

UGANDA / JUDGMENT

Musisi v Kalyango (Civil Miscellaneous Application 2610 of 2023) [2024]

UGHCLD 188 (11 July 2024)

[2024] UGHCLD 188

COURT

HC: Land Division (Uganda)

BEFORE

Nabakooza, J

CASE / FILE NUMBER

Civil Miscellaneous Application 2610 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

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

MISCELLANEOUS CIVIL APPLICATION NO.2610 OF 2023

(ARISING FROM MISCELLANEOUS CIVIL APPLICATION NO. 934 OF 2023)\$

(ALL ARISING OUT OF CIVIL SUIT NO. 0361 OF 2023)

MUSISI AHMED :::::::::::::::::::::::::::::::

VERSUS

KALYANGO STEPHEN::::::::::::::::::::::::::::: BEFORE: HON LADY JUSTICE
NABAKOOZA FLAVIA. K

RULING

- 1. This application was brought by notice of motion under the provisions of **Section** 33 of the Judicature Act, Section 82 and Section 98 (a) of the Civil Procedure Act, Order 9 rules 12 and Order 46 rule 1, 2, 3, 6 and 8 of the Civil Procedure **Rules** seeking the following orders;
- a. The orders of court rendered in High Court of Uganda Land Division *vide* Miscellaneous Application No. 361 of 2023 be reviewed, varied and or set aside.
- b. Costs of the Application be provided for.

- 2. The grounds of the Application are contained in the notice of motion and supported by an affidavit in support deposed to by Mr. Musisi Ahmed (the *Applicant herein)*. Briefly, the grounds are that the Applicant is in possession of the suit property and he has suffered a legal grievance from the ruling and order in Miscellaneous Application No. 361 of 2023. That the ruling manifested a mistake and error as to two issues of irreparable injury and balance of convenience which were found in his favor but ruled against him. That the ruling was in total disregard of the resolution of issues under the ruling. That it is in the interest of justice that the Application is granted.

Halmag 11/07/2024

- 3. The Respondent opposed the application by filing an affidavit in reply wherein he averred that the Applicant has not suffered any legal grievance as he bought the land with notice of fraud which is a preserve of the main suit hence no cancellation order for the Applicant's title was made. That the ruling clearly preserved the status quo which is the purpose of injunctions and the Applicant is still the registered proprietor and in possession of the land with no harm to him. That possession is not a sufficient ground for review as the sufficient cause should be analogous to two other grounds specified under Order 46 of the Civil Procedure Rules. That the Applicant has not proved any grounds for review, his application is frivolous and vexatious, a ploy to waste court's time and should be dismissed with costs.
- 4. In rejoinder, the Applicant reiterated his earlier averments and added that even when the Registrar found balance of convenience to be in his favor being in possession, she issued a ruling which caused a paralysis of his livelihood. That in the ruling, it was stated that the damage which the applicant may suffer can be quantified and compensated in monetary terms. That this application will not occasion any prejudice to the Respondent, if granted.
- 5. Representation: The Applicant was represented by Counsel Fahad Matovu together with Counsel Namasembe Specioza while the Respondent was represented by Counsel Bainomugisha Carol.
- 6. Counsel for both parties filed written submissions which I shall consider.
- 7. The issues for determination are as follows:
 - *i. Whether this application has been properly brought before this court?*
 - *ii. Whether the application discloses sufficient grounds to warrant a review?*
 - iii. *Whether there are any remedies available for the parties?*
- 8. Issue one, the order sought to be reviewed was made by Her- Worship Butanula Rashida *(Assistant Registrar)*. However, in *Mulenga JSC in Attorney General and Uganda Land Commission Vs James Mark Kamoga and James Kamala SCCA 08/2004* rightly observed that "the power to review judgments or orders of the High Court, (including those entered by the registrar) is not among the

Page 2 of 5 Aphrage

11/07/2024

Dowers delePated to the resistror. " This means that only a High Court Judge can review a judgment or order made by a Registrar.

- 9. Accordingly, I find that this application has been properly brought before this court.
- 10. On issue 2, an applicant has to satisfy court by proving the ingredients provided for under Order 46 of the Civil Procedure Act. He/she must show that, (i) there is discovery of new and important evidence which was not available to him/her when the order or judgment was passed despite having exercised due diligence, (ii) there was a mistake or error apparent on the face of record, or (iii) sufficient reasons exist to warrant the review sought (Section 82 of the Civil Procedure Act; Meera Investments Ltd Vs Andreas Wipfler T/A Wipfler Designers & Co. Ltd HCMA No. 163 of 2009).
- I LThe Applicant brought this application on a claim that there is an error on the face of record. His Counsel submits that the ruling manifests a mistake and error as the 3 conditions for grant of a temporary injunction, that is; of irreparable damage, status quo and balance of convenience, were found in the Applicant's favour but court mistakenly ruled to the contrary.
- 12. In reply, the Respondent's Counsel submitted that the alleged error is not self-evident but strategic in an attempt to justify a desired reversal to serve his own interest and undermine the administration of justice. That a review is intended for correction of mistakes but should not be used as a disguised appeal. That a mere divergence of opinions on a matter does not warrant a review simply because they were not in favor of the Applicant, who has not met the conditions to invoke the review process.
- 13. The order of court sought to be reviewed states as follows;
 - a. status quo so as to registration and possession be preserved.
 - b. An injunction doth issue restraining the 7th Respondent, his agents or workers or anybody claiming through him from selling, alienating, encumbering, constructing or building on the suit land,

c....and

Page 3 of 5

11/07/2024

- d. A temporary injunction doth issue restraining the 7th and 8th Respondents from tempering or causing the cancellation of any entry on the register including caveats lodged by the Applicant and or altering the Register in respect of land comprised in Block 246 Plots 2111, 2112, 2113, 2444, 2115, m and 2446 formerly comprised in Block 216 Plot 813, 811, 815, 816 of Kyetabya Bukasa till the final disposal of the main suit.
- 14. The 7th and 8th Respondents in the Application were, Musisi Ahmed and the Commissioner Land Registration respectively.
 - 15. It is now settled law that when court is considering an application for a temporary injunction, it must bear in mind that its purpose is to preserve the status quo in respect of the matter in dispute until determination of the whole dispute (E. L. T. Kiyimba Kaggwa Vs Haji A. N. Katende (1985) HCB 43 as cited by the Respondent's Counsel. The conditions governing the grant of a temporary injunction are well settled and have been well argued by Counsel for the Respondent and they are:
 - a. The applicant has to show that he has 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 damage if the injunction is denied.
 - c. If court is in doubt as to the above considerations it will decide the application on the balance of convenience (American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396; Francis Babumba and 2 Others Vs Erisa Bunjo HCCS No. 697 of 1999; Robert Kavuma Vs M/S Hotel International SCCA No.8 of 1990).
 - 16. In the ruling sought to be reviewed, the learned Assistant Registrar found that there were triable issues in CS No. 361 of 2023. On the point of irreparable damages, she observed that "the payments made to some of the beneficiaries are proof that some damage which the applicant shall suffer can be quantified and compensated in monetary terms. This ground has not been proved".
 - 17. Further on the balance of convenience, she stated that "the 7th Respondent stated that he is in possession and is the registered proprietor... such is the status quo.

Page 4 of 5 11/07/2024

Without pre-empting the determination of the suit on its merits, it is in the interest of justice that the status quo is preserved".

- 18. It is therefore clear that the Respondent herein, or Applicant in MA No.934 of 2023, did not prove the essential conditions for the grant of a temporary injunction order. Nevertheless, the learned Assistant Registrar granted the order.

- 19. I am aware though that temporary injunctions are discretionary orders (**Prof. Peter Anyang Nyongo & others Vs. The Attorney General of Kenya & Others**; East African Court of Justice Case Ref. No. 1 of 2006, unreported). It means that court can exercise its discretion and grant them notwithstanding that the Applicant has not proved the necessary conditions.
- 20. In this case, what I observe is the exercise of a judicial discretion by the learned Assistant Registrar who granted the subject temporary injunction order despite the Applicant/ Respondent failing to prove its conditions. It cannot be claimed that the said exercise of a discretion was an error or mistake apparent on the face of record, since the law permitted doing so.
- 21. The issue should then be whether the said exercise of a discretion was judicious, I find that said temporary injunction achieved the intended legal purpose of preserving the status quo. This being so, I am unable to find an error or mistake apparent on the record.
- 22. In conclusion I find that, the Application lacks merit and is hereby dismissed. Am alive to section 27 of the Civil Procedure Act but let each party bear their own costs.

Dated and delivered at Kampala this.....

Hahng
Nabakooza Flavia. K

Judge

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2024/188/eng@2024-07-11>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/musisi-v-kalyango-civil-miscellaneous-application-2610-of-2023-2024-ughcld-188-11-july-2024-unknown-topic-unknown-court-2024--6a3ea4db3b1caa91297e816e>

Prepared on 13 October 2026 · Esheria