

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)**

HCT-00-CC-MA- 0618OF 2007

(Arising from HCT-00-CC-CS- 553 & MA-634 of 2006)

UGANDA DEV. BANK LTDAPPLICANT

VERSUS

ALLEY ROUTE LTD.....RESPONDENT

BEFORE: HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application brought by Notice of Motion under Order 52 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that:

- (a) The temporary injunction issued by this Court in Miscellaneous Application No. 634 of 2006 be vacated
- (b) Costs of this application be provided for.

The grounds for the application are that:-

1. The Respondent have failed to file an inventory of all assets, machinery and equipment at its plant on Plot 612 Block 17 Rubaga as ordered by the Court on the 1st of February, 2007.
2. The Respondent has nothing to safeguard the Applicant's rights as mortgagee.
3. It is just and equitable that the temporary injunction issued by the Court in Misc. App. No. 634 of 2006 be vacated.

In Misc. Application No. 634 of 2006, the Respondent (now) had sought an order for a temporary injunction restraining the Applicant (now) from disposing or selling or in any other way interrupting the Respondents use and enjoyment of the premises comprised in Plot No. 612 Block 17 Rubaga and Plot 307 Block 148 Singo. In opposing that application the Applicant expressed fears that if an injunction is granted the assets at Plot 612 Block 17 Rubaga, which formed the security for the loan granted to the Respondent by the Application stand a risk of alienation or cannibalisation or being hidden under cover of an injunction thereby leading the Applicant to irreparable loss.

The prima purpose of a temporary injunction is to preserve the status quo pending the disposal of the main suit. An order of temporary injunction binds both parties. Each party is bound by the order to preserve the status quo as at the time of the order. The order in Misc. App. No 634 of 2006 was made on 1st February 2007. Each party was under a duty to preserve the status quo of the premises and all assets, machinery and equipment thereat in the state they were as of that date. To ensure compliance, Court while granting a temporary injunction also ordered that:-

“An inventory of all the assets, machinery and equipment at the plant at plot 612 Block 17 Rubaga be jointly taken by the officials of the Applicant and of the Respondent and a copy thereof, signed by the respective parties' officials and lawyers be filed in Court within 7 days from the date hereof” – i.e. 1st February 2007.

It is an indisputable fact that by the time of filing and hearing this application no inventory had been filed. Thus the Applicant's application that the temporary injunction be vacated for non-compliance with the order to file an inventory. In her affidavit in support of the application Mrs

Priscilla Mugisha, the Bank Secretary of the Applicant, states that the Applicant Bank sent a team to do the inventory as ordered by the Court and the Respondent undertook to file the inventory but that the Respondent has never filed the inventory. In the Respondents affidavit in reply, deponed to by Samuel Mayanja, the Managing Director of the Respondent, it is stated:-

“5. THAT the inventory was taken of the assets, machinery and equipment of the Respondents plant at Rubaga on 21st February, 2007 jointly and thereat the Respondent was represented by Wambi Tonny Wabuyi, Sam Mugambe and myself, and the Applicant by Gabriel Otunda Etou.

6. THAT the said Gabriel Otunda Etou prepared the Report of the joint exercise and later sent the same to the Respondent but he did not sign it and neither did their advocates but on our part we signed.”

Annexure D of the affidavit is a Joint Report entitled “Register of Assets of Alley Route Ltd as of 21st February 2007.” It is neither signed by the said Gabriel Otunda Etou nor by the Applicant’s lawyers.

The averments on oath in paragraphs 5 and 6 of Samuel Mayanja’s affidavit above are neither denied nor rebutted. On the authority of *Massa Vs Achen (1978) HCB 297* the presumption is that they are admitted as true facts. In fact Priscilla Mugisha in her affidavit avers that each party sent a team to do the inventory. She is however silent as to whether the inventory was signed by the Applicant’s officials who had participated in the exercise and /or by the Applicant’s lawyer.

The exercise of taking the inventory was undertaken on 21st February 2007 long after the seven days within which it should have been undertaken from the date of the order – i.e. from 1st February 2007. Both parties had violated the order in that regard. The inventory as set to the Respondent had not been signed by the Applicant’s officials and lawyer as had been ordered. Therefore, it could not be filed in that state. The Applicant had violated the order in that regard. The order as to the filing of an inventory was intended to address the Applicant’s concern and interests. Despite that the Applicant failed to ensure compliance with the order. In view of the

failures of the Applicant indicated above I am unable to fault the Respondent only for non – compliance with the order. Each party must come to Court with clean hands.

In the result the application to vacate the temporary injunction issued in Misc. App. No. 634 of 2006 fails and is accordingly dismissed with costs.

To ensure justice to all it is again ordered that the inventory conducted be verified jointly by the officials of the Applicant and the Respondent and a verified copy signed by the officials and lawyers of the respective parties be filed in Court within 7 days from the date hereof.

Hon. Mr. Justice Lameck N. Mukasa

Judge

30/11/2007