

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

MISC. APPL. NO. 933 OF 2019

ARISING FROM CIVIL SUIT NO. 380 OF 2017

KAGUMAHO MUSANA ADE APPLICANT

VERSUS

1. STELLA RAMA
2. DERRICK MWINE
3. ALEX AMWINE
4. HOUSING FINANCE BANK LTD RESPONDENTS.

Before: Lady Justice Alexandra Nkonge Rugadya

RULING:

Introduction:

The applicant, Mr. Kagumaho Musana Ade, is the registered proprietor of land comprised in mailo volume **Block 222 and plot 2929** situated at Namugongo.

He brought this application against all the four respondents under **section 98 of the Civil Procedure Act Cap. 17, Order 40 r (a), 9 of the Civil Procedure Rules S. 171-1.**

He seeks orders that the certificate of title in the hands of the 1st respondent be deposited in court for safe custody, pending the disposal of the main suit.

Grounds to the application:

The application is supported by the applicant's affidavit. In brief, he claims that the 1st respondent, Ms Stella Rama, attempted to purchase the land from him, but breached the agreement when she failed to pay the entire amount.

That he refunded **Ugx 80,000,000/=**, and remained with a balance of **Ugx 52,000,000/=**, which is the subject of her counterclaim. However, that despite her failure to purchase the property, she held onto the title and got herself registered onto it, in her attempt to secure a mortgage facility.

5 That the applicant has information that the respondent/defendant is trying to pledge the certificate of title for credit with money lenders. Such an act according to him would have the effect of alienating the property before the case is determined which would defeat the purpose of these proceedings as well as open up a multiplicity of proceedings as the applicant would then have to institute further proceedings against such money lenders.

Since therefore she has no proprietary interest in the suit property as her only claim is in money terms, it would therefore not cause her any prejudice of this application is granted.

10 Counsel for the applicant cited the case of **Rashida Abdul Hanali and Another vs Sulemani Adrisi MA 0011 OF 2017** (arising from **HCCS No. 0008 of 2017**), where court held that the basic principle in deciding applications of this nature was for it to take whichever course seems likely to cause the least irremediable prejudice to one party or the other.

15 That the act of depositing the title in court pending the determination of the suit will cause the least irremediable prejudice to either party since the sole aim is to preserve the certificate of title so that it is available to either of the parties at the end of the case.

Arguments by the 1st respondent:

The rest of the respondents did not file any reply. The 1st respondent on her part filed an affidavit in reply opposing the application on the grounds as spelt out in detail in her affidavit.

20 That she took out a loan of **Ugx 80,000,000/=** from Housing Finance Bank Ltd which she had paid to the applicant on 6th October, 2016; and then took possession of the land as the owner after transfer forms had been signed into her names.

That the transaction was however frustrated when the bank failed to give the entire loan as expected, which prompted her to vacate the house on 1st May, 2017, upon which she requested in vain, the applicant to refund the purchase price.

25 She claimed that the application has no sufficient ground to warrant a grant of any such order, and has not shown that he would suffer substantial loss and hence has no justification for the relief sought.

30 Furthermore, that the claim by the applicant is speculative and this court would be setting a dangerous precedent that litigants can just walk to court, speculate and get orders as they wished.



That the discretion vested in a court by the provisions as cited is not to be exercised arbitrarily or capriciously but must be exercised judicially and judiciously. It follows therefore, that in exercising its discretion the trial court goes by the material facts in this case the facts deponed in the affidavit.

5 In the instant case, the applicant confirmed under *paragraph 6* of the affidavit stated that she refunded some of the money to the 1st respondent leaving a balance of **Ugx 52,000,000/=**.

10 That alone was a justifiable reason for her to have a claim in the property. That the applicant has failed to prove that the subject matter is in danger of being destroyed, sold or in any way disposed of by the 1st respondent.

The 1st respondent while admitting that she was in possession of the certificate of title further however denied that she was in the process of pledging the certificate of title to a third party and believed that she was in better position to keep the title in custody; and would be more likely to be inconvenienced, should it be taken away from her.

15 She prayed therefore that since the applicant has not satisfied the consideration for grant of the application the application be dismissed with costs to the 1st respondent.

The applicant who was represented by **MS Mushabe Munungu & Co. Advocates**, did not file any rejoinder. The 1st respondent was represented by **MS Sewankambo & Co. Advocates**.

20 **Consideration of the issue:**

The Law.

I have had the benefit of perusing the pleadings, submissions by each side together with the authorities, details which I need not reproduce here.

25 **041 r. 1 (a) CPR** under which this matter is brought provides that if the property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, the court may by order grant a temporary injunction to restrain the such act or make such other order for the purpose of saying and preventing the wasting, damaging alienation, sale removal or disposition of the property as the court thinks fit until the disposal of the suit.

30 The gist of the concern is laid out clearly in *paragraph 12* of the supporting affidavit, which states:

That I was informed by one Allen Barwa a broker that the 1st defendant has been trying to pledge the certificate of title for credit from money lenders.

5 The applicant however did not attach any form of proof whether by the informant Allen Barwa by way of an affidavit or avail any documentary evidence to support his claim. It rules out any possibility therefore that the suit property is in danger of being wasted, damaged or alienated, acts against which **order 41 of the CPR** sets out to protect. The applicant did not file any rejoinder to challenge the 1st respondent's claim that she had no intention of pledging the certificate of title. The application is therefore shrouded in speculation.

10 Be that as it may, the question of ownership of the suit property is a matter still pending determination by this court. **Section 98 of the CPA**, allows court to exercise its inherent powers to make any order it deems necessary to meet the ends of justice and to prevent abuse of court process.

15 I therefore direct that while this suit is still pending in court, no person shall enter any mortgage, transfer or in any other way deal with the suit land, until all matters surrounding the dispute are fully resolved.

Costs in the cause.


Alexandra Nkonge Rugadya

20 **Judge**

15th March, 2021