

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISC. APPLICATION No. 3798 OF 2023
ARISING FROM MISC.APP No.3799 OF 2023
ARISING FROM MISC APPN NO.3794 OF 2023
(ALL ARISING FROM MISC CAUSE NO 069 OF 2022)

- 1. PULLE KIZITO HERMAN GERALD ::::::::::::::: APPLICANTS**
- 2. PULLE ANN JOSEPHINE**

(Suing as beneficiaries of the estate of the late Hugh Francis Pulle for their benefit and interest in the suit estate land)

VERSUS

- 1. NAKAZZI AGATHA PULLE ALICE**
- 2. NAKACHWA HANIFA SEMANDA ::::::::::::::: RESPONDENTS**
- 3. KINTU ABUBAKER**
- 4. KIWANUKA PETER SSAMULA**
- 5. SENTONGO MARTIN GRACE**
- 6. THE COMMISSIONER LAND REGISTRATION**

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.



Introduction;

1. Pulle Kizito Herman Gerald and Pulle Ann Josephine (hereafter referred to as the Applicants), brought this application under Sections 98 and 64(e) of the Civil Procedure Act Cap 71 and Order 52 rules 1, 2, 3 & 4 of the Civil Procedure Rules SI 71-1 seeking for orders that;

i) An interim order doth issue restraining the Respondents, their agents, assignees and all persons deriving instructions from them, from entering, occupy, sale, pledged, mortgage, carry out any cultivation, dealings, constructions and allowing any person occupy and use the suit land comprised in Busiro Block 400 plots 91,92,93,94,95,96,97,98,99,100,102&103 situate at Nganjo, Wakiso District until the determination of the main application.



ii) Costs of the application be provided for.

Background;

2. The application is supported by an affidavit deponed by the 1st Applicant for himself and on behalf of the 2nd Applicant pursuant to a copy of the authority to swear an affidavit which is on court record, the application was opposed by the Respondents in their respective affidavits in reply to which the applicants' filed affidavits in rejoinder.
3. I will consider the contents of the affidavits and the evidence attached on the same in the resolution of this application. However, I have to note that upon my perusal of the affidavits for both the Applicants and the Respondents I realized that most of the averments therein are most appropriate for consideration while determining the application for a temporary injunction and or the main application for review, in that regard I will consider such averments in resolving the pending two applications.

Representation;

4. The applicants were represented by M/S Mpagi Sunday & Co. Advocates where as the respondents were represented by M/S Okurut Law Chambers. Parties filed their affidavits and



submissions which I have considered in the determination of this application.

Issues for consideration by this court;

5. The Applicants in their submissions raised two issues and the same were adopted by the Respondents, the parties also argued the issues in the same chronological manner and I will proceed to resolve the same as framed and argued by the parties, the issues are;

- i) Whether the applicants' application meets the grounds for granting an interim order?***
- ii) Whether the applicants are entitled to the costs of the application in the cause?***

Resolution and determination of the issues;

Issue 1; whether the applicants' application meets the grounds for granting an interim order;

6. The principles governing the grant of an interim order have been discussed by court in a number of cases and one of them is **Souna Cosmetics Uganda LTD Vs. Commissioner Customs**



URA and Commissioner General URA, HCMA No. 424 of 2011, this case was cited by the applicants' and also adopted by the Respondents in their submissions, the principles expounded by court in the case upon which an interim order can be granted include:

- i) The need to maintain the status quo,*
- ii) The need to preserve the right of the applicant to be heard in the main application,*
- iii) The suit property being in imminent danger to the detriment of the applicant,*
- iv) The need to avert the occurrence of irreparable injury likely to be suffered by the applicant,*
- v) And in case of doubt as to who should be granted the order, the balance of convenience is resolved in favor of the person likely to suffer much if the order is not granted.*

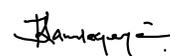
7. I will consider the principles as highlighted in determining whether or not to grant this application



- i) The need to maintain the status quo*

8. On status quo, the Applicants in their affidavit under **paragraphs 13 and 14** state that the suit land is currently registered in the names of the Respondents, that the Respondent have deposited building materials on the land and that they have commenced constructions on the land which constructions according to the Applicants are illegal and that such constructions can only be stopped by an interim order, that if an interim order is not granted the status quo of the suit land will be altered thus creating a false impression in the main suit that the Respondents have always been in the occupation of the suit land whereas not. **The Applicants attached on their affidavit photographs as annexures G1, G2, G4 and G4, showing the digging of the foundation on the suit and the building materials deposited thereon.**

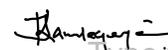
9. The Applicants further under paragraphs **17, 18, 20 and 22** of the affidavit in support of the application state that the suit land is in imminent danger of being sold because the Respondents are bringing intending buyers to purchase the same before the determination of the main application, from their averments the Applicants aver that the state of affairs as



is means that the suit land has not been sold yet, or pledged as a security to guarantee the repayment of any loan, that if the looming sale and disposal of the suit property is not restrained, the main application will be rendered nugatory. The Applicants also state that the Respondents are busy making a road through the suit land with the intention of selling before the determination of the main application, **to show the road being made through the suit land, the applicants adduced a copy of the photograph as annexure J.**

10. The 2nd Respondent like the other Respondents filed an affidavit in reply opposing the application however I will consider the contents of the said affidavit under paragraphs **2 (a, b, c, d, e, f, g, h, I and j)**, the same applies to paragraphs **2 (a, b, c, d, e, f, g, h and I)**, of the 3rd Respondent's affidavit in reply **and to the paragraphs 2 (a, b, c, d, e, f, g, h, I, j, k and I)**, of the 4th Respondent's affidavit in reply.

11. However, by the other contents of their affidavit in reply, the 2nd Respondent under **paragraphs 2 (k and l), 7, 8, 9, 10, 11, 12 and 13**, deponed that he has been in occupation of the suit land since the year 2012, that he is the one who


Type text here

planted the trees exhibited in the photographs by the Applicants but not the applicants, he also states that he constructed and has houses and buildings on the suit land, that he stays on the suit land and he also stated that he is the owner and the current registered proprietor of the suit land comprised in **Block 400 Plot 95, 96, 97, 98, 99 and 100**, he maintained that he has no intentions of selling the suit land in his names and that there is no status quo to be maintained by court because the Applicants have never been in the occupation of the suit land, they have never been the owners of the same land and that it's the 2nd Respondent who is currently utilizing the land.

12. The averments of the 3rd Respondent by his affidavit in reply under **paragraphs 2 (j), 6, 9 and 6 and the contents of the 4th Respondent's affidavit in reply particularly paragraphs 2 (m and n), 4, 8, 9 and 10**, are strictly a replica of the 1st and 2nd Respondents affidavit in reply, that being the case I see no need of repeating the said averments.

13. From the averments of the Respondents, what is common to all of them is that they claim to have houses and buildings

Handwritten signature

on the suit land although they have not adduced evidence of such houses and buildings before court to help court make a finding in that regard, further the 2nd Respondent deponed that the trees on the suit land exhibited by the Applicants were planted by him but he has not labored to adduce any evidence of the said trees to at least help court compare in reaching its decision.

14. In their affidavits in rejoinder, the Applicants agreed that the Respondents are the ones in occupation, possession and utilization of the suit land, and that they are carrying out constructions thereon while the matter is in court, they maintain that they planted eucalyptus trees on the suit land.

15. They depone that since the Respondents never planted the trees on the suit land, it is the reason why during the hearing of their application for a vesting order, they did not tell court that they had planted trees on the suit land, they never told court the particulars of their occupation and development on the suit land.

16. The Applicants in rejoinder further stressed that indeed the Respondents are constructing on the suit and that the

H. H. H. H. H.

constructions can be restrained/halted at the level they are, further that the cultivation of Maize on the suit land can be stopped after harvesting the maize currently grown on the suit and, lastly the Applicants in rejoinder state that the Respondents have not attached on their affidavit any evidence showing their alleged old occupation and use of the suit land and the to the applicants, the reason why such evidence has not been attached is because all the constructions being carried out on the suit land and the activities thereon are just fresh and new activities contrary to the allegations of the Respondents that they have been in occupation and utilization of the suit land since the years 2008, 2009 and 2012.

17. The Applicants in support of their case attached on their affidavit in rejoinder copies of photographs showing the grading of the land by 15th January 2024, fresh construction, a constructed wall fence and a small structure in the fence, they also attached a copy of the application for a vesting order and why they assert that no form of occupation was stated by the Respondents in the said application. See the photographs as

Handwritten signature

annexure A1, A2 and A4 and the application for a vesting order and the supporting affidavits as annexure **B1, B2 and B3**.

18. From the evidence of both the Applicants and the Respondents, as outlined and considering their submissions, it is my finding and as admitted by both parties that the status quo of the suit land is that the same is currently registered in the names of the Respondents, according to the evidence of both parties, the land has not been sold to any other person.

19. Further it has not been mortgaged to any bank or person and this is amplified by the assertions of the Respondents that they are not intending to sell or dispose of the suit land in any way, the status quo is further that the Applicants are not utilizing the suit land but the Respondents.

20. It is also my finding that the Respondents have no homes and buildings on the suit land as they alleged because they failed to adduce evidence showing the said houses and homes, it is also not in dispute that constructions are taking place on the suit land during the pendency of the main application for review and the application for a temporary injunction, on the ongoing constructions.



21. The Applicants adduced photographs of the said constructions by 15th January 2024 and the Respondents did not rebut the said photographs and the fact that they are carrying out constructions on the suit land during the pendency of the main application for review and the substantive application for a temporary injunction, the failure by the Respondents to adduce evidence rebutting the assertions of the applicants to that effect leads to the conclusion that indeed the Respondents admit that they are busy carrying out constructions on the suit land as asserted by the Applicants. **See the case of Samwiri Masa Versus Rose Achen (1978) HCB 297.**

22. Under **section 98 of the Civil Procedure Act cap 71**, this court is given inherent powers to make such orders as may be necessary to ensure that the ends of justice are met or to prevent abuse of the process of court, **section 64 (e) of the Civil Procedure Act**, supra, provides that, “In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed, make such interlocutory orders as may appear to the court to be just and convenient, basing on the powers



conferred upon this court, and upon analyzing the evidence adduced by parties , the laws and the interest of justice, it is my finding that it's vital that the status of the suit land as I have highlighted the same hereafter be maintained , that it's just that the status quo should not be further altered by any of the parties to the application.

23. I particularly direct that no further and/or new constructions should be carried out on the suit land by the Respondents or their agents. The suit land should also be maintained in the names of the Respondents until further orders of court.

ii) **The need to preserve the right of the applicant to be heard in the main application.**

24. On this principle, the Applicants basing on the advice of their lawyer under paragraph 16 of their affidavit in support of the application deponed that they have the right to be heard on the main application for a temporary injunction which is pending hearing before this court, however that their right to be heard on the main application can only be protected and preserved if an interim order is granted and that if an interim



order is not granted, the main application even if successful will be rendered nugatory.

25. The Respondents did not make any efforts in their affidavit in reply as to whether the Applicants have the right to be heard on the main application or not, but they made submissions on the matter, although the Respondents did not make any averments on this principle by their affidavit in reply.

26. I will consider their submissions because the right to be heard by any party is a matter of law envisaged **under Article 28(1) of the Constitution of the Republic of Uganda 1995**, the Respondents by their submissions contended that the Applicants have never been the owners of the suit land, that they have never been in occupation of the suit land, that it's the Respondents who are using the suit land and that the Applicants have not adduced any evidence with merit to form the basis upon which this court can make a finding that they have the right to be heard on the main application.

27. In resolving this principle and , basing on the evidence on record and the pleadings by the parties, I am of the view that there is no contention that the Applicants filed the main



application and that the same is pending hearing before this court, and as I said, the right of any party to be heard on any matter he or she presents to court is constitutional and as of right, the said right doesn't envisage anywhere that courts will only hear a case where a party has presented evidence satisfying court that such evidence raises a probability of success.

28. It is thus my decision that as long as a party files a matter before court, such a person must be accorded the necessary facilities and environment to be heard for court to determine whether the matter presented to it has merit or not.

29. I must also state that for an application of an interim order, the merits of the main suit and application are not considered in determining whether to grant or not to grant the application. In the case of **Souna Cosmetics (supra)**, **Justice Christopher Madrama**, was faced with a situation to determine whether the Applicant had the right to be heard on the main application and what constitutes the said right, court in resolving the said issue had this to say: ***"The law concerning an interim stay of execution or injunction is that the court***



preserves the right of the applicant/appellant to be heard on the merits.

30. The principles for preserving the right of appeal or the rights of hearing were stated in the case ***of Wilson V. Church (1879) Vol 12 Ch D 454***, the supreme court of Uganda in the case ***Somali Democratic Republic V. Anoop SunderialTrean C.A.C.A No 11 of 1988 before Manyindo DCJ Odoki J.S.C and Oder J.S.C.*** adopted the same position and held that ***the court would order a stay of execution in order to preserve the applicants right of appeal so that it is not rendered nugatory. At page 459 of the same case Bret Lord Justice held that the law is that court will exercise its discretion so as to stop an appeal from being rendered nugatory.***

31. Court in granting an application for an interim order on grounds that the Applicant had the right to be heard on the main application, the judge held and I quote; ***I agree with the submissions of the Applicants' counsel that in exercising the discretion to prevent an appeal or application from being rendered nugatory, the court does not consider the merits of the application for a temporary injunction. Then***

J. Banerjee

what does court consider? It is my decision that the court considers whether the applicant or appellant has a bona fide appeal or application and whether their right to have it heard would be curtailed if an interim measure of injunction or stay of execution is not granted.

32. In this application, I agree with the test set by the judge in Souna Cosmetics (supra) and I hold that since the Applicants filed the main application for Temporary Injunction which is pending before court, they have the right to be heard on the main application since the said right is constitutional and inherent.

iii) **The suit property being in imminent danger to the detriment of the Applicant and need to avert the occurrence of irreparable injury likely to be suffered by the Applicant.**

33. The Applicants by their affidavits in support of the application under paragraphs 22 deponed that the suit land is in imminent danger of being sold because the Respondents are regularly taking buyers on the land, they also say that the

Handwritten signature

Respondents have made a road through the suit land for the buyers to access the land.

34. The Applicants further state that some of the Respondents have constructed fences around the portions of the suit land and that if the interim order is not granted, the suit land will be disposed of to their detriment, on irreparable damages.

35. They depone that if the suit land is sold, recovering it will be costly, expensive, and impossible that they have emotional attachment on the suit land since it's their family land and if the same is taken, no compensation will be adequate for the emotional suffering they will go through.

36. The Respondents on the other hand deponed that the Applicants will not suffer any irreparable damages because they have no interest in the suit land, that the Applicants have never been in occupation and utilization of the suit land but the Respondents, and that for that matter they cannot suffer any irreparable damages because in any case the suit land is no longer family land since it was sold to the Respondents long time ago. That the respondents being in occupation of the land

H. Sanchez

are likely to suffer more than the Applicants who are not in occupation, on imminent danger of selling the suit land.

37. The Respondents depone that they stay on the suit land, and that as the owners of the land, they have no intentions of selling it and that the Applicants have not adduced any evidence that the Respondents want to sell the suit land.

38. The court in the case of, **Kiyimba Kagwa Vs Haji Abdu Nasser Katende (186) HCB 43**, which was quoted with approval in the case of, **Digital Solutions Limited Versus MTN Uganda Limited, HCMA NO 546 OF 2004**, discussed irreparable damages as hereunder;“... ***irreparable injury doesn't mean that there must be no physical possibility of repairing the injury; but means that the injury must be substantial or material, that is, one that cannot be adequately, compensated for in damages***”

39. On imminent danger of selling the suit property before the hearing of the main application, the applicant relied on the case of **Souna Cosmetics limited supra**, in which the court granted an interim order by holding that refusing the application for an interim order would mean that the intended sale for which

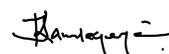


a main application has been filed in court would take place without hearing the Applicant on the merits with the result that the main application for the injunction will be rendered nugatory, the Applicant basing on the said holding invited court to grant this application.

40. Upon analyzing the evidence on record for both parties, their submissions and the averments by their affidavit, it is my finding that the Applicants have proved that the suit land is in imminent danger of being sold before the determination of the main application.

41. The Applicants' assertions have been fortified by the submissions of the Respondents by which the Respondents submitted and asserted that they have the right over the suit land as the owner of the same and that by the said right they can sell the suit land as they wish.

42. The Respondent's assertion puts the suit land in imminent danger of being sold because it presupposes that the Respondents can suddenly make up their mind, sale, mortgage and dispose of the suit land as they wish, if the suit land is sold during the pendency of the main application, the Applicants



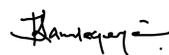
will suffer irreparable damages because they will lose the suit land, the main application will be rendered nugatory, if the land is transferred to other persons as deponed by the Applicants, recovering it will be impossible, very costly and the emotions of the Applicants attached on the suit land will not be capable of being compensated by an award of damages or money.

43. In that regard, I find that the Applicants have proved this ground.

iv) **Balance of convenience.**

44. Both the applicants and the Respondents did not make any depositions on the balance of convenience, they made submissions on the same, the applicants relayed on the case of, ***DIGITAL SOLUTIONS supra on pages 7 and 8***, by which court on balance of convenience held that and I quote. “..... a **person who is likely to be inconvenienced if the status quo is altered ought to be granted the order**”

45. The Respondent on the other hand relied on the case of, **Kiyimba Kagwa Vs Katende , supra**, for the definition of balance of convenience in which court held that the balance of

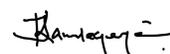


convenience should normally be resolved in favor of the person who is in possession of the land and likely to be affected if the land is interfered with.

46. The cases cited by the parties all lead to the same position that where a person is likely to suffer more, the balance of convenience should be resolved in his or her favor, my understanding of the case of Kiyimba Kagwa is that the said case did not make it automatic that once the person is in possession, automatically and just of course, the balance of convenience must be resolved in his or her favor, it is my finding that this depends on the facts and circumstances of each case.

47. court must first exercise its discretion, weigh the facts and evidence of each case before resolving the balance of convenience in favor of any of the person.

48. In the current application and upon evaluating the evidence on record, I find that the balance of convenience tilts in favor of ensuring that the status quo is not further altered, that is to say, the suit land must remain in the names of the Respondents, that the constructions taking place on the suit land while the case is progressing must be halted and the land



ought not to be dealt with in any manner which will render the main application for review and the main application for a temporary injunction nugatory.

49. In that regard, I have resolved the balance of convenience in favor of the Applicants because if this application is not granted and the suit land is dealt with as I have explained, the Applicants will suffer more than the Respondents.

50. Accordingly, it is my finding that the application succeeds with the following orders;

- i) An interim order is hereby issued restraining the Respondents, their agents, assignees and all persons deriving instructions from them from selling, pledging, mortgaging, further constructions, transferring the Suit land and allowing any other persons to occupy and use the suit land comprised in Busiro Block 400 plots 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102 & 103 situate at Nganjo, Wakiso District until the determination of the main application.
- ii) No orders as to costs.

I SO ORDER.

Hansraj

NALUZZE AISHA BATALA

JUDGE

3/04/2024