

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC APPLICATION NO. 714 OF 2013
(ARISING OUT OF CIVIL SUIT NO. 350 OF 2013)**

1. **POPINA GENERAL SUPPLIES**
2. **INNOCENT MUGISHA** } **APPLICANTS**
3. **JACKIE BAYONGA** }

VERSUS

1. **STANBIC BANK OF UGANDA LIMITED**
2. **WAMALA RICHARD** }
 RESPONDENT
3. **COMMISSIONER OF LAND REGISTRATION**
4. **KALWANA EMMANUEL**

RULING

BEFORE HON LADY JUSTICE EVA K. LUSWATA

This is an application for a temporary Injunction presented under Order 41 r. 1, 3 & 9 and S.5298 CPA. The applicants seek to restrain the 1st and 3rd respondents from transferring the 3rd applicant's land comprised in Block 405 Plot 40 Bukasa, Wakiso into the names of the 2nd respondent or from disposing off of the 2nd applicant's land comprised in Block 438 Plots 459 and 460 (hereinafter collectively referred to as the suit land, until disposal of the main suit, as well as costs.

The application was filed before the 4th respondent was a party to the suit. Following my order in Misc Application 952/13, he was added and has since then, been represented by Mr. Tebusweke. The applicants are represented by M/s Kabega Tumusiime & Co., Advocates.

The application is supported by the affidavit of Jackie Bayonga the 3rd applicant. None of the respondents filed an affidavit in reply. Time lines were given for the parties to file their submissions. The applicants failed to comply with the time lines and on 7/10/15, I ruled that a decision would be made on the application upon their pleadings. Although submissions were filed for the 4th respondent, I noted that much of what was stated were matters of fact. Since no

affidavit evidence was presented for the 4th respondent to back up those submissions, it is deemed to be evidence from the bar. I thereby choose not to consider it in this ruling.

The grounds of the application are well enumerated and I will not repeat them here. In a nutshell, the applicants argue that there is a danger that the transfer and registration of the suit land in favor of the 2nd and 4th respondents is imminent and ought to be prevented until disposal of the main suit. The supporting affidavit expands on those grounds.

The law on temporary injunctions is contained in **Order 41 rules 1(a)** of the **Civil Procedure Rules** and the principles governing the grant of a temporary injunction are well settled. In the case of **American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396** Lord Diplock laid down guidelines for the grant of temporary injunctions that have been followed in the Ugandan cases of **Francis Babumba and 2 others Vs Erisa Bunjo HCCS No. 697 of 1999** and **Robert Kavuma Vs M/s Hotel International SCCA No.8 of 1990**, which are as follows:-

1. The applicant has to show that they have a prima facie case with a probability of success in the main suit.
2. The applicant has to show that he is likely to suffer irreparable damage if the injunction is denied.
3. If court is in doubt as to the above considerations, it will decide the application on a balance of convenience.

In considering the above principles, the court should also bear in mind that the court should not attempt to resolve issues related to the main suit: See: **Prof. Peter Anyang Nyong'O & Others Vs The Attorney General of Kenya & Others; East African Court of Justice Case Ref. No. 1 of 2006 (unreported)**

It is not in dispute that the applicants have filed HCCS No.350 of 2013 against the respondents and it is from that suit that this application originates. In that suit, the applicants as owners and mortgagors of the suit land contest its sale and transfer by the 1st respondent as mortgagee on account of a mortgage they argue was not properly discharged by the latter or discharged in bad faith, illegally and with fraud.

In her affidavit in support of the application, the 3rd applicant recounts much of the contents of the plaint and states that the 1st respondent extended to the applicants' an overdraft, guarantee and exposure facilities to the tune of Shs. 3 billion to finance several business projects. The suit land was offered and accepted as the security, a debenture was placed against the assets of the 1st applicant and several personal guarantees made by the 2nd and 3rd applicants respectively. There was default by the applicants, but without notice or considering the alternative remedies under the debenture or in receivership, the 1st applicant proceeded to sell the suit land to the 2nd respondent for a paltry sum. That there were then subsequent transfers to the 4th respondent. The applicants deem the sale and transfers fraudulent, null and void. They also complained against the failure by the 1st respondent to account for the rent collected from the property belonging to the 2nd applicant.

As previous authorities have shown, *prima facie* case is not necessarily a tight case. It is a case in which the court need only be satisfied that there is a serious question to be tried. Wambuzi C J (as he then was) in the case of **Robert Kavuma (supra)** explained it well when he stated that the applicant is required at this stage of the trial to show a prima facie case and a probability of success but not success. (Emphasis mine). In my considered view, and from the facts as briefly related above, the amended plaint raises serious issues that merit a trial. In this application, there was no rebuttal against the existence of the loan facility and the fact that the suit land was sold by the 1st respondent to the 2nd respondent to discharge the mortgage. In the main suit, the applicants would still need to prove their claim but for now, *prima facie* case has been raised.

Beyond raising the *prima facie* case, I note that in both the application and main suit, the applicants concede to the fact that the suit property belonging to the 3rd applicant has already been transferred to the 4th respondent. The facts in paragraphs 8 (d) and particulars of fraud in the amended plaint depict that much. In paragraph 13, the plaintiffs/applicants seek an order directing the 3rd defendant/respondent to rectify the register to reinstate the 3rd applicant on the title and that prayer is repeated in paragraph 15 (c) thereof. To my mind, that is the prevailing status quo in place at the time of filing the amended plaint.

It must not be forgotten that temporary injunctions are discretionary orders and will generally not be granted in vain. It is confirmed from the pleadings that the act of transferring Block 405 plot 90 to the 2nd and 4th respondents, and registration onto the title of the name of the 4th defendant was completed, and for that reason, granting the order sought by the applicants will be in vain and it is accordingly denied. The applicants may well continue their pursuit of the claim and if successful, can still obtain an order reversing the sale and transfer of the 3rd applicant's land into the name of the 4th respondent.

The applicants in addition sought an order preventing the 1st and 3rd applicants from disposing off of the land belonging to the 2nd applicant until disposal of the suit. There was no specific contest to that prayer and I have already found that the applicants have by their pleadings raised a *prima facie* case. The valuation report attached to the amended plaint as annexure "E" shows that that property was in May 2012 valued at Shs. 1,715,000,000/-. This was repeated in the affidavit of the 3rd applicant. I have no doubt to believe her that it is valuable property and that the 2nd applicant stands to suffer substantial loss if it is sold off before final disposal of the suit.

I would thereby allow the prayer in respect of that property and order that a temporary injunction doth issue to restrain the 1st and 3rd respondents from disposing off of property of the 2nd applicant comprised in Busiro in Block 438 Plots 459 and 460 until the main suit is heard and disposed of.

Since the application has only succeeded in part, I would in addition order that each party herein meets their costs of the application.

I so order

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EVA K. LUSWATA
JUDGE
16/10/2015