

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0861-2006

(Arising from HCT-00-CC-CS-0753-2006)

Nabugabo Updeal Joint Venture

Applicant

Versus

Escom Investment Limited

Respondent

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. On 17th January 2006 I heard the above application for a temporary injunction and dismissed the same with costs as it had no merit. I indicated that I would provide my reasons for doing so on 31st January 2007 and I now do so.
2. In the head suit the applicant claims for a permanent injunction against the respondent on the ground that the respondent is interfering with its exclusive business of managing, collecting and disposal of solid waste in Kampala Central Division, as well as general damages for loss of income, inconvenience and costs of the suit. The applicant avers that it has an agreement with the Ministry of Local Government and Kampala City Council that confers upon it the exclusive right to manage solid disposal in Kampala Central Division, to run for 3 years from 1st January 2005.
3. The application sought a temporary injunction to issue against the respondent, its employees, agents, or any body acting on its instructions from interfering in any way whatsoever with the applicant's business of solid waste management and disposal in Kampala Central Division. The grounds of the application set forth in the application are two. Firstly that the applicant is the exclusive manager and disposer of solid waste in Kampala Central Division. Secondly that the respondent's interference in the applicant's business will occasion loss which the respondent is incapable of compensating. It

asserted that further and other grounds would be found in the affidavit of Sonko Abdul, the applicant's project director. The application is brought under Order 41 Rules 2 and 9 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act.

4. The respondent opposed this application and filed an affidavit in reply.
5. At the hearing of the application I asked Mr. Mike Musisi, learned counsel for the applicant to point to the evidence that indicated that the applicant would suffer irreparable loss if the temporary injunction was not granted. Mr. Musisi replied that the respondents did not have an agreement with Kampala City Council. Nor had they followed the proper procedure of tendering to obtain such contract as the applicants had done. The applicant is no longer able to collect any fees from its clients. The applicant had entered into a contract with a foreign firm to recycle and utilize garbage for development. The applicant has purchased vehicles for refuse collection. The additional affidavit of Mr. Juma Mugisha shows the nature of interference. The respondent's employees have assaulted the employees of the applicant several times in the city.
6. Mr. Musisi further submitted that the acts complained of had not been denied by the respondent, and in any case the respondents affidavit was incurably defective as it did not disclose whether the deponent is swearing is matters to his own knowledge or belief. He referred to the case of *Kagwimukya v Kasigwa* [1978] HCB 251 in support thereof.
7. Mr. Byenkya, learned counsel for the respondent, submitted that this application failed to establish a prima facie case as the person sued is not privy to the contracts relied upon. Secondly that if this is a question of interference with a contract, the applicants had failed to show even a single customer who had been interfered with. There is no basis for finding that there has been interference with a contract. Thirdly he submitted that the applicants had failed to establish that they would suffer irreparable loss.
8. The law with regard to temporary injunctions, like the one applied for, is well settled. In respect of applications sought under Order 41 Rule 2 of the Civil Procedure Rules, the main suit must be seeking an injunction against the defendant. The suit ought to have a probability of success, or at least disclose serious questions for investigation. The injury alleged to be suffered by the applicant must be irreparable. This would mean that an award of damages would not be adequate compensation for the same. In case of doubt with regard to the foregoing the court may then consider the balance of convenience. The

purpose of the grant of the temporary injunction would be to preserve the status quo until the determination of the questions in issue.

9. I examined both affidavits filed in support of the application. They allege a number of assaults by unnamed persons whom they assert to be employees of the respondent on employees of the applicants at different points and dates in Kampala. The affidavits allege that reports have been made to the police. There is no connection between the alleged assaults with the respondent. The affidavits allege that the respondents are collecting money from the applicant's customers. They do not name a single customer from whom the respondents have collected money. The allegations in both affidavits are of the most general nature.
10. The applicant failed to establish that it was likely to suffer any irreparable harm, which is loss that money could not atone for. If the complaint is that the applicant has been prevented from collecting fees for refuse collection, that in my view is not sufficient, to show that the loss resulting from such a situation is irreparable. If the loss is only fees not collected, such loss can be atoned for by way of monetary damages.
11. Applicant's counsel mentioned a joint venture with a foreign company, which was just starting. Mr. Ssonko's affidavit asserts that this project is likely to be disrupted and thus cause damage that cannot be atoned for by an award of monetary damages. The affidavit does not show what damage is likely to flow from the alleged disruption, let alone the nature of the disruption itself, to the project. It is simply a bare assertion without more. Nothing is provided upon which this court can weigh whether or not the alleged damage likely to be suffered, or already suffered, is irreparable.
12. It was suggested in the affidavit of Mr. Ssonko, that the respondent was a new company with a small share capital and fluctuating membership, incapable of compensating the applicant. This is a consideration that ought not to be taken into account in determining whether the damage alleged to be suffered cannot be atoned for by way of monetary damages. This consideration speaks, not to the nature of damages in question, but to the ability of the respondent to meet the same, an aspect that can be addressed differently.
13. The applicant claims it has the exclusive right, arising out of contract with Kampala City Council and the Ministry of Local Government, to manage solid waste disposal in Kampala Central Division. The applicant does not cite any particular provision that

purports to grant this right. I examined the documents annexed to the affidavit of Mr. Ssonko, in support of the application. I have not come across any provision to support that claim. To the contrary, the contract documents do recognise that the some city residents had made private arrangements with individual contractors to collect refuse. The contract documents do not purport to affect such contracts as far as I can gather.

14. The contract does set out certain deliverables that the applicant had to perform and do so within certain timelines. The application is silent on how the respondent's alleged interference has impacted on these deliverables or duties of the applicant, save for the bare assertion of being unable to collect fees from unnamed city dwellers.
15. I was satisfied that on a careful evaluation of the application and its supporting affidavits alone, no case had been made out for the issue of a temporary injunction. I therefore decided to dismiss it with costs.

Signed, dated and delivered at Kampala this 31st day of January 2007-01-30

FMS Egonda-Ntende
Judge