

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

HCT-00-CC-MA-0435-2007

(Arising from HCT-00-CC-CS-0518-2007)

Agnes Bainomugisha

Applicant/Plaintiff

Versus

DFCU Ltd

Respondent/Defendant

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

**RULING**

1. The applicant is seeking a temporary injunction to restrain the respondent from selling or otherwise dealing with the suit property comprised in Plot No. 15 Kashari Block 18 Folio 8 Volume 2514 Mbarara until the hearing and determination of the main suit. Ten grounds have been put forth on the notice of motion in support of this application. The application is supported by an affidavit sworn by the applicant, and is opposed by the respondent which has filed an affidavit in reply.

2. The facts of this case are not substantially in dispute. The applicant's husband, Mr. Frank Baine Bitamazire, is the registered proprietor of the suit land. Mr. Frank Baine Bitamazire, granted powers of attorney over the suit land to Bainebitamazire Mixed Farm Ltd, which company in 2002 mortgaged to the respondent the suit property as security for a loan granted to Bainebitamazire Mixed Farm Ltd. The husband and the applicant are directors in the said company, and the applicant also serves as the secretary. The mortgage deed was signed by the applicant as a director/secretary of Bainebitamazire Mixed Farm Ltd. The applicant also executed a personal guarantee for the loan advanced to Bainebitamazire Mixed Farm Ltd.

3. The applicant has now come to this court for interim relief. She wants this court to issue a temporary injunction restraining the respondent from exercising the power of sale under that mortgage as the mortgage is contended to be a nullity. All the 10 grounds set forth in the notice of motion can be summarised to the effect that the applicant contends that the suit property is the

family home that cannot be mortgaged without the express prior written consent of a spouse as provided under Section 39 of the Land Act, before its amendment by the Land (Amendment) Act, 2004. As she did not provide the prior written consent in a prescribed form, this mortgage is a nullity.

4. It is now settled that that where a party seeks a temporary injunction before determination of the main suit, that party must, firstly, show that it has a prima facie case. Secondly that it stands to suffer irreparable loss should the injunction not be granted. And in case of doubt, the matter can be resolved on a balance of convenience.

5. In order to succeed on this application the applicant must demonstrate that she has a prima facie case, or at least an arguable one. At this stage, as no trial has taken place the court is not required to evaluate the case in detail or assess at great length the probability of success of the same. However, the court must be able to be satisfied that there is some serious question to be investigated.

6. It is worth considering at this stage that in this case, as director and secretary of the mortgagor, Bainebitamazire Mixed Farm Ltd, the applicant was the actual 'mind' of the mortgagor, together with her husband, the other director. She, in effect, together with her husband, was the mind that mortgaged the suit property. Did she require any consent from herself as a spouse to Bainebitamazire Mixed Farm Ltd or at all? I would think not but perhaps this is a question that will be fully explored, argued and decided at the trial of the main suit.

7. Nevertheless given that scenario I am unable to find that the applicant has made out a prima facie case for the grant of a temporary injunction. I find that this application has no merit whatsoever. I dismiss the same with costs.

Signed, dated and delivered in Kampala this 19<sup>th</sup> day of September 2007

FMS Egonda-Ntende  
Judge

- [Commercial Court](#)
- [Add to Significant Recent Additions](#)