

1. KATUNKU EDWARD
2. KATUNKU MILLICENT
3. KAABYA NICHOLAS
4. MWATI PAUL
5. BULAGI RUTH GIFTAPPLICANTS
6. KANTUNKU ZEPHANIA
7. NAMUNYONJO JOSEPH KATUNKU
8. GIMBO EDITH MARY KATUNKU
9. GIMBO PAMELA

1. KATUNKU JOSHUA STEVE
2. HASSAN HASHIM..... RESPONDENTS
3. MWIMA FAIZAL MBALE DISTRICT LAND BOARD
4. COMMISSIONER LAND REGISTRATION

RULING

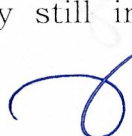
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155, Folio 22, Plot 33-35 located at Hospital Cell, Palisa Road, Mbale pending the hearing and determination of Civil Suit No. 73 of 2022;

(b) A Temporary injunction doth issue restraining the Respondents from interfering with the Applicants' possession and use of the suit land and also restraining the 2nd Respondent from transferring, selling or in any way disposing of the suit land pending the determination of Civil Suit No. 73 of 2022;

(c) Costs of the Application be provided for.

2. This Application is supported by the affidavit of Katunku Edward (the 1st Applicant) and briefly averred as follows-
3. That the Applicants filed a Civil Suit pending hearing against all the Respondents in the High Court vide Civil Suit No. 73 of 2022 for among others permanent injunction and cancellation of a certificate of title comprised in registered land formally described as LRV 428 Folio 14 Plot 33/35 Palisa Road, Mbale now described as FRV MBA 155, Folio 22, Plot 33-35 located at Hospital Cell, Palisa Road, Mbale which was fraudulently obtained by the 2nd Respondent.
4. The Applicants alleged that the suit land belonged to their late mother Edith Mary Katunku and they have been in possession of the suit land since 1986 to date. However, the 2nd Respondent in a bid to unlawfully evict them connived with the officials of Mbale city council to file Mbale High Court Civil Suit No. 23 of 2024 against the 2nd Respondent for a demolition order which order was granted by this court on 3rd May, 2024 on the basis of the consent of the parties.
5. That the demolition was indeed conducted on 24th of May, 2024 at 4:00 am and all the Applicants' properties and those of their tenants were destroyed and are now homeless. After the demolition, the Respondents attempted to take possession of the suit property hence the Application for temporary injunction to restrain them from taking possession since the Applicants are legally still in possession despite the unlawful demolition.



6. The 1st Applicant further averred that if any of the Respondents is allowed to take possession, it will be an abuse of court process and cause the Applicants to suffer irreparable damage incapable of any monetary compensation.
7. He argued that the status quo is in favour of the Applicants because the demolition order was granted in the disguise that the Applicant's property caused nuisance and was inhabitable yet they have been in possession of the same without any warning from Mbale City.
8. He added that the main suit discloses a prima facie case against all the Respondents since all the Respondents unlawfully and fraudulently obtained the certificate of title in respect of the suit property.
9. That it is in the interest of justice that the temporary injunction is granted to maintain the status quo to let the Applicant continue being in possession of the same and restrain the Respondent from taking possession of the property till disposal of the main suit.
10. **Affidavits in reply**
11. This Application was replied to by the 1st, 2nd and 3rd Respondents. I will consider them below.
12. **Affidavit in reply by the 1st Respondent.**
13. The 1st Respondent averred that the Application or suit does not disclose a cause of action against him, it is fatally defective, full of falsehoods and hearsay and should be struck off the court record.
14. He contended that the Applicants are not in possession as alleged. The 1st Respondent averred that the Applicants are seeking to protect their interest and process which ceased to exist on 15th July, 2019 when their late mother Katunku Edith Mary before her death sold her interest as an occupant in the suit land to Abubakar Abdulrahman who also sold the same to the 2nd Respondent and the same does not form part of the estate of their mother Katunku Edith Mary.
15. The Respondent stated that the 1st Applicant stays in half London, Industrial City Division, Mbale City and does not stay on the suit

property. The 2nd Applicant stays in Kireka, Kira Municipality in Kampala and does not stay on the suit property. The 3rd Applicant stays in half London, Industrial City Division, Mbale City and does not stay on the suit property. The 4th Applicant stays in Kadama Township, Kibuku District and does not stay on the suit property.

16. The 5th Applicant stays in Kadama Township, Kibuku and does not stay on the suit property. The 7th Applicant stays in ADRA Maluku estate Industrial City Division, Mbale City and does not stay on the suit property and the 9th Applicant stays in Bujoroto, Northern City, Division, Mbale City and does not stay on the suit property.

17. He said that the balance of convenience is in dismissing this Application as the 2nd Respondent is the registered proprietor of the suit property, in possession of the same whilst paying all the government dues to the statutory bodies.

18. That the Applicants have not demonstrated how they will suffer irreparable injury and have not proved that the suit land is in danger of alienation or wasted damage as required by law.

19. He added that the status quo to preserve is that the 2nd Respondent is the registered proprietor and had tenants on the suit land namely Jaramba Uthuman, Samanya Hassan and Namilengo Joel among others at the time when the building was condemned by the authorities.

20. The 1st Respondent stated that after the demolition of the dilapidated structure, possession of the suit land was maintained by the 2nd Respondent who put iron sheets to stop idlers who were gaining access but unfortunately, the same were illegally removed by the Applicants on the instructions of their lawyer.

21. He prayed that the application be dismissed with costs to the Applicants.

22. **Affidavit in reply by the 2nd Respondent**

23. The 2nd Respondent in his affidavit in reply raised three preliminary objections to the effect that- the Application does not disclose any

reasonable cause of action against the Respondent, that the Application is incompetent and misconceived and that the Application is fatally defective.

24. He further contended that the contents in HCCS NO. 073 of 2022 which is pending hearing are partly true but the allegations of fraud are untrue.

25. He said that he was not part of Civil Suit No. 23 of 2024 which culminated into demolition of the property and the grant of the court order to Mbale City was on the grounds of public and health safety.

26. The Respondent contended that according to annexure "C" and "D" to the affidavit in support, the status quo is already tampered with by virtue of lawful existing court orders and there is nothing to stay in this Application.

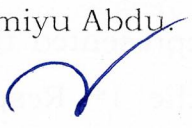
27. The 2nd Respondent averred that he acquired a loan facility and tendered his certificate of title in respect of the suit property as collateral and the same is on the verge of accumulating which shall cause more damages to him than any other party to this suit.

28. He said that the balance of convenience and irreparable damages are in his favour as the same can easily be atoned to the Applicants hence the 2nd Respondent ought to be granted a remedy for security.

29. He averred that the Application does not raise sufficient grounds and has failed to disclose all the ingredients required to warrant its success hence, it ought to be dismissed with costs to the Respondent.

30. **Affidavit in reply by the 3rd Respondent**

31. The 3rd Respondent averred that he and the Applicants have interest in the suit land comprised in Plot 33-35 Palisa Road. He said the suit property was formerly an expropriated property managed by the Departed Asian Property Custodian Board (DAPCB) and in 1975, the property was allocated to Katinku Edith Mary, Matovu Henry Peter, Mugisha Simon and Kimiyu Abdu.



32. He contended that Matovu Henry Peter was allocated Plot 33/35D, Kimiyu Abdu was allocated Plot 33/35A, Katunku Edith Mary was allocated Plot 33/35B and Mugisha Simon was allocated Plot 33/35C and they all took possession of their respective allocations as sitting tenants of the Departed Asian Custodian Board (DAPCB) from 1975.
33. The Respondent stated that the contents in paragraph 7 and 8 of the Applicants are admitted to the extent that his tenants were evicted since they were paying rent to him for the part they were renting.
34. That in 2019 he purchased the interest of Matovu Henry Peter, Mugisha Simon and Kimiyu Abdu which formed 75% of the entire suit property and the same was allocated to him on the 26th of September, 2019 from the predecessors in title and he has been in quiet possession since then.
35. The 3rd Respondent averred that the 1st Respondent illegally registered Plot 33/35 Pallisa Road in his names and later transferred it to the 2nd Respondent. He added that the 1st, 2nd, 4th and 5th Respondents and their agents unlawfully demolished the property and should be restrained from taking possession of the same.
36. He further averred that the temporary injunction order should be issued against the 1st, 2nd, 4th and 5th Respondents to restrain them from taking possession or using or doing anything on the suit land until the determination of the main suit.
37. **Issues for this court's determination**
- (a) *Whether there are grounds for granting this Application for a temporary injunction pending the determination of the main suit*
- (b) *What remedies are available to the parties?*
38. **Legal representation**
39. Counsel Were Sefiyu represented the Applicants whereas counsel Allan Molly represented the 1st Respondent, counsel Wasige Sefu represented the 2nd Respondent and Counsel Imam Ali represented the 3rd Respondent. The 4th and 5th Respondents were not represented.

40. **Submissions**

41. This Application proceeded by way of written submissions. The Applicants and 1st, 2nd and 3rd Respondent complied. I will consider their submissions in the determination of this ruling.

42. **Analysis of court**

43. I have carefully studied the court record and noted that the 1st and 2nd Respondents raised some preliminary objections which I will consider later in the body of this ruling.

44. I further noted that prior to this Application, the Applicants instituted two Applications for temporary injunction and the same were dismissed to wit- Misc. Application No. 409 of 2022 and Misc. Application No. 16 of 2023. Misc. Application No. 409 of 2022 was dismissed because the affidavit in support was struck out for being incompetent which rendered the Application unsupported and Misc. Application No. 16 of 2023 was allegedly dismissed due to lack of merit. (See: Paragraphs 20, 21 and 22 of the 1st Respondent's affidavit in reply.)

45. In the view of the above averments, counsel for Applicants referred this court to the case of **Nalongo Estate Ltd V. KCC & Others Misc. Application No. 256 of 2017** where it was stated that one can file a fresh application if there is new evidence that was not available during the previous application and there is change in the circumstance.

46. Counsel argued that there is new evidence and material change in the circumstances since the previous application was disallowed and the suit property is already demolished and the 2nd Respondent wants to take possession by way of construction hence, it's upon that basis that they filed this Application.

47. To add on the above submission, Misc. Application No. 409 of 2023 was dismissed due to the defect in the affidavit in support. Which by implication means that one could correct the defect in the affidavit and apply afresh.



48. Secondly, like it has been submitted by counsel, at that point there was no threat of changing the status quo which is not the position now.

49. It is therefore the finding of this court that this Application is competent before court.

50. I will now determine the merit of the application.

51. ***Issue No. 1: Whether there are grounds for granting this Application for a temporary injunction pending the determination of the main suit***

52. Order 41 rule 1 of the Civil Procedure Rules SI.71-1 provides that-


"Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any property to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders."

53. In **Giella vs. Cassman Brown & Co Ltd [1973] 1 EA 358** Spry VP at 360 held that-

"The conditions for the grant of an interlocutory injunction are now I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."



54. The above principles will guide this court in the resolution of this application.

55. **Prima facie case with the probability of success.**

56. In the case of **Digital Solutions Ltd versus MTN Uganda Ltd Miscellaneous Application No. 546 of 2004** on page 4, Court stated that, the Applicant must show a prima facie case with a probability of success and in showing that the Applicant has a prima facie case, ***“Court must be satisfied on the basis of the material availed at this stage that there are serious questions to be tried between the parties with a probability that the question will be decided in favor of the Applicant”.***

57. In the present case, the Applicants averred under paragraphs 6 and 7 of the affidavit in support that the suit land belonged to their late mother Edith Mary Katunku and that they have been in possession of the same since 1986 to date. The Applicants’ averment was buttressed by the 3rd Respondent’s affidavit in reply who stated under paragraphs 6 and 7 that the suit property was formerly an expropriated property managed by the Departed Asian Property Custodian Board and in 1975 the land was allocated to Katunku Edith Mary, Matovu Henry Peter, Mugisha Simon and Kimiyu Abdu. The mentioned individuals were allocated Plot 33.35B, 33/35D and 33/35C respectively.

58. The above fact was further confirmed by the 1st Respondent’s affidavit. Under paragraph 10 the 1st Respondent stated that the Applicants are seeking to protect their interest and process which ceased to exist on 15th July, 2019 when their late mother Katunku Edith Mary before her death sold her interest as an occupant in the suit land to Abubakar Abdurahman who also sold the same to the 2nd Respondent.

59. In Civil Suit No. 073 of 2022 the Applicants are seeking for a declaration that the certificate of title comprised in FRV MBA 155 Folio 22, Plot 33-35, land at Hospital Palisa Road, Mbale in the name of the

2nd Defendant was fraudulently obtained, a declaration that the certificate of title comprised in FRV MBA 155 Folio 22, Plot 33-35, land at Hospital Palisa Road, Mbale be cancelled and an order declaring that the property comprised in FRV MBA 155 Folio 22, Plot 33-35, land at hospital Palisa Road, Mbale still forms part of the estate of the late Katunku Edith Mary to which Plaintiffs are beneficiaries among others.

60. Therefore, in the view of the above averments and the prayers sought in Civil Suit No. 73 of 2022, I am satisfied that there is a serious question to be tried between the parties with a probability of success.

61. **Irreparable Injury**

62. In **Kiyimba Kaggwa V. Katende (1985) HCB 43**, it was stated that-
“Irreparable injury does not mean that there must not be physical possibility of repairing injury, but means that the injury must be a substantial or material one, that is, one that cannot adequately be compensated for in damages”.

63. The Applicants averred under paragraph 10 of the affidavit in support that if any of the Respondents is allowed to take possession, it will cause them irreparable damage incapable of any monetary compensation.

64. The Applicants added under paragraphs 7 and 8 of the affidavit in support that they were in possession of the buildings that were on the suit land prior to the demolition of the same by the 4th and 2nd Respondents on 24th of May, 2024.

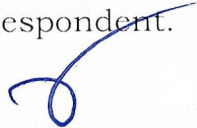
65. From the averments analyzed in the 1st ground, it is clear that the Applicants have been in possession of the suit land since 1986 to date. This would therefore mean that whatever development that is likely to be put on the suit before the determination of Civil Suit No. 73 of 2022 will cause the Applicants to suffer irreparable injuries.

66. **Balance of Convenience.**

67. In the present case, I note that the 2nd Respondent is the registered proprietor of the land in dispute. There is however no clear evidence to

indicate that he took possession of the suit land save for holding the certificate of title which was issued to him on 7th of July, 2022 since the Applicants have been in possession from 1986 to date.

68. The 2nd Respondent averred under paragraph 6 of his affidavit in reply that he acquired a loan facility in respect of the suit land as collateral and the same is on the verge of accumulating which shall cause more damages to him than any other party.
69. I have however looked at the loan documents and noted that the alleged loan was issued on 12th December, 2023 after the Respondent had filed his written statement of defence in respect of Civil Suit No. 073 of 2022. This was not proper, and the same cannot be a basis for denial of this application.
70. In the circumstance, I find that the balance of convenience is in favour of the Applicants who have been in possession of the suit land since 1986 to date.
71. **Status Quo.**
72. It is settled law that the grant of temporary injunction is an exercise of court's discretion for purposes of maintaining the status quo. **(See Kiyimba Kaggwa V. Katende Supra)**
73. According to the Applicant's averments, it is apparent that the status quo was tampered with following the court order which was issued on 3rd of May 2024. That order led to the demolition of the structure which was on the suit land.
74. However, since the demolition was conducted in the presence of the pending Civil Suit No. 073 of 2022 in court, the status quo of the suit land shall be maintained in favour of the Applicants who were in possession before the demolition, but no permanent developments shall be made thereon until final determination of Civil Suit No. 073 of 2022.
75. I therefore agree with the submissions of counsel for the Applicants and counsel for the 3rd Respondent.



76. Nonetheless, the 2nd Respondent averred in his affidavit in reply that this application does not disclose a cause of action, incompetent or misconceived and fatally defective. However, considering my discussion in the body of this ruling, the alleged preliminary objections are overruled.

77. In the upshot, this Application accordingly succeeds in the terms below-

- (a) A temporary injunction is issued restraining all the Respondents from taking possession and evicting the Applicants from the suit property comprised in registered land formally described as LRV 428 Folio 14 Plot 33/35 Palisa Road, Mbale now described as FRV MBA 155, Folio 22, Plot 33-35 located at Hospital Cell, Palisa Road, Mbale pending the hearing and determination of Civil Suit No. 73 of 2022.
- (b) A temporary injunction is issued restraining the Respondents from interfering with the Applicants' possession and use of the suit land.
- (c) A temporary injunction is issued restraining the 2nd Respondent from transferring, selling or in any way disposing of the suit land pending the determination of Civil Suit No. 73 of 2022.
- (d) The Applicants shall not make any development on the suit land until determination of Civil Suit No. 073 of 2022.
- (e) Costs of this Application are awarded to the Applicants.

I so order.


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LUBEGA FAROUQ
JUDGE

Ruling delivered via the email of the parties on 30th day of August, 2024