

UGANDA / JUDGMENT

Equity Bank (U) Limited & Another v
Great Value Safaris Limited & Another
(Miscellaneous Appeal 7 of 2024)
[2024] UGCommC 127 (8 April 2024)
[2024] UGCommC 127

COURT

Commercial Court of Uganda

BEFORE

Kahigi Asiimwe, J

CASE / FILE NUMBER

Miscellaneous Appeal 7 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT I(AMPALA

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MISCELLANEOUS APPEAL NO. OOOT OF 2024

(Arising from Miscellaneous Application No 2715 of 2o231

(Arising from Civil Suit No. 1392 of 2o23l'

| 1. Equity Bank (Uf Ltd | I | |

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| 2. Somdiam Limited | | l::::::::::::::::::::::::::::::::Appellants |

Versus

1. Great Value Safaris Ltd ^I 2. Patrick Kalinda]::::::::::::::::::::::::::::::::Respondents

Before Hon. Lady Justice Patricia Kahigi Asiimwe

Judgment

Introduction

- 1. This appeal was brought under section A(21(c), section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, Order 44 Rule 1, Order 50 Rule 8 of the Civil Procedure Rules against the Orders of the learned Registrar in Miscellaneous Application No. 2715 of 2023.
- 2. The Appeal seeks orders that:
 - a) The Order granted in Miscellaneous Application No. 2715 reversing the status quo in property comprised in LRY 222 Folio 13 Plot 59 Kira Road, Kamwolqra and LRV 221 Folio and LRV 221 Folio 8 Plot 49 Kira Road, Kamwokya be set aside for having been granted in contravention with the established principles of law relating to temporary injunctions.
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- b) The Order granted in Miscellaneous Application No. 2715 lapsing the order in Miscellaneous Application No 2722 be set aside for having been granted without requisite jurisdiction.
- c) The order granted in Miscellaneous Application No. 2715 restricting the 2nd Appellant's proprietary rights in property comprised in LRV 222 Folio 13 Plot 59 Kira Road, Kamwokya LRV 221 Folio and LRV 221 Folio 8 Plot 49 Kira Road, Kamwokya be set aside for contravening the law on sale of mortgaged property.
- d) Cost of the application.
- 3. The grounds of the Appeal are set out in the Notice of Motion and in the Affidavit in Support deposed by Isha Baguma, legal manager of the 1st Appellant. He stated that:
 - The 1st Appellant disbursed a loan facility of UGX \$a) \$ 1,120,000,000 to the 1st Respondent which was secured by legal mortgages over land and property comprised in LRV 222 Folio 13 Plot 59 Kira Road Kamwokya and LRV 221 Folio 8 Plot 49 Kira Road Kamwokya Kampala registered in the 2nd Respondent's names.
 - b) The 1st Respondent defaulted on his loan obligations and the 1st Appellant commenced foreclosure proceedings.
 - The 1st Appellant advertised the suit property in Daily c) News Papers and on 29th September 2023 the 2nd Appellant purchased the suit property through public auction at UGX 827.805,298.

- On 13th November 2023 the Respondents filed M. A No. 2722 of 2023 seeking interim orders and restraining the Appellants from evicting the Respondents from the suit properties.
- On 21st December 2023, M. A No 2722 of 2023, an application for interim injunction was heard and dismissed in favor of the Appellants and the 2nd Appellant went ahead and took vacant possession of the suit properties.
- On 8th February 2024 the substantive application for a temporary injunction, M. A No. 2715 of 2023 was heard and determined in favor of the Respondents.
- The Registrar acknowledged the learned that the Respondents had been evicted from the suit land but illegally granted the temporary injunction.
- The learned Registrar illegally sought to reverse the status quo of the suit properties.
- The learned Registrar acted illegally and in excess of his powers when he set aside and lapsed the dismissal order in MA No 2722 of 2023.
- The Learned Registrar injudiciously exercised his discretion when he restricted the 2nd Appellant's ability to deal in suit property despite the vivid available remedies in law relating to the sale of the mortgaged property.
- k) The 2nd Appellant's possession of the suit properties is a threat and he has failed to enjoy quiet possession despite having purchased the suit properties.
- 4. The Appeal was further supported by an additional affidavit in support sworn by Peter Baguma the LC 1 Chairperson of Kamwolgral Village D Kampala. He stated that:
 - a) On 26th January 2024, his office received a letter from the Inspector General of Police in respect to the clearance of the handover of the suit properties.
 - b) The 2nd Respondent was evicted from the suit property on 5th February 2024 and vacant possession was granted to the 2nd Appellant.
 - c) The 2nd Appellant is currently enjoying vacant possession of the suit properties.
- 5. The Respondents opposed the Appeal through an Affidavit in Reply deposed by the 2nd Respondent. He stated that:
 - a) The 1st Respondent informed the 1st Appellant that it was experiencing challenges in servicing the loan facility.
 - b) They therefore commenced fresh restructure negotiations that resulted in a variation of the terms agreement dated 3rd July 2023.
 - c) The variation of terms agreement was conditioned on the 1st Respondent paying all accrued interest and restructure fees which the 1st Respondent paid UGX 150,000,000 to cater for the said fees.

- d) According to the information from his lawyers, the variation of terms of the agreement was in CCta redemption of the mortgages on the suit properties which effectively halted the foreclosure and sale. Therefore, the alleged sale was illegal, fraudulent, and aimed at defeating and frustrating the redemption.
- e) His lawyers informed him that the sale without a valuation within 6 months prior to sale is illegal irregular and in contravention of the Mortgage Regulations. and
- f) The suit properties were sold and transferred to the 2nd Appellant at undervalue because the Respondents sought an independent valuation that returned a value of UGX 1,500,000,000 as of 5th March 2018.
- The Appellants have not yet taken vacant possession and the Respondents are still in physical possession
- h) Annexure C to the Affidavit in Support is a clearance to provide security during the intended handover and does not prove and corroborate that the Appellants are in possession of the land.
- i) Annexure F to the Affidavit in Support is a letter addressed to the State House Land Department simply presented with a chronology of events that gave rise to the parties' dispute and doesn't in any way conclusively prove that Appellant took possession of or is currently in possession of the suit properties.
- j) There is no evidence to show that in the additional affidavit that the deponent is the LC1 Chairman of Kamwoliqra Village D in Kampala.
- k) The Respondents' advocates informed him that at the hearing of MA No. 27 15 of 2023, the Respondents were still in possession of the suit properties which is the status quo to date and that the Application was meant to preserve that status quo and the Learned Registrar's order did not reverse the status quo since no eviction had taken place.
- l) The Respondents' lawyers informed him that the moment the substantive application was heard and determined, the interim orders automatically lapsed therefore the order of Learned Registrar lapsing the interim orders was moot and of no legal effect.
- m) The Respondents' lawyer informed him that the 2nd Appellant has not brought any evidence to show that he is in possession of the suit properties.
- 6. In Rejoinder the Appellants relied on the Affidavit in Rejoinder deposed by Gideon Kibuuka, an Advocate and legal officer in Jald Uganda Limited. He stated that:
 - a) In June 2022, his company was instructed by the 1st Appellant to recover from the Respondents the outstanding sum on the loan facility disbursed to the 1st Respondent totaling UGX 1,035,807,454.

- b) Having undertaken all the required processes and through an advert placed in the Daily newspapers of the 26th June 2023 the suit property was sold via public auction at UGX 827, 805, 298 and titles were transferred into the names of the Appellant.
- Eviction of the Respondents had been cleared by letter dated 3rd November 2023 but was halted due to M. A No. 2722 of 2023 and MA No. 2715 of 2023.
- When the interim application was dismissed, they obtained the necessary clearances and handed over vacant possession of the suit properties on 5th February 2024.
- From his knowledge as a lawyer, the Learned Registrar in MA No 2715 of 2023 unjudiciously exercised his discretion when he deliberately ignored the evidence furnished with respect to the status quo of the suit properties as at the time of the hearing of the Application.
- The Learned Registrar having acknowledged in his ruling that the Respondents had been evicted from the suit properties as at the time of hearing the Application erroneously attempted to consider the said eviction to have been illegal without advancing any reasons for his findings.

Representation

7. The Appellants were represented by M/S Katende, Ssempelwa & Co Advocates, Solicitors, and Legal Consultants, and the Respondents were represented by M/S Muwema Co Advocates & Solicitors. At the hearing, the parties made oral submissions in Court.

Resolution

Ground 1: The learned Registrar erred in law when he granted the order reversing the status quo in property comprised in LRV 222 Folio 13 Plot 59 Kira Road, Kamwokya and LRV 221 Folio and LRV 221 Folio 8 Plot 49 Kira Road, Kamwokya

8. In the case of Housing Finance Bank Ltd Vs Silk Events Ltd & Another Civil Appeal No. 0300 of 2021 court noted that:

Since the granting of an interlocutory injunction is a discretionary matter, appellate courts have limited their role. The appellate court must not interfere with the exercise of discretion merely on the ground that it would have exercised the discretion differently. There are two circumstances where the appellate Court will interfere with the exercise of discretion namely; where the court at first instance acted on wrong principles, and where the decision is manifestly absurd or unreasonable that a misapplication of a wrong principle is inferred. To interfere, there must be a clear mistake in the law or the evidence, or some other glaring error.

(Also see the case of **Nakato Margaret V Housing Finance Bank LTD & Anor Civil Appeal No.0687 of 2021**)

9. The Appellants submitted that on the 29th of September 2023, the 2nd Appellant purchased the suit property. On 13th November 2023, the Respondents filed 2 applications one for a temporary injunction and the other for an interim temporary injunction restraining the Appellants from evicting them from the suit properties. The interim temporary injunction was dismissed and the 2nd Appellant went ahead and took vacant possession of the suit properties. They further submitted that by the time the

temporary injunction was heard the status quo had changed and that the Court should not have granted the injunction.

10. The learned Registrar in his ruling noted that it is not in dispute that the suit property was sold to the 2nd Appellant. He further stated that the Respondents submitted on status quo as follows:

> They however submitted that following the ruling of this Court in Misc. Application No. 2722 of 2023, the 2nd Respondent took over vacant possession of the subject property to which it continues to enjoy the same to date. That the current status quo of the property comprised in LRV 222 folio 13 Plot 59 Kira Road, Kamwokya, and LRV 221 Folio 8 Plot 49 Kira Road, Kamwokya has been detailed in a letter in response to a complaint filed by the Applicants to the State House Land Department copied and filed in this Court on the 15th day of February 2024. The same has since changed from what it was when the applicants filed this application before this court. Precisely, the event as deposed by the application in respect to the Kira property have since occurred following the dismissal of the *Applicants' application for interim order.*

- 11. It is also clear from the Ruling of the Registrar that both parties submitted that they were in possession of the suit property. However, the learned Registrar having summarised the submissions of the Respondent on the status quo did not make a finding on the issue.
- 12. According to **Black's Law Dictionary** 8th Edition page 4418 status quo means the situation that currently exists.
- 13. In the case of **Morjaria Maheshwery Purshotam Versus Stanbic Bank Uganda Limited** Miscellaneous Application No. 0191 of 2022 it was held that the main purpose for issuance of a temporary injunction order is the preservation of the suit property and the maintenance of the status quo between the parties pending the disposal of the main suit.
- 14. The Court in **Ikinu Debora Ogwang V Osele John & 18 other MA No 0017 of 2022** noted that in considering of grant of a temporary injunction it is necessary to identify the status quo.

- 15. In the case of Jover Byarugaba Vs. Ali Muhoozi & Ano. Kashaija Robert Jom Misc Application No.215 of 2014 it was held that in addition to the 3 conditions stated in the **Kiyimba Kaggwa Vs. Hajji Abdul Nasser Katende (1988) HCB 43**, the Applicant must show or prove that the aim of the temporary injunction is to maintain the *status quo* until the determination of the whole dispute.
- 16. From the above authorities, the issue of the status quo is very key in determining whether or not to grant a temporary injunction. A temporary injunction will not be granted where the effect will be to reverse the status quo. I find that the learned registrar erred in law when he did not make a finding on the issue of the status quo.
- 17. The learned Registrar did however order that the Applicants should not be evicted from the suit properties and further ordered that:

Any eviction that could have taken place before the issuing of this order must have been carried out illegally and shall reverse with immediate effect.

- 18. The above order by the learned Registrar shows that the Registrar was not sure of the status quo at the time of determining the Application. This notwithstanding, the learned Registrar made an order which in effect would reverse the status quo in the event that an eviction had taken place. This was an error on his part.
- 19. It is not in dispute that the suit property was sold to the 2nd Appellant by public auction. It is also not in dispute that at the time of the hearing of the Application for the temporary injunction the suit property had already been sold to the 2nd Appellant. What appears to have been unclear was who was in possession of the suit property at the time of the hearing of the application for the temporary injunction.
- 20. From the record, I note that none of the parties submitted any substantive evidence to prove that they were in possession of the suit property. This is one of those cases where a visit to the locus in quo would have been useful. Be that as it may, in this case, the Applicants in the application before the Registrar brought the Application seeking an order restraining the 2nd Respondent from selling, disposing, or otherwise evicting the Applicants from the suit property. As already noted at this point the suit property had already been sold to the 2nd Appellant. It is trite that he who alleges must prove (section 103 of the Evidence Act). Therefore, the Applicants had the burden to prove that they were in possession of the suit property at the time the Application was heard. The Applicants in the Miscellaneous Application did not submit any evidence to prove that they were in possession of the suit property. Therefore, the burden of proof did not shift to the Respondents.

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- 21. In the circumstances I find that the Applicants in the matter before the Registrar did not prove that they were in possession of the suit property.

- 22. The submissions of both parties show that at the time of filing the application for a temporary injunction, the Respondents were in possession of the suit property. However, at the time of hearing the application and at the time of hearing this appeal, both parties were still claiming that they were in possession of the suit property. Clearly one of the deponents of the affidavits told lies on oath. This court has a challenge determining which of the parties has possession of the property as it is not possible that both of them are in possession of the suit property.
- 23. The Appellants filed 3 affidavits in respect to this appeal. The affidavits bring in new evidence that was not availed to the Registrar at the time of hearing the application. This is contrary to Order 43 Rule 22 of the Civil Procedure Rules. However, the rule does provide for exceptions as follows:
 - (a) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; or
 - (b) the High Court requires any document to be produced of any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the High Court may allow the evidence or document to be produced, or the witness to be examined.

- 24. Given the challenge this court is faced with, in the interest of ensuring substantive justice in this matter, I will consider the evidence submitted by the parties in the present appeal.
- 25. The Appellants filed an affidavit sworn by Peter Baguma who stated that he is the LCI Chairperson of Kamwokya 1 Village D, Kampala where the suit land is situated. He testified that the 2nd Respondent was evicted from the suit property on 1st February 2024 and vacant possession was granted to the 2nd Appellant.
- 26. The Applicant also relied on the affidavit sworn by one Gideon Kibuuka who testified that his company Jald Uganda Limited was contracted by the 1st Appellant to recover money from the Respondents. He further stated that after the application for the interim injunction was dismissed he obtained clearances and handed over vacant possession of the property to the 2nd Appellant.
- 27. The deponent of the Affidavit in Reply Patrick Kalinda stated that it is the Respondents who are in physical possession of the suit property and they continue to collect rent from the tenants. However, no evidence was adduced to support the testimony.
- 28. Based on the above evidence, I find that the 2nd Appellant was in possession of the suit property at the time of hearing the application for a temporary injunction. Therefore, the status quo had changed from the Respondents being in possession of the suit property to the 2nd Appellant being in possession of the suit property at the time of hearing the Application for a temporary injunction.

- 29. In the case of Mitanda Baklae Masso David V URA MA No 1424 of 2017 court dismissed the Application for a temporary injunction on grounds that the status quo had changed and that a temporary injunction would reverse the status quo.

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- 30. In conclusion the learned Registrar erred in law when he granted the order for the temporary injunction thus reversing the status quo. This ground is therefore upheld.
- 31. Having upheld the 1st ground of appeal I have not deemed it necessary to address grounds 2 and 3 as doing so would be moot-
- 32. The Appeal is therefore allowed and the orders of the learned Registrar in Miscellaneous Application No.27 of 2023 are hereby set aside. The costs shall abide the outcome of the main cause.

Dated this 8th day of April 2024

Patricia Kahigi Asiimwe

Judge

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Prepared on 13 October 2026 · Esheria