

UGANDA / JUDGMENT

Kyaligonza v Irumba and Others

(Miscellaneous Application No. 84 of 2021) [2022] UGHCLD 111 (22 April 2022)

[2022] UGHCLD 111

COURT

HC: Land Division (Uganda)

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application No. 84 of 2021

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASINDI**MISC. APPLICATION NO. 0084 OF 2021**

(Arising from Land Civil Suit No. 19 of 2015)

KYALINGONZA VINCENT ::::::::::::::::::::::::::::::::::: APPLICANT**VERSUS****1. IRUMBA ACHILLES 2. BARONGO AHMED 3. KAIJJA FAROUK 4. BEYEZA HAWA 6. HAJJI KITAKULE 7. KWEBIIHA ESAU 8. KYAMANYWA MOSES 9. JOHN MPANGA****5. KIIAQ EZRA ::::::::::::::::::::::::::::::::::: RESPONDENTS****RULING*****Before: Hon. Justice Byaruhanga Jesse Rugyema***

- [1] In this application, the Applicant is seeking for orders that the Respondent be arrested and detained in civil prison for 6 months for contempt of court and or disobeying court orders in **M. A No.36 of 2015** and be fined a sum of **shs.60,000,000/=**. Then for an order of exemplary/punitive damages to the sum of **shs.30, 000,000/=** and that costs be provided for.
- [2] The application is supported by an affidavit of the applicant which sets out the grounds upon which the application is based and briefly, the grounds are;
 - 1. That this honourable court on 14/6/2016 issued a temporary injunction restraining the Respondents, their agents/employees/servants and all persons claiming under them

from evicting the applicant, trespassing, alienating, selling or in any way interfering with the Applicant's quiet enjoyment and possession of the suit land located at Kihomboza II ward, Bujumbura Division, Hoima Municipality, until the main suit is heard and determined.

- 2. That the said order was issued in the presence of the Respondents and their counsel on whom it was later duly served but that the Respondents have since disobeyed the court order by continuing to trespass onto the suit land together with their agents/servants/employees by cutting trees for firewood for sale as well as destroying the Applicant's crops.
- 3. That the activities of the Respondents have been adverse to his interests on the land where the Respondents continue to threaten him and scare his workers which has also affected his health.
- 4. That he has lost business and lost revenue because of the Respondent's impunity and has been stressed and depressed by their actions.
- [3] In the affidavit in reply by the 2nd Respondent, the Applicant's claims of contempt of the court order of injunction are denied. It is however admitted that the injunction order was issued and the Respondents are aware of its existence.

The 2nd Respondent deponed that at the time the temporary injunction was granted, the Respondents were already in occupation and in use of the suit land and the Applicant was not in occupation.

- [4] That it is the Applicant who prior to the institution of the suit cut all the trees on the suit land upon which the Respondents reported the matter to police and the Applicant was arrested and accordingly imprisoned. That the Applicant is now using the pictures which were taken after he had cut the trees on the suit land before this suit to claim that the Respondents have violated the order of the court whereas not.
- [5] The Applicant is represented by **Counsel Rugambanengwe** while the Respondents are represented by **Counsel Aaron Baryabanza**.
- [6] The Order the Respondents allegedly disobeyed is vide **M. A No.36 of 2015** (Arising from the main Suit No.19/2015) and it reads as follows;

***"THE REPUBLIC OF UGANDA"**

IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI CIVIL MISC. APPLICATION NO-HCT-12-CV-MA-0036 OF 2015 (ARISING FROM CIVIL SUIT NO. LAND NO-009 OF 2015)

...

KYALIGONZA VINCENT:.....APPLICANT/PLAINTIFF

...

VERSUS

IRUNBA ACHILLES & 8 ORS ::::::::::::::: RESPONDENT/DEFENDANTS ORDER

This application coming for final disposal this 14th day of June 2016 before His Lordship, HON. JUSTICE BYABAKAMA SIMON MUGENYI...

IT IS HEREBY ORDERED AS FOLLOWS:

- *a) The application for temporary injunction is allowed and or granted.*
- *b) The temporary injunction doth issue against the Respondents, their agents and those claiming under them, restraining them from evicting the applicant, trespassing, alienating, seeking or in any way interfering with his quiet enjoyment and possession of the suit land until the determination of the main suit.*

c) The status quo be preserved as at the time of filing the suit.

d) Costs of the application to abide the cause. Given under my hand and seal of this court this 14th day of June 2016.

Sign

..... Assistant Registrar"

- [7] As can be seen from the Order above, it is clear that there was a finding by court that the Applicant was in possession and therefore, the order was intended to protect his interest and ensure that he is not evicted.
- [8] The above finding is in tandem with the Applicant/plaintiff's pleadings in **paragraph 4(a)-(f)** of the plaint. The relevant portions of the pleadings are as follows;
- *"4(a): In 1990, the plaintiff applied to Hoima District Land Committee for a lease over 250 acres of public land at Kihomboza, Busiisi Bugahya-Hoima District...*
- *(b) On 3rd April 2008, the plaintiff made an application to Hoima District Land Board seeking a grant of freehold land title over the said 250 acres...*

(c) ...

(d) The plaintiff's application for ownership of the said land in 1991 was inspired by the fact that he grew up thereon with his father the late Antwani Mastsiko and stayed on it with his late father until he died on the 9th of April, 2014. The plaintiff has at all material times been on this land where he even married, established a matrimonial home and sired a couple of children and on which he planted muvule and mahogany trees, subsequently adding several crops namely: Guavas, mangoes, jackfruits, Avocados and coffee alongside food cross from season to season.

(e) ...

(f) On 1st March 2015 while at his matrimonial home....the defendants...descended on the crops and trees growing on the land which they wantonly cut down as they threatened to kill him, his wife and children. The plaintiff and family scampered, before they reported the case against the culprits at Hoima police station Vide SD/REP 67/03/03/2015 CRB 509/2015."

The Respondents/Defendants on the other hand, in their joint Written Statement of Defence (WSD) averred and contended that

"the suit land belonged to their late father, the late Antwani Matsiko and that is where the plaintiff...were born and grew up from and therefore, if the plaintiff included the suit land which is approximately between 25 to 30 acres in the land he applied for, then he did so fraudulently."

- [9] The totality of the above as disclosed by the pleadings in my view, raise serious triable issues of ownership, possession, trespass and eviction for adjudication in the main suit. 2ndly, it is clear from the pleadings that the parties to the application and the suit at that, are all children of the late **Antwani Matsiko** who are conflicting over the alleged estate of their late father. It therefore follows that the intention of the injunction order was to preserve the status quo of the suit land at the time of filing the suit land and ensure that none of the parties were to evict the other.
- [10] Therefore, as to whether the Respondents disobeyed the injunction Order dated **14th/06/2016**, the onus was on the Applicant to show by affidavit evidence that he has either been evicted, the suit land is in danger of being wasted, alienated, sold or has been alienated sold or in any way, his quiet enjoyment and possession of the suit land has been interfered with; **O.41 r. CPR**.
- [11] As regards eviction, the Applicant has not shown in anyway by affidavit evidence that he has been evicted. The submission by counsel for the Applicant in his submissions in rejoinder that the Applicant's workers on the suit land were recently chased away by the Respondents in total violation of the court order is not supported by the Applicant's affidavit in support of the application. Besides none of the said Applicant's servants or workers deponed to that effect.
- [12] As regards wastage, alienation and or selling of the suit land, there is no evidence in the Applicant's affidavit in support of the application to that effect. It is not in any of the complaints of the Applicant.
- [13] As regards interference of the Applicant's quiet enjoyment and possession of the suit land, the Applicant deponed that the Respondents have continued to bring their agents, servants and employees unto the land to cut trees for firewood and for sale which is to his detriment. He attached to the affidavit in support of the application photos of the alleged cut trees. The Applicant however, did not disclose as to who took the photos. As a result, no photographer deponed as to when and where the photos were taken from. In these modern times, digital photographic evidence in court is often susceptible to manipulation as they are easily altered or edited. The principle requirements to admit a photograph into evidence

therefore, are relevance and authentication. Unless the photograph is admitted by the stipulation of both parties, the party attempting to admit the photograph into evidence must be prepared to offer testimony that the photograph is an accurate representation of the scene. This usually means that the photograph accurately portrays the scene as viewed by that witness.

- [14] In the instant case, the 2nd Respondent on the other hand deponed that the Applicant is using the pictures which were taken after the Applicant himself cut the trees on the suit land before the institution of this suit to claim that the Respondents had violated the Order of the court. The 2nd Respondent attached to his affidavit in reply other photos of cut trees by the Applicant before the institution of the suit and that the matter was reported to police **Vide SD No.77/17/3/2015**. The photos reflect the date of 17/3/2015. This suit was filed on 29/4/2015.
- [15] In the absence of evidence as to where and when the photos attached to the Applicant's affidavit in support of the application were taken and in the absence of the affidavit of the photographer for authentication of the photos, I find and rule that the Applicant has failed to discharge the onus on him to prove their (photos) relevance and authentication as regards his claims that the Respondents were behind the cutting down of the trees on the suit land thus violating the order of the court.
- [16] In the premises, I find that the Applicants have not proved any contempt of court and disobeying of the court order in **M. A No.36/15**. The injunction court order however on record has to be maintained and both parties are bound by it and must obey it as regards none eviction of any party from the suit land, alienation or sale of the suit land and interference of the applicants' quiet enjoyment and possession of the suit land. The status quo as at the time of filing the suit must continue to be preserved until the disposal of the suit.
- [17] The application is accordingly dismissed but with no order as to costs since the parties are all children of the late **Antwani Matsiko** and are conflicting over his alleged estate.

Dated at Masindi this 22nd day of April, 2022.

Byaruhanga Jesse Rugyema JUDGE.

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