

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-MA-0305-2005

(Arising from HCT-00-CC-CS-0314-2005)

STANBIC BANK UGANDA LIMITED

APPLICANT

Versus

JOSEPH AINE

RESPONDENTS

JIMMY TUMWINE

DEBORAH TUHIRIRWE TUMWINE

PROVIDER GENERAL ENTERPRISES LIMITED

BEFORE ME: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. Stanbic Bank Uganda Limited, hereinafter referred to as the Applicant, seeks a temporary injunction to restrain the Respondent No.4, and its directors, Respondent No.2 and No. 3, from transferring, selling, or otherwise dealing buses registration no. UAF 392N and UAF007J, hereinafter referred to as the buses, till the final disposal of this suit, and that costs of this application be provided for. the application is supported by an affidavit sworn by Mr. William Kasozi.
2. It is alleged that that the buses, in equity, belong to the plaintiff as they are part of the proceeds of a fraud committed by Respondent No.2 on the plaintiff, and are therefore held by Respondent No.4 as constructive trustee for the Applicant. It is feared that if no restraining order is made against the Respondents No. 2, 3 & 4, the Applicant would suffer irreparable injury with regard its claim to ownership of the buses as they would not be available, in case the suit succeeds. It is further averred that the applicant has high chances of success and that it would be in the interests of justice to grant the injunction. The applicant abandoned seeking orders to restrain the use and or running of the buses by the Respondents.

3. The application was vigorously opposed with the Respondents filing two affidavits in reply sworn by the Respondents No. 2 and 3. The Respondents denied that they committed any fraud and asserted that the buses were legitimately procured.
4. This application is brought under Order 37 Rule 1 & 9 of the Civil Procedure Rules. It will be useful to bring Rule 1 in view. I set it out below.

“1. Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”

5. It would appear to me that it is necessary for any application under this rule to prove by affidavit or otherwise, the existence of the danger of wastage, damage, or alienation of the property in dispute or the existence of a threat or intention by Respondent or adverse party to dispose of his own property with a view to defraud creditors. It is only when the foregoing has been proved to be the case that a court would then have to consider the probability of success of the main suit or whether an arguable case has been put forward; the existence of irreparable injury and if in doubt, the balance of convenience, in order to decide whether or not to grant the order sought.
6. In the instant case upon examination of both the application and supporting affidavit of the applicant, it is clear that no allegation is made as to the existence of a danger of wastage, damage or alienation of the buses posed by the Respondents No. 2, 3, and 4. No case therefore has been made out for the issue of a temporary injunction under Order 37 Rule 1 of the Civil Procedure Rules.
7. In the result I dismiss this application with costs.

Dated at Kampala this 1st day of June 2005

FMS Egonda-Ntende
Judge