**Nsubuga and another v Mutawe**

**Division:** Court of Appeal at Kampala

**Date of judgment:** 25 October 1974

**Case Number:** 25/1974 (5/75)

**Before:** Spry Ag P, Mustafa and Musoke JJ

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**Appeal from:** High Court of Uganda – Wambuzi, C.J

*[1] Injunction – Interlocutory – Ex parte – Leave to dispense with service on defendant must be asked*

*for and obtained – Defendant must be served with plaint, summons and affidavits – Civil Procedure*

*Rules, O.* 37*, r.* 3 (*U.*)*.*

*[2] Injunction – Interlocutory – Probability of success and irreparable loss must be shown.*

*[3] Landlord and tenant – Landlord’s title – Tenant may not challenge at date of tenancy but may show*

*it has determined.*

**Editor’s Summary**

The respondent rented premises from the second appellant company. When he failed to pay his rent the company distrained and the respondent obtained from the High Court an *ex parte* injunction which was later affirmed. He alleged, but produced no evidence to support the allegation, that the company had been owned by non-citizen Asians and the property had been abandoned so vesting it in government.

**Held –**

(i) an application for leave to dispense with service of an application for an injunction on the defendant must be made;

( ii) the defendant must be served with the plaint, summons and affidavits in support as well as the order;

(iii) as no evidence was produced to show the ownership of the shares of the company a bare allegation could not be acted on;

(iv) no irreparable loss by the respondent had been shown;

(v) a tenant may not challenge his landlord’s title at the beginning of the tenancy but may show that it has since determined (dictum of Cockburn, C.J. in *Delaney v. Fox* (1) followed).

Appeal allowed.

**Cases referred to Judgment:**

(1) *Delaney v. Fox* (1857), 140 E.R. 618.

(2) *Noormohamed v. Kassamali* (1953), 20 E.A.C.A. 8.

(3) *E.A. Industries v. Trufoods*, [1972] E.A. 420.

(4) *Giella v. Cassman Brown*, [1973] E.A. 358.