

Kabugo v Nantongo & Another
(Miscellaneous Application 373 of 2024)
[2024] UGHCFD 55 (16 September 2024)
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VERSUS

- 1. HEATHER FLAVIA NANTONGO ::::::::::::::: JUDGMENT CREDITOR/1ST RESPONDENT
- 2. HENRY KONDE ::::::::::::::: JUDGMENT DEBTOR/2ND RESPONDENT

RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA**1.0 Introduction.**

1.1 This Ruling relates to an application brought by the Applicant under Article 26, 28 and 126 (2) (e) of the 1995 Constitution of the Republic of Uganda (as amended), Section 98 of the Civil Procedure Act, Cap. 282, Section 37 of the Judicature

Act, Cap. 16, and Order 52 Rule 1, 2 & 3 of the Civil Procedure Rules S. I 71-1 seeking for the following orders that;

- i) An interim order for stay of execution maintaining the status quo doth issue against the Respondents by themselves, their successors in title, agents or anyone claiming under them from evicting the Applicant from the suit land comprised in Busiro, Block 313 Plot 4933 land at Kiwumu-Bulooba in Wakiso District measuring approximately 0.1250 Hectares and/or enforcing the orders of Her Worship Maureen E. Ijang (Ag. Assistant Registrar) issued on the 3rd day of March, 2023 in respect of *EMA No. 053 of 2023, Heather Flavia Nantongo Versus Henry Konde (Administrator of the estate of the Late E. L. Mugalasi)* until the determination and final disposal of the substantive application for a temporary order for stay of execution.
- ii) The status quo be maintained by inter alia prohibiting and or restraining the Respondents by themselves, their agents, employees, servants or any other person claiming under them from endorsing any transaction in form of selling, transferring, pledging as collateral, mortgaging, leasing, and sub-leasing, transferring or entering into any transaction whatsoever in respect of the suit land comprised in Busiro Block 313 Plot 4933 land at Kiwumu-Bulooba in Wakiso District measuring approximately 0.1250 Hectares until the hearing and final determination of the substantive application for a temporary order for stay of execution.

- iii) The costs of the application abide the outcome of the main application.
- 1.2 The grounds of the application are summarized in the Notice of Motion and also set out in the supporting affidavit of **Kabugo Juliet**, the Applicant, which briefly are that;

- 1. The Applicant has filed an application seeking among others that her suit land comprised in Busiro Block 313 Plot 4933 land at Kiwumu-Bulooba, Wakiso District measuring approximately 0.1250 Hectares is not liable for attachment and or execution and that the same should be released from attachment and or execution as the same is pending determination by this Honorable Court.
- 2. The Applicant has also filed a substantive application for a temporary stay of execution seeking to maintain the status quo and restraining the Respondents from evicting her from the suit land but the same is pending determination by this Honorable Court.
- 3. The Respondents have already commenced execution proceedings against the Applicant who was not a party to EMA No. 53 of 2023 from which the order for attachment of the suit land emanated and indeed, the Applicant is on the verge of being evicted from her own land.
- 4. There is need to preserve the status quo of the subject matter pending the disposal of the substantive application for temporary stay of execution and the main application seeking release of the suit land from attachment and/or execution.
- Page 3 of 11 5. The Applicant is facing eminent danger of eviction by the Respondents since the Respondents have inter alia started

visiting the suit land with police officers and unknown men while taking photographs and measurements.

- 6. The Applicant is in possession of the suit land and indeed, there is need to preserve the status quo of the subject matter pending final determination and disposal of the substantive application for temporary stay of execution before this Honorable Court.
- 7. It is in the interest of justice that the orders sought herein be issued, otherwise the main application for temporary stay of execution shall be rendered nugatory and mute.
- 8. The Applicant shall be rendered destitute if this Application is not granted.
- 9. This Application has been brought without any inordinate delay.
- 10. It is fair, just and equitable that this Application be granted so that the rights and interest of the Applicant in the suit land is preserved.
- 1.3 Both Respondents were served with the Application on 19th April, 2024 through their respective advocates as per the Affidavit of Service sworn by Musisi Robert filed in this Court on 3rd July, 2024 but none of the Respondents filed in Court their respective Affidavits in Reply to the Application.

- 1.4 Also when the matter came up for hearing on 11th July, 2024 none of the Respondents nor their respective Counsel appeared in Court for the hearing. The Applicant prayed that the Application proceeds ex parte under **Order 9 Rule 11 (2) (a) of the Civil Procedure Rules S. I 71-1.**

- 1.5 The Applicant filed written submissions on 12th March, 2024.

1.6 I have carefully perused, evaluated and considered all pleadings and their attachments together with the written submissions filed by the Applicant in determining of this Application.

2.0 Hearing and Representation.

2.1 The Applicant was represented by Mulumbi Derrick of M/s. Sam Kiwanuka & Co. Advocates.

3.0 Issue for Court's Determination.

1. Whether there is justification to grant the Applicant an interim order for stay of execution?

4.0 Determination of this Application.

- 4.1 The considerations for granting an interim order for stay of execution are well-established:
 - i. There must be a substantive application pending in Court.
 - ii. There must be a serious threat of execution before the hearing of the substantive application.
 - iii. If the interim order is not granted, it would render the substantive application nugatory.

(See Osuman Kassim Ramathan Versus Century Bottling Company Limited, Civil Application No. 35 of 2019, China Henan International Cooperation Group Co. Ltd Versus Justus Kyabahwa, Civil Application No. 30 of 2021 & Hwang Sung Industries Versus Tajdin Hussein and Others, Civil Application No. 19 of 2008)

- 4.2 The purpose for an interim order is to preserve the right of the Applicant to have his or her application heard and to ensure that the main application is not rendered nugatory.
- 4.3 In the present case, the Applicant filed Miscellaneous Application No. 372 of 2024 from which this application is emanating and which is pending before this Court. Therefore, this requirement is met.
- 4.4 The background of this application is that Civil Suit No. 148 of 2022 was filed by the 1st Respondent against the 2nd Respondent as the administrator of the estate of the Late E. L. Mugalasi. The suit sought orders that the 2nd Respondent gives the 1st Respondent an

additional 1 acre of land at Buloba comprised in Block 313 Plot 239 and Block 313 formerly Plot 16 being her late father's entitlement under the Will of the Late E. L. Mugalasi. The 1st Respondent alleged that the 2nd Respondent had not fully honored the Will's provisions and had only given her 3 acres out of the 4 acres her late father was bequeathed at Buloba.

- 4.5 Throughout the hearing of the Civil Suit, the 2nd Respondent made no mention of the fact that he had sold the land at Busiro Block 313 Plot 4933 land at Kiwumu-Bulooba, Wakiso District measuring approximately 0.1250 Hectares to the Applicant or any other person whatsoever. The court, therefore, ordered the 2nd Respondent to avail the remaining 0.285 acres of land at Buloba comprised in Block 313 to the 1st Respondent as her father's entitlement in a judgment delivered on 15th June, 2023.

- 4.5 Following the judgment, the 1st Respondent filed EMA 053 of 2023 to enforce judgment. In handling this execution application, the Ag. Assistant Registrar faced a significant challenge determining the specific location from which the 0.285 acres awarded to the 1st Respondent should be carved out of Block 313. The judgment did not specify the exact plot from which the acreage was to be deducted. The 1st Respondent was entitled to 0.285 acres as decreed by the court. However, while the 2nd Respondent proposed that this acreage be taken from the ancestral home, the 1st Respondent insisted that her entitlement be derived from Block 313 Plot 4933, which she argued was more commercially valuable. This divergence in positions necessitated a visit by the Ag. Assistant Registrar to both plots to better understand the conflicting claims and to make an informed decision on how to satisfy the judgment.
- 4.6 During the visit to the plots on Block 313, it was noted that the area proposed by the 2nd Respondent for the 1st Respondent was approximately 150 meters away from the highway, on what was formerly Plot 16. Part of this plot had been subdivided and allocated to the 1st Respondent as her father's share in the estate. In contrast, Plot 4933, which was still registered in the deceased's name and located along the Kampala-Mityana highway, was identified by the 1st Respondent as a commercial property. This commercial value was the basis for her insistence that her entitlement should be carved from Plot 4933. It was also observed by the Ag. Assistant Registrar that the adjacent plots to Plot 4933 had already been fully distributed to the 2nd Respondent.

- 4.7 During the locus visit, the Applicant was present and claimed that she had purchased Plot 4933, measuring 31 decimals from the 2nd Respondent. The 1st Respondent, however, contested this claim, asserting that the Applicant, who is a sister to the 2nd Respondent's wife, had never actually bought the land.

- 4.8 Given that Plot 4933 remained registered in the deceased's name, the Ag. Assistant Registrar concluded that this plot was available for attachment to satisfy the decree issued in Civil Suit No. 148 of 2022. Consequently, the Ag. Assistant Registrar ordered the 2nd Respondent to, among other directives, deliver vacant possession of the land at Busiro Block 313 Plot 4933 to the 1st Respondent by 7th March, 2024.
- 4.9 The Applicant asserts in her affidavit, specifically in paragraphs 2, 3, 5, 6, 16, 17, and 18, that she purchased the land identified as Busiro Block 313 Plot 4933, located at Kiwumu-Bulooba, Wakiso District, measuring approximately 0.1250 hectares, from the 2nd Respondent. She claims that she paid the full purchase price of UGX 195,000,000/- as per the sale and purchase agreement dated 13th February, 2018. The Applicant contends that the 2nd Respondent sold Plot 4933 to her in his capacity as the administrator of the estate of the late Mugalasi Erasito Lubanga and subsequently granted her vacant possession of the property. The Applicant also asserts that she was present during the court's locus visit and was asked to provide a copy of her purchase agreement. However, she did not bring the document, as she believed the issues at hand did not pertain to her property. She later submitted the purchase agreement and other ownership

documents through her lawyers, requesting the court to consider alternatives to her plot. Additionally, the Applicant indicated that on 11th December, 2023, she filed a caveat to prevent the registration of any instrument affecting her interest in the property.

- 4.10 The Applicant attached the sale and purchase agreement, marked as "**Annexure A**" and the caveat, marked as "**Annexure E**," to her affidavit in support of the application. Upon review of these documents, the Court identified several material inconsistencies.
- 4.11 Clause 1 of the sale agreement states;

"In consideration of Ugx. 195,000,000 (Uganda Shillings One Hundred Ninety Five Million) payable by the purchaser to the vendor, the vendor hereby sells land comprised in Busiro Block 313 Plot 4933 land at Kiwumu Measuring 0.1250 Hectares. The payment shall be done as follow;

- *a) The purchaser shall pay Ugx. 195,000,000 (Uganda Shillings One Hundred Ninety-Five Million) at the execution of the agreement and the vendor has signed hereon to acknowledge receipt thereof."*
- 4.12 According to Clauses 2 and 4 of the sale agreement, upon receipt of the full payment, the vendor is obligated to: hand over vacant possession of the land to the purchaser; provide transfer forms in favor of the purchaser to facilitate her registration; and to hand over the duplicate certificate of title to the purchaser to enable her to complete the registration process.

- 4.13 In contrast, the Applicant's affidavit in support of the caveat dated 11th December, 2023, particularly in Clauses 2, 3, 4, and 5, indicates that, in 2018, the Applicant purchased the land from the registered proprietor, one Henry Konde (the 2nd Respondent) and made a **partial payment**. The affidavit asserts that upon executing the sale agreement, she took possession of the land and was expecting the registered proprietor to process the title and sign transfer forms in her favor. However, the transfer forms were not signed due to the **outstanding balance**. Since then, the registered proprietor has been avoiding her attempts to contact him and has not provided the signed transfer forms necessary for her to perfect her interest in the property.
- 4.14 Clearly, the Applicant's affidavit contains discrepancies regarding the sale agreement and subsequent events, casting significant doubt on the authenticity of her claims. The material inconsistencies between the sale agreement and the caveat, as reflected in the affidavit, are substantive and cannot be overlooked by this Court.
- 4.15 In the case of **Bitaitana Versus Kananura (1972) HCB** it was held that where there are falsehoods in Affidavits, the entire Affidavit has to be disregarded and the Application rejected. Also in the case of **Joseph Mulenga Versus Photo Focus (U) Ltd (1996) VI KALR 19** court held that where an affidavit in support of an application contained obvious falsehoods, such falsehoods rendered the entire affidavit suspect and an application based on such an affidavit must fail.

4.14 This Court taken cognizance of the case of **Osman Kassim Ramathan Versus Century Bottling Company Limited, Civil Application No. 35 of 2019**, where Hon. Justice Opio-Aweri while considering an application for an interim stay of execution clearly set out the considerations as I have already highlighted above but further noted as follow;

"It is also trite that an interim order should not be granted as a matter of course. The decision is not an exercise of ticking boxes. That surely would tantamount to abuse of process. In other words, the discretion to grant or deny an interim order for stay must be exercised judiciously."*

4.15 I absolutely agree with this reasoning. The discretion to grant or deny an interim order must be exercised judiciously and not as a mere formality. The Court must ensure that such orders are not issued unless clearly justified. Given these considerations, the application cannot be granted.

5.0 Conclusion.

This Application is therefore dismissed. No order as to costs.

Dated, signed and delivered electronically this 16th day of September, 2024.

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Prepared on 13 October 2026 · Esheria