

second and third applicants claim as biological children of the first applicant and his late wife, their mother.

Being minors, the second and third applicants, sue through their father, Mr. David Nyakana Balinda, as a next friend.

The Respondent denies the claims of the applicants, contending that, he is the sole owner of the property, the same having been transferred to him by his late mother.

The Respondent as well as the second and third applicants share the same mother, the late Matilda Mukabwemi Balinda. He, Respondent, was born before her mother, late Matilda Mukabwemi Balinda, got married to the first applicant. Thus the first applicant is not father to the Respondent, but is father to the second and third applicants. From the Bar, Counsel for the Respondent, informed Court that the particulars of the father of the Respondent are unknown. The Respondent was all along solely brought up and supported by her mother. When Respondent's mother married the first applicant, the Respondent came with her and stayed with her and first applicant in the same matrimonial home. The second and third applicants were born and grew up with the Respondent.

The Respondent further contends that the property in dispute was solely acquired and developed by her late mother, and that the said mother died having bequeathed the property to him to the exclusion of the plaintiffs. The property had never been a matrimonial home of the family. The same was built by her mother to be rented. The matrimonial home of the deceased is in Mukono, not this property.

The Respondent thus demanded of the applicants to pay rent for occupying the suit property, or else leave the same.

In determining whether or not to grant a temporary injunction the Court has to consider: the need to maintain the status quo, whether the applicant has a prima facie case of success in the main

suit, whether the applicant is likely to suffer irreparable injury which no damages can adequately atone for, if the temporary injunction is not granted.

The Court if still in doubt after considering the above may decide the issue by considering the balance of convenience the parties to the suit, if the temporary injunction is refused or granted: See **Robert Kavuma Vs. International Hotel Supreme Court of Uganda Civil Appeal No. 8 of 1990**, unreported, and **GIELLA VS CASSMAN BROWN & CO. LTD: [1973] EA 358**.

The duty of the Court is to weigh the above stated factors before reaching a decision.

With regard to determining whether the applicant has a prima facie case, it has to be appreciated at this interlocutory stage the facts from the side of the parties to the suit are disputed by the other side and vice-versa. There is only affidavit evidence not subjected to cross-examination. The prima facie case looked for therefore is one that makes the Court to be satisfied that the applicant's case is not frivolous or vexatious but rather one that shows that there is a serious case to be tried by Court: See **AMERICAN CYNAMID COMPANY KAMICOR LTD (1975) AC 396** (Judgment of Lord Diplock): See also: **Tinyinondi Ag. J. in H.C.C.S No. 78 of 1992 EDWARD BAMUGYE & GEORGE MAYANJA VS. LIBYAN ARAB UGANDA BANK & ABSIMNA ENTERPRISES (U) LTD**. Unreported.

In the considered view of Court, there is need to maintain the status quo of the suit property, a piece of land and a residential house, at Buye, Kigowa, Ntinda, Kampala District; pending the determination of the issues of ownership of same in the main suit.

The salient issues to be determined in the main suit concern who acquired and developed the suit property, whether the same was validly bequeathed to the Respondent, and whether the Respondent lawfully became registered owner of same to the exclusion of the alleged interests of the applicants. These issues establish a prima facie case, or such a case that is not frivolous or vexatious and which has serious issues to be tried.

Both sides to the suit claim to have sentimental attachment to the suit property, as a matrimonial home (applicants) or a place when one grew and had fond memories with a loving mother (Respondent). These sentimental feelings may not be possible to be atoned for by money payment alone.

It is also to be appreciated that the second and third applicants are minors, earning no income. The Respondent too is a university undergraduate, not yet working and thus not earning any income. The earning capacity of the first applicant was not established before Court. Given such state of affairs of the parties to the suit, it appears that, a part from disposing of the suit property by way of generating money, none of the parties to the suit on their own, has the capacity to pay damages if ordered to do so.

As to the balance of convenience, it appears that the Respondent is suffering inconvenience in that he is not occupying the suit property. He is currently staying with relatives, which negatively affects his studies at Makerere University.

The first applicant, speaking for all applicants informed Court, that the Respondent was welcome to rejoin them at the suit property. The Respondent appeared unwilling to rejoin the applicants.

Having considered all the relevant factors relating to this application, Court grants a temporary injunction in the following terms:-

- (i) The Respondent is restrained from evicting the applicants from the suit property.
- (ii) The applicants are to let, facilitate, and not in any way interfere or prevent the Respondent from occupying and using the boys quarters of the suit property.
- (iii) The suit property shall not change hands by way of ownership, occupation, possession, and use from the status as at the date of and as ordered in this order to any one else.

It is further ordered that the temporary injunction shall remain in force for three (3) months from to date until the 18th June 2007, when the Court may review the same; or until the final determination of the main suit, whichever is earlier.

The costs of this application shall go to the successful party in the main suit.

Remmy K. Kasule

Ag. Judge

12th April 2007