

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 652 OF 2018
(ARISING FROM MISC. APPLICATION NO. 651 OF 2018)
(ARISING FROM MISCELLANEOUS CAUSE NO. 285 OF 2018)

1. FIRDOSHALI MADATALI KESHWANI HABIB
2. DOLATKHANU MADATALI HABIB:.....APPLICANTS
VERSUS

1. THE DEPARTED ASIANS PROPERTY CUSTODIAN BOARD
2. ATTORNEY GENERAL:.....RESPONDENTS

BEFORE: HON JUSTICE SSEKAANA MUSA

RULING

This is an application seeking for an interim order of injunction brought under Rule 3(2) of the Judicature (Judicial Review) Rules 2009, Order 52 Rules 1, 2 & 3 of the Civil Procedure Rules SI 71-1 and section 98 of the Civil Procedure Act Cap 71.

The applicants filed a main application for judicial review wherein they sought different orders among which were an order for a permanent injunction. They also filed a main application seeking a temporary injunction which is pending hearing before this Honorable Court.

The applicants are the registered proprietors of the land comprised FRV 60 Folio 5 known as plot 42 Kampala Road. According to the affidavit in support of this application sworn by the 1st applicant, the applicants have been in quiet possession of the land since 1992 until 2018 when the 1st respondent allocated the property to a one Mr. Salim Ssemanda.

The Applicants were represented by Mr John Mike Musisi and the respondents were represented by Mr. Ojambo Bichachi State Attorney from Attorney General.

This application is supported by the affidavit of Firdoshali Madatali Keshwani Habib. The 1st respondent filed an affidavit in reply sworn by the Executive Secretary Bizibu George William. The 2nd respondent did not file an affidavit in reply.

In the interest of time the court directed the party to file written submission and indeed the court has considered the submissions of the respective parties.

The applicant contends that the property is in danger of alienation and there is a need to maintain the status quo until the hearing of the main application.

For court to grant an application of this nature, it must consider the circumstances prevailing and then determine whether to grant an interim order or not. In the case of *Yakobo Sekungu and Others v Crensis Mukasa*, (Civil Application No. 05 of 2013) that:

“...the granting of interim orders is meant to help parties to preserve the status quo and then have the main issues between them determined by the full Court as per the Rules.”

Status quo is not about who owns the suit property but the actual state of affairs on the suit premises prior to the filing of the main suit. The subject matter of an interim order or temporary injunction is the preservation of the existing state of affairs pending litigation. Court's duty is only to preserve the existing situation pending the disposal of the substantive suit. In exercising this duty, court does not determine the legal rights to property but merely preserves it in its actual condition until legal title or ownership can be established or declared.

In the case of **HON JM MUHWEZI -VS- ATTORNEY GENERAL (CONSITUTIONAL COURT MSIC. APPN. NO. 18 OF 2007)**, it was observed by Twinomujuni JA that the main considerations for granting this application are the same as those for granting or rejecting the main application, namely:-

- (a) That the court has jurisdiction to grant or not to grant the order sought for.
- (b) That the suit from which the application arises discloses triable issues and is not frivolous and/or vexatious.
- (c) That failure to grant the application would render the disputed matter nugatory in a manner that cannot be redressed through an award of damages.

(a) That the court has jurisdiction to grant or not to grant the order sought for.

The applicant prays that court grants an interim order of injunction restraining the respondents, their servants, workers or agents or any person deriving title or authority or acting under them from disposing off or transferring, taking over possession of, vandalizing or demolishing or alienating or doing any other act in respect of land comprised in FRV 60 Folios 5 Plot 42 Kampala road pending the determination of the main application and costs of the application.

The respondents opposed the application stating that it was vexatious, frivolous and tainted with fraud and should be dismissed with costs.

In grant of an interim order, the following principles ought to be considered;

1. That there is a pending main application that could be rendered nugatory if the interim order is not granted.
2. That there is an imminent threat to do the act complained of.

These principles have been discussed in *Hwan Sung Industries Ltd. - vs - Tajdin Hussein and 2 Others, Civil Application No. 19 of 2008*, where the Supreme Court considered the issue of merit of an application of an interim order.

The court stated on merit as follows:

“- - - for an interim order of stay, it suffices to show that a substantive application, is pending and that there is a serious threat of execution before the hearing of the pending substantive application.

It is not necessary to pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”

Counsel for the respondents' submissions stated that the principles for grant of the application are;

1. The main case as filed has a prima facie case with a possibility of success,
2. That if the injunctive order is not granted, the applicants will suffer irreparable damage which cannot be adequately compensated by an award of damages.
3. That if the court is in doubt, the applicants must show that the balance of convenience is in their favor.

Counsel discussed the principles considered for the grant of the main application for a temporary injunction and did not address the principles for grant of an interim order.

According to *Hwan Sung Industries Ltd. - vs - Tajdin Hussein and 2 Others (supra)* it is only necessary for the court to satisfy itself, on evidence, that a substantive application is pending and that there is a

serious threat to do the act complained of before the substantive application is heard and determined.

In the instant case, a substantive main application for a temporary injunction is pending hearing before this court. The main application raises triable issues that ought to be settled by this honorable court.

Furthermore, the applicants allege that the 1st respondent has commenced the process leading to the sale or disposal of the suit property through private treaty to a one Salim Ssemanda. Evidence has been brought proving that the land in dispute was temporarily allocated to Salim Semanda and preparation for its disposal has been commenced. This shows that there is an imminent threat of disposal of the property creating a third party interest and rendering the main application nugatory.

I am satisfied that there is pending in this court a substantive application for a temporary injunction vide misc. application No. 651 of 2018. I am also satisfied that there is a real threat to dispose of the suit property before the disposal of the substantive application. When that is done, the substantive application for a temporary injunction would be rendered nugatory.

It is fair and just in the circumstances that the applicants' interim order of injunction is granted until the main application is heard and the costs of the application shall be in the cause.

I so order

Ssekaana Musa
Judge