

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
MISCELLANEOUS APPLICATION NO. 370 OF 2014
ARISING FROM M.A. NO. 369 OF 2014
ARISING FROM AN INTENDED APPEAL IN H.C.C.S. NO. 570 OF
2002
GENERAL PARTS (U) LTD. VERSUS RAJABALI VALIMOHAMED
VAIYA AND 3 OTHERS
BEFORE: THE HONORABLE LADY JUSTICE SOLOMY BALUNGI
BOSSA JA

RULING

This application is based on a substantive application filed in November, 2014 for a temporary injunction, *vide* Miscellaneous Application No. 369 of 2014. However, the intended appeal, whatever that means, is stated in the pleadings to be No. 570 of 2002, while the submissions state that the appeal No. 190 of 2014. Be that as it may, there is a substantive appeal pending in this court.

The instant application seeks an interim order for an unconditional stay of execution of the judgment and orders in **HCCS No. 570 of 2002** pending disposal of Miscellaneous Application No. 369 of 2014. It also seeks for costs.

The purpose for the instant application as stated by the applicant is to ensure that the main application and appeal should not be rendered nugatory. The reasons given for the application is that given the past conduct of the respondents, they are likely to misuse the judgment and orders in HCCS No. 570 of 2014 as a tool to evict the applicant from the suit premises. The balance of convenience would therefore favor the grant of an interim order of injunction. RB

On the merits of the appeal, the applicant submits that the repossession certificate is challenged and the property was illegally registered in the names of the respondents.

Resolution of the application

This court (Twinomujuni J.A. as he then was) has stated that interim orders by their nature are intended to protect the property in the dispute and the right of appeal pending the matter being resolved by a court of competent jurisdiction (see *Tropical Bank Ltd. and Anor. V. Lweza Clays Ltd. and Anor. Civil Reference No. 64 of 2009*).

The Supreme Court in the case of *Hwan Sung Industries v. Tajdin Hussein and 2 others SCCA No. 19 of 2008* has laid down conditions on which an interim order of stay of execution may be granted. It has stated that there must be a substantive application pending. There should be a serious threat of execution before the hearing of the pending substantive application.

Therefore, the applicant must satisfy the court that the conditions for grant of an interim order have been satisfied. It is in this regard that the background to the instant application becomes important. The respondents bought the suit property from the persons who repossessed it and sued the applicant as tenant for breach of tenancy agreement and for arrears of rent. The High Court (Monica Mugenyi J.) gave judgment on October 30, 2014 for the respondents and found that; the applicant breached the tenancy agreement between him and the respondents; that the respondents rightly and lawfully terminated the tenancy on account of the applicant's breach of it; that the applicant pay to the respondents shs. 52,061,285/= to the respondents being rent arrears due and owing to them; that the applicant offsets shs. 55,000,000/= from the monies due to the respondents in rental arrears being the value of improvements to the property comprised in Kyadondo LRV 184 Folio 4; general damages of shs. 10,000,000/= to the respondents for breach of tenancy agreement; costs

to the respondents. It is this judgment and said orders that have been appealed.

My understanding of the facts is that the applicant has no proprietary interest to protect in the property of the respondent as it is a mere tenant. As such it would suffer no irreparable damage if execution was to ensue. Moreover, the learned trial Judge did not order eviction of the applicant.

Secondly, the status quo is that the respondents have not yet taken steps to execute the judgment and orders of court and the applicant is still occupying the premises that it rents. The applicant has not shown that there is imminent threat of execution. The affidavit of its Managing Director merely states that the respondents are likely to apply for execution of judgment and decree. No such application has been made yet. This court cannot base its decision on mere speculation. The applicant's application is thus based on fear. No threat has been established on the property or right of appeal.

Taking into account all the above circumstances, I find no merit in this application. The conditions for grant of an interim order have not been satisfied. The application is dismissed with costs to the respondent.

It is so ordered.

Dated this ^{2nd} day of March, 2015

Signed by

Solomy Balungi Bossa 

Justice of Appeal

Read by the

Registrar  BLEANOR KHAINZA

This ^{4th} day of March, 2015

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04.03.15 at 10:37 am

Olivia Kyamupa Matovu holding brief for Kabito Karumira for the respondents

CE Reliing read. 