

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA; AT KAMPALA**  
**(EXECUTION & BAILIFFS DIVISION)**  
**MISCELLANEOUS APPLICATION No. 2772 OF 2013**  
*(Arising from Execu. Misc. Cause No. 2153 of 2013)*

**1. ANGOPA DENNIS**  
**2. ANGOPA CHARITY ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANTS**

*VERSUS*

**MOSES ATWONGERE t/a BEST**  
**ASSOCIATED AUCTIONEERS ::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT**  
*(on behalf of BEATRICE KAGERE*  
**KIRUMIRA) }**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY –**  
**DOLLO**

**RULING**

This application, brought under the provisions of sections 98 of the Civil Procedure Act, and as well, 0. 52 rr.1, 2, 3, & 9 of the Civil Procedure Rules, seeks orders and declarations of this Court that: –

1. The Respondents vacate and open up premises comprised in Kyaddondo Block 261 Plot 721, situated at Lukuli Zone 5, Makindye Division, Kampala (herein after the suit property).
2. The Applicants are not affected by the General certificate of levy of distress for rent issued in Misc. Cause No. 2153 of 2013.
3. The Respondents are restrained from evicting the Applicants from, or disturbing the Applicants' quiet possession of, the suit premises.

4. The general certificate of levy of distress for rent given on the 2<sup>nd</sup> of December 2013 is vacated.

5. Costs of the application are provided for.

The grounds for the application, which are better set out in the affidavits sworn by the Applicants in support of the application, can be summed up that: –

(i) The applicants are beneficiaries of their late father's estate, which the suit property forms part of.

(ii) The Applicants, and their tenants have been in occupation of the suit premises.

(iii) Two of their siblings, contrary to the resolution made by their family, fraudulently obtained letters of administration of the estate of their late father; and thereafter purported to sell of the suit property to one Beatrice Kagere Kirumira.

(iv) The applicants have set in motion a number of legal actions seeking to overturn the impugned grant of letters of administration, and to set aside the sale of the suit property to Beatrice Kagere Kirumira.

(v) The Auctioneer (Respondent), acting for the said Beatrice Kagere Kirumira has thrown the Applicants and their properties out of the suit premises pursuant to a General Certificate issued by this Court in Misc. Cause No. 2153 of 2013, to levy distress against persons named therein; but those persons are not the Applicants, and are not residents of the suit premises.

Beatrice Kagere Kirumira, and the Auctioneer (Respondent) acting for her in the execution of the certificate for distress for rent, each swore an affidavit in reply. In both affidavits, they deposed that Beatrice Kagere purchased the suit premises from the administrators of the estate of the late father of the Applicants; and that when she increased rent, most of the tenants vacated the premises whereupon the

Applicants and some of their siblings entered therein without her consent. She further deposed that she lodged a complaint against the Applicants, with the police, for criminal trespass; and the Applicants risk being prosecuted.

When the matter came up for hearing, their Counsel raised a preliminary point that the application is incompetent for having been served on them beyond 15 days permitted by law; hence it should be thrown out with costs. Counsel has cited a number of authorities in support of the contention; and these, indeed, postulate the right principles of law. However, I think this preliminary point of objection ignores the fact that the pleadings by both the Applicants and the Respondent raise serious matters of illegalities. First, the Applicants allege that the suit property is their inheritance, and they are not in possession as tenants.

Indeed, Beatrice Kagere Kirumira, who purchased the property, corroborates this point that the Applicants were not tenants on the suit premises from which they have been thrown out. Second, the order in the certificate for distress of rent was not for eviction of the occupants. Third, the order in the certificate to levy for distress of rent was not directed against them; but instead against those from whom Beatrice Kagere Kirumira bought the property, and yet these persons were not in possession of the suit premises. The law enjoins this Court to investigate any allegation of illegality whenever it is brought to its attention; and in doing so, it must disregard all issues of pleadings. Accordingly, I overrule the points of objection raised herein; and shall determine the merits of the application.

It is quite apparent on the evidence that the matter before me is a family contest over inheritance. The right to levy for distress for rent only arises where there is a landlord/tenant relationship between the parties; and there is default in the payment of rent by the tenant. Here, the landowner herself states that the Applicants are illegal trespassers, and she obtained certificate of levy of distress against other persons. It is thus wrong to seek to evict the Applicants from the suit premises. The

proper course of action open to her is to bring civil action for their eviction from the premises. I notice that the Applicants have already taken Court action seeking to revoke the grant of the letters of administration to their siblings, and to recover the suit property from Beatrice Kagere Kirumira.

It would be wrong to allow the impugned certificate of distress for rent to stand in the circumstances. Court must always guard against issuing any certificate for levy of distress for rent where there is no clear evidence adduced before it, of a running tenancy between the landlord and a tenant; and further, there is no clear evidence of default in the payment of rent by the tenant. Since this is precisely the case in the matter before me, I allow the application; and set aside the impugned certificate for levy of distress for rent issued in Misc. Cause No. 2153 of 2013. The proper thing is for the parties herein to pursue the suits now pending in Court, to determine their respective interests in the suit property. I award costs of the application to the Applicants.



Alfonse Chigamoy Owiny – Dollo

**JUDGE**

**24 – 02 – 2015**