

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
MISCELLANEOUS APPLICATION NO.409 OF 2019
(ARISING FROM MISCELLANEOUS APPLICATION NO. 404 OF 2019)

- 1. LUKWAGO JOSHUA KATO**
- 2. AUDREY BISASE**
- 3. DAMALI BISASE**
- 4. RACHEAL NALUWAGGA**
- 5. NAMUDDU PRISCILLA----- APPLICANTS**

VERSUS

- 1. RON MBOWA**
- 2. JOSEPHIS RUFUS BISASE KISOSONKOLE**
(Administrator of the Estate of the Late KLB Kisosonkole)----- RESPONDENT

BEFORE HON. JUSTICE MUSA SSEKAANA

RULING

The Applicant brought this application by way of Notice of Motion against the respondent under Section 33 of the Judicature Act cap 13 and Section 98 of the Civil Procedure Act, and Order 52 r 1, & 3 of the Civil Procedure Rules, for orders that;

- a) An Interim Order staying the implementation, execution and or enforcement of a Consent Judgment vide Civil Suit 417 of 2019 sealed by court on the 24th day of June 2019, by way of transferring or registering the suit land comprised in Kyadondo Block 185 Plots 13804, 13810 and 13811 to the 1st respondent or doing any activity or transactions or whatever activity on the said land by the respondents on any part of the final determination

of Miscellaneous Application No. 404 of 2019 for review of the Consent judgment.

b) Costs of the application be provided for.

The grounds in support of this application are set out in the affidavit of Lukwago Joshua Kato dated 26th June 2019 which briefly states;

1. That the applicants are some of the grandchildren and beneficiaries to the estate of the late Kupuliano Lufo Bisase Kisosonkole, the former registered owner of the main suit land comprised in Kyadondo Block 185 Plot 653.
2. That the suit land was decreed to the applicants together with the rest of the grandchildren of the late Kupuliano Lufo Bisase Kisosonkole vide HCCS No. 248 of 2018 and Originating Summons No. 15 of 2018.
3. That in contravention of the court judgment, the 1st respondent purportedly bought part of the suit land from 2nd respondent, sometime in April 2019 after court had decreed the same land to the grandchildren of the late Kupuliano Lufo Bisase Kisosonkole.
4. That on the 24th day of June 2019, the respondents entered into the impugned consent judgment which affects the applicants' land together with the rest of the grandchildren of the late Kupuliano Lufo Bisase Kisosonkole.
5. That the applicants as direct beneficiaries to the suit land and the defacto owners thereof, have already filed the main application for review and setting aside the impugned consent judgment.
6. That the applicants have legitimate and well founded fears that before the disposal of the main application, the respondents shall have obtained the certificates of title to the suit land and transacted on them to the detriment of the applicants.

7. That the applicants have already filed an application for review and setting aside the Consent judgment vide Miscellaneous Application No. 404 of 2019 which is still pending in court but there are legitimate fears that before the disposal of the same application, the respondents may have obtained certificates of title to the suit land and dealt with them to the detriment of the applicants.
8. That it is fair and equitable that an interim Order is issued by court staying the execution and or implementation and or enforcement of the impugned consent judgment until and after the determination of the main application for review.

In opposition to this Application the Respondents filed two affidavits by both respondents briefly stating that;

1. The 1st applicant confirmed selling one quarter of the estate to enable him pay the debts and that he sold 5 acres of the recovered property.
2. That he sold 5 acres to the 1st respondent who later became impatient and sued him to enforce the agreement.
3. That later he agreed with 1st respondent and entered a consent agreement and he signed the same before the Registrar of court.
4. That he is advised by his lawyers that he is possessed with legal mandate to deal with the estate property to clear debts before distribution of the estate to the beneficiaries.
5. The 2nd respondent also confirmed having bought part of this land from the 1st respondent after conducting due diligence.
6. That the 1st respondent as a businessman he entered into a purchase agreement and a consent and paid 400,000,000/= with a view of subdividing the land and selling plots for a profit.

7. That on the 14th day of June, 2019, he was surprised with information in the land office that the 2nd respondent had signed mutation forms for subdivision of land for transfer into several persons in exclusion of his interest for the 5 acres.
8. That the 1st respondent is a bonafide purchaser for value of the suit property without notice of any irregularity or fraud whatsoever having purchased and said property lawfully from the administrator of the estate.

In the interest of time the respective court heard the brief submissions of the parties on 5th July 2019 and I have considered the respective submissions. The applicant was represented by *Mr Ambrose Tebyasa* whereas the 1st respondent was represented *Mr Katumba Chrizestome and Mr Kikomoko Saul holding brief for Kyeyago Edward*.

The applicant's counsel submitted that, the granting of an Interim injunction/interim stay is an exercise of judicial discretion as was discussed in the case of **Equator International Distributors Ltd vs Beiersdorf East Africa Ltd & Others Misc.Application No.1127 Of 2014**.

He mainly submitted that they have applied for review of the consent entered into between the respondent which has a direct effect of depriving the applicants of their ownership of land, the effect of the said consent is to cause a transfer of the land into the names of the 1st respondent. If the respondents are not restrained the main application for review pending before this court will be rendered nugatory.

The applicants' counsel further contended that there is eminent danger of transferring the land immediately. It was therefore fair that an interim measure preserving the status quo should be maintained until the determination of the main application.

The respondents counsel contended that 1st respondent will be inconvenienced more than the applicant since he paid 400,000,000/= and he is not a member of the family and yet the family have the remaining 20 acres that can be shared.

The 2nd respondent also argued that the interim sought is not necessary since the 2nd respondent sold the land to be able to pay the debts for the benefit of all the beneficiaries of the estate.

The grant of an interim remedy is an exercise of discretionary powers and is to be exercised judiciously as was noted in the case of **Yahaya Kariisa vs Attorney General & Another, S.C.C.A. No.7 of 1994 [1997] HCB 29.**

It should be noted that where there is a legal right either at law or in equity, the court has power to grant interim orders in protection of that right.

It is trite law that for an application to be maintained the court must be satisfied by the Applicant that there is a pending suit/application which raises triable issues.

The Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. **(See American Cynamide vs Ethicon [1975] ALL ER 504).**

The whole purpose of granting an interim order of injunction or stay is to preserve the status quo as was noted in the case of **Humphrey Nzeyi versus Bank of Uganda and Attorney General Constitutional Application No.01 of 2013.** Honourable Justice Remmy Kasule noted that an order to maintain the status quo is intended to prevent any of the parties involved in a dispute from taking any action until the matter is resolved by court. It seeks to prevent harm or preserve the existing conditions so that a party's position is not prejudiced in the meantime until a resolution by court of the issues in dispute is reached.

The applicants wish to maintain the said land status at the land registry to avoid creating third party claims or bonafide purchases before the determination of the main application for review of the consent Judgment.

The current state of the land in respect of its registration should not be altered by whatever description until the determination of the main application for review of the consent judgment entered in the main suit.

The court should always be willing to extend its hand to protect a citizen who is being wronged or is being deprived of property without any authority of law or without following procedures which are fundamental and vital in nature. But at the same time, judicial proceedings cannot be used to protect or perpetuate a wrong committed by person/persons who approach the court like the respondents who came to court with a sole purpose of depriving the applicants of the land after the court had ordered the 2nd respondent to surrender the said land to the applicants.

In the result for the reasons stated herein above this application succeeds and is allowed with costs.

An Interim Order issues staying the implementation, execution and or enforcement of a Consent Judgment vide Civil Suit 417 of 2019 sealed by court on the 24th day of June 2019, by way of transferring or registering the suit land comprised in Kyadondo Block 185 Plots 13804, 13810 and 13811 to the 1st respondent or doing any activity or transactions or whatever activity on the said land by the respondents on any part of the final determination of Miscellaneous Application No. 404 of 2019 for review of the Consent judgment.

It is so ordered.

SSEKAANA MUSA
JUDGE
12th/7/2019