

UGANDA / JUDGMENT

Nankoomi & Another v Onwuvuche & 3 Others (Civil Reference 8 of 2023) [2024] UGCA 102 (8 May 2024)

[2024] UGCA 102

COURT

Court of Appeal of Uganda

BEFORE

Buteera, DCJ, Kiryabwire, JA, Mulyagonja, JA

CASE / FILE NUMBER

Civil Reference 8 of 2023

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

Coram: Buteera, DCJ, Kiryabwire & Mulgagonja, JJA

CIVIL RTREFERENCE NO. 008 OF 20.23

BETWEEN

1. NANKOOMI PROSSY

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2. KASOZI JOHN BAPTIST !!!!!!!!!!!!!!!3:3!::3!::!!!!!!:!!::!::!::: APPLICANTS

AND

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:::RESPONDENTS

- 1. OWCHEAUSTIN NNAMDI

- 2. ONUTTryUCHE NAKTBUUKA SARATI

- 3. ATICE MAI(ANGA (as Administrator of the Estate of Mbabali John Makangal

4. COMMISSIONER LAND REGISTRATION .,]

RULING OF THE COURT

Introduction

This Reference was brought under Rule 55 of the Judicature (Court of Appeal Rules) Directions, SI 13- 10, from the Ruling delivered on 1st August 2023 by Barishaki, JA, sitting as a single Justice, in Civil Application No. 277 of 2023.

Background

The background to the Reference is that the Respondents sued the Applicants in High Court Civil Suits 163 and 311 of 20th9. The suits were consolidated and heard together and Judgment was given in favour of the Applicants on 17th May 2023, with a declaration that the Applicants

were the bona fide purchasers of the land known as Kibuga Block 12 PLOT 789 at Mengo, and that therefore they are the owners of the said land. It was further ordered that the Commissioner for Land Registration rectifies the Register to revert to the status at th^{is} time of the suit, by entering the names of the Applicants as registered proprietors of land known as Kibuga Block 12 Plot 789 at Mengo.

The Court further declared that title to the land known as Kibuga Block 12 Plot 791 at Mengo did not pass from the 3rd plaintiff (Alice Makanga), now the 3rd respondent, to the respondents herein and the contract between them was repudiated. The 3rd respondent was thus ordered to indemnify the 1st and 2nd respondents for the monies expended for the purchase of the land.

Dissatisfied with the decision of the trial Court, the respondents appealed to this court in Civil Appeal No. 278 of 2023. They also applied for stay of execution of the orders of the High Court, in Civil Application No 227 of 2023. On 1st August 2023, Barishaki, JA granted a temporary injunction restraining the Applicants, then the respondents, jointly and/or severally, their agents, servants and all persons/entities/agencies claiming from them from any encroachment, selling, developing/constructing, mortgaging or transferring the land comprised in Kibuga Block 12 Plots 789 and 791 at Mengo, until disposal of Civil Appeal No. 278 of 2023. 15 20

Dissatisfied with the ruling, the Applicants by letter from their Advocates, M/s Kabega, Bogezi & Bukenya, Advocates lodged a Reference in which they intended to move the court to vary, discharge and/or reverse the ruling and orders or decision of the single Justice. They requested that they be availed with the brief typed and certified record of proceedings, if any.

Subsequently, on 4th, August 2023, M/s Kabega, Bogezi & Bukenya Advocates, and Muganwa, Nanteza & Co Advocates, both for the Applicants filed a document entitled Memorandum of Reference, in which they stated the grounds as follows:

- 1. The learned Honourable Justice of this Court erred in law and fact in omitting to address the fact of the Applicants being in occupation of the subject land, Kibuga Block 12 Plot 789, thereby causing a miscarriage of justice.
- 2. The learned single Honourable Justice of this court erred in law and fact to in the contrary and impliedly (sic) order eviction and or further encroachment thereon in disregard of the fact that the Applicants were in possession, thus coming to the wrong justification.
- 3. The learned single Justice of this court erred in law and fact (in) holding that execution shall render the appeal nugatory, whereas not.
- 4. The learned single Justice of this honourable court erred in law and fact in deciding Civil Application No. 277 of 2023 in isolation of the pleadings of the Applicants and in totality coming to a wrong decision to the detriment of the Applicants.
- They prayed that the Reference be allowed and that the orders of the single Justice be set aside and varied, and in place thereof the following orders be granted: 20
- i) That the status/position of the Applicants' physical possession, occupation and use of the suit land be maintained;
- ii) The orders of this court relating to encroachment be discharged;
- iii) Each party bears its costs.

The 1st and 2nd respondents opposed the Reference by filing affidavits in reply dated 12th October 2023. The 3rd respondent filed an affidavit in reply deposed on 16th October 2023 in which she stated that the restraining Order was made on the wrong assumption that the 1st and 2nd respondents in the Reference are in occupation/possession and use of the land known as Plot 789, yet the said Plot has always been in the possession and use of the Applicants in the Reference. Further, that the 1st and 2nd respondents are in occupation of Plot 791, but their ownership is contested.

i.o Representation

When the matter came up for hearing on 14th December 2023, Messrs Moses Kabega and Abbas Bukenya represented the Applicants. The respondents' Advocates were absent but the 1st respondent was present. It was noted that the respondents' Advocates filed written submissions addressing the Reference. The 1st respondent agreed that the written submissions earlier filed be adopted as their legal arguments upon which this matter would be decided and they were so adopted.

Preliminary Objection

20 We observed that in their submissions filed on 24th October 2023, counsel for the 1st and 2nd respondents raised a preliminary objection that Civil Reference No 008 of 2023 is moot and an abuse of court process because it was lodged in respect of a Ruling in Civil Application 278 of 2023. They contended that the Applicants therein sought an interim order for a temporary injunction but the application was withdrawn because Civil

25 Applications 277 and 278 of 2023 were both called on for hearing on 19th July 2023. That Civil Application No 278 of 2023 was withdrawn in the presence of the parties and their Advocates. They thus prayed that the Reference be dismissed with costs.

The Applicants filed their conferencing notes/submissions on 25th October 2023 but they did not respond to the preliminary objection. However, for completeness, we deemed it necessary to address it and hereby do so.

Resolution of Preliminary Objection

In his submissions, counsel for the Applicant states that the Reference was brought under rule 55 (1) (b) of the Rules of this court. He then goes on to address the grounds, as they were stated in the Memorandum of Reference, starting with the preliminary objection. The relevant part of rule 55 of the Rules of this court is as follows:

55. Reference from decision of a single judge.

- (1) Where under section 12(2) of the Act, any person being dissatisfied with the decision of a single judge of the court—
 - (a) in any criminal matter wishes to have his or her application determined by the court; or
 - (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court,

the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.

- (2) At the hearing by three judges of the court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court.

{Emphasis added}

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The procedure for initiating a Reference is clearly laid down in Rule 55 (1) as it is shown above. It is either by oral application to the single judge immediately after he renders his/her decision, or by letter to the Registrar, within seven days after the decision is given. In this case, the Applicants chose to write to the Registrar on 1st August 2023 and the letter was set before us at page 5 of the Applicants' amalgamation of documents called the "Record of Reference."

In their letter, Kabega, Bogezi & Bukenya, Advocates, stated that:

"In the Reference, it is intended to move court to vary, discharge and or reverse the ruling order and decision of the single judge." (sic) 10

They then applied for the typed and certified record of proceedings, impliedly adopting the procedure that is followed on the filing of an appeal to the Supreme Court. It seems to us that it is for that reason that they went on to set out "Grounds of Appeal" in the Memorandum of Reference.

Further to that, we note that the 1st and 2nd respondents filed two affidavits in opposition of the Reference. It is there that they first raised the preliminary objection stating in paragraph 2 of each of them, that the Reference was initiated in respect of Application No. 278 of 2023, instead of Application No. 277 of 2023 and therefore ought to be dismissed for that reason 15

However, there is no doubt that this matter was filed on the 1st August 2023, when counsel for the Applicants wrote to the Registrar to initiate a Reference in respect of the decision of the single Judge in Application No. 277 of 2023, as it is required by Rule 55 (1) of the Rules of this Court. The document that was entitled "Memorandum of Reference" and the record of Reference are not provided for by the Rules of this Court. The

Memorandum of Reference, in particular, is an innovation that has come to be accepted by the court out of practice in that Applicants articulate the grounds upon which they challenge the decision in more detail than they did before the single judge on the oral application, or in the written communication to the Registrar.

For those reasons, the preliminary objection was misconceived for it is not based on any point of law articulated by the respondents. We also did not find any that supported it. For those reasons, the objection is overruled and we shall proceed to consider the Reference.

10 But before we do so, it is pertinent to note that Rule 55 (2) of the Rules of this Court provides that, at the hearing by three Judges of the Court of an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court. As we have already observed, the 1st, 1nd and 3rd respondents filed affidavits in reply to the 15 Reference, the first two of which were to oppose the Reference. Some of the facts in the two affidavits are different from those that were stated before the single Judge in that they relate to events that took place after the Ruling was delivered on 1st August 2023. For example, in paragraph 21 (e) and (h) of the first Respondent's affidavit in reply, he states thus:

²⁰ "(e) That on the 15th day of September 2023, the Police officers came to the suit land to read a court order to the parties in a bid to enforce the same but found that the 7th and 2nd applicants had altered the status quo by placing onto part of the suit land makeshift container shops.

²⁵ (h) That the actions of the applicants therein amount to blatant contempt, abuse and disobedience of the Court order granted in Civil Application No 277 of 2023."

The 1st and 2nd respondents then appear to have gone on to apply for orders that were never the subject of Application No 227 of 2023 which

is the subject of the Reference, such as the declaration that the Applicants are in contempt of the court order under Reference, that the Applicants pay up to UGX 323 million to the respondents as "specific," exemplary and punitive damages resulting from the alleged contempt of court and a fine to be determined by court. The 1st Applicant then prayed, in paragraph 22 of his affidavit, that in the interests of justice, this court first disposes of the application for contempt of court, filed as Civil Application No. 1085 of 2023, before disposing of this Reference.

Counsel for the respondents did not appear at the hearing of the Reference on 14th December 2023. The 1st respondent appeared on his own and agreed that the Reference be disposed of on the basis of submissions that were filed by his Advocates before the hearing. We have carefully perused those submissions. We established that counsel for the respondents did not apply for leave to adduce additional evidence, as they did in their affidavits filed on behalf of their clients. 10 15

We are also of the view that the requirement in Rule 55 (2) of the Rules of this court that a party that wishes to adduce additional evidence in the Reference must first seek and obtain leave to do so is mandatory. Since counsel for the 1st, 2nd and 3rd respondents neither sought nor obtained the leave of this court to adduce additional evidence; and the relevant facts that they sought to adduce took place after the decision under Reference, we find that the said evidence is improperly before this court. For those reasons, we have no other option but to strike out the 1st, 2nd and 3rd respondent's affidavits in reply, and we hereby do so with costs to

the Applicants. 25

With regard to the prayer in the said affidavits that this court considers Civil Application No 1085 of 2023 for contempt of the court order in Civil Application No. 277 of 2023 before disposing of this Reference, we take cognisance of the rule that court orders should be obeyed without question. Thereafter, the party that is subjected to the order may challenge it in a court with competent jurisdiction to vary or set it aside.

5 However, in this matter, the application for contempt of court and this Reference were set before us on the same d'y, one following the other. The resources of this court in terms of judicial officers are not infinite. The Application to hear MA 1085 of 2023 before we dispose of the Reference was brought in affidavits that have since been struck out for being filed contrary to the Rules of this Court. We therefore have no valid application before us. 10

In addition, this court is vested with the discretion to control its own proceedings. We found no valid reason to expedite the hearing of an application for the alleged contempt of an order that is being challenged by the persons against whom it was issued. We therefore deemed it more prudent to dispose of this application before we can consider whether or not the Applicants were indeed in contempt of an order of this court worthy sanctioning them for contempt or not. We thus proceeded to dispose of the Reference as a matter of expediency.

Analysis and Determination 20

In their joint submissions for the Applicants, counsel addressed grounds I and 4 stated in the Memorandum of Reference together, after which they addressed grounds 2 and 3 separately. On the other hand, counsel for the respondents addressed ground 1 on its own, grounds 2 and 4 together and ground 3 on its own.

We addressed the Reference in the same order that counsel for the applicant presented their submissions. The submissions were reviewed immediately before disposing of the various grounds of the Reference.

Grounds 1 & 4

s Submissions of counsel

With regard to grounds 1 and 4, counsel for the Applicants contended that injunctive orders that were issued are not clear and are ambiguous, especially the Reference to 'encroachment' in respect of both of the pieces of land that are in dispute, Plots 789 and 791 at Mengo Kisenyi. Counsel explained that the two plots of land which were the subject of Consolidated Civil Suits 163 and 311 of 2019 are adjacent to each other. Further, that the Applicants have been in active possession of Plot 789 and have no interest in Plot 791. They also explained that the 1st and 2nd respondent have never been in possession of Plot 789, as they deposed in the Application and as was the finding of the single judge that heard the Application, at page 40 of the record of Reference (page 24 of the Ruling). 10 15

20 25 Counsel for the Applicants further stated that while the suit was still pending determination in the High Court, the 1st and 2nd respondent tried to forcefully evict the Applicants and take possession of Plot 789 and erected temporary iron sheet structures thereon. That however, these were removed following an order issued in High Court Misc. Application No. 14OS of 20.21 for an interlocutory mandatory injunction compelling the respondents to remove the structures. Counsel for the Applicant further referred court to pages 21, 28, 165, 260 and 262 of the Record of

Reference to show that the Applicants were in possession and usage of Plot 789 before delivery of the Judgment in the main suit, and that they continue

to possess and occupy the same. He contended that this fact was never denied, challenged or controverted by the 1st and 2nd respondents in their affidavit in rejoinder to the application.

Counsel relied on the decision in *Uganda Revenue Authority v. Stephen s Mabosi*; SCCA No. 26 of 1995 where it was held that the omission to challenge evidence in-chief of a material or essential point by cross-examination in effect means acceptance of that evidence. Counsel then asserted that when he failed to address his mind to that position of the law, the single judge came to the wrong decision. Further, that the fact that a restraining order was issued against the Applicants in respect of both Plots was unfair because court looked at both of them as though they were owned by the appellants, the respondents here.

Counsel then went on to emphasise that the Applicants own Plot 789 while Plot 791 is owned by the late John Mbabali Makanga. That there was ample evidence that the Applicants own and occupy Plot 789 and their ownership has never been interrupted; it was the position prior to HCCS No 163 and 311 of 2019, and still is to date.

20 25 Counsel further submitted that had the learned single Justice considered the pleadings and submissions of both parties in totality, he would have found that the 1st and 2nd respondents could not be evicted from land that they did not occupy or possess. Counsel then asserted that the learned single Justice erred when he misapplied the law governing proof of facts, the burden of proof and the omission to apply the principle of the law relating to unchallenged evidence, when he found that the 1st and 2nd respondents were in possession of all of the land in dispute from which they derive their livelihood, when they were not. He thus came to the wrong decision.

In reply to ground 1, counsel for the respondents submitted that it is the court's duty to preserve the existing situation pending the disposal of the substantive suit and not to determine the legal rights to property. They stated that the learned single Justice aptly heard Civil Application No. 2 of 2023, correctly weighed the dispute between the parties before applying principles that have to be proved before the grant of a temporary injunction. Counsel referred to the principles as they were stated in *Shiv Construction Co. Ltd v. Endesha Enterprises Ltd*, SCCA No. 34 of 1992.

Counsel then referred to the facts that were stated in paragraph 14 of the 1st respondent's affidavit in reply to the Reference where it was stated that the 1st respondent purchased a leasehold on land comprised in Kibuga Block L2 Plots 789 and 791 at Mengo from Alice Makanga, the 3rd respondent herein, and Robert Stephen Mayanja, duly appointed attorney of John Mbabali Makanga, the registered proprietor of the land. 10 15

However, the said affidavit was struck off the record and cannot be relied upon by the respondent. Counsel for the 1st and 2nd respondents again sought to rely on the same affidavit at pages 4-5 of their submissions, in proof of the titles alleged to be held by the respondents, but that cannot be sustained for the same reason.

With regard to grounds 2 and 4 which counsel for the 1st and 2nd respondent addressed together, counsel referred to Rules 2 (21 and 6 (21 (b) of the Rules of this court. They also referred to the principles in Robert Karnrma v. Hotel International, SCCA No.8 of 1990 to be considered in an application for a temporary injunction. They submitted that the learned single Justice correctly applied the law in granting an order prohibiting eviction and or further encroachment as the 1st and 2nd respondents were

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in possession of the suit land. They prayed that this honourable Court upholds his decision.

Resolution of Grounds 1 and 4

5 Ground 1 in this Reference was that the single Justice erred when he did not address the fact that the Applicants were in occupation of the land known as Kibuga Block 12 Plot 789 and thereby occasioned a miscarriage of justice. Related to that, ground 4 was a complaint that the single Justice erred when he decided Civil Application No 277 of 2023 in isolation of the pleadings of the Applicants, and thus totally came to the wrong decision to their detriment. 10

The order that the respondents sought in Application 277 of 2023 was a temporary injunction to restrain the respondents, the Applicants in this Reference together with Alice Makanga and the Commissioner for Land Registration, 3rd and 4th respondents in that Application, but now the 3rd and 4th respondents in this Reference, from any further encroachment, selling, developing/constructing, mortgaging, or transferring the land comprised in Kibuga Block 12 Plots 789 and 791 at Mengo Kisenyi, Kampala, until disposal of the appeal pending before this court.

The portion of the decision of the single Judge that the Applicants complained about was at pages 23-24 of his ruling and as follows: 20

> "On where the balance of convenience lies, Kihika, JA in Legal Brains Tntst & BD Ltd u Attorneg General, Ciuil Application No. 56 of 2023 stated that the balance of convenience lies more on the one who will suffer more if the respondent is not restrained in the actiuities complained of in tlrc appeal.

The applicants auerred in their respectiue affiauits that theg purchased a lease hold interest in Kibuga Block 12 Plots 789 and 791, land at Mengo-Kisenyi and that they were in posses sion of tlrc leasehold certificates of title. 25

Further that they have been in actual possession and use of the suit land together with their children operating together with them a car park business and deriving rent used in the family's sustenance therefrom by the time they were evicted from Block 12 Plot 789 Mengo Kisenyi on 11th July 2023. They attached annexure "J" a copy of the Leasehold Agreement, *Annexure "K," a copy of the Certificate of title for Plot 789 Block 12, Kibuga* land at Mengo, Annexure "L," a copy of a Certificate of Title for Plot 791 Block 12 at Mengo Kisenyi.

I find that the balance of convenience lies in favour of the applicants because *they are in possession of the suit land from which they derive sustenance.*"

We take cognisance of the legal position that was espoused in **Justine E. M. N. Lutaya v. Stirling Civil Engineering Company Ltd, SC Civil Appeal No 11 of 2002**, that, in the absence of any other person having lawful possession, the legal possession is vested in the holder of a certificate of title to the land. In the event of trespass, the cause of action accrues to that person, as against the trespasser. However, in paragraph 1 of the affidavit in reply in Application 277 of 2023, deposed by Kasozi John Baptist, it was shown that in Consolidated High Court Civil Suits 163 and 311 of 2019, the Applicants in this application sued the respondents when the latter moved the Commissioner for Land 20 Registration (4th Respondent here) to cancel the title in respect of Plot 798 at Mengo, which was registered in the names of the 1st and 2nd Applicants. The suit was clearly not for trespass but in respect of a claim of title and ownership of the land. We will return to the evidential value of the certificates of title that were produced by the 1st and 2nd respondents later 25 on in this ruling.

It appears from the analysis that was done by the single Justice before he came to his decision that the 1st and 2nd respondent were in actual possession of the land in Plot 789 at Mengo, he considered the evidence in

the Applicants' (now the respondents) affidavits in support only. 30

The Applicant's evidence in Application No 277 of 2023, which the Applicants contend the single Justice did not consider in arriving at his decision, was that the Applicants here sued the respondents in respect of land comprised in Kibuga Block 12 Plot 789 which was registered in the names of the 1st and 2nd respondents. Attached to the 2nd Applicant's affidavit in reply dated 13th July 2023 was a copy of a special certificate of title in respect of the land. It showed that the land was transferred from John Mbabali Makanga to the Applicants by Instrument No KCCA-00044956 on 16th November 2017. The 2nd Applicant further averred that the land remained in their names during the pendency of the suits in the lower court.

The second Applicant further stated that Plot 789 has no leasehold interest registered on it; that the former lease that had been registered on it in favour of Semaili Kabanda expired on 14th October 2021. This was reflected in the copy of the special title where Instrument No. KCCA-0008478 showed that the lease to Semaili Kabanda was on 14th October 2021 registered to have terminated by expiry.

The 2nd Applicant further averred that he was in actual occupation of the land comprised in Plot 789 and part of it was developed with buildings. He attached copies of photographs to the affidavit collectively marked as M2. Further, that part of the land was fenced off with iron sheets and was used as a parking space for vehicles of tenants using the building on part of Plot 789. Copies of photographs showing the status of the portion fenced off were attached and collectively marked M3. He further averred that Plot 789 was under surveillance by Police and private guards and that this was done after the respondents here and their agents tried to forcefully occupy the land.

The 2nd Applicant went on to aver that the 1st and 2nd respondents attempted to trespass on the land known as Plot 789 by erecting makeshift structures thereon but the same were removed by court order. He attached copies of the court order and a warrant for removal of the structures as 5 M6 and M7, respectively.

He then asserted that the 1st and 2nd respondents have no interest in the land comprised in Kibuga Block 12 Plot 789. Finally, that during the trial, the 3^d respondent then and in this Reference, testified that the transaction between her and the 1st and 2nd respondents here was in error because her husband, the late John Mbabali Makanga, had earlier sold the land known as Plot 789 to the 1st and 2nd Applicants in this Reference. He attached a letter to that effect dated 14th January 2019 from Alice Makanga to the Commissioner of Land Registration as M8.

The 1st respondent filed an affidavit in rejoinder deposed on 25th July 2023. He stated that the special certificate of title in respect of Plot 789 in the names of the 1st and 2nd Applicants was cancelled by the Commissioner Land Registration as having been entered illegally. He attached a copy of the order of the Commissioner to that effect to his affidavit, which order was the origin of the HCCS No 163 of 2019, as Annexure CD. He asserted that he is in actual possession of the land in Plot 789 with Police occupying a small portion thereof, and he was operating a car park business on it. He attached a copy of the temporary consent order in HCMA 776 of 2017 to prove his occupation thereof as Annexure TM." 15 20

The 1st respondent then stated that there were iron sheets that were illegally placed on Plot 789 by the Applicants (now the 1st and 2nd respondents) and their agents when they tried to evict them from it on 11th July 2023. He referred to copies of photographs attached to his affidavit in 25 support as Annexure UJ." He charged that hoarding off the land with iron sheets was an illegal activity for it was never approved by Kampala Capital City Authority (KCCA). That the activities were especially illegal for there was no order issued in Civil Suits 163 and 31 1 of 2019 for the Applicants to take vacant possession of the land in dispute.

The 2nd respondent also deposed an affidavit in rejoinder on 26th, July 2023. She stated that though the 1st and 2nd Applicants in this Reference were in possession of the special certificate of title for land known as Plot 789 at Mengo, she was in possession of the duplicate certificate of title for the same land. She explained that it was handed over to her by Alice Makanga, the authorised attorney of John Mbabali Makanga. A Photostat copy was attached to the affidavit as Annexure "A."

In paragraph 10 of her affidavit in rejoinder, the 2nd respondent stated that the Applicants here obtained a police clearance letter which they used for 'eventual eviction' of the respondents from the land known as Plot 789 at Mengo Kisenyi. She went on to state in paragraph 11 that the eviction was illegal and irregular because there was no application for execution made to court before it was done. That this warranted the issue of an order of an injunction and or stay of any further execution. 15

We are of the view that the actual possession or occupation of Plot 789, which both parties claim could not be determined on the basis of certificates of title because the suit in the lower court was the result of a challenge to the cancellation of the Applicants' special certificate of title. However, on the basis of other facts on record, it must now be established whether the 1st and 2nd respondents were in possession of the land known as Plot 789 Block 72 at Mango Kisenyi, so justifying an order to restrain the 1st and 2nd Applicants from "any encroachment" on the said land. 20 25

The main reason that the single judge relied upon to grant the order was that the 1st and 2nd respondents here were in possession of the land. This was based in the finding that they had certificates of title for both Plot 789 and 791, as well as a lease agreement between them on the one hand, and Alice Makanga and Robert Stephen Muyanja on the other. However, the certificates of title that he relied upon were not in the 1st and 2nd respondent's names. Instead, they were in respect of leaseholds held by Semaili Kabanda, for Plot 789, to expire in 2021, and Haji Badiru Musisi and Hakibu Kagimba, to expire in 2025.

- The 2nd respondent also produced the duplicate certificate of title for the land known as Block 12 Plot 789 in the name of John Mbabali Makanga, Annexure A to her affidavit in rejoinder, and stated that it was given to the respondents by Alice Makanga. However, the said title still reflected that it had an encumbrance registered on 18th February 1975, being a lease in the name of Semaili Kabanda for 49 years from 1st October 1972. Apart from the lease agreement, Annexure J to the affidavit in support deposited by the 1st respondent, the Applicants had nothing to prove that they had an interest in the land known as Plot 789 Block L2 at Mango Kisenyi. 15
- Though they could have obtained a copy of the duplicate certificate of title for Plot 278 from Alice Makanga, they could not have entered into a valid lease agreement for the same land in 2010 when the leasehold to Semaili Kabanda was still subsisting and would continue to run for 11 more years. 20

In addition, there was evidence adduced by the Applicants here before the single Judge, in the form of a letter dated 14th January 2019 from the 3rd respondent here, Alice Makanga, to the Commissioner Land Registration (4th respondent) Annexure MB to the affidavit in reply deposited by Kasozi 25

John Baptist. In the letter, Alice Makanga informed the Commissioner that in 2007, her husband (John Mbabali Makanga) sold the land comprised in Kibuga Block 12 Plot 789 to John Baptist Kasozi and Prossy Nankoomi. That due to a lapse in memory, she sold the same piece of land to the 1st and 2nd respondents but had no motive to defraud them. Alice Makanga further stated that she was willing to refund the purchase price to the 1st and 2nd respondents.

These averments were contained in paragraph 31 of John Baptist Kasozi's affidavit in reply. The 1st applicant in Application No 277 of 20.23 did not rebut the facts. The 2nd applicant did so in paragraph 20 of her affidavit in rejoinder. She stated that she was informed by her Advocates, M/s Soita & Co, that the contents of paragraph 31 were speculative and hearsay evidence because John Baptist Kasozi, then the 2nd respondent, did not point to any part of the record or proceedings to support his averments. Further, that these facts ought to have been stated by the 3rd respondent, Alice Makanga, but she conceded to the application for an injunction leaving the 2nd respondent's averments with no probative value. 10 15

We carefully perused the 3rd respondent's affidavit in reply to the Application which was deposited on 26th July 2023 (at page 193 of the Record of Reference). It was not correct for the 2nd applicant to state that Alice Makanga conceded to the application because she strenuously opposed the application. In paragraph 17 of her affidavit she stated that should the court be inclined to grant the application, then the applicants should be ordered to deposit Two billion Uganda Shillings in court, the value of the land in Kibuga Plot 12 Plot 791; finally, that she deposited the affidavit to oppose the application for a temporary injunction staying execution of the decree in Civil Suits 163 and 311 of 2019. 20 25

In addition, it was not correct state that the letter ought to have been produced by the 3rd respondent. We say so because it was no longer ^a document of the 3rd respondent for it was adduced as evidence in Consolidated Civil Suits 163 and 311 of 2019 upon which the court found that the contract for the sale of Plot 789 at Mengo was repudiated. Further, that the 3rd respondent should indemnify the 1st and 2nd respondents for money expended in purchasing the land.

The preponderance of evidence before the single Judge was therefore that having bought the land known as Block 12 Plot 789 in 2007 before the 1st and 2nd respondents did so in 2010, the Applicants here would be in possession thereof. The single Judge therefore erred when he held that possession of the certificates of title that were presented by the respondents implied that they were in actual possession of the land known as Block 12 Plot 789 at Mengo Kisenyi. 10

We also observed that the single judge did not consider the restraint orders that were presented by the parties to prove that either of them was in possession of Plot 789. The 1st and 2nd respondents produced a temporary consent order that was issued to maintain the status quo in Miscellaneous Application No 776 of 2017, arising from High Court Civil Suit No 389 of 2017, Dr Olivia Muwanula Makanga, Robert Stephen Mayanja & 6 Others v. Alice Makanga & Onwuvuche Nakibuuka Sarah & 3 Others, entered on 17th June 2018. It was stated therein that the 2nd respondent in the application, (the 2nd respondent in this Reference) and her agents were in occupation of the land in dispute in that suit, but the land was never identified in the order. It is therefore not known whether it is the same land that was in dispute in HCCS No 163 and 311 of 2019. As a result, we could not come to the conclusion 15 20 25

that the 2nd respondent was in occupation of the land known as Plot 789 at Mengo on the basis of the said consent order.

On the other hand, the Applicants produced a copy of an interlocutory mandatory injunction that was issued on 1st December 2021 in Misc. s Application No 14OS of 2021, arising from HCCS No 163 of 2019, Nankoomi Prossy & Kasozi Baptist v. Onwuvuche Austin Nnamdi & 3 Others. According to the order, Annex M6 to the affidavit in reply deposed by the 2nd Applicant, an interlocutory mandatory order was issued to the Applicant to restrain, stop and/or prevent the respondents, their agents, 10 employees, workers or any persons claiming or working under their authority from in any way trespassing and or destroying, alienating, disposing of the suit property comprised in Kibuga Block 12 Plot 789 at Mengo, or in any way dealing with the suit land detrimental to the interests of the Applicants and from interfering with the Applicants' possession or its use of the suit property until final determination of the Civil Suit No. ¹⁶³ of 2019.

The 2nd Applicant also produced a warrant of removal of unwanted structures (Annex I) that was issued on 2nd December 2019 authorising Muzoora Kenneth, a court bailiff. The warrant authorised the removal of unwanted iron sheet structures from land known as Kibuga Block 12 Plot 789 immediately and hand over the said property to the Applicants here.

In rejoinder to paragraph 21 of the affidavit in reply deposed by Kasozi John Baptist, the 1st respondent stated that he was in possession of the land known as Plot 789 Mengo Kisenyi, from the time the leasehold interest was purchased and had the time to put up the said structures. That Annex M6 and M7 were issued to demolish temporary structures

that he had constructed on Plot 789 because he did not obtain approved plans prior to construction. That this was absurd because the order was granted ex parte. But the respondents did not challenge the order yet it was issued within the proceedings against them where the Applicants claimed the land in Plot 789 it therefore stood until the suit was finally disposed of in favour of the Applicants.

In addition, in paragraphs 7, 8 and 9 of his affidavit in support of the application, the 1st respondent referred to an eviction on the basis of a Police Clearance Letter, Annexure G thereto. The letter was dated 25th May 2023. He then states in paragraph 8 that following the said letter, early in the morning on 1st July 2023, the 1st and 2nd Applicants, with a platoon of policemen and thugs entered the land at Plot 789 Mengo Kisenyi, destroyed the structures and evicted their business without a warrant. They hoarded off part of the land with iron sheets with the intention of commencing construction because they started ferrying material onto the land. In paragraph 14 the 1st respondent went on to state that he and his family derived sustenance from the land in Block 12 Plot 789 at Mengo by the time they were evicted from it. 10 15

In her affidavit in rejoinder, in paragraphs 9 and 10, the 2nd respondent also states that they were evicted from Plot 789 on the basis of the same Police Clearance Letter referred to by the 1st respondent, which she attached to her affidavit in rejoinder as Annex B. She then asserted that the eviction was illegal because no application for execution was made before it was effected. However, we observed that the Police Clearance Letter, from the Office of the Inspector General of Police, was addressed to the Police Commander, Kampala Metropolitan. It was not in respect

of 20 25

Block 12 Plot 789, which the applicants here claim, but in respect of Block 12 Plot 79L.

We therefore find that the respondents did not prove that the Applicants were trying to evict them from Plot 789 at Kisenyi after the decree in Consolidated HCCS No 163 and 311 of 2019 was issued on 23rd May 2023. Instead, the Applicants sought to prevent the respondents, the defendants in HCCS No 163 of 2019, from trespassing on or alienating the land in Kibuga Block 12 Plot 789 at Kisenyi, which they claimed ownership of in the suit, until final disposal thereof. An order was issued to that effect on 1st December 2021 and the respondent's structures were by warrant issued by the court on 20th January 2021 removed from the land, about ¹ years before Judgment was delivered in the Consolidated Suits on 17th May 2023.

In conclusion therefore, the single Judge omitted to address the fact that the Applicants were in occupation of the land known as Block 12 Plot 789 at Mengo Kisenyi; he also erred in fact when he decided Civil Application No 277 of 2023 in isolation of the evidence adduced by the Applicants much to their detriment. 15

Ground 2

The applicants' grievance in this ground was that the single Justice erred when he by implication ordered eviction and or further encroachment on Plot 789, in total disregard of the fact that the Applicants were in possession thereof, thus coming to a wrong justification. 20

Counsel referred to pages 21, 28, 165, 260 and 262 of the record of Reference to show that the Applicants have been in actual possession, 25

occupation and use of the land comprised in Plot 789 at Mengo. They contended that the usage of the word, 'encroachment' in the order against the Applicants was unfair. Further that the order of a temporary injunction restraining the Applicants from encroaching on the land which they are in actual possession of gives the respondents here leeway to evict them from it before determination of the pending appeal.

Counsel also submitted that the respondents have no legal or equitable interest in Plot 789 as the 1st respondent has never purchased any lease over the land because the persons who executed the said lease as lessors were not the registered owners of Plot 789 and therefore could not sign a valid lease in respect of the same. Further, that the purported lease has never been registered on the certificate of title for Plot 789.

They also stated that the agreements relied on by the second respondent to show that she purchased the mailo interest in land comprised in Kibuga Block 12 Plot 789 were marred with flaws as they were not executed by the Applicants who are the registered proprietors of the said Plot of land. Further, that the land was not available for purchase, having already been

sold to the applicants. That the powers of attorney by virtue of which the vendor signed the sale agreements had hitherto been revoked. That John Makanga (husband to the 3.d respondent) stated in HCCS No. 311 of 2019 that he had already sold the Plot to the Applicants and the second respondent did not defend nor testify throughout the trial of HCCS No. 311 and 163 of 20t9. 20

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It was also counsels'submission that the 1"t and 2'd respondents have no equitable interest in Plot 789 as the Applicants brought evidence to show that they partly developed and are in occupation of the same. Counsel went on to state that the single Justice looked at both Plots 789 and 791

together thereby failing to arrive at the right decision. Counsel explained that Plot 791 is not contested by the Applicants and they have no interest in it. He went on to submit that after the determination of HCCS No. 311 of 20L9, Plot 791 was restored into the narnes of the late John Mbabali Makanga and the 2"d respondent lost legal interett in it and therefore she lost capacity to seek protection of the law. Counsel stated that the learned single Justice failed to consider the fact that the 2"d respondent has no interest whatsoever in Plot 789.

In reply, the respondents'counsel addressed grounds 2 and 4 together and their submissions have been summarised above, but briefly they assert that they are in occupation of the land in dispute. That the Applicants here sought to execute the orders of the lower court and obtained clearance from the Police to evict the respndents from the land in both Plots 789 and 791 at Mengo Kisenyi. 10

1s Resolution of Ground ²

Ground 2 as stated in the Memorandum of Reference is rather confusing. As we understood it, it seems to be that the single Judge erred when he impliedly ordered eviction of the Applicants and further encroachment on both pieces of land.

²⁰ However, the order that was issued was to restrain all of the respondents, now the Applicants and the 3.d and 4th respondents in the Reference from any encroachment, selling, developing/constructing, mortgaging and transferring the suit land comprised in Kibuga Block 12 Plots 789 and 791, until final disposal of Civil Appeal No 278 of 2023.

The Order, in our view is omnibus, because it was issued against all the 4 parties as though each and every one of them could have done or caused the acts that were restrained by the single Judge. The Applicants here in particular complain that they were restrained from encroaching on land which they occupy. We accept the submission that the Order was futile for applicants could not encroach since they were already in occupation of the land known as Plot 789 at Mengo Kisenyi.

The Applicants also state that they are not interested in the land known as Plot 791 which is occupied by the 1st and 2nd respondents, though their occupation is also contested. The efforts to enforce the decree of the lower court in respect of that land were therefore not by the Applicants here but by Alice Makanga, referred to in the decree as the 3rd plaintiff. 10

We observed that the contents of the Decree are also a little confusing, to say the least. The parties referred to therein do not appear in the heading to the Decree in the same manner as they are referred to in the body of the decree. For instance, in clause 8 thereof, the Registrar is referred to as "the 8th defendant." However, the heading of the Decree does not show that there was ever an 8th defendant in the suit because the defendants in HCCS 311 of 2019 are referred to as (1) Alice Makanga, (2) Alice Makanga, as Administrator of the estate of John Mbabali Makanga, and 7 others. The seven were redacted for no reason. The parties to HCCS No 311 of 2019 are even more confusing in that they are all stated in the heading to be defendants who are against other defendants, viz: 1) Alice Makanga (2) Alice Makanga (as administrator of the estate of Mbabali John Makanga (defendants) versus Omwuvuche Austin Namdi and 5 Others (defendants). 15 20 25

We must point out that Order 21 rule 6 of the CPR provides for the contents of the decree as follows:

5. Contents of decree.

- (1) The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit.
- (2) The decree shall also state by whom or out of what property or in what proportion the costs incurred in the suit are to be paid.

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In a suit such as the one from which the application that is the subject of this Reference originates, it is incumbent upon the trial Judge to clearly state the parties to each suit in the Judgment. If he/she changes the description of the parties in the consolidated Judgment, then it is incumbent upon the Judge to explain why, and then state what the original description of the parties was in the suits that were consolidated. That would obviate any errors that would arise out of a misstatement or erroneous description of the parties in the orders and declarations made in the judgment, which translate into the decree of the court.

Nonetheless, in the decree that was filed in Application No 277 of 2023, 20 the orders and declarations in respect of Plot 791 were in clause 9 thereof, and as follows:

"9. Legal title has never passed from the 3rd plaintiff to the defendants. The contract between the 3rd plaintiff and the defendant was repudiated. There were various illegalities committed between the 3rd plaintiff and (the) defendants which she owned up (to) and is willing to make good. However,* this cannot be done to the detriment of the 1st and 2nd plaintiffs who are bona fide purchasers for value without notice. The 3rd defendant must indemnify the defendant all their monies expended in the course of this

transaction, qs per tlrc impugned agreement of sale of land for the land comprised in Kibuga Block 12 Plot 791."

5 This is by no means usual in a decree for it normally states the declarations or orders of the court without narrative or argument. However, the clause above implies that the trial Judge cancelled the 1st and 2nd respondent's title in respect of the land known as Kibuga Block 12 Plot 79L at Mengo. Alice Makanga therefore sought to have the title rectified to revert to its status before the suits, as it was ordered by court.

According to her affidavit in reply to Application No 277 of 2023, this was achieved. In paragraphs 6, 7 and 8 of her affidavit she stated that the reliefs that were granted by the lower court were that legal title (to land known as Block 12 Plot 79L) had never passed from John Mbabali Makanga to the Applicants (1st and 2nd respondents in this Reference). That the contract between the latter and John Mbabali Makanga was repudiated. She further averred that in compliance with the Court Orders she wrote to the Commissioner Land Registration to reinstate her husband as the registered proprietor of the land and he did so, as it is shown in the search certificate, Annex A to her affidavit. 10 15

The search certificate showed that John Mbabali Makanga was reinstated as the proprietor by virtue of Instrument No KCCA-OO107352, on 14th July 2023 at L2. 02 pm. This means that the Commissioner for Land Registration implemented the cancellation of the transaction between the 3rd respondent and the 1st and 2nd respondents, as it was stated in his letter dated 24th May 2023. He therefore could no longer be restrained from implementing that particular clause of the decree on 6th application for a temporary injunction pending an appeal. 20 25

We also observed that the Applicants were not the registered proprietors of the land known as Plot 791. They therefore had no power to and could not carry out any transactions in respect of that land. The single Judge therefore ought to have issued orders specifically addressing the acts prohibited of each party, for clarity of implementation thereof.

The Applicants prayed that the term "encroachment" be cancelled from the Order issued by the single Judge in respect of Plot 789 at Mengo Kisenyi, which they were in possession of and occupied. We see no reason not to do so and it is hereby deleted.

10 Ground ³

The Applicants' grievance in this ground was that the learned single Justice erred in law and fact in holding that execution of the orders of the lower court shall render the appeal pending in this court nugatory.

Submissions of Counsel

¹⁵ Counsel referred to the affidavit in reply deposed by Kasozi John Baptist where he stated that there was no execution of the decree in progress and that no formal application had ever been filed. That the learned single Justice at page 23 of his Ruling held that because the police issued a clearance letter for the Decree, he was satisfied that the appeal would be rendered nugatory yet there was no application for execution yet. That this was because the Applicants were already in occupation and use of the land prior to the delivery of Judgment in HCCS No 163 and 311 of 2019. ²⁰

Counsel contended that it was speculative of the single justice to hold that the appeal would be rendered nugatory because of a mere police clearance

letter to implement the decree. That the single Judge therefore erred in law and fact when he held that execution would render the appeal nugatory.

Counsel for the Applicants concluded their submissions by referring to *Betty If,izito v. Dickson Nsubuga & others*; Civil Applications No. 25

5 and, 26 of 2012²¹ where it was held that a contemnor would not be held liable for violating a court order if the order is unclear and unequivocal. They further contended that the order for a temporary injunction was not clear in so far as it did not specify the property in respect of which the respondents therein should be restrained from encroaching upon. That it would defeat logic for the Applicants to be restrained from encroaching on property that they own and occupy. ¹⁰

Counsel then reiterated their prayers that the physical possession and occupation of Plot 789 be maintained, the orders of this court relating to encroachment be discharged and that each party bears its own costs.

In reply, counsel for the 1st and 2nd respondents submitted that the Applicants had through their lawyers, M/s Muganwa Nanteza & Co., Advocates commenced the execution process by letter to the Commissioner Land Registration to effect changes on the Register. They further stated that the Applicants directed the 1st respondent to produce the duplicate certificate of title in order to effect the orders in the decree. That they also initiated execution by clearing the decree with the police which wrote a letter dated 25th May 2023, in order to evict the 1st respondent from the land. It was their submission that all of these actions depicted a clear threat of execution and that the status quo would be altered hence rendering the appeal nugatory. ^{15 20 25}

They further submitted that the learned single Justice correctly analysed and considered the pleadings and submissions of all the parties thereby arriving at a correct and just decision. They prayed that this Civil Reference be dismissed with costs to the \$1^{st}\$ and \$2^{nd}\$ respondents.

Resolution of Ground 3 \$\mathsf{S}\$

The portion of the single Judge's decision that the Applicants complained about in this ground was at page 23 thereof where he stated thus:

"The applicants attached a copy of a decree and a letter dated \$23^{rd}\$ May, 2023 from the \$1^{st}\$ and \$2^{nd}\$ respondent's counsel addressed to the *Commissioner Land Registration, 4th Applicant, marked as annexure "D"* and "E." Further, they have also attached a copy of the letter from the \$4^{th}\$ respondent directing them to produce the duplicate certificate of title for the suit land to effect the court decree in Consolidated Civil Suits Nos 163 and 311 of 2019. The said letter is marked annexure "F". The applicants have also attached annexure "G", a police clearance letter of a Decree vide Civil Suit Nos 163 and 311 of 2019.

From the evidence above, I am satisfied that the applicants have shown that *the appeal shall be rendered nugatory.*"

The \$1^{st}\$ and \$2^{nd}\$ respondents brought their application under Rules 2 (2), 6

- \$(2)\$ (b), 43 (1) and (2) of the Rules of this court. They sought an order for a \$20\$ temporary injunction to restrain the Applicants and other persons acting on their behalf from encroaching, selling, developing, mortgaging or transferring the land known as Kibuga Block 12 Plot 789 and 791 at Mengo Kisenyi, before the disposal of their appeal pending in this court.
- Rule 6 \$(2)\$ (b) of the rules of this court provides that the institution of an \$25\$ appeal shall not operate to suspend any sentence or to stay execution, but the court may,
 - (b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 76 of these Rules, order a stay of execution, an injunction, or a stay of proceedings on such terms as the court *{Emphasis added}* may think just.

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There are three different remedies provided for in Rule 6 \$(2)\$ (b) of the Rules \$\mathsf{S}\$ of this court: i) stay of execution, ii) an injunction, iii) stay of proceedings. The \$1^{st}\$ and \$2^{nd}\$ respondent specifically chose to apply for a temporary injunction to restrain the Applicants from carrying out specified acts in relation to the land in dispute, not an order for stay of execution of the orders of the lower court. 10

The grounds upon which the court issues orders for temporary injunctions were restated in *Shiv Construction Co. Ltd v. Endesha Enterprises Ltd*, Supreme Court Civil Appeal No 34 of 1992, where the court referred to them with approval as they were laid down by the Court of Appeal for East

- Africa in *Giella v. Cassman Brown & Co. Limited* [1973] EA 358, as 15 follows:
- The applicant must show a prima facie case with a probability \$i\$ of success:
- An injunction will not normally be granted unless the applicant \$ii\$ might otherwise suffer irreparable injury, which could not be compensated in damages; and
- When the court is in doubt it will decide the application on the \$iii\$) balance of convenience.

The principles were also laid down by the House of Lords in *American Cyanamid v. Ethicon* [1975] AC 396; [1975] 1 All ER 504 as follows: \$25\$

- i) There must be a serious issue to be tried. This will be established unless the claim is completely frivolous or vexatious.
- ii) The court should then consider whether the claimant, if successful at trial, would be adequately compensated by damages if no interim injunction is made. If damages would be adequate, ordinarily no injunction should be granted.
- iii) If the answer to (i) is yes, the court should consider whether the defendant, if successful at trial, would be adequately compensated by damages if an interim injunction is made.
- iv) If either of the two previous issues are ambiguous, the court should consider where the balance of convenience lies.

The starting point in the granting of a temporary injunction is that the balance of convenience favours preserving the status quo. If the respondent has not yet started acting in the allegedly illegal manner, then the balance of convenience will normally favour the grant of an injunction. If the respondent has begun acting, then the balance of convenience will favour not granting the injunction. But ultimately, a temporary injunction will not be granted where the Applicant will be adequately compensated by an award of damages for the wrong that they seek to restrain.

In this case, the respondents did not seek to stay execution of the orders of the lower court because if that was their goal, they would have filed an application for stay of execution, specifically addressing the orders that were issued by the lower court. For example, in respect of clause 8 of the Decree, they could have sought an order to stay execution of the lower court's order that, "Registrar reverts the register to the status quo pertaining

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at the time of the suit and reverts the names of the 7th and 2nd plaintiffs on the title" (sic) till final disposal of the app, -al now pending before this court.

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The principles that are considered before the grant of a stay of execution were re-stated in Theodore Ssekikubo & 3 Others v Attorney General

5 & 4 Others, Constitutional Application No. 06 of 2013, as follows:

- i) The applicant must establish that his appeal has a likelihood of success; or a prima facie case of his right to appeal;
- ii) The applicant will suffer irreparable damage or that the appeal will be rendered nugatory if a stay is not granted;
- iii) If 1 and 2 have not been established, the court must consider where the balance of convenience lies.

The principles considered before the grant of an order for stay of execution pending an appeal are therefore different from those considered for granting a temporary injunction in that while the court has an obligation to consider whether the appeal will be rendered nugatory if the order to stay execution is not granted, it does not have to consider that criterion in an application for a temporary injunction. Whether or not the appeal will be rendered nugatory is determined after considering whether the appeal has a likelihood of success or whether there is a prima facie case of the right to appeal. Following that, it would then be established whether the appeal would be rendered nugatory. 15 20

In this case, the respondents did not indicate what the grounds of appeal were. They simply stated that they were more than 10 grounds of appeal in their Memorandum of Appeal. Without establishing what those grounds were, it was not possible to come to a finding that the refusal to grant an

order for a temporary injunction in the terms stated in the application would render the appeal pending before court nugatory.

We therefore find that the single Judge erred in law when he held that the restraint orders would be granted because if they were not, the appeal would be rendered nugatory.

Final Disposition

This Reference thus succeeds and we substitute the order of the single Justice with the following orders:

- i) An order of temporary injunction hereby issues to restrain the 1st and 2nd respondents in Application No 277 of 2023, jointly and/or severally, their agents, servants and all persons/entities/agencies claiming under them from selling, developing/constructing on, or mortgaging or transferring the land comprised in Kibuga Block 789 at Mengo Kisenyi, until final disposal of Civil Appeal No 278 of 2023. 10 15

- ii) An order of temporary injunction hereby issues to restrain the 3rd respondent in Application No 277 andf or her agents, servants and all persons/entities/agencies claiming under her from selling, developing/constructing on, or mortgaging or transferring the land comprised in Kibuga Block 791 at Mengo Kisenyi, until final disposal of Civil Appeal No 278 of 2023.

iii) And order of temporary injunction shall issue to restrain the 4th respondent in Application No 277 of 2023 from registering any transactions on the certificates of title for the land known as Kibuga Block 12 Plots 789 and 791 at Mengo Kisenyi until final

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disposal of Civil Appeal No 278 of 2023 or until further orders of this court to the contrary.

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irr) Since the error that was complained of by the Applicants was occasioned by the court, each party shall bear their own costs for ⁵ this applicatiotl.

Dated at Kampala this day of rb 2024.

Richard Buteera DEPUTY CHIEF JUSTICE

Kiryabwire

15 JUSTICE OF APPEAL

t Irene Mulyagonia

JUSTICE OF APPEAL

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