

UGANDA / JUDGMENT

Ssempereza v Mukasa and Another (Civil Application 255 of 2024) [2024] UGCA 225 (27 August 2024) [2024] UGCA 225

COURT

Court of Appeal of Uganda

BEFORE

Kihika, JA

CASE / FILE NUMBER

Civil Application 255 of 2024

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

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 0.255 OF 20.24

(Aising from Ciuil Application No. 1272 of 2023 and Ciuil Appeal No. 298 of 2o2s)

RAJAB SSEMPEREZA APPLICANT

VERSUS

- 1. SHEM MUKASA (Administrator of the estate of the late Christopher Mukasa)
- 2. RAPID ADVISORY LTD ::::::::::::::: RESPONDENTS

BEFORE: HON JUSTICE OSCAR KIHII(4, JA

(Sitting as a single Justice)

RULING OF COURT

This application was brought under Rule 2(2), 43 and 44 of tl:,e Judicature (Court of Appeal Rules)
Directions seeking for orders that;

A Temporary Injunction doth issue restraining the Respondents, their agents, representatives, assignees or nominees from selling, transferring, sub-dividing, developing, constructing, leasing, mortgaging or in any other way, dealing in or interfering with land and property comprised in LRV 2357 FOLIO 15 KYADONDO BLOCK 273 PLOT 2585 AT KAAZI, BUSABALA or any part thereof, until the hearing and final

determination of Court of Appeal Civil Application No. 1272 of 2023.

2. Costs of this application be provided.

The grounds upon which this application is premised are set out in the Applicant's Notice of Motion and the affidavit in support of the application deposed by RAJAB SEMPEREZA, sworn on the 16th of April 2024. The grounds are briefly that;

- 1. Court of Appeal Civil Appeal No. 298 of 2023 arose from Civil Suit No. 673 of 2018 Shem Mukasa Vs Rapid Advisory Ltd wherein the subject matter was a dispute over land comprised in LRV 2357 FOLIO 15 KYADONDO BLOCK 273 PLOT 2585 AT KAAZI, BUSABALA measuring approximately 4.053 Hectares.
- 2. During the pendency of High Court Civil Suit No. 673 of 2018, the 1st Respondent and his now deceased brother and co-Administrator, Stone Mukasa, entered a Financing Agreement with the Applicant wherein it was mutually agreed that the Applicant would finance the recovery process of the suit property from the 2nd Respondent.
- 3. On 22nd June 2023, judgment was delivered by the High Court in Civil Suit No. 673 of 2018 in favour of the 1st Respondent.
- 4. Upon delivery of the said judgment, the Applicant, as the Donee of Powers of Attorney from the 1st Respondent and as financier of the 1st Respondent and was entitled to immediate transfer of four acres of the suit property and the title was placed in the possession of the Applicant.
- 5. The Respondents conjured a mischievous plan to defeat the Applicant's interest and entered a consent agreement dated 7th September 2023.
- 6. In Clauses 5 and 6 of the impugned consent agreement, it was stated that the 2nd Respondent's certificate of title be restored and the 1st Respondent's title, in the possession of the Applicant, be cancelled.
- 7. The impugned consent judgment is the perfect opposite of the learned trial Judge's findings and was intended to overturn the decision of the High Court in Civil Suit No. 673 of 2023 without hearing Civil Appeal No. 298 of 2023.
- 8. The impugned consent agreement was calculated to frustrate the Applicant who is almost finalizing the sub division of the suit property to recover his four acres as per the Financing Agreement.

- 9. Civil Application No. 1272 of 2023 discloses a prima facie case and has a high likelihood of success since consent Judgments whose effect is to overturn the decision of the High Court have been condemned by this court to be illegal and unconstitutional.
- 10. The Applicant will suffer irreparable loss if the suit property, which is on the shores of Lake Victoria, is alienated.
- ¹1. The balance of convenience favors the Applicant who holds the special certificate of title, powers of attorney and a financing agreement from the 1st Respondent.

The 1st Respondent did not file an affidavit in reply. The 2nd Respondent filed an affidavit in reply deposed by MUTESASIRA KINTU LEONARD sworn on the 3rd of May 2024 opposing the application on grounds that;

- 1. The financing agreement dated the 30th day of November 2021 between the 1st Respondent and the Applicant and marked as annexure 'B' attached to the Applicant's supporting affidavit to the application falls within the definition of champerty and maintenance agreements and is unenforceable at law.
- 2. That whereas the 2nd Respondent filed CA No 298 of 2023 arising from HCCS No 673 of 2018 in this court, the parties to the appeal with guidance and advice by their respective Lawyers reached a consent agreement / settlement that was reduced into writing, signed by the parties and their respective lawyers and duly endorsed by this Court.
- 3. That the interests of the parties in CA No 298 of 2023 arising from HCCS No 673 of 2018 were amicably resolved by the parties through a consent agreement.
- 4. The Applicant is a stranger to CA No 298 of 2023 arising from HCCS No 673 of 2018 and claims to be aggrieved by the consent agreement executed by the parties, the Applicant has to demonstrate his legal grievances.

Representation

At the hearing of this application, Mr. MacDusman Kabega appeared for the Applicant, Ms. Regina Trouner appeared for the 1st Respondent while Mr. Kavuma Kabenge appeared for the 2nd Respondent. The Applicant and the 2nd Respondent filed written submissions which were adopted as their respective legal arguments.

Consideration of the application

I have carefully considered the affidavits and the submissions of both parties. I have also perused the authorities provided by counsel for which I am grateful.

The jurisdiction of this court to grant a temporary injunction stems from Rule 6 (2) (b) of the Rules of this Court which provides as follows;

6. Suspension of sentence and stay of execution.

- (2) Subject to subrule (1) of this rule, the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the court may—
- (a) ...
- (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 may think just.

The conditions precedent for the grant of an order of a temporary injunction were discussed in *Robert Kotrumba Vs Hotel International Supreme Court Civil Appeal No. 8 of 1990*, wherein Wambuzi CJ, as he then was, stated as follows: -

"It is generally accepted that for a temporary injunction to issue the court must be satisfied:

- i. That the Applicant has a prima facie case with a probability of success.
- ii. That the Applicant might otherwise suffer irreparable damage which would not be adequately compensated for in damages.
- iii. If the court is in doubt, on the above two points, then the court will decide the application on a balance of convenience. In other words, whether the inconveniences which are likely to issue from withholding the injunction would be greater than those which are likely to arise from granting it".

The task before me is to determine whether or not the Applicant has met these conditions.

1. Prima facie case with likelihood of success

The Supreme Court in the case of *Gashumba Maniraguha vs Sam Nkudiye Civil Application No. 24 of 2015*, in effect held that the likelihood of success, is the most important consideration in an application for a temporary injunction. Therefore, it is incumbent upon the Applicant, to avail material to the court which would enable it to establish whether or not the Applicant has a prima facie case on appeal.

In this regard, the Respondents raised a preliminary objection stating there is no prima facie case to form a basis for grant of a temporary injunction on grounds that the financing agreement that the Applicant seeks to rely on falls within the definition of champerty and maintenance agreements which are contrary to public policy and illegal. In addition, that Civil Appeal No. 298 of 2023 was determined by consent of both parties to the suit.

On the other hand, counsel for the Applicant submitted that for a contract to be invalidated on grounds of champerty or maintenance, it must be shown that the Applicant is a person with neither an interest in litigation nor any other motive recognized by the law as justifying his interference. Counsel further argued that the Applicant is a holder of powers of Attorney from the 1st Respondent, which the 1st Respondent has neither denied nor revoked. Counsel submitted that the Applicant is duly recognised in law, as an agent of the 1st Respondent whose acts are

legally binding and construed as those of the principal.

Having perused the affidavits in support of and in opposition to this application, I note that the Applicant and the 1st Respondent entered into a Financing Agreement attached to the affidavit in support of the Notice of Motion marked annexure B'. the 1st Respondent also donated powers of attorney to the Applicant and a Power of Attorney was made and is marked annexure A'. It is on the basis of these two documents that the Applicant seeks to enforce his 'rights' in Civil Application No. 1272 of 2023.

It is my considered view that there are arguable points of law and fact that have been raised by the Applicant.

Page 7 of 10

In the persuasive decision of the Court of Appeal of Kenya, in *Stanley I (ang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] e KLR, an arguable appeal was described in the following terms:

"iii). An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous. iv). In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal."

Thus, it is not the duty of this court to pre-empt considerations of matters for the full bench in determining the appeal or application in the instant case, but to determine whether there exists a *prima facie* case. In the instant application, I am satisfied that the Applicant has established a *prima facie* case on appeal.

2. Irreparable damage

The second consideration is whether the applicant will suffer irreparable damage or that the appeal will be rendered nugatory if the application is not granted.

In this regard, the Applicant's counsel relied on paragraph 23 of the Applicant's affidavit in support of the application and submitted that the property subject of this application is situated in Busabala along the shores of Lake Victoria and cannot be adequately replaced in the event that the Respondents alienate it. The Respondents did not address this element.

The Applicant relied on the persuasive decision in *Emorani Yusuf vs Nakendo Hajirah HCMA No. 478 of 2014* in which the element of irreparable damage was found to have been proved over land situated in Mukono, which was considered prime and valuable, and the trial Judge found that a fair replacement might not be easy to come by.

In my understanding, the Applicant has to show that the damage bound to be suffered is such that it cannot be undone or compensated for in damages. In *Giella v. Cassman Brown & Co.* [1973] E. A 358, it was held that by irreparable injury, it does not mean that there must not be physical possibility of repairing the injury, but it means that the injury or damage must be substantial or a material one, that is; one that cannot be adequately atoned for in damages.

In the instant case, the Applicant is in possession of the certificate of title to the suit property and had embarked on the process of subdivision of the land. The nature of his interest is one particularly on the 4 acres of the land comprised in LRV 2357 FOLIO ¹⁵ KYADONDO BLOCK 273 PLOT 2585 AT KAAZI, BUSABALA for which he was given a Power of Attorney. It is my considered view that it is in the interest of justice for the status quo to be maintained pending the determination of the Applicant's claim in enforcement of the Power of Attorney given to him.

Having found as I have above, I find no reason to consider the issue of balance of convenience for reasons that court should only consider the balance of convenience where it is in doubt.

In the result, this application was granted with the following orders;

- 1. A Temporary Injunction is hereby issued restraining the Respondents, their agents, representatives, assignees or nominees from selling, transferring, sub-dividing, developing, constructing, leasing, mortgaging or in any other way, dealing in or interfering with land and property comprised in LRV 2357 FOLIO 15 KYADONDO BLOCK 273 PLOT 2585 AT KAAZI, BUSABALA or any part thereof, until the hearing and final determination of Court of Appeal Civil Application No. 1272 of 2023.
- 2. Costs shall abide the outcome of Civil Application No. 1272 of 2023.

I so order.

Dated this h/- >i day of ²⁰²⁴

t/ OSCAR JOH IKA JUSTICE OF

Page 10 of 10

Source & reproduction note

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

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2024/225/eng@2024-08-27>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ssempereza-v-mukasa-and-another-civil-application-255-of-2024-2024-ugca-225-27-august-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria