

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL APPEAL NO.4 OF 2019

5 ***[Arising out of Miscellaneous Application No. 2050 of 2019]***

[Arising from High Court Civil Suit No. 1046 of 2018]

VIVO ENERGY UGANDA LIMITED:..... APPELLANT

Versus

1. COMMISSIONER LAND REGISTRATION

10 **2. MUSHIGE MOSES KAMYA**

3. MUSHIGE ISAAC

4. HASSAN SENTAMU

5. ADMINISTRATOR GENERAL:..... RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

15

RULING

Introduction:

This is an appeal brought under ***Order 50 Rule 8 of the Civil Procedure Rules and section 79 (1) (b) of the Civil Procedure Act*** against the decision of the Deputy Registrar, ***His Worship Samuel Emokor***, delivered in
20 ***Miscellaneous Application No. 2050 of 2019***, where he declined to grant the appellant's application for a temporary injunction intended to stop the respondents or their agents or any person under their instruction or title from

transferring, evicting the appellant/applicant or in any way dealing with the suit property, until the final disposal of **High Court Civil Suit No.1046 of 2018**.

Background to the appeal:

5 The appellant sued the respondents jointly and severally in **High Court Civil Suit No. 1046 of 2018** for declarations that: cancellation of its lease comprised in **LRV 2093, Folio 20** without according it a fair hearing was illegal; the appellant is a *bonafide* purchaser for value; a consequential order directing the 2nd respondent herein to take note of the appellant's lease on the
10 suit land irrespective of the registered proprietor of the suit land.

The appellant thereafter filed **High Court Miscellaneous Application No. 2020** for a temporary injunction; and **Miscellaneous Application No. 2051 of 2018** for an interim order.

15 Since the hearing of the temporary injunction had started and had been concluded. **Miscellaneous Application No. 2051 of 2018** for an interim order was later abandoned; and dismissed by the Deputy Registrar on *18th February, 2019*.

In a ruling dismissing the main application, **Miscellaneous Application No.2050/2019** delivered on *18th February, 2020*, the Deputy Registrar
20 observed that the applicant/appellant did not meet the test necessary for the grant of a temporary injunction.

The appellant was dissatisfied with the order and lodged this appeal, on the grounds that:

1. *The learned Deputy Registrar had erred in fact and law when he found that the applicant would not suffer irreparable damage if successful in the suit because the suit property was quantified.*

5 2. *The Deputy Registrar erred in fact and law when he failed to consider the applicant's/appellant's evidence that it would suffer reputational damage which could not be quantified.*

10 3. *The Deputy Registrar erred in fact and law when he found that the burden fell on the applicant to demonstrate that the respondents did not have the ability to compensate it in the event they succeeded in the main suit.*

15 4. *The Deputy Registrar erred in fact and law when he found that the balance of convenience favoured the respondents because they had a certificate of title of the suit property and had snubbed efforts to regularize their possession of the suit land.*

20 The appeal is supported by an affidavit sworn by Mr. Michael Mafabi, an advocate of the High Court practicing under the firm **C/o M/s Sebalu & Lule Advocates and Legal Consultants.**

The respondents on the other hand opposed the appeal as shown in the two affidavits in reply sworn by the 2nd respondent, Mr. Musiige Moses Kamyia; and Mr. Musiige Isaac *alias* Khalid Kizza Kabanda, the 3rd respondents, filed respectively on 15th May, 2019 and on 16th May, 2019.

The 2nd respondent states that that there is no basis to challenge or vary the decision of the deputy registrar dismissing the application for a temporary injunction.

5 The 3rd respondent further deponed that the 2nd, 3rd and 4th respondents would be prejudiced if the appeal is granted as they would be further delayed from utilizing their land upon which they hold legal title. It would also imply that the court would be validating a transaction procured by fraud.

Consideration by court:

10 I have perused the record of appeal and the submissions of learned counsel on either side. I have also considered and made use of the authorities cited for purpose of guiding this court. Since however the four grounds are intertwined, I will consider them jointly.

The first appellate court has the duty to scrutinize the evidence adduced by each side and subject it to re-evaluation prior to drawing its own conclusions;
15 **(See *Banca Arabe Espanol Vs Bank of Uganda SCCA No. 1/1999*).**

The main point of contention in this appeal was that the Deputy Registrar of this court had erred when he ruled that the applicant/appellant failed to demonstrate that it would suffer irreparable injury since the loss was quantifiable.

20 Court further ruled that it was not the respondent's duty to show that it could afford to compensate the applicant/appellant in the event that it lost the suit. According to the appellant therefore, in dismissing the application court had

validated the very actions of the respondents which the appellant sought to challenge in the main suit.

The 2nd to the 4th respondents in return questioned the *locus* of the appellant to file the application, given the fact that the certificate of title of John Sentongo who had leased the land to the appellate company had been cancelled, and following which the respondents became the registered owners of the disputed land.

Citing the case of ***Mbogo vs Shah [1968] E. A 93***, that the grant or refusal of an order of a temporary injunction was an exercise in judicial discretion and an appellate court will not normally interfere unless the appellant satisfied court, which it had not done, that the trial court was manifestly wrong in exercising that discretion, resulting in the miscarriage of justice.

Furthermore, that the Deputy Registrar had been alive to the principles on which the injunction is granted or refused; correctly evaluated the evidence as presented. Accordingly, the appellant had no basis to fault that decision.

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 “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***).

In the case of ***Rashida Abdul Hanali & Anor vs Suleiman Adrisi*** ***Miscellaneous Application No. 011 of 2017*** court observed that the purpose of granting a temporary injunction is for preservation of the parties' legal rights pending litigation.

- 5 The court does not 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.

Thus if failure to grant the injunction might compromise the applicants' ability to assert their claimed rights over the land, for example when
10 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.

The possibility of irreparable loss is established as a real probability rather than a mere possibility in the event that the property is sold, transferred, disposed of, encumbered or in any other manner alienated by the registered
15 owners before determination of the suit. Such eventuality would result in compromising the applicant's ability to assert its acclaimed rights over the land.

Status quo is given the meaning of an existing state of affairs, things or circumstances during the period *immediately preceding* the interlocutory
20 application. (***Humphrey Nzei vs Bank of Uganda, CACA 001 of 2013***).

In dealing with the dispute arising out of this kind of application, an attempt must always be made to establish the actual *status quo ante* of the property

in issue, as at the time prior to the filing of the application. The order if it is to be allowed should not should not reverse but preserve the *status quo*.

Court must therefore as a key principle consider whether if the applicant were to succeed at trial in establishing its right to an injunction, he would be
5 adequately compensated by an award of damages for the loss he would have sustained as a result of the respondent's continuing to do what was sought to be enjoined between the time of the application and the time of trial.

Thus if damages recoverable at common law would be adequate remedy and the respondent would be in a financial position to pay them, no interlocutory
10 injunction should normally be granted. (***American Cyanide Co. vs Ethicon [1975] 1 ALL ER 504***).

As duly pointed out in the ruling, the issue of the respondents' ability/capacity to compensate the appellant only came out during
15 submission. It was however collateral to the concept of irreparable loss/injury and cannot therefore be ignored by this court.

Such injury can be incurred depending on the peculiar circumstances of each case, by a party who will be affected most if the contesting party is interested in or is placed in such a position as would allow him to sell, mortgage, transfer or in any other way alienate the property.

20 The basis for the decision by the Deputy Registrar in this case had been that at the time of filing the application the applicant/appellant company was in occupation of the land, but that the lease from which it had derived its claim

had been cancelled, and therefore non-existent leaving the appellant with no legal status.

With all due respect however, court at this stage would not be required to rule on the actual merits of the case. Thus having correctly ruled that there were indeed triable issues, the validity of the lease after the decision was made by the 1st respondent to cancel the title are the very reason why the parties were in court for the main suit.

It is not in dispute in this case that the appellant company has been in uninterrupted occupation of the premises since 2002. Thus any such threat or likely possibility of threat posed by registered owners against such existence while the matter is still pending determination may not only result in substantially altering the *status quo*.

It would also have an overall effect of rendering the main suit nugatory and at worst result in an eviction, a situation which may not be quantified in monetary terms and/or atoned for by an award of damages.

Based on the above therefore, the decision of the Deputy Registrar is hereby set aside and the orders below made along the following terms:

1. A temporary injunction is hereby issued restraining the respondents, their agents, workers, tenants or persons claiming under them, from engaging in any of act of selling, transferring, disposing of or through other ways alienating or creating encumbrances over the property until the final disposal of the suit.

2. The costs of this appeal shall abide the outcome of the main suit.

I so order.

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.....
Alexandra Nkonge Rugadya

Judge

23rd September, 2020.