

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0385-2007

(Arising from HCT-00-CC-CS-0528-2007)

Pan African Commodities Ltd..... APPLICANT
Aya Biscuits (U) Ltd

Versus

Barclays Bank PLC..... Respondent

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING (1)

1. The applicants are the plaintiffs in head suit in which they seek, among other things, for declarations that the loan facility agreement and debenture between the applicants and respondents are void. The applicants filed an interlocutory application in the meantime seeking a temporary injunction against the respondent restraining the respondent from ‘taking possession, occupying, managing, selling, or otherwise dealing with and/or taking any action on the securities given to the respondent including of the 6 post dated cheques and the Biscuit Manufacturing and Packaging Machinery, the subject matter of the contested loan facility agreement and debenture executed on the 20th December 2006 until further orders of the court.’

2. This application is opposed by the debenture holder, the respondent in this matter and defendant in the head suit. At the hearing of the application Mr. Masembe Kanyerezi, learned counsel for the applicant raised a preliminary point of law that this application was misconceived as it was brought under Order 41 Rule 1 (a) of the Civil Procedure Rules which is inapplicable to the case at hand. He contended that under that rule there must be property in dispute, and that property in dispute must form the subject matter of the suit. In the case at hand, what the plaintiff seeks in the head suit are declaratory orders with regard to 2 agreements, and as such there is no property in dispute to lay a proper foundation for an application for a temporary injunction.

3. Mr. Muzamiru Kibeedi, learned counsel for the plaintiff/applicant, submitted that the objection was more to form rather than substance. He contended that the order sought is intended to protect property that forms the subject of the debenture from being alienated before the validity of the debenture is pronounced upon by this court. And the suit is about the validity of the debenture. In those circumstances, it is the contention of Mr. Kibeedi that this application is not misconceived, and is properly brought under Order 41 Rule 1 of the Civil Procedure Rules.

4. I agree with Mr. Kibeedi. The head suit is seeking a declaration that the loan facility agreement and debenture signed by the parties are null and void. Regardless of the merits of this question, which may, in a limited manner, be explored as the main application is considered, the temporary injunction sought is intended to restrain the exercise of certain rights under the debenture which may include the alienation of property. Clearly the exercise of those rights, including, inter alia, power of possession and sale of such property by the debenture holder is at the substance of the plaintiff's claim in the head suit.

5. Without touching upon the merits of the main application, I am satisfied that this application is brought under the correct provisions of the law, and would dismiss the preliminary objection accordingly.

Signed, dated, and delivered this 18th day of July 2007

FMS Egonda-Ntende
Judge

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