

UGANDA / JUDGMENT

Twed Property Development Limited v Uganda Investment Authority and 2 Others (Civil Appeal No. 39 of 2021) [2022] UGHCLD 108 (27 May 2022)

[2022] UGHCLD 108

COURT

HC: Land Division (Uganda)

BEFORE

Keitirima, J

CASE / FILE NUMBER

Civil Appeal No. 39 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL APPEAL NO. 39 OF 2021

(ARISING FROM THE RULING OF THE DEPUTY REGISTRAR

OF THE LAND DIVISION)

(ALL RIGHTS ARISING FROM CRWL SURR NO. 675 OF 2021)

TWED PROPERW DEVELOPM ENT LIMITED: ::::::::::: APPELLANT VERSUS

1. UGANDA INVESTMENT AUTHORITY

2. VICTORIA NILE PLASTICS LIMITED::::::::::::: RESPONDENTS 3. JERRYFA LIMITED

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

RULING:

This is an application brought by way of Notlce of Motion under Section 98

& 79(1) of the Civil Procedure Act and Order 50 Rule 8 of the Civil Procedure Rules. The appellant is seeking for orders that:-

- 1. The Deputy Registrar's order declining to grant the temporary injunction
- vide M. A No. 1378 of 2021 was contrary to the facts and the law governing temporary injunctions. 20
- 2. The Deputy Registrar's order declining the application for a temporary injunction be set aside.

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- 3. Miscellaneous Application 1378 of 2021 be allowed and the orders sought in terms;
- (i) That a temporary injunction issues restraining the 2nd and 3rd respondents from dispossessing the applicant of occupation on the suit land and proceeding to carry on any developments on the land formerly comprised in Kyaggwe Block 113 Plot 572 and presently subdivided into Plots 1638 and 1639 until the disposal of the main suit.
- (ii) A further temporary injunction be issued prohibiting the 1st respondent from issuing full term leases to the 2nd and 3rd respondents in respect of the said land till the disposal of the main suit.
- 40 The application is supported by the affidavit of the Appellant's Managing Director Dr. Dan Twebaze who deposes inter alia:-
- (i) That the appellant is dissatisfied with the ruling vide M. A No. 1378 of 2021 delivered on the 1st November, 2021 by the Deputy Registrar of this court that declined the appellant's application for a temporary injunction.
- (ii) That the Deputy Registrar erred in law and fact when she held that the appellant will not suffer irreparable damage.

- 50 (iii) That the Deputy Registrar erred in law and fact when she ruled in favour of the 2nd and 3'd respondents on the ground of balance of convenience at the detriment of the appellant.
- 55 (iv) That the Deputy Registrar erred in law and fact when she ignored the fact that the appellant was not at all material times in possession of the suit land even before the 2nd and 3'd respondents were issued with titles of the suit land.
- (v) That the Deputy Registrar erred in law and fact when she failed to resolve the ground that the appellant must show a prima facie case with a probability of success.

(vi) That it is in the interest of justice that the subject matter of the main suit be preserved to meet the ends of justice and the appeal be allowed and a temporary injunction granted in the terms proposed in the application.

In his affidavit in reply Hamza Galisonga, the Director Industrial Parks Development of the 1s respondent deposes Inter alia:-

70 (i) That he is advised by his Attorney's Chambers that the Deputy Registrar properly guided herself on the law regarding to the issuance of ^a temporary injunction and arrived at the right conclusion.

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- (ii) That he is advised by his said lawyers that there are several considerations that a court considers when evaluating an application for a temporary injunction.
- (iil) That he is informed by his said lawyers that the appellant has no legal or equitable claim over the suit land on account of the fact that they no longer have a valid lease and therefore the appellant has no legal position of standing to bring an application to obtain/recover land,
- (iv) That he knows that the 1s respondent was well within its rights to refuse to renew the lease held by the appellant.
- (v) That the 1't respondent did not unlawfully deprive the appellant of land but rather the appellant's lease expired and land reverted by operation of law to the 1* respondent.
- 90 (vi) That he knows that the appellant will not suffer any damage which is incapable of compensation in monetary terms if this application is not granted and that the 1't respondent is capable of satisfying any adverse court award.
- 95 (vii) That he knows that the balance of convince is in favour of the respondents,
- (vili) That he is reliably informed by the attorneys in the Attorney General's chambers that:-

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- (a) Granting temporary injunctions is an exercise of judicial discretion and the purpose of granting it is to preserve the status quo until the question to be investigated In the main suit can finally be disposed of.
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- (b) The imminent threat in this case is not against the appellants but against the respondent's investment revenue which if this application is granted will be unreasonably halted.
- 110 (c) That the legal factual balance of convenience in this case is in favour of the respondents.
- (d) That the status quo in this case is that the appellant's lease automatically abated, and they have no legal or equitable interest In the suit land.
- (e) That if orders prayed for in this application are granted, they will effectively be changing the status quo and placing the appellant onto the land without any colour of right and contrary to the purpose of temporary injunctions.
- (D) That the appellant has failed to demonstrate to court on a balance of probabilities that they shall suffer any irreparable loss or damage which cannot be atoned for by an award of damages.
- (S) That the main suit filed by the appellant is not based on any legally recognizable instrument of ownership of land and lacks merit.

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(ix) That in the interest of justice this application should be rejected and dismissed with costs to the 1st respondent.

The appellant and the first respondent filed written submissions the details of which are on record and which I have considered in determining this appeal.

135 The issue to determine now is whether the Deputy Registrar's order declining to grant the temporary injunction vide Miscellaneous Application No. 1378 of 2021 was contrary to the facts and law governing temporary injunctions.

Order 41 Rule I of the Civil Procedure Rules provides that "where in any suit it is proved by affidavit or otherwise -

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongly sold in execution of a decree or
- (b) that the defendant threatens or intends to remove or dispose

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of his or her property with a view to defraud his or her creditor, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienating, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders".

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155 160 It was held in the case of Kiyimba Kaggwa versus A. N Katende [7985] H. C., B 43 that the granting of a temporary Injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the status quo until the question to be investigated in the suit is finally disposed of. It was also held in the said case that the conditions for the grant of a temporary injunction are first that an applicant must show a prima facie case with a probability of success. Secondly, such injunction will not normally be granted unless the applicant might suffer irreparable injury which would not adequately be compensated or atoned for by an award of damages, thirdly if the court is in doubt, it will decide the application on the balance of convenience.

165 1,70 The appellant filed H. C. C. S No. 675 of 2021 against the respondents claiming its equitable interest in the suit land comprised in Kyaggwe Block 113 Plot 572 and presently subdivided into plots 1638 and 1639. The appellant claimed it is in possession of the said suit land and the respondents have jointly and severally tried to defeat their interests and are riddled with fraud and misrepresentation. The appellants are seeking in the main suit for the recovery of the suit land, cancellation of the title, special damages and costs of the suit.

115 The appellant subsequently filed Miscellaneous Applications No. 1378 and 1379 of 2021 and the said applications were seeking for injunctions which the Deputy Registrar declined to grant hence this appeal.

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The 2nd and 3rd respondents never contested this appeal as they never filed affidavits in reply.

180 It is apparent that it is the 2nd and 3rd respondents who have the titles to the suit land. Whether they were validly obtained or not is a matter that is yet to be decided by this court. They did not contest this appeal, in fact the 3rd respondent conceded to the appeal. The 1st respondent is not in physical possession of the suit land and will therefore not be affected in any way by the outcome of this application. It was held in the cases of H. B Gandesha

185 and another versus G. J, Lutaaya - S. C. C. A No. 74 of 7989 and Prof. Oloka Onyango and Others versus Attorney General Constitutional Petition No. 6 of 2074 that uncontested evidence should be taken as the truth.

Since the 2nd and 3'd respondents who have titles to the contested suit land have not contested this appeal, I take it that they conceded to it.

In my view the concerns of the 1s respondent will properly be addressed when the main suit is determined.

It is therefore basing on the above reasons that I will allow this appeal and will set aside the ruling of the Deputy Reglstrar vide Miscellaneous Application No. 1378 of 202l involving the parties herein.

200 The said appllction will be granted until the determination of the main sult. Costs of the sald application and this appeal will abide the outcome of the sald suit.

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HON. JUSTICE JOHN EUDES KEITIRIMA 27/05/2022

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Prepared on 14 October 2026 · Esheria