

UGANDA / JUDGMENT

Nabatanzi v Mayanja & Anor (Miscellaneous Application No. 105o F 2014) [2015] UGHCLD 35 (12 May 2015) [2015] UGHCLD 35

COURT

HC: Land Division (Uganda)

BEFORE

Luswata, J

CASE / FILE NUMBER

Miscellaneous Application No. 105o F 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

MISCELLANEOUS APPLICATION NO. 105O F 2014

(Arising from Civil Suit No. 89 of 2014)

EDITH NABATANZI

(*Administrator of the estate of the late*

Manjeri Namakula)..... APPLICANT

VERSUS

1. MAYANJA ROBERT

2. REGISTRAR OF TITLES

(MUKONO ZONAL OFFICE)..... RESPONDENTS

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

The applicant has by chamber summons presented this application under Section 64 CPA and Order 41 rule 1(a) of the CPR seeking for orders that a temporary injunction doth issue against the respondents restraining them or, their agents, legal representatives, workmen, assignees, servants or any other person from entering, trespassing, disposing off, transacting, destroying and/or from any other dealing in the suit land comprised in Kyaggwe Block 110 Plot 814 at See and that costs of the application be provided for.

The application was supported by the affidavit of Edith Nabatanzi the applicant who in brief stated that she is the administrator of the estate of the late Manjeri Namakula, the former registered proprietor of the suit land (hereinafter referred to as the deceased) and was in current possession of it. That the suit land was fraudulently registered in favour of the 1st respondent through nonexistent letters of administration. That in October 2013, she attempted to lodge a caveat on the suit land but her application was rejected by the 2nd respondent citing reasons that, **“the suit land had changed hands into the possession of a bona fide third party for value without any notice of fraud”*.* She continued that the 1st respondent had requested an intending purchaser to carry out a search on the suit land with the intention of disposing of it, an action that would result into irreparable damage and loss to her.

In reply to the application, Mayanja Robert the 1st applicant, stated that he was the registered proprietor of the suit land and had conversely, been in possession since its purchase. He argued that the application lacked merit since the letters of Administration being relied on in the main suit, were granted by the wrong authority. He also argued that nothing had been shown that the applicant would suffer irreparable damage and loss and that being the registered proprietor in possession, he should be favoured and the status quo maintained.

Order 41 Rule 1(a) CPR provides grounds to consider before granting a temporary injunction. However, each case must be considered upon its own peculiar facts. In the case of **American Cyanamid Co. Vs Ethicon Ltd [1975] AC 396** Lord Diplock laid down guidelines for the grant of temporary injunctions, and they include:-

1. The applicant has to show that he/she has a prima facie case with a probability of success in the main suit.
2. The applicant has to show that he/she is likely to suffer irreparable damage if the injunction is denied.
3. If court is in doubt as to the above considerations, it will decide the application on the balance of convenience.

In the case of **Godfrey Sekitoleko and others VS Seezi Mutabazi [2001-2005] HCB Volume 3 at 80** the Court of Appeal made the position clear by stating that in addition to the above, an injunctive order is meant to preserve the status quo and protect the interests of the parties before a final decision is made on the issues in the main suit. In this, I found the caption lifted from the same case to be instructive that:-

*“*The court has a duty to protect the interests of the parties pending disposal of the substantive suit. The subject matter of a temporary injunction is the protection of legal rights pending litigation. In exercising its jurisdiction to protect legal rights to property from irreparable or serious damage pending the trial, the court does not determine the legal rights to the property but merely preserves it in its actual condition until the legal title or ownership can be established or declared.”* (Emphasis mine).*

In addition to the above, I am always conscious of the fact that temporary injunctions are discretionary orders, and at no time should the court attempt to prejudge the question in issue or resolve issues related to the main suit: See: **Prof. Peter Anyang Nyong'o & Others Vs The Attorney General of Kenya & Others; East African Court of Justice Case Ref. No. 1 of 2006 (unreported)**.

Although there is an existing suit between the parties the basis on which this application lies, not much of its contents were related in the applicant's affidavit. Instead his counsel chose to give an account of the applicant's claim in their submissions. Be that as it may, I noted the claim in the main suit is that after the applicant obtained Letters of administration of the deceased's estate she was notified by the 1st respondent that he was the registered proprietor of the suit land and had intentions of disposing it off to third parties. She claims that her investigations showed that the letters of Administration of the 1st applicant's predecessor in title were nonexistent. Both counsel did agree in their submissions, that the applicant's pleadings did raise serious issues for determination of court, and thus I can only concur that a prima facie case worth investigation has been raised by the applicant.

In **Francis Kanyanya Vs Diamond Trust Bank HCCS No. 300 of 2000** Hon Justice Lameck N. Mukasa relying on **Kiyimba Kaggwa Vs Hajji Nassar Katende (supra)** stated to the effect that irreparable injury means that the injury must be substantial or a material one, that is, one that cannot be adequately compensated for in damages.

It has been argued for the applicant that she will suffer irreparable injury is not restricted to physical injury but one that is substantial and for which damages are not adequate compensation. According to her counsel, the respondent has directed a prospective buyer to make a search on the land at the land registry with the intention of disposing off of the suit land and. That the 1st respondent's actions have only been restrained by an interim order of this Court. Further that the decision of the 2nd respondent to deny registration of the applicant's caveat, frustrates her efforts to protect the suit land from further fraudulent transactions. That should the suit land be so disposed of, financial compensation would not be adequate remedy.

Counsel for the 1st respondent disagrees. In his view, nothing has been advanced in the pleadings to show irreparable loss. That the applicant's fears that there is a pending transfer by the respondent to 3rd parties is only an insinuation and the refusal by the 2nd respondent to register the caveat is not an element of irreparable loss.

I do agree with counsel for the respondent that a search being made on the land or an application to lodge a caveat being denied are not enough to depict an imminent sale. Further, the reasonableness or lack of it in denying the application, by the applicant to ledge the caveat, are matters resolved in the main suit. The respondent is undeniably the registered owner of the suit land and has been, so far a considerable period of time. His interest in the suit land would thus be substantial and override that of the applicant, at least until the dispute in the main suit is resolved. I am therefore not satisfied that the applicant will suffer irreparable injury if a temporary injunction is not granted. I am therefore not satisfied that the applicant will suffer irreparable injury if a temporary injunction is not granted.

Having found a prima facie case, but no danger of irreparable loss, my findings above require that I make a decision on this application on a balance of convenience, and in this, exercise of discretion is paramount. Counsel for the respondent has agreed that there serious issues raised in the plaint to merit investigation. In my view, such issues include questions of whether, the suit land at one time belonged to the deceased's estate, and there was a fraudulent transfer to the 1st applicant and whether the 1st respondent's registration should be retained on the Land Register. On the other hand, the 1st respondent argues that he is a registered proprietor in possession whose activities on the suit land should not be curtailed by a pending suit by way of temporary injunction.

I do agree with the finding of the court in **Commodity Trading Industries Vs Uganda Maize Industries & Anor (2001-2003) HCB 118** that the court is not expected to determine legal rights to the property but merely to preserve it in its actual condition until the legal title or ownership can be established. This is because, temporary injunctions are meant to preserve and protect legal rights pending disposal of the main suit.

According to Annexure "A" to the 1st respondent's affidavit, the suit land did at one time belong to the deceased vide Instrument No. MKO 37923 of 23/10/78. This would lend credence to the applicant's assertion that without the subsequent transfers, it would form part of her estate which is within her mandate to administer. Also, according to Annexure "EN3" to the applicant's affidavit in rejoinder, the respondent's counsel did unequivocally indicate that his client 'was in advanced stages of a sale transaction' of the suit land. The applicant's fears that she may be forever displaced from the suit land are therefore not misplaced.

However, the facts of which party is in possession appear to be in dispute. According to the applicant, she has been in possession by herself land with tenants since she assumed administration of the deceased's estate, which would be since January, 2012. Conversely, the 1st respondent claims to have been in possession since he purchased the suit land. Although the date of purchase is not specified, he procured registration in May 2000 and it is assumed he obtained

vacant possession then. Both parties claim to occupy the suit land by themselves and with tenants, but the respondent has only produced photographs of some carpentry activity in some undisclosed location. On the other hand, the receipts provided by the applicant are neither more helpful for they were being given to and signed for by persons who do not appear to be party to the suit.

However, the applicant, provided Municipal rates and water bills dating as far back as August 2006, addressed to a one Mada or Magadelna Nankya in respect of a commercial premises in Baggala Zone, seta. Seeta is the stated location of the suit land and Nankya Mada is the person mentioned in the memorandum of understanding introduced in the proceedings as Annexure "EN32" to the affidavit in rejoinder, as the person being appreciated by the applicant for taking care of the deceased's land "where she is right now". Those facts are not seriously contradicted by the respondent and I am inclined to deduce on a balance of probabilities that it is the applicant and not the respondent in possession of the suit land, despite the superior proprietary rights of the latter. In view of the protestations of the applicant that she represents an estate who was deprived of property through fraud, her unregistered interests by possession should be maintained until the dispute is resolved.

I thereby find merit in this application and it is granted. A temporary injunction is thereby granted restraining the respondents, their agents, legal representatives, assigns, servants of any other person from entering, disposing off, transacting, destroying and/or from any other dealing in the suit land comprised in Kyaggwe Block 110 Plot 814 Seeta, until final disposal of the main suit.

Costs of this application shall abide the outcome of the main suit.

I so order.

EVA K. LUSWATA

JUDGE

12/5/2015

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