

UGANDA / JUDGMENT

# Mukiibi and Another v Katale mwa and Another (MISCELLANEOUS APPEAL NO. 0149 OF 2023) [2025] UGHC 145 (21 March 2025)

[2025] UGHC 145

## COURT

High Court of Uganda

## BEFORE

Busingye, J

## CASE / FILE NUMBER

MISCELLANEOUS APPEAL NO. 0149 OF 2023

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)

MISCELLANEOUS APPEAL NO. 0149 OF 2023

(ARISING FROM MISC. APP NO. 1025 OF 2023)

10 (ALL ARISING FROM CIVIL SUIT NO. 461 OF 2023)

1. IBRAHIM MUKIIBI

2. FARIDA KIBIRA :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANTS (Administrator/  
Administratrix of the Estate of the Late Abdul Wahab Semakula)

15 VERSUS

1. KATALEMWA MOSES 2. KATALEMWA AISHA ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::  
RESPONDENTS BEFORE: HON LADY JUSTICE IMMACULATE BUSINGYE  
BYARUHANGA

20 RULING

This appeal is brought by way of Notice of motion under Section 76 (1) (h), 79 (1) (b) and 98 of the Civil Procedure Act, Section 33 of the Judicature Act, and Order 50 rule 8 of the Civil Procedure Rules SI 71-3 as amended for the following orders that;

- 25 1. The Ag. Assistant Registrar's Ruling and Order of Temporary Injunction restraining the appellants and all the beneficiaries of the Estate of the Late Abdul Wahab Semakula or their agents/ claimants from interfering with the respondent's occupation and use of the suit land comprised in Block 15 Plot 228 be set aside.
- 30 2. The period within which this appeal ought to have been filed be retrospectively enlarged.



- 5 3. Alternatively, this appeal be validated; and
- 4. The costs of this application be provided for.

The Miscellaneous Appeal is supported by three affidavits deponed by Ibrahim Mukiibisworn on the 26 th day of October 2023 and a Supplementary Affidavit sworn by Counsel Specioza Tayebwa deponed on 27th February 2025. The grounds of the 10 appeal are contained in the Notice of Motion and in the affidavit in support of the appeal BUT briefly the grounds are as follows;

- a. That the Learned Ag. Assistant Registrar erred in law/ failed to properly evaluate the evidence on record and /or to apply the relevant legal principles when he held that;
- 15 i. The respondents disclosed a prima facie case/ triable issues in the main suit.
- ii. The respondents would suffer irreparable damages if the appellants were not restrained from evicting them from the suit land because they have been in possession of the suit land for 49 years and that is where 20 they derive their sustenance and livelihood... which cannot be compensated by an award of damages;
- iii. The balance of convenience lays in favour of the respondents.
- b. The Learned Ag. Assistant Registrar acted injudiciously in granting the Order of Temporary Injunction without considering the appellants' evidence on 25 record and the appellant's written submissions.
- c. The Learned Ag. Assistant Registrar's Ruling was delivered on 29.9.2023 on the Electronic Court Case Management Information System (ECCMIS) in the absence of the appellants without prior notice to the appellants that the same would be uploaded on the said system on the said date.
- 5 d. By reason of the above, the appellants were prevented by sufficient cause from filing this appeal within the stipulated period.
- e. This appeal has been filed without unreasonable delay and in such manner as a matter of convenience and economy in the administrative of justice.
- f. It is in the interest of justice that this appeal is allowed.

- 10 At the trial of the appeal, the appellants were represented by **Counsel Busobozi Henry Wycliffe** and **Counsel James Ssegane**. During hearing on 11th February 2025, this Court ordered that this Miscellaneous Appeal proceeds exparte under Order 9 rules 10 and 20 of the Civil Procedure Rules on account of the fact that the respondents were served with the hearing notice but chose not to make an appearance 15 without advancing any reason.
- **Background to application**

On 26th May 2023, the plaintiffs/ respondents filed Civil Suit No. 461 of 2023 before this Honourable Court against the defendants/ appellants herein jointly and severally for breach of contract seeking an order of specific performance, renewal 20 of the plaintiff's lease for another 49 years in respect to property comprised in FRV 305 Folio 21 and LRV 870 Folio 17 on Kyadondo Block 15 Plot 228 at Kibuli, an order for the 4th defendant to effect changes in the Register to reflect the renewal of the plaintiffs' lease for another 49 years , permanent injunction and costs of the suit.

The defendants/ appellants herein filed their written statement of defence on 16th 25 June 2023 wherein they denied the contents of the plaint and contented that the plaint discloses no cause of action. The defendants further contended that the Late Abdul Wahab Semakula entered into a lease agreement with the late Abduhamedi Katalemwa in respect of the suit land comprised in LRV 870 Folio 17 Kyadondo



Block 15 Plot 228 Land at Kibuli for a period of 49 years effective 1st 5 June 1974 to which a leasehold certificate of title was issued.

The defendants also contended that the plaintiffs who are the late Abduhamedi Katalemwa's successors in title on 6th May 2022 through a letter expressed an interest to renew their lease to the Administrators of the Estate of the late Abdul Wahab Semakula (the 1st and 2nd 10 defendants/ appellants). The respondents/ plaintiffs also contended that they were not privy to the alleged negotiations referred to in the letter dated 6th May 2022 and as such were not bound by the same.

The defendants/appellants averred that the Administrators of the estate of the late Abdul Wahab Semakula convened a family meeting on 17th May 2023 where it was

15 discussed and agreed upon by the beneficiaries of the said estate that upon the expiry of the lease on the said suit land on 31st May 2023, the said suit land be disposed off at a consideration of UGX 700,000,000(Uganda Shillings Seven Hundred Million) and that the priority offer be made to the plaintiffs/currents respondents.

The defendants stated that by letter dated 22nd May 2023, the plaintiffs were duly 20 notified of the resolutions of the said meeting. That subsequently, the said Administrators convened another family meeting on 1st June 2023 where the decision to sell the suit land was reaffirmed.

The defendants contended that at no point did the 1st - 4<sup>th</sup> defendants agree with the plaintiffs to renew their lease nor have the said defendants receive any payment from

25 the plaintiffs. The defendants also contended that the lease on the suit land expired on 31st May 2023 whereupon the suit land reverted to the 1st and 2nd defendants as the Administrators of the Lessor's Estate and as such the plaintiffs do not have any proprietary interests legal or equitable in the suit land.



- Following the filing of the main suit, the respondents herein filed Miscellaneous \$ \mathsf{S}\$ Application No.1025 of 2023 seeking for a temporary injunction to restrain the appellants/ defendants in the main suit from interfering with the applicants' occupation on 30<sup>th</sup> May 2023 by way of Chamber Summons. The Assistant Registrar issued a ruling notice on 29<sup>th</sup> August 2023 indicating that the ruling would be
- delivered on 29<sup>th</sup> September 2023 at 9.00am. The said notice was not served on the \$10\$ parties and their counsel since there is no affidavit of service on ECCMIS record. In addition, there are no proceedings of the Assistant Registrar on record in respect of the application for the temporary injunction. The \$1^{\text{st}}\$ and \$2^{\text{nd}}\$ appellants filed an affidavit in reply to the application for the temporary injunction on \$28^{\text{th}}\$ August 2023.
- The applicants/respondents counsel in the present appeal filed written submissions 15 on 4<sup>th</sup> September 2024 while counsel for the currents appellants filed submissions on \$28^{\text{th}}\$ September 2023.

On 29<sup>th</sup> September 2023, Ag. Assistant Registrar Okumu Jude Muwone delivered his Ruling in Miscellaneous Application No. 1025 of 2023 wherein a temporary injunction was issued maintaining the status quo on the suit land wherein the \$20\$ respondents/ now appellants and all the beneficiaries of the said estate of the late Abdul Wahab Semakula or their agents/ claimants were restrained from interfering with the applicants (respondents herein)'s occupation and use of the suit property comprised in LRV 305 Folio 21 and LRV 870 Folio 17 on Block 15 Plot 228 till the

disposal of the main suit. The order was uploaded in ECCMIS on 17<sup>th</sup> October 2023 25 and it is dated 16<sup>th</sup> October 2023. Being dissatisfied with the Ruling and Orders of the Acting Assistant Registrar, the appellants filed this appeal.

### Late filing of submissions

On 11<sup>th</sup> February 2025, this court ordered counsel for the appellants to file their written submissions by 28<sup>th</sup> February 2025, however, to date the said submissions \$30\$



5 have not been filed and as such the same shall not be considered by this court when making its decision.

## Decision

### **\*Enlargement of time within which to file the appeal out of time without leave\***

Before I delve into the merits of the appeal, I shall address the issue of filing of the 10 appeal out of time. I have observed from the Electronic Court Case Management System (ECCMIS) that the trial Acting Assistant Registrar delivered his Ruling in HCMA No. 1025 of 2023 on 29th September 2023, however, the appeal was filed almost a month later on 27th October 2023 at 4:07pm contrary to the stipulations of the law in **Section 79 (1) of the Civil Procedure Rules**.

15 **Section 79 (1) (b) (supra)** provides that except as otherwise specifically provided in any other law, every appeal shall be entered within seven (7) days of the date of the order of the Registrar as the case maybe, the court may for a good cause admit an appeal though the period of limitation prescribed by this section elapsed.

### **In the case of Attorney General & Anor versus Okwi Richard Miscellaneous**

20 **Application No. 36 of 2019**, it was held that applications for enlargement of time to file an appeal should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the court has not presented a reasonable explanation of his failure to file the appeal within the time presented by the law or where extension will be prejudicial to the respondent or the 25 court is actually satisfied for the intended appeal is actually not an arguable one.

In the instant case, according to ground (c) of the appeal, it is the appellants' contention that the delay in filing this appeal was occasioned by the appellants' lack of information that the Trial Acting Assistant Registrar had uploaded the Ruling on 29th September 2023. I have observed that the appellants filed this appeal three

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5 weeks out of time, and I am of the opinion that the appellants afore cited reason forms a good cause to explain the minimal delay in filing the appeal.

**Section 96 of the Civil Procedure Rules** provides that where any period is fixed or granted by court for the doing of any act prescribed or allowed by this Act, the Court may in its discretion, from time to time, enlarge that period, even though the period 10 originally fixed or granted may have expired.

In the case of **Tight Security Ltd versus Chartis Uganda Insurance Co. Ltd & Anor HCMA No. 8 of 2014**, it was stated that when an application is made for enlargement of time, good cause showing that justice warrants such an extension must be proved by the applicant before court can exercise its discretionary powers 15 and grant the extension. The term "**good cause**" was defined in

**Pinnacle Projects Limited versus Business in Motion Consultants Limited HCMA No. 362 of 2010** where it was held that sufficient reason must be related to the inability or failure to take a particular step in time.

In the instant case, I have observed from ECCMIS that a Ruling Notice for HCMA 1025 of 2023 was issued on 23 20 rd August 2023 at 1:01pm, however, there is no evidence of service or return on service of the said Ruling notice on the parties to the application and in particular the appellants in this case. I have earlier stated that the proceedings of the Assistant Registrar in respect of the application for the temporary injunction are not on record. In light of the above, I am convinced that

25 the appellants were not informed about the said Ruling hence justifying the delay in filing the appeal.

Therefore, I am satisfied that the appellants had a good cause to justify the late filing of their appeal. Therefore, the prayers to validate this appeal and enlarge time within which to file an appeal are granted.

### **5 \*Merits of the appeal\***

I shall now proceed to the crux of this appeal, which is the grant of the temporary injunction. I have taken note of the grounds of appeal and I am of the view that these grounds can be sufficiently summarized in the issue below which court shall proceed to resolve; \*Whether the Learned Acting Assistant Registrar erred in law and fact\*

10 \*when he granted the temporary injunction restraining the appellants and all the beneficiaries of the Estate of the Late Abdul Wahab Semakula and all their agents/ claimants from interfering with the respondents here in's occupation or use of the suit land comprised in Block 15 Plot 228\*.

At Page 2 of his Ruling, the Learned Acting Assistant Registrar rightly stated the 15 position of the law on temporary injunctions as reflected under Order 41 rule 1(a) of the Civil Procedure Rules as follow;

"the \*court's duty is only to preserve the existing situation pending the disposal of the substantive suit.\* His Worship rightfully added that, \*in exercising this duty, court does not determine the legal rights to\* 20 \*property but merely preserves it in its actual condition until legal title or ownership can be established or declared".\*

The principles for grant of temporary injunctions have been well traversed in a wealth of authorities and they are that unless the injunction is granted, the damage so occasioned is such that the applicant would not be adequately compensated by an

25 award of damages. Secondly, the applicant must show that his case has a probability of success. Thirdly, if the court is in doubt, it will decide the application on the balance of connivance and fourthly, 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. These were laid in the case of **Robert Kavuma versus M/s Hotel**

30 **International S. C. C. A No. 8 of 1990** and in more recent authorities like **Humphrey**

21st March 2025

### **5 Nzeyi versus Bank of Uganda and Attorney General Constitutional Application No. 1 of 2013 among others.**

In his ruling, the Learned Acting Assistant Registrar found on page 4 of his Ruling that the applicants had made out a prima facie case.

On the second requirement of irreparable damage, the Learned Trial Assistant 10 Registrar found on page 5 of his Ruling that;

"\*... the applicants have demonstrated that they have been in occupation and possession of the suit property for a period of 49 years with developments thereon and tenants who are renting the premises for carrying out their business and others as their residence and they also\* 15 \*have historical attachments to the suit property which was bequeathed to them by their father, in my view I have found that the applicants will suffer irreparable damages if the respondent is not restrained from evicting them from the suit land because they have been in possession of the suit land for 49 years and that is where they derive their\* 20 \*sustenance and livelihood from the suit land which cannot be adequately compensated by an award of damages ."

In conclusion, the Learned Acting Assistant Registrar held that the applicants would suffer irreparable damage if the application for temporary injunction was not granted.

25 Lastly, on the requirement of \*balance of convenience,\* the learned Registrar pronounced himself on the meaning of the said term to mean, "\*the applicant has to show that that failure to grant the temporary injunction would be in his/ her greater detriment.\* He relied on the case of **Kiyimba Kaggwa versus Hajji A. N Katande (1985) HCB 43**. The Learned Acting Assistant Registrar found that the balance of 30 convenience tilts in favor of the applicants who were able to prove that they have been in possession of the suit land for 49 years and that it was a non-contested fact that the respondents had refused to sign the renewal of the applicants' lease and had

5 instead offered the suit property for sale to the respondents at a consideration of UGX 700,000,000 which had to be paid within 7 days.

As cited by the Trial Acting Assistant Registrar, in the case of **Kiyimba Kaggwa versus Hajji Abdul Nasser Katande (1985) HCB page 43**, it was held that the most important purpose of the grant of a temporary injunction is to preserve the matters 10 in status quo until the question to be

investigated in the main suit is finally disposed of. The rules and principles governing the grant of a temporary injunction were well settled in the locus classicus case of **American Cyanamid versus Ethicon Limited (1975) AC 396** and this has been followed in several other Ugandan cases including **Francis Babumba and 2 others Vs Erisa Bunjo HCCS No. 697 of 1999** and **15 Robert Kavuma Vs M/s Hotel International SCCA No.8 of 1990**, these principles include: -

- \*a) The applicant has to show that they have a prima facie case with a probability of success in the main suit.\*
- \*b) The applicant has to show that he is likely to suffer irreparable\* 20 \*damage if the injunction is denied.\*
- \*c) If court is in doubt as to the above considerations, it will decide the application on a balance of convenience.\*

In the instant case, the respondents are dissatisfied with the Trial Acting Registrar's finding in his Ruling on the Temporary injunction vide HCMA No. 1025 of 2023 25 and made a prayer to have the same set aside. Therefore, being the first appellate court, this court is tasked with the responsibility of reevaluating evidence in HCMA 1025 of 2023 while following the principles for grant of a temporary injunction.

\*Prima facie case\*



- 5 The term prima facie case was defined by Wambuzi CJ (as he then was) in **Robert Kavuma vs. M/S Hotel International SCCA No.8 of 1990** where it was held that what is required for one to say that there is a prima facie case, the applicant has to satisfy court that the claim is not frivolous or vexations with a probability of success. One must show that there are serious questions to be tried.
- 10 The respondents herein filed Civil Suit No. 461 of 2023 against the appellants herein seeking for an order of renewal of the plaintiffs' lease of 49 years in respect of the suit land comprised in FRV 305 Folio 21 and LRV 870 Folio 17 Block 15 Plot 228 for which they have been in possession. It was the plaintiffs' contention in paragraph 5 (d) that the said lease is subject to renewal for another 49 years as stipulated in

### 15 Clause C (2) of the Lease Agreement.

In paragraphs 5 (c)- (j), the plaintiffs contended that following a meeting held between the plaintiffs and the Administrators and Beneficiaries of the estate of the late Abdul Wahab Hassan Semakula, it was agreed that the plaintiffs lease would be extended.

- 20 On the other hand, in paragraph 6 (c) of the written statement of defence, the defendants denied the aforementioned negotiation and averred that they were not privy to the same. They however, contended in paragraph 6 (d) of the defence that the plaintiffs' lease would not be extended upon expiry, but rather the suit land would be disposed of at a consideration of UGX 700,000,000 (Uganda Shillings seven
- 25 hundred million) and that the offer of first priority of purchase would be made to the plaintiffs.

Therefore, it is not in contention that the plaintiffs held a lease for forty-nine (49) years over the suit land which was due for expiry on 31 st May 2023 2023 the reversionary interest having been owned by the late Abdul Wahab Semakula.

5 Following the aforementioned contentions, I am certain that there are triable issues that this court would be interested in determining regarding the purported breach of the lease agreement hence by all accounts and standards, the respondents raised a prima facie case. In the premises, I am satisfied with the trial Assistant Registrar's findings on this principle.

10 \*Irreparable damage.\*

According to the **Black's Law Dictionary, 9th Edition**, at page 447 irreparable damage is defined as \*"damage that cannot easily be ascertained because there is no fixed pecuniary standard of measurement.\* In our jurisdiction in the case of **City Council of Kampala Vs. Donosio Musisi C. A Civil Application No 3 Of 2000**,

15 irreparable damages have been defined as \*"loss that cannot be compensated for with money."\*

It is trite that irreparable injury does not mean that there must not be physical possibility of repairing the injury but means that the injury must be substantial or material one that is one that cannot be adequately compensated for in damages. In

20 the land mark case of **American Cyanamid versus Ethicon Limited 1975 AC at page 369**, court noted that the injunction would not be granted;

"\*if damages in the measure recoverable at common law would be adequate remedy and if the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted,\* 25 \*however strong the plaintiff's claim appeared to be at that stage ...."

In the instant case, I have critically studied the pleadings and attachments thereto of both parties in the main suit and the application for the temporary injunction HCMA 1025 of 2023 and it is my candid observation that the plaintiffs as members of the family of the late Abduhamedi Katalamwa have been in possession of the suit land 30 for a period of 49 years. It should be noted that at this point in time, the court ought

5 not to delve into the merits of the main suit but rather should be purposed to maintain the status quo of the suit land pending the disposal of the main suit.

I have observed from the lease agreement attached to both the plaintiffs and the defendants' pleadings in the main suit that the lease agreement commenced on 1st June 1974 for a period of 49 years. This means that the said lease would be expiring on the 31st 10 of May 2023. It is not a disputed fact by the appellants that they never intended to extend the plaintiff/ respondents' lease but rather they intended to sell off the same at a consideration of UGX 700,000,000 (Uganda Shillings seven hundred million).

- According to ECCMIS, I have observed that Civil Suit No. 461 of 2023 was filed on 26 15 th May 2023 while HCMA 1025 of 2023 being the application for the temporary injunction was filed on 30th May 2023, one day before the expiration of the lease, which would mean that by the time the trial Assistant Registrar delivered his Ruling on 29th September 2023, the plaintiffs' lease had since expired hence the status quo had changed since the suit land had reverted to the lessor's estate, in this case being the 1st and 2nd 20 appellants as administrator and Administratrix (Per annexure RE1 of
- the appellants affidavit in reply to the application for the temporary injunction).

It has already been established that a temporary injunction is intended to preserve the status quo (see **Morjaria Masheshwery Purshotam versus Stanbic Uganda Limited HCMA No. 191 of 2022**). The **Black's Law Dictionary, 8th Edition** page 25 4418 defines status quo as the situation that currently exists. In the instant case, the status quo is that the respondents' lease expired on 31st May 2023 hence the suit land reverted to the estate of the late Abdul Wahab Semakula. Therefore, by issuing the temporary injunction, the trial Assistant Registrar altered the status quo of the suit land which defeats the purpose of the said order. By 29 th September 2023, when the



5 Assistant Registrar issued the order for the temporary injunction against the appellants, the lease had already expired and there was no status quo to maintain.

In the premises, there is no need to further determine the requirement of irreparable damage and balance of convenience since there is no status quo to maintain. Therefore, this appeal is allowed.

- 10 In the premises I order as follows;
- **1. The Ruling and orders of the Learned Acting Assistant Registrar in Miscellaneous Application No. 1025 of 2023 are hereby set aside.**
- **2. The respondents shall bear the costs of this appeal.**

Ruling delivered in High Court, land Division on the 21st day of **March, 2025** via 15 ECCMIS.

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## IMMACULATE BUSINGYE BYARUHANGA JUDGE

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