (*hereinafter the suit lands*) be discharged or varied in respect of the said property.
2. An order be issued to the 3rd Respondent to remove the said temporary injunction as an encumbrance on the suit lands.
3. Costs of the application be provided for.

The grounds of the application are reiterated in the affidavit sworn by the 1st Applicant. I shall therefore not belabour to reproduce them. In her affidavit, the deponent averred that the 1st Respondent obtained an injunction against the Administrator General, Linda Lucia, Anne Birungi, Umar Katongole and the Commissioner Land Registration on the 16th September, 2015, vide Miscellaneous Application No.776 of 2015.

That at the time of grant of the said injunction, Umar Katongole; the 4th Respondent therein, had already sold Plots 4971 and 4972 to the 1st Applicant and Plot 4974 to the 2nd Applicant. Further, that despite the said plots not belonging to Umar Katongole at the material time, they were nevertheless affected by the injunction. *Copies of the said injunction are attached as annexure "A" and "B"*. She added that the Applicants were neither parties to Civil Suit No.433 of 2015 nor Miscellaneous Application No.776 of 2015 under which the said injunction was issued and; that the suit lands are registered in the names of the Applicants respectively.

Copies of the search statements were attached as annexure "B1", "B2", "B3" respectively. These statements indicate that the Applicants were registered on the suit land in May and June, 2017, respectively.

Further, it is her evidence that the said injunction was re-affirmed in Miscellaneous Application No.775 of 2017. *A copy of the order from the application was attached as annexure "C".* She added that the said order was registered as an encumbrance on the suit land by the 2nd Respondent on the 16th November, 2017, which has greatly affected the Applicants as they cannot transact or use their land to generate capital. Lastly, but not least; that the said injunction was issued in error on the ground that the Applicants were condemned unheard.

The application was opposed through the affidavits in reply by the 1st and the 2nd Respondents. It is a common ground in both affidavits that the 1st and 2nd Respondents object to the competency of the application on ground that the Applicants were not parties to the main suit. The 2nd Respondent's further objection to the competency of the application is on the ground that he himself is neither a party to the main suit nor the applications from which the application arises.

Further, the 1st Respondent also, generally averred that the Applicants are also in contempt of the impugned injunction on the ground that the transfer of the suit land to them by Umar Katongole happened after its issuance. In stating so, she referred

me to the *search certificates, annexures "B1", "B2", "B3"* above, which indicate that the Applicants were registered in June 2017. Premised on the foregoing, both Respondents invited me to dismiss the application with costs for lack of merit.

Counsel to each party filed written submissions in support of their respective cases. I have noticed that the submissions of the 1st Respondent's Counsel dwell much on the point of contempt of Court which is not an issue for determination in this application. I shall therefore only consider what appears relevant from his submissions, and those of the Applicants and the 2nd Respondent's Counsel.

Upon considering the entire application, I came to realise that it is not actually the impugned temporary injunction which is registered on the suit land but a different order. According to the search certificates adduced by the Applicants, the said order arose from the application of Kamada Bukenya against Edith Nakandi and Umar Katongole vide Miscellaneous Application No. 933 of 2017 for stay of execution pending review of a consent judgment between Edith Nakandi and Umar Katongole. That said application arose also from Miscellaneous Application No. 775 of 2017 which sought for review of the said consent judgment and an order adding Kamada Bukenya as a co-plaintiff to HCCS No.433 of 2015, the main suit.

On the 9th of November, 2017, this Court disposed of Miscellaneous Application No.775 of 2017 afterwhich Court denied

to grant the application, and also ordered that the order for stay of execution of the consent judgment be set aside.

Legally speaking, one may thus safely say that the said order was stripped of its legal force by the subsequent order. Unfortunately, the 3rd Respondent, perhaps in ignorance of the subsequent order, went ahead and registered Kamada Bukenya as an encumbrancer on the suit lands vide the same order seven days (7) after the ruling.

That notwithstanding, having noted that it has no legal force, the Applicants were at will to move the 3rd Respondent under the subsequent order to remove the said encumbrance. Having established this factual background, I am convinced that the Applicants were under a misapprehension when they brought this application.

Besides the above, it is also clear from the evidence that the impugned temporary injunction preceded the Applicants' registration on the suit lands. In view of this fact, it became difficult for me to believe that the impugned temporary injunction was issued in error as the Applicants allege. In fact and as the Respondents contend, the evidence before me creates an inference of contempt of lawful Court order by the Applicants. The inference is compelling especially by the fact that the Applicants chose not to make Umar Katongole, the alleged vendor of the suit lands, a party to this application notwithstanding that he was a party to the impugned temporary injunction.

In the view of the circumstances above, I find no reason for interfering with the impugned temporary injunction. I am therefore in agreement with the Respondents that the application lacks merit and ought to be dismissed with costs.

Before taking leave of the matter, I am constrained to comment on the point of law raised by the 1st and 2nd Respondents regarding the competence of this application. I must note that this was as well reiterated by their Counsel in his written submissions. It was undisputed that the Applicants were neither party to all proceedings from which this application purports to arise.

In my view, this alone renders their application defective. In that case, I am also in agreement with Respondents' Counsel that this application lacks competency.

Consequently, the same is hereby is dismissed with costs to the 1st and 2nd Respondents.

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Henry I. Kawesa

JUDGE

13/06/2019

13/06/2019:

Nsubuga Kenneth for the Applicants.

Applicant absent.

Mugisha Ronald & Mohammed Matovu for 1st Respondent.

1st Respondent present.

2nd Respondent absent.

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Henry I. Kawesa

JUDGE

13/06/2019