

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 1983 OF 2022
(ARISING FROM MISCELLANEOUS APPLICATION NO. 1235 OF
2021)
(ARISING FROM CIVIL SUIT NO 620 OF 2021)

- 1. NANTUMBWE EDITH KIZITO**
- 2. MUKALAZI JOSHUA**
- 3. NANKYA ELINA**
- 4. DR EMMY TUGUME BERAHO**
- 5. DR MONICA BERAHO KARUHANGA::::::::::::::::::::: APPLICANTS**

VERSUS

TINKASIMIRE JOHN (SUIING THROUGH HIS LAWFUL
ATTORNEYS NAMULINDWA JOY NABYALIRO AND BYAMUKAMA
LEVISTER)::: RESPONDENT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.



Introduction:

1. This is an application by notice of motion brought under Sections 64 and 98 of the Civil Procedure Act, Order 41 rules 4 and 9 of the Civil Procedure Rules (CPR) for orders that: -
 - i) That the Temporary Order of Injunction issued vide M/A 1235 of 2021 against the applicants be discharged and set aside.
 - ii) That a consequential order be issued to the Registrar of Titles to vacate the injunction registered as an encumbrance on Kibuga Block 28 Plots 1244,1245,1246 and 1247 Formerly Plot 540 at Makerere Hill.
 - iii) Costs of the application be provided for.

Background;

2. The applicants in the instant application were respondents vide Misc. Application No.1235 of 2021 where a temporary injunction was issued by court against them in favour of the applicant herein referred to as the respondent.
3. The said temporary injunction order was registered on the certificate of title to the suit land as an encumbrance over the suit land by the commissioner land registration prohibiting any

transfers of the certificate of title or change of proprietorship. Being dissatisfied with the temporary injunction order, the applicants brought this application.

Applicants evidence;

4. The application is supported by affidavits deponed by the Mukalazi Joshua the 2nd applicant on behalf of the 1st and 3rd applicants and another affidavit deponed by Dr. Emmy Tugume Beraho the 4th applicant on behalf of the 5th applicant which briefly state as follows;

- i) That the Applicants were the Respondents in MA 1235 of 2021 which suit was heard and decided against me and the other Applicants by way of grant of a Temporary Injunction on Kibuga Block 28 Plots 1244,1243,1246 and 1247 Formerly Plot 540 at Makerere Hill.
- ii) That the 1st Applicant purchased the suit land from a one Nakalanzi Christine in 1973 and had the certificate of title registered in her name, developed the same with a residential house which at the moment is being rented.
- iii) That the 1st Applicant in 1993 later transferred the land to the 2nd applicant and the 3rd Applicant and who owned that

land ever since until 2020 when they sold off part of the land to the 4th and 5th Applicants.

- iv) That on the 20th day of September 2022, Court went to the locus vide Misc. App No.1235 of 2021 and visited the land where it observed that there were no developments on the suit land.
- v) That the respondent in Paragraph 7 of the Affidavit in support of the Chamber summons in M/A No.1235 of 2021 committed outright perjury and gave false information which intended to mislead court where he stated that he had permanent residential homes for his family on one part of the land and also uses the other part for agricultural activities and that he even had burial grounds thereon.
- vi) That the Respondent having been lawfully evicted from part of the suit land cannot come around to claim the same land.
- vii) That it is in the interests of justice that the Temporary Injunction be discharged and set aside as against the Applicants and the Registrar of Titles be ordered to vacate the Temporary injunction as an encumbrance on the suit land.



Respondents' evidence;

5. The application is responded to by an affidavit in reply deponed by NAMULINDWA JOY NABYALIRO the lawful attorney to the respondent which briefly states as follows;

- i) That the applicants filed the instant application on the 15th day of November, 2022 and the same has after one and half years been fixed for hearing which clearly manifests the applicants' seriousness and disinterest in prosecution of the same.
- ii) That the respondent instituted Civil Suit No. 620 of 2021 against the applicants and Miriam Kuteesa claiming 2.5 Acres of a kibanja interest in land comprised in Kibuga Block 25 Plots 1244, 1245, 1246 and 1247 (formerly Plot 540) at Makerere. also subsequently filed Miscellaneous Application No. 1235 of 2021 for a temporary injunction order which was granted pending the hearing of the main suit.
- iii) That the respondent was in possession of his kibanja with developments thereon which were demolished by the



applicants and at the time of determination of the said application he had been evicted therefrom.

- iv)** That if the instant application is granted, it would allow the applicants to deal and/or develop the suit land pending the determination of the instant suit something prejudicial to the respondent.

Representation;

6. The 1st, 2nd and 3rd applicants were represented by Simon Kiiza of SK Advocates and Nuwamanyi Mark for the 4th and 5th applicants of M/S Lens advocates whereas the respondent was represented by Ronald Bogezi of Kabega, Bogezi, Bukenya and Co. Advocates. both parties filed affidavits and submissions which I have considered in the determination of this application.

Issues for determination;

- i) Whether there is sufficient cause to discharge and set aside the temporary injunction order issued vide Misc .App No.1235 of 2021?**
- ii) What remedies are available to the parties?**



Resolution and determination of the issues;

7. Before I proceed with the resolution and determination of the issues in the instant application, I will first address the preliminary objections raised by counsel for the respondents.
8. Counsel for the respondent raises a preliminary objection in his submissions in respect to the representation of the applicants, where he avers that the applicants at all times during the proceeding of the suit where this application arises have been represented and their pleadings drafted by S.K Kiiza & Co. advocates and M/S Mayanja, Nakibule & Co. Advocates.
9. Counsel further submits that the instant application is brought by M/S Lens Advocates on behalf of the applicants without filing a notice of change of advocates, therefore lens advocates had no instructions to bring this application.
10. Counsel for the respondent relied on regulation 2(1) of the advocates professional conduct regulations and the decision in **Okodoi George & Anor vs. Okello Opaire Sam HCT-04-CR-M.A**

0143 of 2016 before Justice Henry Kaweesa which speak to the fact that the onus lies on the advocate to prove that indeed he has instructions and no advocate shall act without instructions.

11. In reply counsel for the applicants submitted that the point of law raised by counsel for the respondent does not meet the tests for a point of law as per order 6 rule 28 and 29 of the civil procedure rules and relied on the decision in **Aya Investment (U) Ltd Vs Industrial Development Corporation Of South Africa MCA 2908 Of 2023**.

12. A point of law is one which should be capable of disposing of the suit and one which doesn't require further evidence from the parties. In determining the points of law, courts will only look at the pleadings of the parties and the attachments there under.

13. I concur with the provisions and case law cited by counsel for the respondent in his submissions and it would be a procedural irregularity for counsel to act without instructions from the client.

14. The point of law raised by counsel for the respondents is one which speaks to representation of the parties and that Lens advocates that filed the instant application did not have instructions to bring the instant application. 

15. Upon perusal of the file, I establish that there is a notice of change of advocates filed on the 5th of march 2024 by Lens advocates indicating how it's them with instructions from the applicants to bring this application however the instant application was filed in 2022.

16. I take notice that at the time the application was filed there was no proof of change of advocates from Lens advocates adduced in court.

17. However, this honourable court is enjoined with inherent powers to ensure that substantive justice is administered, having this application disposed prematurely due to the late filing of the notice of change of advocates would be shutting down the doors of justice to the parties involved in this application. **(See; Section 98 Of The Civil Procedure Act Cap 71)**

18. For purposes of ensuring that the ends of justice are met, the notice of change of advocates filed late is hereby validated by this honourable court further the application is to proceed on its own merits.



19. Therefore, the preliminary objection raised by counsel for the respondent is hereby overruled and the same stands dismissed by this honourable court.

20. I will proceed to determine the issues raised in the instant application.

Issue 1. Whether there is sufficient cause to discharge and set aside the temporary injunction order issued vide misc.app no.1235 of 2021

21. A temporary injunction is a temporary remedy available to parties to a suit for the purposes of reserving their rights in the suit land pending the determination of the main suit.

22. The same temporary injunction can be discharged or varied by court as provided for in the civil procedure rules under Order 41 rule 4 which is to the effect that "**Any order of injunction may be discharged, or varied, or set aside by the Court on Application made to the Court by any party dissatisfied with the order**

23. The same principle has been adjudicated upon by court as stated in the decision in **Robert Kavuma v Hotel International Limited SCCA No. 08 of 1990** by the supreme court of Uganda



where it held that an application to set aside, vary or discharge an interlocutory injunction may be granted upon evidence of **a sufficient cause.**

24. There is no specific definition of a sufficient cause, this is a fact that can be determined by case-to-case basis. The Black's Law Dictionary 8th Edition at Page 231 defines "sufficient cause" to be analogous to good cause" or just cause", which simply means legally sufficient reason.
25. In establishing a Sufficient cause, it is often the burden placed on a litigant by court rules or order to show why a request should be granted or action or inaction excused.
26. In the instant application, the applicants in their affidavits in support state that when court visited locus it was established that the respondent did not have any developments on the suit land and that the respondent was legally evicted by an order of court.
27. In response, the respondent in his affidavit in reply states that he had developments on the suit land which were destroyed and demolished by the applicants and that the same applicants evicted him.



28. Further the respondent states that the eviction order was only in respect of 5 decimals of the suit land, not the whole of the suit land as stated by the applicants.
29. I will draw reference to the record attached at page 7 where it indicates that court conducted a locus visit of the suit land and established that the suit land had palm grass on one part and nothing more was on the suit land and neither was the land registered in the names of the respondent.
30. Further the eviction order attached is one which was lawfully issued by court and it was referring to 5 decimals of the suit land.
31. However, the temporary injunction order issued by the learned registrar referred to the entire suit land which suit land the respondent did not prove any interest in that the injunction order seemed to protect.
32. A temporary injunction order is one which seeks to preserve rights of parties in the suit land, for one to enjoy the legal protection of a temporary injunction he ought to establish an interest that he is to be deprived of if the said temporary injunction order is not granted.



33. It should be noted that where there is a legal right either at law or in equity, the court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded. (**See; Titus Tayebwa Versus Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009**)

34. In the instant application, the temporary injunction order referred to the suit land which suit land did not have any developments on that belonged to the respondent and that the suit land is registered in the names of the 4th and 5th applicants not the respondent who are in possession of the same.

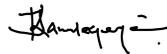
35. Further the applicants submit that the said temporary injunction order issued was registered on the certificate of title to the suit land as an encumbrance by the commissioner land registration, this is a fact that is not disputed by the respondent in his evidence.

36. I am of the view that the applicants have established a sufficient cause to have the said temporary injunction order issued discharged this is because it's not the respondent in possession nor is he the registered proprietor to the same suit land.

37. In the circumstances, the instant application succeeds with the following orders;

- i) The Temporary Injunction Order issued vide M/A No.1235 of 2021 is hereby discharged and set aside by this honourable court.
- ii) The Commissioner Land Registration to vacate the said temporary injunction order registered on the said certificate of title to the suit land as an encumbrance.
- iii) I make no orders as to costs.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

28/03/2024