

Last Updated: 13 July 2007

Alley Route Limited V Uganda Development Bank Ltd- HCT-00-CC-MA-0634-2006 (2) [2007]  
UGCommC 26 (29 March 2007)

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

**HCT-00-CC-MA-0634-2006 (2)**  
(Arising From Hct-00-CC-CS-0553- 2006)  
Alley Route Limited Applicant/Plaintiff  
Versus  
Uganda Development Bank Ltd Respondent/Defendant

**29 March 2007**

**BEFORE:HON. MR. JUSTICE LAMECK N. MUKASA**

**RULING 2:**

Following delivery of my ruling in Miscellaneous Application No. 634 of 2006 where I granted the Applicant, M/S Alley Route Ltd, a temporary injunction restraining the Respondent, M/S Uganda Development Bank Ltd, from disposing or selling or in any other way interrupting the Applicant's use and enjoyment of the premises comprised in Plot No 612 Block 17 Rubaga and Plot 307 a Block 148 Singo until further orders of this Court, Mr. Rexida, Counsel for the Respondent applied for leave to appeal against the ruling.

Miscellaneous Application No. 634 of 2006 was brought under Order 41 rules 1, 2 and 9 of the CPR hence required no leave of Court under Order 44 rules 1(I), (q) CPR before an appeal there from can be filed. Thus there was no need for this application. But supposing I am mistaken and such leave is required the principal upon which leave can be granted was stated in the case of **Sango Bay Estates Ltd & Others Vs Dresdner Bank AG (1972) EA 17** where the East African Court of Appeal held that leave would normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration. In **Degeya Trading Stores (U) Ltd Vs Uganda Revenue Authority C. AC Application No. 16 of 1996** their Lordships of the Court of Appeal had this to say:

" An applicant seeking leave to appeal must show either that his intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct."

Their Lordships went further and stated:-

"As to whether the intended appeal has a chance of success we can only at this stage say that there are matters that merit consideration on appeal"

At this stage Court should refrain from considering matters which may in any way prejudice the issues which may rise at the appeal or amount to a review of its own ruling. So it is not open to this Court to determine whether the intended appeal would succeed or not. If the applicant has raised arguable grounds of appeal and there are serious matters which merit consideration on appeal, and is not guilty of dilatory conduct then Court should exercise its discretion and grant the applicant

leave to appeal. See **The Commissioner General Uganda Revenue Authority Vs Meera Investments Ltd H.C. Miscellaneous Application No. 359 of 2006**

The land described above and the subject matter of the application was deposited as security for a loan granted to the applicant by the Respondent. The terms of the loan are the subject of adjudication in the main suit, Civil Suit No. 553 of 2006. Mr. Rexida submitted that the Respondent Revenue Authority Vs Meera Investments Ltd H.C. Misc. Application No. 359 of 2006.

The land described above and the subject matter of the application was deposited as security for a loan granted to the Applicant by the Respondent. The terms of the loan are the subject of adjudication in the main suit, Civil Suit No 0553 of 2006. Mr. Rexida submitted that the Respondent is a bank dealing with public funds and purely a development bank. Counsel argued that temporary injunctions tie the hands of the banks as terms of mortgages and debentures go to the core of the very business and existence of banks. That injunctions encourage borrowers to default, thereby affecting the bank's existence.

Mr. Ojakol, for the applicant, opposed the Respondent's application and argued that the Respondent had not shown that it has an arguable case on appeal.

I have carefully considered all the submissions of Counsel for both parties and the law as outlined above and I find that Mr. Rexida's contention is that, considering the nature of business of banks, a temporary injunction which has an effect of staying a bank from exercising its rights under a mortgage or debenture deed should not be granted. That raises an important question of law whether a temporary injunction should be granted against a bank staying it from exercising its rights provided for in a mortgage or debenture deed.

I find the above issue appropriate for guidance by an appellate Court and accordingly allow this application. Leave is hereby granted to the Uganda Development Bank Ltd to appeal to the Court of Appeal against the ruling in Miscellaneous Application No 634 of 2006 delivered on 9<sup>th</sup> February 2007. The order as to costs in the intended appeal shall bind the costs of this application.

I so order.