

Tabula v Kange & Malomba
(Miscellaneous Application 107 of 2024)
[2024] UGCommC 378 (27 September 2024)
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- 20 1, seeking orders that:
- 1. The Applicant and his family be restored to their home on Block 275 Plot 1357 situated at Gombe A, LC1, pending the determination of the main suit.
- 2. Costs of this application be provided for.

- 25 Background

The background of this application is detailed in the Applicant's affidavit in support of the application, and is summarized below:

- 5 1. That the Applicant was the registered proprietor of land comprised in Busiro Block 275 Plot 1357 measuring approximately 22.5 decimals, situated at Gombe.
- 2. That the Applicant sold 11.5 decimals of his land to the 2nd Respondent and the land sale agreement was drafted by the 1st 10 Respondent.
- 3. That the Applicant gave the 2nd Respondent a copy of the certificate of title for him to mutate off the 11.5 decimals that he had bought but instead, the 2nd Respondent transferred the entire land (Plot 1357) into his name without any lawful justification whatsoever.
- 15 4. That the 2nd Respondent caused the arrest and eventual imprisonment of the Applicant and shortly after, illegally and without any lawful authority, entered upon the Applicant's land and has since planted hooligans who are occupying the Applicant's home.
- 5. That the Applicant and his family have no place to stay and are 20 languishing on the streets of Wakiso Town.
- 6. That all the efforts to have the 2nd Respondent vacate the suit property (commercial and or residential building) have to date proved futile thus, filing this application seeking an order to restore the Applicant and his family to their home as the Applicant has since 25 sued the Respondents and the matter is yet to be heard and determined by this Honorable Court.
- 7. That this Honorable Court has the inherent power to make interlocutory orders as may appear to be just and convenient in order to prevent the ends of justice from being defeated and it is in the best 30 interest of justice that this application is granted.

In reply to the above averments, the 2nd Respondent in his affidavit in reply, opposed the application contending that:

- 5 1. This application is baseless, an abuse of the Court process, lacks merit and ought to be dismissed with costs.
- 2. The Applicant willingly sold the suit land to the 2nd Respondent at the purchase price of UGX 30,000,000/= (Uganda Shillings Thirty Million Only) which was all paid and upon which he handed over the 10 duplicate certificate of title and executed transfer instruments in the 2nd Respondent's favour.
- 3. Upon execution of the transfer instruments, the suit land was legally transferred into the 2nd Respondent's names and he is the current registered proprietor.

- 15 4. The 2nd Respondent has since taken possession of the suit land and currently the suit land is occupied by tenants who made rental payments in advance for over two years and are enjoying quiet possession.
- 5. The Applicant's claims are, without merit because he was fully aware 20 that he was selling land and there was no doubt that the transaction was a sale and not a mortgage.
- 6. An application of this nature is aimed at maintaining the status quo and that having purchased the suit land, the 2nd Respondent is legally in possession of the same and evicting him would occasion an 25 injustice and an inconvenience to him.

In rejoinder, the Applicant disputed the 2nd Respondent's affidavit in reply contending that:

1. The Applicant obtained a loan of UGX 9,000,000/= in instalments of UGX 6,000,000/= and UGX 3,000,000/= from the 2nd Respondent 30 and he was to repay UGX 3,000,000/= as interest on the said loans.
- 5 2. The 2nd Respondent took the Applicant's certificate of title as security for the said loans.
- 3. When the Applicant failed to pay back the loan together with the interest that stood at UGX 12,000,000/=: he voluntarily entered into a Sale Agreement of UGX 30,000,000/= with the 2nd Respondent in
- 10 the presence of his advocate (the 1st Respondent), to offset the said accumulated interest together with the loan, by selling to the 2nd Respondent 11.5 decimals off his land.
- 4. Due to that, the Applicant handed over his certificate of title, mutation and transfer forms to the 2nd Respondent to mutate off the 15 said portion.
- 5. The 2nd Respondent after the offset, was supposed to pay the Applicant a sum of UGX 18,000,000/= as purchase balance of the 11.5 decimals but only paid, an instalment of UGX 8,000,000/=: leaving a balance of UGX 10,000,000/= unpaid to date.
- 20 6. The Applicant was shocked to receive copies of several forged loan agreements from the 2nd Respondent dated 27th July, 2020, 19th October, 2020 and 13th November, 2020, purportedly advancing to him loans of UGX 80,000,000/= and UGX 100,000,000/=: over the suit property, comprised in Block 275 Plot 1357, which Court shall 25 investigate in the main suit, as he has never requested for the said loans.
- 7. The arrangement between the 2nd Respondent and the Applicant, was purely money lending and the sale of 11.5 decimals from part of the Applicant's land was to settle the accrued interest and loan that 30 stood at UGX 12,000,000/=:.

5 8. The main suit may take some time to be heard and determined and currently the Applicant has nowhere to stay following the illegal eviction, which illegality cannot be sanctioned by this Court.

Representation

The Applicant was represented by **Learned Counsel Wandera Ismail** of **M/s Ismail Wandera Advocates & Legal Consultants** while the 2nd 10 Respondent was represented by **M/s KIYN Advocates**. The 1st Respondent was not represented.

Issues for Determination

- 1. Whether the Applicant should be restored to his home situated in 15 Busiro Block 275 Plot 1357 at Gombe A pending the determination of the main suit?
- 2. What remedies are available to the parties?

Both parties were directed to file their written submissions which they did, and the same have been considered by the Court.

20 Issue No. 1: Whether the Applicant should be restored to his home situated in Busiro Block 275 Plot 1357 at Gombe A pending the determination of the main suit?

Applicant's submissions

Counsel for the Applicant invited this Court to look at the Constitution

25 (Land Evictions) (Practice) Directions, 2021, specifically at Sections 3,5,6 and 10, contending that they are aimed at safeguarding the rights of individuals and families against unlawful evictions, ensuring due process and fair treatment in land disputes.

5 Counsel quoted the case of **Muhindo James and 3 Others Vs Attorney General, Misc. Cause No.127 of 2016**, wherein **Hon. Justice Musa Ssekaana** relied on the case of **Port Elizabeth Municipality Vs Various Occupiers (2005) (1) SA 217 (CC) 55**, which held that:

"*It does not matter that the Applicants do not hold title to the suit premises and even if they had been occupying shanties, the 1st* 10 *Respondent was duty bound to respect their right to adequate housing as well as their right to dignity. Wherever and whenever evictions occur, they are extremely traumatic. They cause physical, psychological and emotional distress and they entail losses of* 15 *means of economic sustenance and increase impoverishment. In this case, I must therefore agree with the Petitioners that their eviction from the suit premises without a plan for their resettlement would increase levels of homelessness and this Court must strive to uphold the rights of the Petitioners and especially the right to be* 20 *treated with dignity*."

Counsel also cited **Section 98 of the Civil Procedure Act**, which confers upon this Court unlimited and inherent power to make such orders as may be necessary for the ends of justice. Counsel then referred to paragraphs 5-9 of the affidavit in support under which the Applicant 25 stated that he has nowhere to stay as the commercial/residential house exhibited in the pictures is his only home but the 2nd Respondent caused his arrest and eventual imprisonment and shortly after without any lawful justification, entered upon the Applicant's land and has since planted people who are occupying his only home. Counsel submitted that the 30 question to be

investigated is, how did the Respondent enter into possession of the Applicant's land that was in the Applicant's family's

- 5 possession? That the 2nd Respondent in his affidavit, has not offered any explanation/ proof of how he gained entry on the suit property leaving the affidavit evidence of the Applicant uncontroverted since he averred that the Respondent evicted his family at the time he was in prison over charges trumped up by the 2nd Respondent. To that, Counsel prayed to Court to
- 10 find that the 2nd Respondent has not furnished Court with any authority that allowed him in the form of a Court order or otherwise, permitting him to evict the Applicant and his family from their home and the consequent entry onto the suit property. That the action of the 2nd Respondent of evicting the Applicant and his family from their only home amounted to an
- 15 illegal eviction, which the Court should not lend its hand or condone.

2nd Respondent's submissions

In reply, Counsel for the 2nd Respondent submitted on the legal principles considered in an interlocutory application as stated in the case of **Capital Shoppers Ltd and 4 Others Vs Uganda Revenue Authority, Misc.* 20 *Application No.265 of 2020**. Counsel further submitted that the purpose of interlocutory applications is to maintain the status quo until the question to be investigated in the suit can be finally disposed of. In that aspect, Counsel submitted on the conditions that an Applicant should fulfil for the grant of a temporary injunction to include; that the Applicant 25 must first show a prima facie case with a probability of success and that there ought to be a triable issue, before a tribunal or adjudication, not necessarily one that must succeed. Secondly, that the Applicant must show a likelihood of irreparable damage or injury, that is an injury which is substantial and cannot be adequately remedied or atoned for by 30 damages. Thirdly, that if the Court is in doubt, it will decide the application on a balance of convenience. On the current status quo of the suit land,

5 Counsel quoted the case of **Otimong Dismas & 2 Others Vs Eastern Mining Limited Misc. Application No.148 of 2015**, in which **Hon. Justice Henry I. Kawesa** relied on the holding in the case of **Legal Brains Trust Ltd Vs Attorney General HCMA No.638 of 2014** that:

"*Status quo is purely a question of fact and simply denotes the* 10 *existing state of affairs before a particular point in time and the relevant consideration is the point in time at which the acts complained of as affecting or likely to affect or threatening to affect the existing state of things occurred*."

Relating the above to the application, Counsel submitted that by the time 15 the Applicant filed this application, the 2nd Respondent had entered into the land transaction over the suit land with the 2nd Respondent. That, according to paragraph 3, of the affidavit in support, the Applicant admitted giving the 2nd Respondent his duplicate certificate of title to mutate only 11.5 decimals,

and under paragraph 5, he admitted that the 20 2nd Respondent is in possession of the suit land. That as per paragraphs 6 and 7 of the affidavit in reply, the 2nd Respondent already transferred the suit property into his name and has taken possession thereof.

Counsel contended that the grant of this application would amount to a great injustice since the Court would have predetermined that the 25 Applicant is the rightful person to possess the property pending the hearing of the main suit.

On whether there is a prima facie case with a probability of success, Counsel relied on **Osborne's Concise Law Dictionary, 12th Edition**, which defines a prima facie case as a case in which there is evidence which will suffice to support the allegations made in it and which will stand unless there is evidence to rebut the allegations. He also relied on the cases

- 5 of *American Cyanamid Co. Vs Ethicon Ltd* [1975] UKHL 1* and *Imelda G. Basudde Nalongo Vs Tereza Mwewulizi and Another HCMA No.402 of 2003**, which illustrate the Court's considerations in establishing a prima facie case.
- Counsel then submitted that, in the instant case, the Applicant willingly sold the 11.5 decimals of the land at a purchase price of UGX 30,000,000/= (Uganda Shillings Thirty Million Only), which was all paid to him and upon which he executed transfer instruments in favour of the 2nd Respondent. That the Applicant on his own volition, agreed to sell the rest of the land to the 2nd Respondent since a subdivision of the initial 11.5 15 decimals, would lead to the demolition of his house constructed in the middle of the plot and therefore, the Applicant's claims are baseless and intended to waste the Court's time.

As to whether the Applicant will suffer any irreparable damage or injury in case the application is not granted, Counsel for the 2nd Respondent, first defined irreparable injury as per **Black's Law Dictionary, 9th Edition page 447**, to mean, damage that cannot be easily ascertained because there is no fixed pecuniary standard of measurement. He also cited the cases of the *City Council of Kampala Vs Donozio Musisi Sekyaya Court of Appeal Civil Application No.3 of 2000* and *Giella Vs* 25 *Cassman Brown & Co. Ltd* [1973] 1 E. A 358*.

Counsel submitted that the case of *Housing Finance Bank Ltd and Another Vs Edward Musisi, Court of Appeal Civil. Application No.158 of 2010** cited the case of *Kagumaho Kakuyo Vs Shilla Ninsiima Misc. App No.13 of 2020**, wherein the Court of Appeal stated that irreversible damage must not, only be stated but must be proved.

That, the Applicant's claim that he was evicted is not true as the 2nd 5 Respondent only occupied the land upon lawful execution of the transfer instruments by the Applicant. That no evidence has been adduced to show that the Applicant will suffer irreparable damage and that they trust the Court that the suit will be handled expeditiously hence this application should be dismissed to avoid wasting the Court's time.

Regarding the balance of convenience; Counsel relied on the case of *Misaki Kaviigi Vs Musiime James, Court of Appeal Civil Application No.147 of 2024**, where it was stated that the balance of convenience lies more on the one who will suffer more if the 2nd Respondent is not restrained

in the activities complained of in the suit. That in arriving at the proper decision, on whether the balance of convenience favors the Applicant or not, the Court must weigh the loss or risk of exposure for the Applicant, in the event that the order is denied and the damage which could be suffered, if it is not granted.

20 Counsel reiterated that the Applicant willingly sold the suit property to the 2nd Respondent who is now in occupation of the same. That the 2nd Respondent being the current owner of the suit land, and has even put tenants and received money from them, would be greatly inconvenienced if the Applicant was to be restored onto the land and therefore, he bears 25 more of the risk of injustice if this application is granted.

Applicant's submissions in rejoinder

In rejoinder, Counsel for the Applicant submitted that Counsel for the 2nd Respondent's submissions are misplaced and intended to mislead the Court. That the 2nd Respondent's submissions are based on **Order 41**

30 rules 1, 2, 3 and 9 of the Civil Procedure Rules SI 71-1, regarding temporary injunction applications, yet the present application was purely

- 5 brought under **Section 98 of the Civil Procedure Act and Order 52 rules 1 and 2 of the Civil Procedure Rules**. That the application is purely on the enforcement of rights and guard against illegal evictions. In conclusion, Counsel prayed that, the application is granted in the terms as prayed and that the 2nd Respondent's submissions be disregarded.
- 10 Analysis and Determination

This application arises out of *Civil Suit No.89 of 2024* instituted by the Applicant herein against the Respondents for orders that; the 2nd Respondent pays a balance of UGX 10,000,000/= for the 11.5 decimals he purchased off the suit land comprised in Busiro Block 275 Plot 1357 land

15 at Gombe A, a declaration that the 1st and 2nd Respondents illegally and fraudulently forged the Applicant/Plaintiff's signature together with that of his sister Nambalirwa Annet on the purported loan agreement of UGX 100,000,000/= dated 27th July, 2020 for a loan which the Applicant never requested, quiet possession of the land against the 2nd Respondent, a 20 declaration that the 2nd Respondent illegally and fraudulently registered

himself on the Applicant/Plaintiff's entire certificate of title comprised in Busiro Block 275 Plot 1357 land at Gombe A, without his knowledge and consent, cancellation of the 2nd Respondent's name from the certificate of title in respect of land comprised in Busiro Block 275 Plot 1357 land at 25 Gombe A among others.

The facts constituting the above claims are that on 26th July, 2019, the Applicant became the registered proprietor of the suit land. That the Applicant borrowed from the 2nd Respondent, a money lender, UGX 6,000,000/= at an interest of UGX 1,000,000/= and the 2nd Respondent 30 required a certificate of title as security. That the 2nd Respondent then drafted an agreement of purchase of the suit land instead of a loan

- 5 agreement through a one Daphine Nambozo, indicating that the Applicant had sold his land to the 2nd Respondent at a consideration of UGX 7,000,000/= whereas not. That due to the financial constraints, the Applicant signed the agreement. That on 22nd March, 2021, the Applicant again approached the 2nd Respondent for a loan of UGX 3,000,000/= with
- 10 an interest of UGX 2,000,000/=. A land sale agreement was still drawn by a one Daphine Nambozo, which summed up all the principal debt and interest to UGX 12,000,000/=. When the Applicant failed to pay back, he proposed to sell to the 2nd Respondent, land behind his commercial or residential premises at UGX 30,000,000/= to lessen the loan to which the
- 2nd Defendant agreed and an agreement was drafted. However, that the 2nd 15 Respondent only paid UGX 8,000,000/= and caused the Applicant's arrest and remand to Sentema Prison for three weeks and while in prison, he was made to sign a memorandum of sale of land and the 2nd Respondent evicted the Applicant's wife and children. The Applicant now brings this
- 20 application seeking to be restored to his home comprised in Busiro Block 275 Plot 1357 situated at Gombe A, LC1, pending the determination of the main suit. The 2nd Respondent disputes the application contending that he was legally registered on the suit land having purchased the same from the Applicant.

25 Section 98 of the Civil Procedure Act, Cap. 282 provides that:

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court."*

30 As stipulated above, this Court has inherent power to grant such orders as may be necessary for the ends of justice.

5 In the case of *DFCU Bank Ltd and 3 Others Vs MP Electronics Limited & Another Misc. Application No.0124 of 2024*, **Hon. Justice Stephen Mubiru** defined an interlocutory application and stated that:

"*Interlocutory application" therefore means an application to the Court in any suit, appeal or proceeding already instituted in such* 10 *Court, other than a proceeding for execution of a decree or order. By their nature and purpose, interlocutory applications seek interim reliefs and do not by their objective resolve the parties' rights as pleaded in the pleadings. However, sometimes applications for interlocutory orders may require resolution of substantive as well as* 15 *procedural issues and may formally or practically finally determine the rights, duties and obligations of the parties. The timing and nature of the application though, and not the effect of

any decision or order, is what defines an application as being interlocutory*."

As observed above by His Lordship, interlocutory applications in their 20 nature and purpose, are not intended to finally resolve the parties' rights as pleaded but seek interim reliefs pending the final determination of the suits they arise from.

Following the pleadings by both parties and the submissions by Counsel, the Applicant was the registered proprietor of land comprised in Busiro

Block 275 Plot 1357, situated at Gombe A and on 18th July, 2023, the 2nd 25 Respondent was registered as the current proprietor of the same land. This is evidenced by annexure "A" attached to the affidavit in support of the application.

As per his affidavit in reply, the 2nd Respondent avers that he is the current 30 registered proprietor of the suit property and in possession of the same, having purchased the land from the Applicant. The Applicant does not

5 dispute the same but contends that the 2nd Respondent fraudulently registered himself on the title since he was to mutate only 11.5 decimals from 23 decimals of his land but decided to take the whole land and then illegally evicted his family.

Section 59 of the Registration of Titles Act, Cap. 240 provides that:

10 *"... every certificate of title issued under this Act shall be received in all Courts as evidence of the particulars set forth in the certificate and of the entry of the certificate in the Register Book, and shall be conclusive evidence that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint* 15 *or dispose of the land described in the certificate is seized or possessed of that estate or interest or has that power."*

In accordance with the above provision, the contents of a certificate of title are conclusive evidence of the particulars therein and sufficient proof of ownership of the said land. The exception to the above provision is 20 provided for in **Section 160(c) of the Registration of Titles Act** which stipulates that:

> *"No action of ejectment or other action for recovery of any land shall lie or be sustained against the person registered as proprietor under this Act, except in any of the following cases-*

25 *(c) the case of a person deprived of any land by fraud as against the person registered as proprietor of that land through fraud or as against a person deriving otherwise than as a transferee bonafide for value from or through a person so registered through fraud."*

5 The order of restoration onto the suit land sought by the Applicant is premised on claims of fraud by the Respondents hence falling under **Section 160(c) of the Registration of Titles Act**.

As held by **Wambuzi, CJ** in the case of *Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No.22 of 1992*, it is generally accepted that 10 allegations of fraud must be strictly proved, the burden being heavier than on a balance of probabilities generally applied in civil matters.

Allegations of fraud such as in this case, are contentious matters and necessitate oral evidence of both parties rather than relying on affidavit evidence before me which fails to abide by the principle of strict proof.

- 15 Besides that, the order of restoration sought is one that, if granted, will affect the 2nd Respondent's rights as the registered proprietor without proper evidence and it is one of the remedies for determination in Civil Suit No. 89 of 2024. In the circumstances, granting the said order would lead to determination of the merits of the main suit to a large extent. It would 20 in effect mean that the Court has determined without sufficient evidence
- that the Applicant is the rightful person to possess the property in issue and thus render the main suit nugatory.

On the issue of the Applicant being homeless upon the visit of the locus on 12th September, 2024, Court was informed that the Applicant is 25 accommodated by his mother in a small shelter which he has been staying in for over a year. I agree that it is very small given that the Applicant has a large family. However, Court also observed that the property in issue is currently occupied by people who claim to be tenants of the 2nd Respondent. The 2nd Respondent also confirmed the same in paragraph 7 30 of his affidavit in reply, and as such, evicting them at this stage would 5 create multiple actions and suits that would not resolve the current issues in dispute thus creating further disputes and unrest in the area.

Determination of a remedy of restoration at this stage will amount to a determination of the parties' rights in **Civil Suit No.89 of 2024**, pending before this Court as already stated above. The Court has also cautioned

- 10 itself on the probable applications that would arise from the grant of the order of restoration as sought by the Applicant, thereby contradicting the Court's mandate under **Section 37 of the Judicature Act**. The only solution in the interest of justice for all parties pursuant to **Section 98 of the Civil Procedure Act** and final determination of the matter; is to have
- 15 this matter expeditiously handled and scheduling of the same has been fixed for **18th October, 2024 at 9am**. Thereafter the matter shall be fixed for hearing expeditiously.

In the circumstances, I hereby decline to grant this application. Therefore, this issue fails and this application is dismissed. The costs of the 20 application shall be in the cause.

I so order.

Dated, signed and delivered electronically this 27th day of **September, 2024**.

Patience T. E. Rubagumya

25 JUDGE

27/09/2024

6:30am

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