

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**MISCELLANEOUS APPLICATION NO. 500 OF 2019**  
**(ARISING FROM CONSOLIDATED MISCELLANEOUS**  
**APPLICATION NO.333 OF 2019 AND 430 OF 2019)**  
**(ARISING FROM CIVIL SUIT NO. 194 OF 2019)**

**BAHATI NANTEZA**  
**ASIYA:.....:APPLICANT**

**VERSUS**

- 1. KALEMERA HARRIET KIMERA HENRY**
- 2. BJORDAL BERIT ELIZABETH**
- 3. NANSUBUGA**

**FARIDAH:.....:RESPONDENT**

**S**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This application was brought by notice of motion under Section 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13 and Order 46 r1, 2 & 8 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. The temporary injunction ruling/orders of the Deputy Registrar in this Honourable Court delivered on the 29<sup>th</sup> March, 2019 be reviewed in part and set aside.
2. The access road be restored and the Applicant be allowed to construct.
3. Costs of this application be provided.

The material facts of this application are that the parties herein occupy land comprised in Kibuga Block 4 Plot 508 at Namirembe (*hereinafter the suit land*) with the Applicant on the upper part and the Respondents on the lower part. On the 11<sup>th</sup> March, 2019, the Respondents instituted Civil Suit No. 194 of 2019 against the Applicant claiming for, among others;

1. Cancellation of Certificate of Title of the suit land and;
2. General damages allegedly arising from fraudulent acquisition of the suit land.

In her filed on the 25<sup>th</sup> March, 2019, the Applicant denied the Respondents' allegations of fraud and; in addition set up a counter claim against them claiming for similar reliefs on the Respondents. At the filing of their respective pleadings, both parties filed applications for temporary injunctions that is; Miscellaneous Application No.333 of 2019 by the Respondents

and Miscellaneous Application No.430 of 2019 by the Applicant. The two applications were consolidated for ruling but on the 27<sup>th</sup> March, 2019, where both parties consented before the learned Deputy Registrar to have the same disposed of. Having regard to their wish, the learned Deputy Registrar visited *locus* in order to satisfy himself of the *status quo* prior to the entering the proposed consent whereat he observed the following;

- i) That the Respondents resided in the main house on the suit land with tenants at the back of the same.
- ii) That the Applicant was a resident on the upper part of the suit land with a house that belongs to the late Nuru with her tenants occupying rooms/mizigos on the same land.
- iii) That there was a fencing of iron sheets/mabati on the access road separating the Respondents and the Applicant and that there was, within the mabati a tenant belonging to the Respondents.
- iv) That there was vacant land above the house/rooms of the Applicant on which are pit latrines and rubbish pit while the rest of the land are being vacant.

On the basis of the above observations, this Court issued a temporary injunction restraining “*all parties, their servants, agents from selling, disposing, construction or removing the caveat on the suit land*” until the hearing and determination of

the main suit. Being dissatisfied with the order, the Applicant brought this application on the basis of the following grounds;

1. That the Applicant is aggrieved by the decision of the learned Deputy Registrar in the above consolidated Miscellaneous Application No.33 of 2019.
2. That this Honourable Court mistakenly made an order not prayed for by either party restraining them from constructing on their respective parts of the suit land.
3. That this Honourable Court in error observed that there is a vacant piece of land on the side of the Applicant's part of the suit land (upper part).
4. ***That there is mistake on the face of the record particularly Annexure "G" attached to the affidavit in support of Nanteza Bahati Asiya in the application No.430 of 2019, demonstrating that the Applicant is in the use of the suit land including near her demolished pit latrine.***
5. That there is sufficient cause warranting this review as the decision and the orders made prejudice the Applicant.
6. That this Honourable Court is associating itself to an illegality when it condones occupation of the only access road to the suit property provided in the physical plan of KCCA and

which is obstructed by a temporary iron sheet stall, belonging to the Respondents.

7. That it is just and equitable that this application is granted.

The application was supported by the Applicant's affidavit wherein she avers as follows:

- a) That this Court mistakenly made an order not prayed for by either party restraining the parties from constructing on their respective parts of the suit land.
- b) That this Court also mistakenly observed that there is a vacant piece of land above her house yet the same is used for a dust bin, growing vegetables, maize and a demolished toilet among others, per annexure "G" on Miscellaneous Application No.430 of 2019.
- c) That the said annexure demonstrates that she is in use and possession of what Court observed as vacant land.
- d) That she is in need of reconstructing her latrine which she suspects was demolished by the Respondents and renovating her old houses which she cannot do while the impugned order is in force.
- e) That she also believes that the construction will add value on the suit land and therefore shall not prejudice the Respondents who have also constructed on their part.

- f) Further that she is in need of boosting her tenants' security by erecting a perimeter wall on her part which is clearly separated by an access.
- g) That all the foregoing constitute sufficient grounds to warrant the review of the impugned order.

The application was only opposed by the 3<sup>rd</sup> Respondent through her affidavit in reply to the application. In that regard, this application shall proceed *ex parte* against the rest of the Respondents.

In her affidavit in reply, the 3<sup>rd</sup> Respondent averred that there was no error made by the learned Deputy Registrar in observing that the suit land was unutilized by the Applicant. Further, that by allowing the Applicant to construct on the suit land would constitute alteration of the *status quo* and consequently run contrary to the impugned temporary injunctive order which requires the same to be preserved.

In rejoinder to the 3<sup>rd</sup> Respondent's affidavit in reply, the Applicant averred that the orders prohibiting her from constructing on her part of the suit land were never prayed for and; that they are contrary to her right of clean and health environment because her pit latrine requires reconstruction. Further that while at *locus*, none of the parties was examined as regards to the vacancy on her part of the suit land as mistakenly observed by Court and that, annexure "E" to her written statement of defence also indicates that there is an access road

which persisted on the suit land since 1950 which facts are not disputed by the Respondents.

The respective parties filed submissions and I shall consider accordingly.

In his submissions, the Applicant's Counsel cited O.46 of the Civil Procedure Rules and stated that there must be an illegality, or mistake or error, apparent on the face of the record and other sufficient cause analogous to the foregoing grounds to warrant review.

Counsel then submitted that Court took note of an access road on the suit land but mistakenly declined to reinstate the same yet the Respondents' occupation of the same, constitutes an illegality contrary to the provisions of the Access to Roads Act and the Urban Physical Planning Act. He further submitted that every occupier of land is entitled to have an access road leading him or her to the main road. In his view, upholding the impugned order will deny the Applicant of an access road leaving the Respondents to dance within illegalities. He also submitted further that Court mistakenly restrained the parties from constructing on the suit land yet construction would benefit either party on ground that it would develop their respective portions of the suit land. Accordingly, Counsel submitted that Court cannot grant reliefs to parties from the vacuum and that the Applicant will not be able reconstruct her demolished toilet while the impugned order is in force.

On the other hand, the 3<sup>rd</sup> Respondent's Counsel supported the impugned order on ground that the learned Deputy Registrar acted legally by giving effect to the *status quo* he found on the suit land and that there is no access road on the suit land but rather a fencing of iron sheets separating the parties. He also disputed Counsel for the Applicant's submission, asking Court to permit construction on the suit land, by arguing that such would be contrary to the law governing temporary injunctions because construction would alter the *status quo* rather than preserve it.

In rejoinder, Counsel for the Applicant reiterated his earlier prayers. He also maintained that the order restraining the parties from constructing was based on Court's own motion and thus grossly irregular and offside the parties' pleadings. He also added that Court made a mistake on failing to maintain the *status quo* to the access road it observed and has been on the suit land since 1950. Accordingly, he invited Court to restore the access road on the grounds that;

1. The balance of convenience favours the Applicant who has a right to an access road.
2. The temporary injunction blocking the access road which existed prior the existence of the parties does not maintain the *status quo* but instead enforces the Respondent's illegal acts that is; constructing in the access road and then instituting a suit to maintain the *status quo*.



Concerning Court's observation at *locus* that part of the Applicant's side was vacant; Counsel argued that this was a mistaken fact because there is a demolished pit latrine and rubbish pit. His further argument was that this observation was also not reflected in the parties' pleadings and therefore that the impugned order was made in vacuum. In addition to that, he submitted that annexure "G" on the Applicant's affidavit in support of Miscellaneous Application No.430 of 2019 clearly depicted that there was a demolished pit latrine and maize plantation. Lastly, he prayed that this Court be pleased to grant the application.

### Resolution

First, the Applicant disputes the impugned temporary injunctive order on ground that it restrains construction on her part of the suit land which in the observations of Court, while at *locus*, had a demolished pit latrine and dust bin with the rest being vacant. According to her case, the impugned order was erroneously issued on the ground that none of the parties sought to limit construction in their respective pleadings.

At this point I must note that the reason why the Applicant seeks review of the impugned order is to enable her to construct on her part of the suit land, in particular; reconstruct a pit latrine and erect a wall fence.

Secondly, the Applicant also asserts that the impugned temporary injunctive order violates her right of access road which was also an error on the part of Court.

The foregoing assertions warrant a consideration of the principles governing temporary injunction. According to the case of **Noor Mohammed Janmohamed versus Karamali Virji Madhani(1953)20 EACA 8**, the whole purpose of a temporary injunction is that the parties ought to be preserved in *status quo* until the question to be investigated in the suit can be finally disposed of.

In that regard, the case of **Jakisa & Others versus Kyambogo University Misc. Application No. 549/2013** defines *status quo* to denote “*the existing state of affairs before a given point in time at which the acts complained of as affecting or likely to affect the existing state of things occurred*”.

The question now is; what then was the *status quo* at the material time the impugned temporary injunctive order was issued.

It is undisputed that the *status quo* at the material time was, first of all; there was a fencing of iron sheets on the access road separating the two parties and that there was within the mabati a tenant belonging to the Respondents.

Secondly, Court also observed, at *locus*, that there was a pit latrine and rubbish pit above the house occupied by the Applicant and that the rest of the land was vacant. This however was

disputed by the Applicant who claimed no part of her land was vacant as she uses the said part for a dust bin, growing vegetables, maize and that it also has a demolished toilet among others.

In support of her assertion, she referred me to annexure "G" on her affidavit in support of Miscellaneous Application 430 of 2019. Having looked at the said annexure, I came to the conclusion that what the Applicant asserted was not different from the Court's observations at *locus*. I shall therefore choose to believe the learned Deputy Registrar's observations.

Going by the above, I am unable to fault the learned Deputy Registrar in issuing the impugned temporary injunctive order at the material time in order to preserve the above *status quo*.

That order in my view inherently prohibits all acts or omission, including those not mentioned therein, that may affect the said *status quo*. Accordingly, it is irrelevant that the impugned order expressly stated acts such as construction even when such acts were not described by the parties' pleadings. It suffices to note also that the Learned Deputy Registrar acted properly when he issued the impugned injunctive order without ordering the restatement of an access road as such would have amounted to altering the *status quo*.

As the 3<sup>rd</sup> Respondent's Counsel, I also disagree with the Applicant and her Counsel that the said order was erroneously issued. Further, I am also unable to agree with the Applicant that

impugned order interfered with her right to clean and healthy environment as regards reconstruction of her pit latrine as she is at will to reconstruct the same latrine without changing the *status quo*.

It should be noted that the learned Deputy Registrar visited the *locus* and took note of the *status quo*. In the arguments raised by the Applicant, there is only merit in the desire to have the latrine constructed so that the environment is kept clean. The injunction did not injunct that. The injunction specifically restrained all parties from selling, disposing of, construction, or removing the caveat on the suit property. The injunction therefore covered the said parts shown above.

I therefore cannot find a way out of the order save to advise the her to pursue the main suit and complete it.

The application fails and is dismissed with costs to the Respondent.

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Henry I. Kawesa  
**JUDGE**  
14/06/2019

14/06/2019

Nasser Lumweno for the Respondents.

3<sup>rd</sup> Respondent present.

Nashuha Babra (Mr. Sanywa) for the Applicant.

Applicant present.

Court:

Ruling delivered to the parties present.

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Henry I. Kawesa  
**JUDGE**  
14/06/2019