**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO. 750 OF 1993**

**ELIM PENTICOSTAL EVANGELIC FELLOWSHIP::::::::::::::::::::::PLAINTIFF**

**VERSUS**

1. **TARLOR SING SAGGU**
2. **SOHAN SINGH SAGGU:::::::::::::::::::::::::::::::::::::::::::::::DEFENDANT**

**BEFORE: THE HON. MR. JUSTICE G.M**.. **OKELLO**

This application was brought under 037 rr, l (a) (2) (3) and 9 of the CPR. for an order for a temporary injunction to restrain the Respondent/Defendant an£ or &is agent from evicting the applicant from the suit, property on Plots 30 and 52 William Street in Kampala. The application is based on the ground that £he Applicant/Plaintiff and the Respondent/Defendant have a dispute over the suit property in which the farmer claims equitable interest by of a purchase.

The applicant claims that he and the defendant/Respondent had entered into an agreement of sale in 1972 whereby the Respondent agreed to sell to the applicant the suit property and the applicant agreed to buy it. That the applicant in pursuance to that agreement paid to the defendant the full agreed purchase price of the suit property. That since then the applicant has been in peaceful possession of the property. But that the Respondent/Defendant has now threatened eviction of the applicant from the suit property. The applicant claims that he will suffer irreparable damages if he was evicted from the property before the head suit was heard and decided.

The application was supported by two affidavits; - One sworn m by Isaac Wasswa of P. O. Box 30027 Kampala on 21/10/93 and another Iganatius Malinga of p. 0. Box 7604 Kampala on 25/10/93.

It is an established principle that this courtwill grant, a temporary injunction if the applicant shows to the satisfaction of the court.

1. that he has a prima facie case with a probability of success in the head suit.
2. that he will suffer irreparable damage if the temporary injunction was refused. If the court was in doubt on the question of damages to decide the issue on the balance of convenience of the parties. See.Giela vs. Caseman Brown & Ltd. (1975) EA 358.

In the instant case, I had the chance to peruse the supporting affidavits, and listen to the address of counsel for the applicant. The affidavit of Wasswa shows that the applicant purchased the suit property from the defendant and paid the full purchase price. This is a triable issue and agrees with counsel for the applicant that the applicant has a prima facie case with a probability of success.

The affidavit farthershows that the applicant had since 1972

been in a peaceful possession of the suit property and had, since been running thereon a school known as Kampala Grammar Secondary School for both ‘0’ and 'A' Level offering both Arts and Science subjects.

The affidavit of Malinga shows that ‘0’ Level students will start their U.C.E. examinations tomorrow. That if the temporary injunction was not granted and the applicant was evicted, the ‘0’ level students who are due to start their examinations would then not sit their examinations.

That this would cause irreparabledamages to the applicant, I share

that sentiment. At least the inconvenience which refusal to grant the will be greater

temporary injunction will present to the plaintiff than that which the Respondent will suffer by the grant of the temporary injunction.

The Respondent was not served with the c/summons as required by r. 3 of 037 ofthe C.P.R. The applicant sought to dispense with such service for fear of immediate danger of his eviction, I considered the unique circumstances of this case, and agreed that service of the c/summons to the Respondent would present an immediate serious risk of eviction of the Applicant by the Respondent and this would seriously affect the students who are due to start the examinations tomorrow. Consequently I allowed the application to proceed exparte.

A11 in all I satisfied that this is a proper case in which temporary injunction should be granted to maintain the status quo until the main suit is heard and determined, The temporary injunction is therefore granted as prayed. The applicant is to bear the cost of this Application.



**G.M. OKELLO**

JUDGE

26/10/93.