AMRIT GOYAL

v

HARI CHAND GOYAL & ORS

HIGH COURT MISC. APPLICATION No. 438 OF 2001
(ARISING OUT OF CIVIL SUIT No. 432 of 2001)

HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT)

BEFORE:

JAMES OGOOLA, J

March 2, 2001

Injunctions – Interlocutory application – Application for injunction to prevent interference by respondent in management of company and company assets – Factors to be considered in determining application – Locus standi of applicant – Whether prima facie case established – Order 37 Rule 2 Civil Procedure Rules

The applicant applied under Order 37 rule 2(1) and 9 of the *Civil Procedure Rules* for an injunction to restrain the defendant/respondent from interfering with the management of Roadmaster Cycles (U) Ltd. or of its assets pending resolution of High Court Civil Suit No. 432 of 2001. The issues for the court to resolve were whether the applicant made out a prima facie case with the likelihood of success, and whether any injury or damages likely to be suffered by the applicant could be atoned for in damages.

Held:

(i) The applicant as a shareholder had locus standi to make the present application, and had interests not only in the dividends of the business accruing to his own shares, but in maintaining a tranquil atmosphere in the company's affairs, keeping the integrity of the Company's financial status, and keeping harmony between the company and its customers clients and employees. These interests were incapable of quantification and could not adequately be atoned for in damages

(ii) In the instant application, the applicant raised a veritable number of issues, both of fact

and law, and mixed fact and law, which could not be settled at the preliminary stage of proceedings, and therefore deserved a trial on the merits.

Application allowed.

Cases referred to:
American Cyanamid Co. v Ethicon Ltd [1975] AC 396
Kiyimba Kaggwa v Katende [1985] HCB 43

Legislation referred to:
Civil Procedure Rules Order 37 Rules 2(1), 9

Counsel for the Applicant: Mr. David Mpanga
Counsel for the Respondents: Mr. Bernard Tibesigwa, Mr. Francis Bwengye

RULING

OGOOLA, J: This is an application, under Order 37, Rule 2 (1) and 9 of the *Civil Procedure Rules*, by the plaintiff for an injunction to restrain the defendants (respondents) from interfering with any management affairs of Roadmaster Cycles (U) Ltd or of its assets, pending Court resolution of High Court Civil Suit No. 432 of 2001.

I have considered the very able submissions of both counsel very carefully. Those submissions raise 3 important issues, which I shall deal with respectively as follows.

Prima facie case
The contention here is whether the applicant has made out a *prima facie* case with a likelihood of success? I am satisfied from all the case authorities cited by both counsel. See especially LORD DIPLOCK in *American Cyanamid Co. v Ethicon Ltd* [1975] AC 396, and ODOKI J (as His Lordship the Chief Justice then was) in *Kiyimba Kaggwa v Katende* [1985] HCB 43, that what is intended is not a case that has been proved. Rather, that the case raises triable issues.

Thus, the standard excludes cases that are merely frivolous or vexatious. Definitive proof of the case must surely await the adducing of evidence, and submission of counsel's arguments *for* and against on the merits. At this preliminary stage of the case, Court has no opportunity whatsoever to consider, let alone, to entertain any evidence. That stage can be reached only during the hearing of the substantive case on its merits.

At this preliminary stage of the proceedings, the applicant needs only to raise triable issues. In the instant application, the applicant has raised a veritable number of issues, both of fact and law, and mixed fact and law- all of which deserve a trial on the merits.

(a) Did the Goyal family members ever meet to allocate shares to the applicant? If so, did this create beneficial ownership of shares?
(b) Pending formal transfer of the applicant's shares, did the defendants still hold those

shares? If so, did they hold the shares in trust for the applicant?

(c) Does our law envisage or recognise beneficial ownership of a company's shares?

(d) Was there consideration for the share transfer to the applicant, pursuant to the family's Memorandum of Understanding?

(e) Did the defendants resign their Directorships, and was any such resignation ever notified to the Registrar of Companies, to effect a change in Directors? If so, has the Company's own share file or register been interfered with, as alleged in the Applicant's affidavit-in-rejoinder?

(f) If all the above are answered in the negative, are the defendants still the majority shareholder? If so, are the alleged moves to oust the applicant a measure of minority oppression?

(g) If the defendants are not majority shareholder, who is? The applicant? Roadmaster cycles (India) Ltd. R.M.I. Cycles Ltd? In that event, who has the *locus standi* to bring this suit?

By any standard, these are serious issues. There is nothing frivolous here. Moreover, I am completely satisfied that all these are issues that Court cannot settle at this preliminary stage of the proceedings. We have no evidence. No witnesses. Not all the available documents are complete; others are still to be produced by both parties. It is obvious that even by their sheer quantity, the issues raised above require trial on the merits.

The respondents have not hitherto complained at all concerning the applicant's involvement in the affairs of Roadmaster Cycles (U) Ltd. At any rate, no evidence whatsoever has been shown to Court to that effect, nor has any such argument been canvassed by counsel in his oral submission before Court. Yet the defendants have had a whole year (since September 2000: the day of concluding the alleged Family Memorandum of Understanding), in which to complain or bring this matter to Court. Given this utter silence (for so long) on the part of the defendants, Court is satisfied that the balance of convenience is clearly on the applicant's side who, even by the respondents, own concession, has been involved in the business affairs of Roadmaster Cycles (U) Ltd.

In his submission before Court, learned counsel for the respondents produced a document (Company's Annual Return) on the Company's shareholding, showing that Defendants/Respondents own 97% of the shares of Roadmaster Cycles (U) Ltd; and that Applicant, and two others, owned only 1 % each. Accordingly, argued counsel, the applicant cannot and should not oust those who own 97%. That is fair enough. However, this Company's return, relied on by the respondents, reflects the position as at January 1999. That position is earlier in time than the position at September 2000, when, according to the applicant the position was reversed by the Family Memorandum, to show a shareholding profile that is exactly the opposite of the earlier position of 1999. Now, as to which one of these two shareholding positions is true, and which one is false, is a matter that requires evidence (whether documentary or by oral testimony) in the context of a full-fledged hearing on the merits.

Allied to the above issues, is the recent letter of September 18, 2001 from the respondents which contends that RMI cycles Ltd owns 100% shares of both Roadmaster Cycles (India), and Roadmaster Cycles (U); and that no other person, sole or joint, owns any shares in those

companies. That contention raises the issue of whether any individual member of the Goyal family (whether the applicant or the respondents) owns any share(s) at all in the suit company. For his part, the applicant makes the statement that the 1st , 2nd and 3rd respondents neglected and or refused to execute and to effect a transfer of shares to the applicant. These two contentions by the respective parties, raise substantive issues that go well beyond the simple issue of whether the applicant is only a beneficial owner of the suit company Both issues deserve to be heard on their merits.

Locus standi

This issue was raised by learned counsel for the respondents who contended that any injury or damage to the applicant as a mere shareholder occasioned by respondents' interference in the management affairs of the suit company, could be atoned for in damages. His contention was apparently based on the assertion that all that the applicant would suffer is a loss of his shares in the company. Court does not agree. The applicant as a shareholder, and especially as a minority shareholder has interests that are separate and distinct from the interests of the company, or indeed the interests that are directly related to his own shares. He is of course interested in the dividends of the business accruing to his own shares - whose injury/damage can, admittedly be atoned for in damages. However, far and beyond that, he is interested in a tranquil atmosphere in the company's affairs. He is interested in keeping intact the integrity of the Company's books, returns, financial statements, etc. He is interested in the continued harmony between the Company and its customers, clients, bankers, employees, etc (i.e. good faith).

All these are interests, which are incapable of quantification. If any or all of these interests are adversely interfered with by the respondents, the detriment would redound directly to the company, and ultimately to the owners (shareholders).

Such interests cannot be compensated or atoned in damages. The damage to the shareholder becomes immensely important where as here, that same shareholder claims to be owner of 97% of the company (a claim which needs to be verified and ascertained by trial on the merits).

In light of all the above, Court is satisfied that the applicant has made out a case for his application. Accordingly, Court hereby grants that application. Therefore, respondents are hereby enjoined to desist from interfering with the management of the suit company or its assets, pending final disposal of the underlying suit (HCCS No. 432 of 2001).

Ordered accordingly.

Application allowed.