

UGANDA / JUDGMENT

Mwebaze and Another v Basemera (HCT-01-LD-MA-0061-2025) [2025] UGHC 555 (14 July 2025)

[2025] UGHC 555

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-LD-MA-0061-2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-LD-MA-0061-2025

(ARISING OUT OF HCT-01-CV-CS-0052-2024)

1. EDWARD MWEBAZE

2. KABATWAIRWE DIANAH ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

BASEMERA JESCA ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

- 1. The Applicants brought the instant Application by Chamber Summons under Section 98 of the Civil Procedure Act, Section 37 of the Judicature Act, and Order 41 of the Civil Procedure Rules. The Applicants seek the following Orders:

- (a) A temporary injunction be issued restraining the Respondent, her agents, workers, or anyone deriving authority from her from further acts of destruction on the suit land, specifically targeting the banana

trees, harvesting Matooke from the cut-down plantation, destruction of the fence, destruction of crops, and spraying the land, until the determination of the case or further court orders.

- (b) A mandatory temporary injunction be issued ordering the Respondent, her agents, or any person deriving authority from her, to vacate the land previously occupied by the applicants, remove the fence planted, and restore the farm to its original state until the final determination of HCT-01-CV-CS-0052-2024.
- (c) Costs of the Application be provided for.

Grounds of the Application:

- 2. The grounds for the Application, as detailed in *Edward Mwebaze's* Affidavit in Support of the Application, were summarized as follows:
- (1) The Applicants filed HCT-01-CV-CS-0052-2024 against the Respondent, which is still pending determination.
- (2) The 1st Applicant and the Respondent are joint administrators of the estate of the late *Charles Mwirumubi*.
- (3) The Respondent singly distributed the estate, ignoring the 1st Applicant's role as co-administrator.

- (4) The Respondent under the authority of the impugned distribution, along with others, forcefully took over land in physical occupation of the Applicants.
- (5) The respondent has destroyed property belonging to the Applicants and continued to do so.
- (6) If these acts of destruction are not stopped, the Applicants will suffer irreparable damage due to the wasting, damage, and alienation of their property, which is under threat of further damage and destruction.
- (7) It is just and equitable for a temporary injunction to issue against the Respondent.

Evidence in Support of the Application:

- 3. In his Affidavit in Support, Edward Mwebaze swore that he is an adult of sound mind, the 1st Plaintiff in the main suit, and that he was swearing the affidavit in that capacity. He attached a copy of the grant of letters of administration as **Annexure A** and stated that since the grant, the Respondent has been uncooperative and has taken over the administration of the estate on her own, even summoning meetings without his approval or consent.
- 4. He further explained that the Respondent single-handedly parcelled out the land (LRV1109 Folio 25 at Musororo, Mwenge, Kabarole District, (now Kyenjojo District) among the beneficiaries without considering who was

already physically occupying it. He claimed that the Respondent allocated herself and others portions of land that the 1st and 2nd Applicants had been occupying and developing together. After the distribution, the Respondent began a systematic process of destruction, which included spraying the land, digging up the cattle farm to turn it into a maize garden, forcefully driving out cattle, and removing fences.

- 5. He detailed how the destruction extended to the banana and tea plantations, providing photographic evidence and valuation reports as **Annexures F and G**. He also reported ongoing destruction and occupation, including the Respondent taking over his house, threatening his workers, slaughtering goats and chickens, and exposing the remaining property to further damage.
- 6. He recounted reporting multiple incidents of property damage, housebreaking, and theft to the Kyenjojo Police Station, but noted that investigations have not made meaningful progress. He also stated that his legal advisors informed him that the continued destruction would cause irreparable damage and that the court has the power to grant both prohibitory and mandatory injunctions to stop these activities until the case is decided, which he believes has a high chance of success.

Representation and Hearing:

- 7. When the matter was called for a hearing on 7 th July 2025, *Mr. Nyakaana Patrick* appeared for the Applicants, and the 1st Applicant was present in court. The Respondent and her Counsel were not present. The Applicants' Counsel satisfied the Court that the Respondent had been duly served with the Application on 12th June 2025, and that she should have responded by 27th June 2025. Counsel requested that the matter proceed *ex parte*, which the Court allowed.
- 8. The matter then proceeded by way of written submissions.

Applicants' Submissions:

9. The Applicants' Counsel submitted that the Application aims to restrain the Respondent and anyone acting under her authority from further acts of destruction on the suit land. It also seeks an order for the Respondent to vacate the land the Applicants previously occupied and to restore the destroyed properties. Counsel explained that the Application is supported by the 1st Applicant's affidavit, which details the background of the case. He stated that both the 1st Applicant and the Respondent are children of the late Charles Mwirutubi and were jointly appointed as administrators of his estate on May 31, 2024. However, the Respondent unilaterally took over the administration of the estate and deliberately excluded the 1st Applicant.

- 10. He referred the court to **Annexures "B" and "C"** of the supporting affidavit, which showed that the Respondent had been summoning meetings to distribute the estate land in Musororo, Mwenje, Kabarole District (now Kyenjojo District), without the 1st Applicant's participation. Counsel submitted that the Respondent then proceeded to distribute the land, which was under the Applicants' occupation and use, to herself and other beneficiaries, thereby excluding the Applicants.
- 11. It was further submitted that the Respondent, along with other beneficiaries and local "hooligans," entered the Applicants' land and caused widespread destruction. She allegedly destroyed crops, cut down fences, harassed farm workers, and scattered domestic animals, some of which were killed while others strayed. Counsel directed the Court to a valuation report that detailed the extent of the destruction and noted that even more damage had occurred after the valuation.
- 12. Counsel noted that the Applicants had already filed HCT-01-CV-CS-0052- 2024, seeking declarations that the distribution was unlawful, a condemnation of the destruction, and a permanent injunction against the Respondent. In that suit, they also seek the restoration of the destroyed property and an order for the estate to be managed according to the law, with both administrators making decisions jointly.

- 13. He submitted that while the main suit was pending, the destruction continued unabated, which led to the Applicants being effectively evicted from their land. He stated that this necessitated the current Application to restore the status quo and stop further damage. Counsel also noted that the 1st Applicant had reported the matter to the police, but no tangible help had been achieved.

- 14. Counsel then addressed the applicable law, citing Order 41 Rule 1 of the Civil Procedure Rules, which provides for temporary injunctions when the property in dispute is in danger of being wasted, damaged, or alienated. He also cited Section 98 of the Civil Procedure Act, Section 37 of the Judicature Act, and Section 64(e) of the Civil Procedure Act, all of which empower courts to issue necessary orders for the ends of justice.
- 15. He emphasized that the main issue before the court was whether this was a proper case to grant a temporary injunction, acknowledging that such relief is discretionary but must be exercised judiciously. He cited **Yahaya Kariisa vs. Attorney General & Another (SCCA No. 7 of 1994)**, noting that a party is entitled to injunctive relief once their legal right is infringed. He also referred to **Titus Tayebwa vs. Fred Bogere & Another (Civil Appeal No. 3 of 2009)**, which sets out the criteria for injunctive relief:
 - a) The applicant must show a prima facie case with a probability of success;

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- b) There must be a likelihood of suffering irreparable injury not compensable by damages;
- c) If in doubt, the application should be decided on the balance of convenience.
- 16. He submitted that the Applicants meet all these criteria. He argued that the Respondent violated the terms of the joint letters of administration, allocated the applicants' land to herself, and then embarked on a spree of destruction. He noted that farm infrastructure, crops, and pasture had been destroyed, animals were displaced, and the Applicants were evicted.
- 17. Counsel asserted that these acts were systematic and continuous and, if not stopped, would cause irreparable harm. He questioned how the applicants could be adequately compensated for strayed animals, poisoned pasture, and damaged soil, concluding that monetary compensation would not restore the property to its former condition.
- 18. Turning to the prayer for a mandatory injunction, Counsel requested the court to compel the Respondent to vacate the land she had forcefully taken over and to restore what she had destroyed. He invited the court to consider the Canadian case of **Pacific Television Inc. vs. 147250 Canada Ltd. (1987)**, where specific exceptions justified the grant of a mandatory interlocutory

injunction, including when the very subject matter of the dispute was at risk of being destroyed if left unprotected.

- 19. He submitted that the current situation fell within those exceptions, especially the need to preserve assets and prevent further destruction. He stated that although mandatory injunctions are not easily granted, they are justified when one party has altered the status

quo and the interests of justice demand that it be restored. He cited **Rashida Abdul Hanali and Another vs. Suleiman Adrisa (Misc. Civil Appeal No. 0011/2017)** where Justice Stephen Mubiru stated that such relief is appropriate when a party is in possession at the time of the order and is later dispossessed, or when the opposing party rushes to frustrate the court process.

- 20. He further cited **Nottingham Building Society vs. Eurodynamics Systems plc [1993] FSR 468**, where Chadwick J laid down the principles for granting mandatory injunctions at an interlocutory stage. These included:
 - a) Minimizing the risk of injustice;
 - b) Acknowledging that mandatory orders may carry greater risk than prohibitory ones;
 - c) Considering whether there is a high degree of assurance that the Applicant will succeed at trial;

- d) Recognizing that even without such assurance, a mandatory order may be justified if the risk of injustice from refusing it outweighs that of granting it.
- 21. In conclusion, Counsel submitted that the Applicants had proven the existence of grave and on-going harm, a deliberate violation of their rights, and a risk of further injustice if the relief was denied. He prayed that the court finds in their favour and grant the orders sought.

Issues for Determination:

- 22. Based on the application and the submissions of counsel, I formulate the following issues for determination:
- (1) Whether the Applicants have established the conditions for the grant of a temporary prohibitory injunction.
- (2) Whether the Applicants have established the conditions for the grant of a mandatory temporary injunction.
- (3) What remedies are available to the parties?

CONSIDERATION BY COURT:

Issue 1: Whether the applicants have established the conditions for the grant of a temporary prohibitory injunction.

- 23. The law governing the grant of temporary prohibitory injunctions is wellsettled. A temporary prohibitory injunction is an order issued by a court to prevent a party from performing a specific act or from continuing a course of conduct, pending the final

determination of a case. Its primary purpose is to preserve the **status quo** and prevent the subject matter of the dispute from being wasted, damaged, or alienated. The fundamental principles for the grant of such relief were clearly articulated in the East African Court of Appeal case of **Giella vs. Cassman Brown & Co. Ltd** [1973] EA 358, which established three conditions that an applicant must satisfy. These principles have been consistently applied by Ugandan courts, including in the cases of **Yahaya Kariisa vs. Attorney General & Another** (SCCA No. 7 of 1994) and **Titus Tayebwa vs. Fred Bogere & Another** (Civil Appeal No. 3 of 2009), as cited by the Applicant's Counsel. I will consider each of these three conditions in relation to the facts before this court.

A. Whether there is a **prima facie case with a probability of success.**

24. The first condition requires the Applicants to demonstrate that their main suit raises a serious question of law or fact that warrants a full trial. This does not mean they must prove their case with certainty, but rather that the claim is not frivolous or vexatious. In **American Cyanamid Co. vs. Ethicon Ltd** [1975] AC 396, the court held that the Applicant must show that there is a serious

question to be tried on the merits. The standard is a low threshold, designed to filter out unmeritorious cases at the interlocutory stage.

25. In the instant matter, the Applicants have filed HCT-01-CV-CS-0052-2024, alleging that the Respondent, the 1st Applicant's co-administrator, has unilaterally and unlawfully distributed the estate of the late **Charles Mwirumubi**. The Applicants have presented evidence, including a copy of the grant of letters of administration (Annexure A), which confirms that both the 1st Applicant and the Respondent were appointed jointly. The Applicants' affidavit further alleges that the Respondent acted alone, ignoring the 1st Applicant's role, and that this led to the forceful takeover of their land. These allegations, supported by the pending main suit, clearly raise a serious question about the validity of the distribution and the lawfulness of the Respondent's subsequent actions. It is a matter that a court of law must investigate and determine on its merits. I am satisfied that the Applicants have demonstrated that the main suit raises triable issues.

B. Whether the Applicants would suffer irreparable injury not adequately compensable by damages.

26. The second condition requires the Applicants to show that if the injunction is not granted, they will suffer an injury that cannot be adequately atoned for by monetary damages. The classic and often-cited definition of irreparable injury

in Uganda comes from the case of **Kiyimba Kaggwa v Katende** [1985] HCB 43. In that ruling, it was held that "irreparable injury does not mean that there must be no physical possibility of repairing the injury, but means that the injury must be a substantial one which cannot be adequately compensated by damages."

27. The Applicants' evidence, as presented in the affidavit and submissions, details extensive and on-going destruction. It is alleged that the Respondent has cut down banana trees, sprayed the land, converted a cattle farm into a maize garden, and caused the loss of livestock. While the Applicants did attach a valuation report (Annexure G) quantifying the damage, the harm goes beyond a simple monetary sum. The destruction of a developed farm is not merely the loss of crops; it is the destruction of a livelihood, the displacement of animals, and the potential poisoning of the soil, which may have long-term consequences. The loss of a home and the forced eviction of the Applicants from land they claim to have occupied and developed are injuries that are difficult, if not impossible, to quantify in purely financial terms. Such acts are contemplated by Order 41 of the Civil Procedure Rules, which specifically provides for injunctions when property is in danger of being "wasted, damaged, or alienated." I am convinced that the Applicants would suffer substantial, irreparable injury if the alleged acts of destruction are allowed to continue until the final determination of the main suit.

C. Whether the balance of convenience favours the Applicants.

- 28. The final condition is applied when there is doubt about the first two conditions, though it is often considered in all cases as a measure of prudence. The balance of convenience requires the court to weigh the potential harm to the Applicants if the injunction is denied against the potential harm to the Respondent if the injunction is granted. The court must consider whose position is more likely to be prejudiced by the decision.
- 29. On the one hand, if the injunction is refused, the Applicants claim that the ongoing destruction will continue, potentially rendering any judgment in the main suit meaningless. If the destruction continues, the Applicants' cause will be prejudiced, and a judgment in their favour would be a hollow victory.
- 30. On the other hand, if the injunction is granted, the Respondent would simply be restrained from continuing the alleged acts of destruction pending the main trial. This is a temporary measure that preserves the subject matter of the dispute. Any inconvenience to the Respondent would be temporary and would not cause her irreparable harm, as the court would eventually decide her rights. In my view, the potential harm to the Applicants, which includes the complete devastation of their property and livelihood, far outweighs any potential inconvenience to the Respondent from being temporarily restrained from her

alleged activities. The balance of convenience therefore clearly lies in favour of the Applicants.

31. Having considered the three conditions in light of the Application, the supporting Affidavit, and the submissions of Counsel, I find that the Applicants have satisfied all the requirements for the grant of a temporary prohibitory injunction. I therefore resolve Issue 1 in the affirmative.

Issue 2: Whether the Applicants have established the conditions for the grant of a mandatory temporary injunction.

32. A mandatory injunction is *"an injunction that orders an affirmative act or mandates a specified course of conduct."* (see **Black's Law Dictionary 9th Ed page 855**). Accordingly, a mandatory Injunction is issued when a court directs a person to perform certain acts, as opposed to prohibitory injunction, which seek to preserve the status quo. It is usually granted to restore the status quo that was existing as at the time when the suit was filed. In the case of **Shepherd Homes vs. Sandham**, [1970] 3 WLR 348 at page 356, Megarry J (as he then was), drew the distinction between a prohibitory and a mandatory injunction as follows; -

"whereas a prohibitory injunction merely requires abstention from acting, a mandatory injunction requires the taking of positive steps, and may (as in the present case) require the dismantling or destruction of something"

**already erected, or constructed. This will result in a consequent waste of time, money and materials if it is ultimately established that the defendant was entitled to retain the erection."*

33. Therefore, since a mandatory injunction may have a future undesirous result of wasting time, money or materials when it is ultimately and eventually determined in the main suit that the Respondent/Defendant was justified in doing the act complained of, mandatory injunctions are granted with reluctance and only in exceptional and clearest cases and more so in very special circumstances. In the case of **Kenya Breweries Limited & Another vs. Washington O. Okeyo Civil Appeal No. 332 of 2000** [2002] 1 EA 109, the Court of Appeal of Kenya stated as follows:

"A mandatory injunction can be granted on an interlocutory application as well as at the hearing but in the absence of special circumstances, it will not normally be granted. However if the case is clear and one which the Court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff, a mandatory injunction will be granted on an interlocutory application...A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the Court thought"

that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory injunction the Court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.

- 34. Therefore, the standard of granting a mandatory injunction is higher than that required for grant of a prohibitory injunction. Mandatory injunctions are granted under the discretion of court guided by the above principles and in exercise of the inherent powers of Court as provided for by **Section 98** of the **Civil Procedure Act** and not under **Order 41** of the **Civil Procedure Rules**.
- 35. In the instant case, the Applicants' counsel urged this court to find that the special circumstances that warrant the grant of a mandatory injunction have been proved by the Applicants. He cited the need to preserve the subject matter of the dispute and the principle of restoring the status quo that had been unlawfully altered. While I have already found that the Applicants have a **prima facie case**, this does not, by itself, amount to the "high degree of assurance" or the "clear case" required for a mandatory order. The central dispute here is over the validity of the distribution of a deceased's estate. This

is a complex matter that will require a full trial to determine the rights of all beneficiaries and the proper actions of the co-administrators. The outcome is not so certain that the court can, at this stage, mandate the Respondent to vacate the land.

- 36. Furthermore, I do not find that the special circumstances required to justify this extraordinary remedy exist. While the Applicants allege a forceful takeover and continuous destruction, the primary purpose of an interlocutory mandatory injunction is to address a party who has "stolen a march" by rushing to alter the status quo *after* the suit has been filed, specifically to frustrate the court process. The Applicants' own evidence indicates that the forceful takeover and initial acts of destruction occurred after the alleged unilateral distribution but before the main suit was filed. While the destruction is said to be on-going, the principal act of dispossession had already taken place.
- 37. It is also a fundamental principle that an interlocutory injunction should be no more than is necessary to achieve its purpose. I have already resolved in Issue 1 that a prohibitory injunction is warranted to prevent any further acts of destruction. This order will stop the cutting of banana trees, the spraying of land, and the harvesting of crops, thereby preserving the subject matter of the dispute until the main suit is heard. The Applicants' Counsel's argument that the subject matter is at risk is now moot, as it is protected by the prohibitory

order. Therefore, the drastic step of a mandatory injunction which would force the Respondent to vacate the land and spend money on restoration before her legal rights are finally determined is not necessary to prevent further injustice.

38. For these reasons, I am not convinced that this is one of those clear and exceptional cases that justifies the grant of a temporary mandatory injunction. The standard has not been met. I therefore resolve Issue 2 in the negative.

Issue 3: What remedies are available to the parties?

- 39. The remedies sought in an application of this nature are entirely dependent on the court's findings on the first two issues. The power of this court to grant remedies is derived from **Section 98 of the Civil Procedure Act** and **Section 37 of the Judicature Act**, which confer a broad inherent jurisdiction to issue orders necessary for the ends of justice and to prevent the abuse of the court process. As established in Issue 1, the Applicants successfully demonstrated a need for judicial intervention to preserve the suit property.
- 40. Having found that the Applicants have met the threshold for a temporary prohibitory injunction, it is just and equitable that this court grants it. The purpose of this order is to stop the alleged ongoing harm and to maintain the status quo of the property. This relief will prevent the Applicants' rights from being rendered moot and will ensure that the subject matter of the main suit is preserved until the case is heard and a final decision is reached. A court must

not stand by and allow the property in dispute to be wasted, damaged, or alienated, as this would make a final judgment a mere academic exercise. This principle was aptly noted in the case of **Hajji Siraji vs. Road Master Co. Ltd (Misc. Application No. 209 of 2004)**, where the court affirmed its power to issue such orders to prevent a judgment from being frustrated.

41. However, having found that the Applicants did not meet the higher standard required for a mandatory temporary injunction, that remedy is not available to them at this stage. As I concluded in Issue 2, a mandatory order is a drastic and exceptional remedy, and the circumstances presented, while serious, do not at this stage, rise to the level of certainty required, to compel the Respondent to vacate the land and restore it, as the evidence indicates that the forceful takeover and initial acts of destruction occurred after the alleged unilateral distribution of the estate, but before the main suit was filed.
42. In light of the above findings, I hereby make the following Orders:

(1)A temporary prohibitory injunction is hereby issued, restraining the Respondent, her agents, workers, or anyone deriving authority from her, from any further acts of destruction on the suit land, including cutting down trees, harvesting Matooke from the banana plantation, destruction of the fence, destruction of crops and spraying the land

until the final determination of the main suit, HCT-01-CV-CS-0052- 2024, or until further orders of this court.

- (2)The prayer for a mandatory temporary injunction at this stage is hereby denied.
- (3)The costs of this Application shall abide the outcome of the main suit.

I so order.

Dated at Fort Portal this 14th day of July 2025.

Vincent Wagona

High Court Judge

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Prepared on 12 October 2026 · Esheria