

UGANDA / JUDGMENT

Ayebale v Namanda and Others
(Miscellaneous Application No. 1780 of
2022) [2023] UGHCLD 18 (6 February 2023)
[2023] UGHCLD 18

COURT

HC: Land Division (Uganda)

BEFORE

Basaza, J

CASE / FILE NUMBER

Miscellaneous Application No. 1780 of 2022

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****[LAND DIVISION]****MISC. APPLICATION NO. 1780 OF 2022****[ARISING FROM MISC. APPLICATIONS NO. 1073 & 1074 OF 2020]****[ALL ARISING FROM HCCS NO. 584 OF 2020]****GRACE AKELLO AYEBARE**

.....

APPLICANT **$\$V\$$**

- RITAH NAMANDA KABOYO \$1.\$
- TUNGAKWO BERNARD \$2.\$
- OWEMBABAZI ENID \$3.\$

.....

BEFORE: - HON. LADY JUSTICE P. BASAZA - WASSWA**RULING****Representation:**

- Mr. Nuwagaba Patrick for the Applicant
- Mr. Pande Norman for the 1st Respondent.
- Mr. Ronald Kwesiga for the 2nd Respondent
- Mr. Kubakulungi Elly for the 3rd Respondent

Introduction:

This is an application by which the Applicant; Ms. Ayebare seeks that the order §[1]\$ of the learned Deputy Registrar; HW Flavia Nabakooza, issued on November 17, 2020 vide Misc. Applic. No. 1073 of 2020, be varied to permit her construct a retaining wall.

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§[2]\$ The said order of November 17, 2020 read as follows;

'That the INTERIM ORDER issued on the 2nd day of September is hereby extended but modified to restraining the respondents, their agents, legal representatives, assignees, servants or any other person from selling or excavating the land comprised in Busiro Block 411 Plot 768 Land at Sisa pending the hearing and disposal of this application.

That the status quo of the suit land being the on- going construction and developments shall proceed however no new foundations nor buildings should be erected on the same'

The above order was a variation of an earlier order dated September 2, 2020 in §[3]\$

Misc. Application No. 1074 of 2020 that read that;

'AN INTERIM ORDER do issue restraining the respondents, their agents, legal representatives, assignees, servants or any other person from trespassing onto, selling, constructing, developing, evicting, encroaching / entering thereon and or from any other dealings in the land comprised in Busiro Block 411 Plot 768 Land at Sisa pending the hearing of Miscellaneous Application No. 1073 of 2020 for a temporary injunction'

- The grounds of this application are contained in the Applicant's unusually long §[4]\$ affidavit in support thereof, which can be found on the court record and need not be laid out here.
- All the Respondents, although served with court process, elected not to file any §[5]\$ replies in answer to this application.

Issue for court's determination:

Whether sufficient cause has been shown to grant the Order sought? \$[6]\$

Decision of Court:

The purpose of a temporary injunction under Order 41 Rule 1 of the Civil \$[7]\$ Procedure Rules (CPR) is to preserve the status quo, to prevent any wastage, damage, alienation, sale, removal or disposal of the suit property until the

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questions in the Head suit are investigated and finally disposed of. See Order 41 Rule 1 of the CPR and See Giella v Cassman Brown & Co. Ltd¹.

- Any variation of a restraining Order, such as the Order of November 17, 2020 [8] that was made under the provisions of Order 41 Rule 1, should only be made within the context and realm of Order 41 Rule 1, to wit; within the realm of preserving the status quo.
- In converse to the above, the order sought herein seeks to change, rather than to \$[9]\$ preserve, the status quo. It seeks that fresh construction and new foundations be allowed, which in my view, would defeat the purpose of the restraining Order, and would in effect render the Head suit nugatory.
- I accordingly find no merit in this application, which, with respect, is \$[10]\$ misconceived. To allay any fears harbored by any party, the Head suit will be fast tracked and disposed of quickly.
- In the result, this application is dismissed. The costs shall be in the cause. \$[11]\$

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P. BASAZA - WASSWA

JUDGE

February 6, 2023

Ruling delivered electronically on the Judiciary ECCMIS system and via email to the parties.

¹ [1973] E. A at pages 358 -361

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