

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
(LAND DIVISION)

MISC. APPLICATION NO. 534 OF 2023

ARISING FROM MISC. APPLICATION NO. 0535 OF 2023

ALL ARISING FROM CIVIL SUIT NO. 0219 OF 2023


MUTABINGWA TONNY:::APPLICANT

VERSUS


1. KIZITO DAVID
2. NSUBUGA ANGELLO
3. KATE TEDDY
4. KAGGWA CHRISTOPHER Alias CHRISESTOM
5. NAMIREMBE DAPHINE
6. NANKYE JUSTINE
7. COMMISSIONER LAND REGISTRATION::::::::::::RESPONDENTS

BEFORE HIS WORSHIP KINTU SIMON ZIRINTUSA  
(ASSISTANT REGISTRAR)

RULING

  
29/03/23

The applicant Mutabingwa Tonny filed this application against the respondents for orders that an Interim Order of Injunction does issue restraining the respondents, their agents, legal representatives, assignees, servants and any persons deriving authority from them from forcefully entering the suit land, developing by way of construction, felling bricks and other construction materials, selling, subdividing and or transferring the suit land and or dispose it off in any other manner and or deal in land comprised in Kyadondo Block 244 Plots 8705, 8706, 8707, 8708, 8709, 8710, 8711, 8712, 8713, 8714 and 8715 land at Kisugu Kampala City, formerly Kyadondo Block 244, Plot 8328 land at Kisugu (herein after called the "suit land") until the main application for Temporary Injunction is heard and

  
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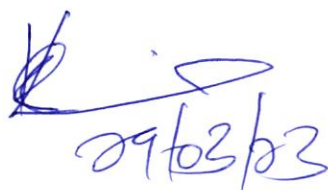
finally disposed of and that costs of the application be provided for.

The application was supported by the affidavit of the applicant and another in rejoinder.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent each swore affidavits opposing the application but the contents were very similar in nature.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents did not reply to the application but appeared in person in court, which implies that they concede to the application.


The 7<sup>th</sup> respondent, Commissioner Land Registration did not file an affidavit in reply but appeared in court through an Advocate and intimated that they do not intend to oppose the application.



A handwritten signature in blue ink, followed by the date 29/03/23.

The respondents raised preliminary points of law regarding first, to the applicant referring to Block 274 Plot 1051 land at Mpunga (Wakiso), in paragraph 30 of his affidavit in support making the affidavit prolix, secondly that the Annexure to the affidavit in rejoinder (Police report) is not commissioned and offends Section 5 of the Oaths Act and Section 5 of the Commissioner for Oaths Act and the author of the same has not sworn an affidavit in support of the same.

The said preliminary objections were overtaken by events as the respondents' counsel partly conceded to part of the application and secondly the suit land was clearly identified in the notice of motion.


  
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The police report was used by the respondents in their reply as part of their evidence and which implies it is not a contested document anymore and therefore admitted.

The 1-3 respondents further stated that they do not oppose the applicants prayers as regards subdividing, transferring the suit land or disposal of the same and that they oppose the rest as they are in possession.

As far as interim applications for injunctions are concerned, the parties both agree that there is a pending application for Temporary Injunction fixed before this court.

The applicant in his affidavit in support stated that he bought the suit land from one Ndagire Annet and had the land registered in his names and that on 02/02/2023 took over possession of his land, graded the same and fenced it


  
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off to begin carrying out developments and that the same does not form part of the graveyard. That he was shocked after a few days of his possession that the respondents were claiming beneficial interest over the suit land.

That the respondents further made a complaint to the Minister of Lands, Housing and Urban Development who on Sunday March 19, 2023 came to the suit land and halted all his activities thereon without any court order.

That he is currently in possession of the suit land but continue to be inconvenienced by the respondents thus seeking the order of this court.


That the respondents intend to once again illegally and enter upon the suit land with intentions of staying there forever.

  
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That if the application is not granted, the main application for Temporary Injunction and main suit will be rendered nugatory.


The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in their respective affidavits in reply stated that the suit land belonged to their late father Yosefu Nsubuga and upon his demise, he was succeeded by their late brother G.R Nsubuga who was registered on the title as the Administrator on 21/07/1999 and passed on 19/06/2021 and by then there was no claim over the land.

That they were shocked on March 04, 2023 when a group of Kanyamas invaded their land, demolished their house, destroyed crops, excavated their graves and fenced it off with iron sheets and so they reported a case of criminal trespass to police who did not help them.

  
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That is not true that the applicant is in possession of the suit land as his invasion was stopped by the Minister of Lands, Housing and Urban Development on 19/3/2023 and that the current status quo is that they are in possession with the protection of Uganda Police Force. That the suit land also has their ancestral graveyards and that the application be dismissed against the applicants. The parties presented oral arguments in support of their cases.

I have evaluated the evidence and the law regarding Interim reliefs which are granted at the discretion of court under the courts inherent powers under Section 98 CPA and the purpose is to preserve the right to be heard in the main cause which is MA-535/2023 fixed for 25/04/2023 and the purpose is to preserve matters in status quo.

  
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As regards the graveyard, it is clear that the same does not form part of the suit land but found on Kyadondo Block 244 Plot 8324 at Kisugu and that it is now registered in the names of Kaggwa Christopher the 4<sup>th</sup> respondent, Namirembe Daphine the 5<sup>th</sup> respondent and Nankya Justine the 6<sup>th</sup> respondent. Therefore, the graveyard does not form part of the suit land.

From the evidence on record paragraph 9 of the affidavit in support, the applicant took over possession of this suit land, graded it and fenced it off and put private security on 02/02/2023 and the respondents state that the applicant invaded the land on 04/03/2023 and fenced it off until the Minister intervened and ordered the applicants workers to leave the land and ordered police to guard the same but all

  
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shows that the applicant is in possession as he graded the same and fenced off the land having been ordered to stop his activities does not imply that the suit land was handed to the 1<sup>st</sup> to 3<sup>rd</sup> respondents as there is no evidence to that effect. The status quo is that the applicant took possession of the suit land, fenced it off and that is the status quo to preserve.

Since the applicant took possession on the suit land, there is a threat/fear put forward by the applicant that the 1<sup>st</sup> to 3<sup>rd</sup> respondents may forcefully take on the suit land and since the respondents concede to part of the application, it is important to issue an Interim Order not to render the main application nugatory.



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Application is therefore granted as prayed with costs in the  
cause.



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**KINTU SIMON ZIRINTUSA**  
**(ASSISTANT REGISTRAR)**  
29/03/2023

