DEVELOPMENT FINANCE COMPANY OF UGANDA LIMITED AND OTHERS

v

N.G. GENERAL LIMITED

HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

HIGH COURT MISC. APPLICATION NO. 1527 OF 1999
(Arising out of Civil Suit No. 950/96)

BEFORE: HON. LADY JUSTICE C.K. BYAMUGISHA

March 7, 2000

Civil Procedure – Security for costs – Application for security for costs – Applicants receivers of respondent company – Whether grounds for application sufficient

The applicants were appointed as receivers of the respondent company upon failure to repay a loan advanced to it by the applicants. The respondents filed a suit challenging the appointment of the receivers in which a consent judgment was entered. Disputes arose in implementation of the consent judgment resulting in applications and filing of suits in the Court by the parties. In this application the applicants sought orders against the respondent for payment of security of costs, on grounds that the respondent was under receivership and was indebted to other entities.

Held: This was not a case in which Court should order security for costs. There was evidence to show that the applicants were in possession of property worth one billion shillings, which was sufficient to take care of the costs likely to be incurred.

Application dismissed

Legislation referred to:

Companies Act Section 404
Civil Procedure Rules Order 23 rules 1, and 3

RULING

BYAMUGISHA, **J:** This was an application by Chamber Summons brought under the provisions of section 404 of the *Companies Act* and Order 23 rules 1 and 3 of the *Civil Procedure Rules* seeking orders.

(a) That the respondent furnishes security for the payment of costs incurred by the applicants in the sum not less than Shs. 90, 000, 000/ = or such other reasonable sum set by the

within 10 days from the date of the order or within such period to be set by Court

(b) Costs of this application be provided for.

The grounds in support of the application are the following:

(1) The respondent was put under receivership pursuant to debentures and loan agreements in favour of Development Finance Company of Uganda Ltd.

(2) The respondent apart from being indebted to the applicant is also indebted to other entities including the Non-performing Assets and Recovery Trust.

(3) All the respondents' assets are pledged and the secured creditors are in the process of realising security hence all assets are liable to be sold off.

(4) The respondent has engaged the applicants in a string of endless and costly litigation which have increased and continue to increase the cost of receivership.
(5) There is little likelihood of Misc. App. No. 1471/99 will succeed and the applicants are worried that they will not be paid their costs if they succeed in their defence.

It is in the interest of Justice to prevent the abuse of Court process and to order the plaintiff/respondents to furnish security for costs.

The facts which have led to the string of applications and counter-applications seem to have began in the following manner. The respondent obtained a loan from Development Finance Company of Uganda Ltd herein after referred to as DFCU in 1993. Some debentures were signed. Pursuant to powers contained in the debentures receivers were appointed on the 8/10/96 to recover the outstanding loan of US $ 182,000 and interest of us $ 54,403.99. The plaintiff filed Civil Suit No. 950/96 challenging the appointment of the receivers. On the 6th November, 1996 a consent order was entered on the following terms:

That the plaintiff/applicant is given up to 31st December, 1996 to pay interest arrears which is 54,403.99 US dollars.

1. That the plaintiff/applicant pays the balance due on the loan in the sum of US dollars 182,000 in monthly installments of US dollars 30,366.5 in a period of 6 months commencing on the 1st January, 1997 by equal monthly installments.

2. That the Defendants/Respondent shall open the ginnery the subject-matter of the Suit and allow the plaintiff/applicant to carry out normal operations subject to the plaintiff/applicant strictly adhere to the terms of this consent judgment and the agreement between the parties.

3. That the plaintiff/applicant shall not restructure or reorganise itself or change its constitution during this period and shall not transfer or dispose of any of its properties without the consent of the Defendants/Respondents.

4. That the plaintiff/applicant shall make monthly reports of all its operations to the defendant/respondents in strict accordance with section 11 of the Loan Agreement.

5. In the event that the plaintiff/applicant shall default in payments in accordance with this consent judgement all the outstanding money shall become immediately payable and the receivers appointed shall proceed to sell the plaintiff/applicant's property under the receivership.

6. The plaintiff applicant shall pay such further interest that shall accrue on the loan during the period from the date of this order till payment in full.

7. Costs shall be in the cause.

It is the implementation of this consent judgment that have apparently led to the numerous applications and Suits which are referred to by Christine Okot - Chono in her affidavit in support of this application.

When the matter came before me both Counsel made submissions in support of their respective positions. They also cited a number of authorities. I have considered their submissions and the affidavit evidence adduced by both sides. I have noted in particular in the affidavit of John Joshua Ndege sworn on January 18, 2000 in reply to the one sworn by Okot Chono and Ogulle. Ndege states in his affidavit and he was not contradicted in his averments that the property in the hands of the receive is worth over one billion shillings. The property in the hands of the receivers is a ginnery which the receiver's should have managed to generate income and payoff the creditors or should have sold off by now to recover the loan due to DFCU. If the ginnery is worth one billion shillings as Ndege asserts, then the receivers have assets from which they can recover any costs which they are likely to incur in the Suits.

I have also noted that it was agreed that the ginnery should be opened to allow the respondent to operate normally. The applicants state that they opened the ginnery but later closed it because the respondent did not strictly adhere to the terms of the Consent judgment. I am not persuaded that this is a case in which the Court should order security for costs. The applicants are in possession of property worth one billion shillings according to the affidavit of Ndege and this should take care of the costs which are likely to be incurred. I therefore find no merit in this application and the same is dismissed with costs to the respondent.