

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 350 OF 2023**  
**(Arising out of Miscellaneous Cause No. 081 of 2023)**

**JUSTINIAN KATEERA.....APPLICANT**

**VERSUS**

**COMMISSIONER OF LAND REGISTRATION.....RESPONDENT**

**AND**

**1.KANGWA GODWIN LIMITED.....1<sup>ST</sup> INTERESTED PARTY**

**2.MICROFINANCE SUPPORT CENTER.....2<sup>ND</sup> INTERESTED PARTY**

**3.MAUDA KIMEIZI.....3<sup>RD</sup> INTERESTED PARTY**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This application is brought by way of chamber summons against the respondents and Interested parties under Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act Order 41 rule 1 & 2 and 9, Order 52 r 1 & 3 the Civil Procedure Rules for orders that;

1. *A temporary Injunction doth issue restraining the respondents, their servants, agents, workmen, representatives, or any other person acting under them from transferring, mortgaging, occupying, creating any encumbrance, interest or other transactions in respect of the land consisting of Buruli Block 173, FVR LUW 5, Folio 6 Plots 20, 21,22 land at Kitalesa and Nakiganda,*

*Buruli Block 173, LRV 45656 Plots 23, 24, 25, 26, 27,28 and 29, land at Kitalesa and Nakiganda (hereinafter referred to as the suit land), pending the hearing and determination of the application for judicial review*

2. *Costs of the Application be provided for.*

The grounds in support of this application are set out in the application and the supporting affidavit of Justinian Kateera which briefly states that:

1. That the applicant is a biological son and beneficiary of the estate of the late Jonathan Kateera, who died intestate on the 16<sup>th</sup> of September, 1995.
2. That he initiated proceedings for judicial review of the decision by the respondent to illegally remove his beneficiary caveat over the suit land and to subsequently transfer the said land.
3. That it is his claim that the 1<sup>st</sup> and 2<sup>nd</sup> respondents acted arbitrarily in removing the said beneficiary caveat without a court order and that unless restrained, will further alienate the property by creating further interests.
4. That he believes that the application for judicial review and substantive application has a high likelihood of success.
5. That he fears that the 1<sup>st</sup> and 2<sup>nd</sup> respondent will prior to the determination of the main application, attempt to further alienate the suit land by registering further interests thereon.
6. That if further alienated as feared above, the loss will not be atoned for in monetary terms.
7. That the respondent will not suffer any damage by the grant of the injunction.

8. That it is in the interest of justice that this application is granted.

***Whether the court should grant a temporary injunction?***

The applicant was represented by *Samuel Ssemwogerere* holding brief for *Edwin Tusiime* while the respondent was represented by *Ssekabira Moses and Arinaitwe Sharon*. The 1<sup>st</sup> interested party was represented by *Richard Rugambwa and Atukwasa Christine*, the 2<sup>nd</sup> Interested party was represented by *Ricky Mudaali*

**DETERMINATION**

The main question for this court to establish is whether in such circumstances the temporary injunction can still be justified. *See Regent Oil Co Ltd v JT Leavesley (Lichfield) Ltd [1966] 1 WLR 1210.*

The granting of a temporary injunction is an exercise of judicial discretion as was discussed in the case of *Equator International Distributors Ltd v Beiersdorf East Africa Ltd & Others Misc. Application No.1127 Of 2014*. Discretionary powers are 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 an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded. *Titus Tayebwa v Fred Bogere and Eric Mukasa Civil Appeal No.3 of 2009*.

It is trite law that for an application to be maintained three conditions must be satisfied by the Applicant as was discussed in the case of *Muhumuza v Attorney General & 2 Ors (Miscellaneous Application No. 449 of 2020) [2020] UGHCCD 185 (28 August 2020)*:-that the applicant must show a prima facie case with a probability of success, that the applicant might otherwise suffer irreparable injury which would not adequately be compensated by

an award of damages and if the court is in doubt, it would decide an application on the balance of convenience.

### **PENDING SUIT WITH TRIABLE ISSUES**

The legal principle upon which Court exercises its discretion to grant a temporary injunction in all actions pending determination of the main suit is now well settled as seen in the wealth of authorities. *See Associate Professor Ssempebwa and Anor v Makerere University (Miscellaneous Application No. 21 of 2021) [2022] UGHCCD 62 (14 April 2022)*

The law for granting a temporary injunction is section 64(e) of the Civil Procedure Act and general considerations for the granting of a Temporary Injunction are set out under Order 41 Rule (1) & (2) CPR.

An interlocutory injunction is a court order to compel or prevent a party from doing certain acts pending the final determination of the case. It is an equitable remedy that aims to preserve the status quo by preventing one party from committing, repeating, or continuing a wrongful act prior to the trial. It is an order made at an interim stage during the trial and is usually issued to maintain the status quo until judgment can be made.

For that reason, there must be a subsisting suit pending before the court, from which the application is sought, that forms the basis from which the interlocutory application arises. *See Simba Properties Investment Company Limited and Another v Kirunda and 3 Others (Miscellaneous Application No. 671 of 2022) [2022] UGCommC 37 (15 June 2022).*

In the instant case, the applicant filed an application for judicial review before this court challenging the removal of a beneficiary caveat that was lodged by the applicant and was allegedly removed by the respondent without the knowledge of the applicant who is a beneficiary of the said estate.

In the present case, the Applicant in the main application claims that the respondent acted illegally when his agents removed a beneficiary caveat which he had lodged without him being informed or without the due process being followed.

Therefore, the first requirement for the grant of this injunction succeeds since there is a prima facie case with triable issues which this court must interrogate in the main cause.

### **IRREPARABLE DAMAGE**

The other issue to look out for is that the applicant is likely to suffer irreparable damages which would not be adequately compensated by an award of damages. *See American Cyanamid Co v. Ethicon Limited [1975] AC 396; Geilla v Cassman Brown Co. Ltd [1973] E.A. 358 and GAPCO Uganda Limited v. Kaweesa and another H.C. Misc Application No. 259 of 2013.*

In this context, the term "irreparable" relates to the type of harm rather than its amount.

This part of the test will typically be met if the harm cannot be defined through the payment of money or if it cannot be easily computed or estimated.

Irreparable damage has been defined by *Black's Law Dictionary, 9th Edition page 447* to mean; "damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement." It has also been defined as a "loss that cannot be compensated for with money" *See City Council of Kampala v. Donozio Musisi Sekyaya C.A. Civil Application No. 3 of 2000*). The purpose of granting a temporary injunction is for the preservation of the parties, legal rights pending litigation. The court doesn't determine the legal rights to the property but merely preserves it in its current condition until the legal title or ownership can be established or declared. If failure to grant the injunction might compromise the applicants' ability to assert their claimed rights, for example when intervening adverse

claims by third parties are created, there is a very high likelihood of occasioning a loss that cannot be compensated for with money.

In order to establish that damages are not adequate, the innocent party will generally have to prove either that a) the subject matter of the contract is rare or unique or b) damages would be financially ineffective. Damages may be found to be an inadequate remedy in the following circumstances, among others: (a) the damage is impossible to repair; (b) the damage is not easily susceptible to be measured in economic terms; (c) the harm caused is not a financial one; (d) monetary damages are unlikely to be recovered; (e) an award of damages is inappropriate in light of the importance of the interest in issue; and (f) the harm has not yet occurred or the wrong is continuing. If there is an adequate alternative remedy, the claimant should pursue such a remedy. *See Uganda Electricity Distribution Company Limited v Citi Bank Uganda Limited and 2 Others (Miscellaneous Application No. 1397 of 2022) [2022] UGCommC 98 (22 December 2022)*

In the instant case, the applicant claims that if the respondent and the other interested parties are not stopped or restrained from dealing with the property pending the determination of the main application there is a likelihood that further interest in the property will be created hence making the results of main application moot as the interests of the applicant maybe defeated.

This court agrees with the respondent's submission that the estate or the other beneficiaries will suffer irreparable loss if the land is dealt with or third party rights are created before the determination of the main cause. Therefore, the second test is satisfied in this application.

### **BALANCE OF CONVENIENCE**

The third component of the test includes the court determining which of the parties will suffer greater harm from the granting or refusing of the injunction pending trial when it is uncertain how the results of its

examination of the first two elements will turn out. The court should consider whether to grant or reject the requested interlocutory relief based on the balance of convenience unless the information available to it at the time of the application hearing for an interlocutory injunction fails to show that the applicant has any real chance of succeeding in his or her claim at trial.

Balance of convenience was defined in the case of *Uganda Electricity Distribution Company Limited v Citi Bank Uganda Limited and 2 Others* by **Mubiru J** to mean comparative mischief or inconvenience that may be caused to either party in the event of refusal or grant of injunction. It is necessary to assess the harm to the applicant if there is no injunction, and the prejudice or harm to the respondent if an injunction is imposed. The courts examine a variety of factors, including the harm likely to be suffered by both parties from the granting or refusal of the injunction, and the current status quo as at the time of the injunction. The court should then take whichever course appears to carry the lower risk of injustice if it should turn out to have been “wrong.” It is thus necessary to weigh the balance of convenience for the public interest as well as the interest of the parties.

When determining where the balance of convenience lies, it is always important to consider the extent to which the disadvantages to each party would not be able to be made up for in damages even if they prevailed at trial.

In the instant case, if the status quo is not maintained, the damage suffered by the applicant would not be able to be quantified in monetary terms whereas the respondent and other interested parties would suffer no harm if the status quo is maintained as is.

Therefore, in the instant case, the balance of convenience is in favour of the applicant.

In the present case, the temporary injunction ought to be allowed maintaining the status quo until the main cause is heard and determined by this Court. The order shall be as follows;

*An Order of temporary Injunction doth issue restraining the respondent or interested parties, their servants, agents, workmen, representatives, or any other person acting under them from transferring, mortgaging, occupying, creating any encumbrance, interest or other transactions in respect of the land consisting of Buruli Block 173, FVR LUW 5, Folio 6 Plots 20, 21,22 land at Kitalesa and Nakiganda, Buruli Block 173, LRV 45656 Plots 23, 24, 25, 26, 27,28 and 29, land at Kitalesa and Nakiganda (hereinafter referred to as the suit land), pending the hearing and determination of the application for judicial review*

Costs shall be in the cause

I so Order

***Ssekaana Musa***

***Judge***

***27<sup>th</sup> September 2023***



