

UGANDA / JUDGMENT

GM Sugar Limited v Isabirye (Miscellaneous Application 97 of 2022) [2024] UGHC 646 (3 July 2024) [2024] UGHC 646

COURT
High Court of Uganda

BEFORE
Bukirwa, J

CASE / FILE NUMBER
Miscellaneous Application 97 of 2022

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT JINJA
MISCELLANEOUS APPLICATION NO. 97 OF 2022 ARISING FROM MISC. APPL. No.
269 OF 2019 ALL ARISING FROM CIVIL SUIT NO.50 OF 2015 GM SUGAR
LTD:..... VERSUS**

**ISABIRYE VICTO:..... BEFORE: HON. LADY JUSTICE FARIDAH
SHAMILAH BUKIRWA NTAMBI RULING**

Introduction

This Application was brought under Section 98 of the Civil Procedure Act and Order 41 rules 4 & 9 of the Civil Procedure Rules seeking orders that the interim order issued by the Deputy Registrar of this Court dated 24.09.2021 be vacated or set aside.

The grounds for this Application were laid out in the Affidavit in Support of this Application deposed by Mugisha Joshua but are briefly stated below that;

- 1. The Applicant is the registered proprietor of the suit land.
- 2. The Applicant has at all times been in possession of the suit land, which fact was ignored by the Deputy Registrar.
- 3. The interim order has the effect of upsetting the status quo instead of preserving it.
- 4. The interim order was issued in perpetuity contrary to the law.
- 5. There is sufficient cause for the interim order to be set aside or discharged.

Representation

The Applicant was represented by M/S Waymo Advocates while the Respondent was represented by Mununlo & Co. Advocates.

Page 1 of 5

Determination of the Application

It should be noted that despite acknowledgement of service of the Applicant's written submissions, the Respondent did not file written submissions to date. As such, this court shall proceed to determine this application basing the submissions on record.

The court shall adopt two issues raised by the Applicant;

- 1. Whether there is sufficient cause for this court to vacate or set aside the interim order.
- 2. What remedies are available to the parties?

Issue 1: Whether there is sufficient cause for this court to vacate or set aside the interim order.

Counsel for the Applicant submitted that interim orders are usually granted to maintain the status quo and are issued for a short time which must be definite. He further submitted that the interim order issued by the Deputy Registrar was issued in perpetuity. The interim order has been in place for over 3 years without any progress of the suit. The Applicant is the proprietor of the suit land and is currently in possession of the suit property. By the time the interim order was issued, the Respondent had already vacated the suit property and thus the interim injunction was overtaken by events.

I have carefully read and considered the submissions by Counsel for the Applicant. It is trite law that an interim 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.

The same temporary injunction can be discharged or varied by the 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."

The same principle has been adjudicated upon by the court as stated in the decision of *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.

There is no specific definition of a sufficient cause, this is a fact that can be determined on a case-to-case basis. Black's Law Dictionary 8th Edition at Page 231 defines "sufficient Page 2 of 5

cause" to be analogous to "good cause" or "just cause", which simply means legally sufficient reason.

In establishing a sufficient cause, the burden is placed on a litigant by court to show why the request should be granted or action or inaction excused.

In the instant application, the Applicant states in paragraph 3 of the Affidavit in Support of the Application that the Respondent instituted Misc. Application No. 269 of 2019 seeking an interim injunction against the Applicant or its employees from inter-alia evicting the Respondent from the suit land, transfer, disposing of or mortgaging the suit land comprised in LRV 638 Folio 1 Plot 39 situated at Kutch Road West Jinja.

In Paragraph 7 of the Affidavit in Reply to the instant application, the Respondent stated that before the ruling in respect to Misc. Application No.269 of 2019 was given by the court, he was forcefully evicted by the Applicant from the suit land. This therefore means that the status quo on the suit land changed before the ruling in M. A 269 of 2019 was rendered in respect to the application for an interim injunction.

This means that by the time the order was issued by the Learned Deputy Registrar in respect to Misc. Application No.269 Of 2019, it was partly overtaken by events. The order issued by the Deputy Registrar partly states as follows;

"This is an application for an interim order to restraining the 4th Respondent, its employees or agents or assignees from evicting the Applicant from the suit property or transferring it to third parties.

.....

It is this Court's view, that this Application is intended to give line to the main suit. For that reason, the Application is granted in the terms proposed."

The order issued by the Learned Registrar to restrain the Applicant from evicting the Respondent from the suit land was overtaken by events since the Respondent in Misc. Application No.269 Of 2019 had been evicted. As such it is a valid ground for varying this order.

Secondly, the Applicant states in paragraphs 5 and 6 of the Affidavit in Support of the Application that the Deputy Registrar granted an interim injunction which is open-ended and seems to have an indefinite life span contrary to the law and purpose of interim orders. As a Page 3 of 5

result, the Respondent has not bothered to prosecute his suit since he obtained the interim order on 20th September 2019.

From the ruling quoted above, it is clear that the Deputy Registrar did not give timelines within which the interim injunction was to operate. It should be noted that in such circumstances, parties will always be likely to abuse the intention of the interim injunction by not pursuing the main Application for a temporary injunction to its reasonable conclusion. Instead, they will use the interim injunction to unjustly use the suit property or frustrate the other party who may be

I agree with Counsel for the Applicant that the Respondent has since the delivering of the ruling sat back instead of pursuing Civil Suit No. 50 of 2015 and Miscellaneous Application No. 268 of 2019. In the result therefore, I will caution the Respondent to refrain from dragging these proceedings before this court in respect to the suit land.

In the circumstances, I find that the Applicants have demonstrated sufficient cause as to why the order for an interim injunction issued by the Learned Deputy Registrar in Miscellaneous Application No. 269 of 2019 should be varied.

Having found that there is sufficient reason why the order for an interim injunction issued in Miscellaneous Application No.269 of 2019 should be varied, this court is left with no option but to go ahead and vary the said order.

1. The Applicant, her employees, agents or assignees shall not transfer, dispose of or mortgage the suit land comprised in LRV 638 Folio 1 Plot 39.

2. This order shall remain in force till the 31st day of October 2024 or the day when Miscellaneous Application No.268 of 2019 shall be disposed of (which ever comes first).

3. Costs of this Application shall be in the cause.

FARIDAH SHAMILAH BUKIRWA NTAMBI

JUDGE
Delivered this Brol
Delivered this Brol
day of July 2024

Page 5 of 5

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Prepared on 13 October 2026 · Esheria