THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - CS - 188 - 2009

TIRUPATI DEVELOPMENT (U) LTD :::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

PETER BIBANGAMBA & ANOTHER :::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HON. JUSTICE GEOFFREY KIRYABWIRE

RULING.

This is an application by way of chamber summons Order 41 Respondent 1 of the Civil Procedure Rules for the grant of a temporary injunction. The law relating to the grant of a temporary injunction is well settled and I did not review it in detail here. That not with standing Counsel for the Applicant able to outline it to court during his submissions, suffice it only to add that the grant of a temporary injunction is an act of judicial discretion and it serves one sole purpose and that is to preserve the status quo at the time of the application until the hearing of the main suit on its merits.

The tests to be made are three; the first is to show court that the Applicant has a prima facie case with a high probability of success. The Applicant in the main suit seeks many prayers, however, the bulk of them are declaratory. They are founded as counsel for the Applicant has put it on the breach of a contract dated the 29th of October 2009 and in particular the enabling provision therein paragraph 3.4. Paragraph 3.4 provides that the agreement shall only shall only take effect on the transfer of Shs.1.5 bn/= to Bank of Baroda. He submitted as I

understood it that this provision is mandatory or a condition precedent. He submitted that the said 1.5 billion was not paid to Bank of Baroda and makes this a fundamental breach. He however concedes that some money was paid in any event to the tune of 1.3 billion shillings which was less the 1.5 billion shillings, so the contract was ineffective. He further submitted this over rode any other understanding or actions that may have taken place subsequently including Bank of Baroda releasing the title or the 2nd Respondent providing a loan facility which was in any event unknown to the Applicants.

In response, counsel for the 1st Respondent submitted that the whole agreement was structured to pay off the Applicants indebtness. In this regard 1.3 billion shillings was paid to Bank of Baroda which was happy and released the titles while the balance of 170 million was paid to M/S Half London to extinguish the indebtness of the Applicant. That being the case the 1.5 billion shillings referred to in paragraph 3.4 and 3.2 was paid. Counsel for the 1st Respondent admitted that there was still a balance due to the Applicant which was only payable under paragraph 5.3 after the Applicant had effected specified works. In other words there is no breach.

Counsel for the 2nd Respondent agrees with counsel for the 1st Respondent but adds that under a Memorandum of Understanding dated the same day the Applicant and the 1st Respondent agreed that the 1st Respondent would get a credit facility to effect the payment of the 1.5 billion shillings and it was the 2nd Respondent that provided the said money and took a mortgage over the property.

It seems to me that there is some contest as to how this agreement was to be applied. The Applicant and the Respondent both agree that payments started to take place. The only argument of the Applicant is that the said payments fall short of what was envisaged in paragraph 3.4. However, counsel for the Applicant does concede that the Bank of Baroda released the titles to suit property, albeit he argues wrongfully, and that the 1st is in what he calls *"partial possession"* and is collecting rent. That is what is on the ground. The 1st Respondent does admit owing money to the Applicant, albeit that it is not yet due. To that extent there is a prima facie case to be investigated by court with some probability of success if the said preconditions can be proved to have been met.

As to irreparable loss that cannot be atoned for with an award in damages the parties are not agreed. The Applicant insists there is breach and yet the 1st Respondent is bringing in a new contractor who may waste, damage or alienate the property. Counsel for the 1st Respondent argues that payment has been effected, possession taken and rent collected. That the Applicant has also made an alternative prayer for damages so they can be computed. He argues that the Applicant merely contests eviction and not alienation damage or wastage of the property. Counsel for the suit property.

The 2nd Respondent agrees with counsel for the 1st Respondent in substance. A lot has been argued about this dispute. To my mind there is a multiplicity of agreements and Memorandum of Understanding(s) that has allowed for some degree of confusion as to the structure of the agreement. However, for purposes of this agreement dated 29th of October 2009 is the quarrel about payments or rights to the property. What is the status quo going to help pending the resolution of this case. I find that it relates to payment not property. The status quo relating to the property on ground changed long ago. Court will not disturb it. The payments due or not due can be atoned for in damages. That being the case I need not address the third test as the court is not in doubt as to the status quo nor what the demands are.

I hereby dismiss the application with costs.

Geoffrey Kiryabwire

JUDGE

Dated: 01/07/2009

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