

2831 and 3462 land at Kitovu Butembe County, Jinja District pending the determination of the Main suit.

- b) A Temporary Injunction doth issue restraining the 1st and 2nd Respondent from registering the new surveys and plots that were created in the names of Mudu Awulira Joshua for Plots 1439, 3844, 3845, 3846, 3847, 3848, 1443, 1451 and 3850 all on Block 3 Butembe County, Jinja District until the hearing and disposal of the main suit.
- c) Temporary order doth issue restraining the 1st and 2nd Respondents from cancelling the applicants certificate of title for land comprised in FRV JJA 102, Folio 2 Block3, Plots 3461 and FRV JJA 114 Folio 2 Plots 3490. 2826, 2827, 2828, 2829, 2830, 2831 and 3462 land at Kitovu Butembe County, Jinja District until the hearing and disposal of the main suit.
- d) Costs of this application be provided for.

In his affidavit in support of this of this application, the applicant deposes that he is the registered proprietor of FRV JJA 102, FOLIO 2, BLOCK 3, PLOT 3461 and FRV JJA FOLIO 2, PLOT 3490, 2826, 2827, 2828, 2829, 2830, 2831 and 3462 all situate at Kitovu Butembe County in Jinja District. It is his evidence that he purchased the said lands from the bibanja holders following which he carried out surveys and obtained certificates of title - copies of which he attached.

The Applicant states that he enjoyed quiet possession till he learnt that the 2nd Respondent had ordered cancellation of his certificates and was conducting fresh

surveys to issue new deed plans on the same land in favour of the 3rd Respondent vide 1/51/1 0940 PLOTS 3844,3845,3849, 3846, 3847, 3848, 3845 and 3850.

That the issuance of these certificates to the 3rd Respondent will render the head suit moot unless they are restrained because they are unlawful and unjustified. That the actions of the Respondents will in effect cancel his Certificates and proprietary interest in the land.

Further to the above he deposes that the 3rd Respondent continues to interfere with the quiet possession and occupation of the applicant and it was for that reason that the applicant filed the head suit which has triable issues with a high chance of success.

That the applicant stands to suffer irreparable loss if the application is not granted.

The first Respondent has never filed a defence nor did they put in a reply to this application which was properly served on them.

The second Respondent MAGEMESO IBRAHIM put in a reply but at the hearing the applicant withdrew the application against him.

His affidavit evidence is nevertheless on record and pertinent to a just decision being rendered here. For that reason it is relevant.

It is states that Plot Nos. 2826, 2827, 2829, 2830, 2831, 3461, 3462 and 3490, all in Butembe, have been cancelled. That in addition the application was only against registration of the said plots with the new plot numbers into the 3rd Respondent's

names; and the grant of this application would be to reinstate the applicant into plots which do not exist. For that reason the application should not be entertained by this court.

The 3rd Respondent is MUDU AWULIRA JOSHUA and he opposes this application. That the claim that the applicant owns the suit land is false and his dealings on it, including resurveying and duplicating deed plans, are illegal and did not confer any ownership rights.

That in 2011 following decades of his long customary possession the Respondent is in the process acquiring certificates of title for the land.

He deposes that he owns the suit land which he purchased in the 1960s and has been in possession and occupation to date. That the applicant has never been in possession. That for that reason the applicant has used his position of influence and power to arrest and torture the 3rd respondent in an attempt to force him off the land.

That the head suit is based on forged, fraudulent and illegal actions and it was right for the 2nd Respondent to cancel the illegal surveys and rectify the records in the registry.

That the balance of convenience is with the 3rd respondent who has been in possession since the 1960's and will suffer greater inconvenience if the application is granted. He avers that allowing the application will amount to his eviction from the suit land before hearing the suit on its merits.

I shall now turn to the merits of the application. The issue for resolution by this court is whether the applicant is entitled to the orders sought.

The parties were granted leave to file written submissions. The applicant filed but the 3rd respondent was late. The court however allowed him to make a late filing.

The submissions are on record and I will not reproduce them here, but will refer them as I proceed.

Grant of an order of Temporary Injunction is regulated by Order 41 of **The Civil Procedure Rules**.

The grounds for grant of the order of temporary injunction under this rule have been laid out in a number of cases and are:

- That there is a serious issue to be tried or investigated.
- That there would be irreparable damage or injury which cannot be adequately compensated by damages to the applicant if the relief is not granted.
- The Court would have to weigh where the balance of convenience lies.
- That where the other factors are balanced the Court would order that the status quo is preserved (See: **Kiyimba Vs Katende [1985] HCB 44**).

In looking at these grounds with respect to this application, the question in the first whether there are serious questions to be tried in the suit. It is answered in the affirmative. The suit raises serious questions regarding ownership of the suit property. This ground is proved.

The second question is whether there would be irreparable damage or injury which cannot be adequately atoned for in damages to the applicant. I will examine it in tandem with the one where the court must ask where the balance of convenience lies.

The applicant states that the 3rd respondent is interfering with his possession. The question of cancellation of the new surveys and registration appears to have been abandoned with withdrawal of the application against the 2nd applicant.

In my view this question ties in with the status quo of the land currently. I have examined the affidavit evidence and it is clear to this court that the 3rd respondent has shown that he is in actual physical possession of the suit land. Secondly the 2nd respondent had cancelled some of the certificates of title earlier granted to the applicant.

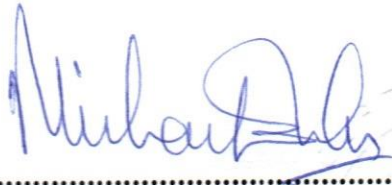
If the application was granted and orders issued as prayed for namely to restrain the 3rd respondent from trespassing on the land, it would amount to an eviction of the 3rd respondent and grant possession to the plaintiff / applicant. This court should not make such a grant at this stage before it has properly canvassed all the evidence from both sides in hearing and determination of the headsuit.

For that reason I find that there is no proof of irreparable damage that would be visited on the applicant as he is not in possession.

This court finds that justice would be best served by preserving the status quo pending resolution of the head suit. Therefore if any new registrations are on - going then they should be stayed.

Secondly the 3rd Respondent who is in possession shall remain so till final disposal of the head suit.

In sum this application is fails with costs.



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MICHAEL ELUBU

JUDGE

15/8/2017