

**THE REPUBLIC OF UGANDA**

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

**[FAMILY DIVISION]**

**CIVIL APPEAL/APPLICATION NO. 06 OF 2023**

**(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 1087**

**OF 2022)**

**(ARISING FROM CIVIL SUIT NO. 473 OF 2022)**

**KALIBWANI RODGERS KISANIRA ::::::::::::::: APPELLANT**

**VERSUS**

**1. SSENTONGO LIVINGSTONE**

**2. NASALA YUSUFU ::::::::::::::: RESPONDENTS**

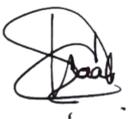
**3. MUGERWA EDWARD KATO**

**RULING BEFORE: HON. LADY JUSTICE CELIA NAGAWA**

**1.0 Introduction.**

1.1 This is an Appeal brought by Notice of Motion under **Section 76(1) (h) and Section 98 of the Civil Procedure Act, Cap. 71, Order 50 Rule 8 and Order 44 Rules 1(q) of the Civil Procedure Rules SI 71-1** as amended seeking orders that;

- a) The ruling delivered on 11<sup>th</sup> September, 2023 by the learned Deputy Registrar allowing the Miscellaneous Application for an order of temporary injunction to be set aside.



- b) The Application for Temporary Injunction as brought in Misc. Application No. 1087 of 2022 be dismissed.
- c) Costs of this appeal and Miscellaneous Application No.1087 of 2022 be provided for.

1.2 The grounds on which the Application is based are set out in the Affidavit of the Appellant, briefly that;

- a) The learned trial Deputy Registrar erred in law in allowing the Respondents' Application in total disregard of the law and based on the wrong principles of the law.
- b) The learned trial Deputy Registrar erred in law and fact when he found that the Respondents had proved irreparable damages in the affirmative.
- c) The learned trial Deputy Registrar erred in law and fact when he proceeded without evidence on record in determining that there are irreparable damages in the affirmative.
- d) The learned trial Deputy Registrar erred in law and fact when he proceeded without evidence on record in determining that there was irreparable loss, the balance of convenience was in favour of the Respondents thereby granting the temporary Injunction.
- e) There are triable issues of law and fact raised in this case.
- f) It is in the interest of justice that the order for Temporary Injunction granted in Miscellaneous Application No. 1087 of 2022 be set aside.
- g) This Appeal has been brought without any inordinate delay.



h) It is fair, just and equitable that this Application is granted to prevent a total miscarriage of justice occasioned onto the Appellant.

1.3 The Respondents were served and an Affidavit of Service is on file deponed by Bitigale Augustine of M/S Kasumba & Kugonza & Company Advocates, Kampala filed on 2<sup>nd</sup> March, 2014.

1.4 The Respondents filed an Affidavit in Reply on 18<sup>th</sup> March, 2024 in opposition to this Application stating that;

a) The facts pleaded were never raised in Miscellaneous Application No. 1087 of 2022 therefore there cannot be a basis of appeal.

b) That two grants vide Administration Cause No. 293 of 2006 and Administrative Cause No. 848 of 2019 were issued by the same court over the same deceased person the Late Erukana Mirundi, hence the need for the temporary injunction.

c) The grants were made by the Court and it's immaterial to move the court to visit Locus to ascertain the same.

d) That the trial Deputy Registrar did not occasion any miscarriage of justice and the order should be upheld in Miscellaneous Application No. 1087 of 2022, and the application should not be dismissed with costs.

### **3.0 Background.**

3.1 The Respondents filed Miscellaneous Cause No. 1087 of 2022 for Orders that a Temporary Injunction doth issue against the Appellant, his agents, servants or any servants acting on his behalf preventing them from carrying out any activity or any developments, alienating or disposing of the suit land



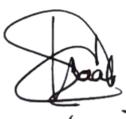
comprised in Block 364 Plot 6 Land at Bulenga, Block 211 Plot 01 Land at Kitotoro, Kakiri, Block 531 Plot 46 Land at Sogoleko, Singo Mityana District, Block 478 Plot 5 Land at Singo Mityana, Block 14 Plot 533 Land at Deeba Kibuga, Block 22 Land at Kitororo, Kakiri Town Council Wakiso District, and further restrain any dealings on the suit property of the Estate of the late Erukana Mirundi until the determination of the main suit.

3.2 Upon hearing the application, the Deputy Registrar granted the order of temporary injunction and the appellant was dissatisfied with this decision hence the current Appeal.

#### **4.0 The Grounds of the Appeal.**

1. The Learned Deputy Registrar erred in law in allowing the Respondents' Application in total disregard of the law and based his decision on the wrong principles of the Law.
2. The Learned Trial Deputy Registrar erred in law and fact when he found that the Respondents in their Application had proved that irreparable loss would be suffered by them if the order was not granted.
3. The Learned Trial Deputy Registrar erred in law and fact when he determined the issue of balance of Convenience after determining the issue of prima facie case and irreparable damages in the affirmative.
4. The Learned Trial Deputy Registrar erred in law and fact when he proceeded without any evidence on record in determining that there is irreparable loss, the balance of convenience was in favour of the Respondent and granting the Temporary Injunction.

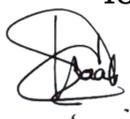
#### **5.0 Duty of the first Appellate Court**



- 5.1 It is the duty of the first appellate Court to appreciate the evidence adduced in the trial Court, subject it to an exhaustive scrutiny and re-evaluate evidence to reach its own conclusion. In the case of **Kifamunte Henry Versu Uganda, S.C Criminal Appeal No. 10 of 1997** court held that; “The first appellate court has a duty to review the evidence of the case, to reconsider the materials before the trial judge and make up its mind not disregarding the judgment appealed from but carefully weighing and considering it”. This Court therefore must re-evaluate the evidence to avoid a miscarriage of justice as it mindfully arrives at its own conclusion.
- 5.2 I will therefore bear these principles in mind as I resolve the grounds of appeal.

## **6.0 Determination by Court.**

- 6.1 An appeal is a creature of statute and the right of appeal cannot be implied or inferred as held in the case of **Baku Raphael Vs Attorney General Supreme Court Civil Appeal No. 1 of 2005 and Attorney General Vs. Shah (No. 4) [1971] EA 50**, where the court stated that the right of appeal is a creature of statute and must be given expressly by Statute. Except as otherwise expressly provided, no appeal lies from any order made by a Court in the exercise of its original or appellate jurisdiction
- 6.2 **Order 44 Rule 1(q)** provides that an appeal shall lie as of right from an Order made under **Order 41 Rules 1,2,4 and 8 of the Civil Procedure Rules** that provide for Applications for Temporary Injunctions.



**6.3 Order 50 Rule 8 of the Civil Procedure Rules SI 71-1** provides that, “Any person aggrieved by any order of a registrar may appeal from the Order to the High Court. The appeal shall be by motion on notice”. This Appeal is therefore competently brought before this Court.

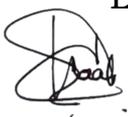
**Ground 1. The Learned Deputy Registrar erred in law in allowing the Respondents’ Application in total disregard of the law and based his decision on the wrong principles of the Law.**

6.4 On this ground, the Appellant contended that at the time the temporary order was granted, he was the one in possession of the active Letters of Administration and he was also in charge of the deceased’s estate. The Appellant contends that the Registrar ordered a Temporary Injunction on the Letters of Administration held by him changing the status quo.

6.5 The Appellant further contends that in making his decision, the Learned Deputy Registrar considered the legal rights of the Respondents in making his decision. The Appellant relied on the decision in **Ndema Emanzi Versus Mubiru Henry MA No. 225 of 2013** where it was held that the Court only must preserve the existing situation pending the disposal of the Substantive Suit. In exercising its duty, the court does not determine legal rights to the property but merely preserves it in its actual condition until legal title or ownership can be established or declared.

**Determination.**

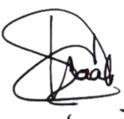
6.6 The court cannot sanction an illegality. There were two Letters of Administration issued over the Estate of the



deceased Erukana Mirundi. The Learned Deputy Registrar ordered that the two existing grants of Letters of Administration under Administration Cause No. 48 of 2019 granted to Mugerwa Kevis, Kyobe Fred Peace and Namuli Harriet on the 16<sup>th</sup> day of December 2019 and Administration Cause No. 293 of 2006 granted to Kalibwani Rogers Kisanira on the 18<sup>th</sup> day of May, 2006 shall not be used for disposal of the Estate property pending determination of the main suit.

6.7 The Learned Trial Registrar did in fact preserve the Status Quo, as he rightfully determined that both Letters of Administration should not be used to dispose of the Estate before the determination of the Main Suit. The learned Deputy Registrar did not determine which set of Letters was valid but rather determined that until the court heard and determined the main suit, the estate of the deceased Erukana Mirundi should be protected from disposal by either one of the parties that held Letters of Administration. The court finds that the essence of the Temporary Injunction was to ensure that the estate is preserved for the final successful litigant. It would be unjust to allow the Appellant maintain active use of the Letters of Administration and be able to dispose of the property before final judgement is delivered or *vis a vis* in regard to the Respondents. The estate is preserved for Administration by both parties upon successful litigation of Civil Suit No. 473 of 2022. This ground therefore fails.

**Ground 2: The Learned Trial Deputy Registrar erred in law and fact when he found that the Respondents in their Application**



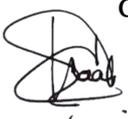
**had proved that irreparable loss would be suffered by them if the order was not granted.**

6.8 On this ground, the Appellant submitted that the learned registrar erred when he determined that the Appellant's subdivision of the certificates of title in respect to land comprised at Block 384 Plot 6 and collecting monthly rent from the deceased various properties would cause the Respondents' irreparable loss.

6.9 The Appellant argued that irreparable loss is that which cannot be compensated by an award of damages should the plaintiff/respondent be successful in the main suit. The Appellant argued that there was no indication by the Respondents in Miscellaneous Application No. 1087 of 2022 that if they were successful in the main suit, the Appellant would not be able to pay the damages.

### **Determination.**

6.10 The court in examining the ruling discovered that Deputy Registrar determined irreparable loss on the basis of **loss to the Estate** of the deceased Erukana Mirundi and not loss to the Respondents. The learned Registrar stated that "*the pendency of two grants of the same estate and them being granted to different parties poses a risk of damage to the Estate of the deceased if the parties to whom these Letters of Administration were granted use the same to dispose of property to third parties.*" The court must protect the estate of the deceased and the interests of the beneficiaries of the deceased in death. Its mismanagement, while it may be



monetarily compensated, will still amount to irreparable loss. The Estate of the deceased is his legacy in death and its wastage to the disadvantage of his beneficiaries is not loss that may be compensated.

6.11 Furthermore, this court cannot determine that because the Appellant can compensate the Respondents if he is unsuccessful in the main suit, he should be allowed to proceed to subdivide the suit property and collect rental proceeds. The court is cognisant of the fact that the Appellant having Letters of Administration may proceed to dispose of the suit property to Bonafide Purchasers for Value without Notice.

6.12 Pausing the use of the Letters of Administration on the ground that irreparable loss may be occasioned to the Respondents is fair and equitable for the Respondents, the Appellants and the estate of the deceased. This ground fails.

**Ground 3: The Learned Trial Deputy Registrar erred in law and fact when he determined the issue of balance of Convenience after determining the issue of prima facie case and irreparable damages in the affirmative.**

6.13 The Respondent contended that the learned Registrar's consideration of the balance of convenience was misconceived when he assessed it in relation to the Appellant's need for protection by way of temporary injunction versus the Respondent's need for protection against possible injury he would face from the grant of the order for a temporary injunction.



**Determination.**

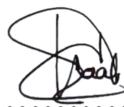
6.14 The role of an Administrator of an Estate is fiduciary. It is a role that is held on behalf of an intestate in death. Therefore, the administrator's role as well as that of the court as earlier emphasized is to preserve the interests of the deceased and those of his beneficiaries in death. The Appellant submitted that the Learned Registrar should have considered the possible injury occasioned to him by the grant of the Temporary Injunction, as opposed to the injury occasioned to the Estate of the deceased and in turn his other beneficiaries.

6.15 The court finds the learned Deputy Registrar rightfully determined the balance of convenience. The Appellant has held the Letters of Administration over the suit estate since 2006 and therefore possibly collected rental proceeds and financially benefited from the estate to the exclusion of some of the other beneficiaries and would continue to do so without the Temporary Injunction. This ground also fails.

6.16 Ground 4 has therefore been determined in Grounds 1, 2 and 3 above.

6.17 With the above considerations, the Appeal hereby stands dismissed with no orders to costs.

***Dated, Signed and Delivered at High Court of Uganda Family Division via Email this 26<sup>th</sup> day of April, 2024.***



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**CELIA NAGAWA**  
**JUDGE**