

**THE REPUBLIC OF UGANDA,
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO 442 OF 2012
ARISING FROM MISCELLANEOUS APPLICATION NO 438 OF 2012
ARISING FROM MISCELLANEOUS APPLICATION NO 437 OF 2012
ARISING FROM CIVIL SUIT NO 304 OF 2012**

ENSCON LIMITED}..... APPLICANT

VERSUS

ORIENT BANK LIMITED}..... RESPONDENT

BEFORE HON. JUSTICE CHRISTOPHER MADRAMA

RULING

The applicant filed this application under section 98 of the Civil Procedure Act and rule 4 of the Judicature (Court Vacation) Rules for issuance of a certificate of urgency in respect of Miscellaneous Application No. 437 and 438 of 2012 arising from Civil Suit No. 304 of 2012 and for costs of the application.

The application is supported by the affidavit of Warren Byamukama which briefly states that:

The applicant filed Civil Suit No. 304 of 2012 against the respondent for an injunction restraining the respondent from selling the applicants property comprised in block 77 plot 65 land at Lyantode, Rakai hereinafter referred to as the suit land. Since the applicant has filed a suit for an injunction stopping the respondent from selling the applicants property arising out of a loan agreement, the application is urgent. It is averred that if the applicant is not heard during court vacation, the Applicant might be held liable for failure to comply with their

contractual obligations. The applicant further avers that it is in the interest of justice that Miscellaneous Application No. 437 and 438 of 2012 are heard urgently. The affidavit in support repeats the grounds mentioned in the notice of motion.

The applicant filed high court civil suit number 304 of 2012 for an injunction restraining the defendant and their servants and/or their agents from selling the plaintiffs property, general damages and costs of the suit. The Plaintiff acknowledges that it borrowed money from the Defendant and that it still owes money to the Defendant. In the suit it is alleged that the Defendant recalled the loan prematurely and in breach of contract.

The Applicant has additionally filed an application for a temporary injunction which is MA No. 437 of 2012 to restrain the respondent from attaching and selling the plaintiffs property comprised in the suit land pending the hearing of the main suit.

The applicant further filed Miscellaneous Application No. 438 of 2012 for an interim order of injunction pending the hearing of the main application for a temporary injunction.

The application does not show when the respondent intends to sell the Applicants property. It is only averred that the respondent has recalled the loan and is trying to sell the applicants property.

I will not comment on the merits of the application for an interim order. What I need to emphasise is that this court has already determined that the registrar has jurisdiction to hear applications during court vacation. However, much as she has power to determine whether the application is of an urgent nature, and to avoid making the proceedings protracted, I will consider whether this application is of an urgent nature.

The applicant asserts that its property is in imminent danger of being sold. That it is willing to pay the loan. The court cannot at this stage assess the merits of any matter and will only consider whether the application should be heard during court vacation.

The pleadings on the face of it disclose that there is some urgency in the imminence of the sale. This is based on a supposed contractual right of the Respondent as a Bank to sell property. This court presupposes that there are no other judicial proceedings or orders touching on the same matter.

In the circumstances, I will not shut out the applicant from arguing his case for an interim order of injunction on the merits before the registrar. The certificate of urgency is granted with respect to Miscellaneous Application No. 437 of 2012. As to whether an interim order should be granted in the circumstances will be determined by the registrar on the merits of the Application. The applicant's application will be heard by the registrar. The main application should be given a date in consultation with the presiding judge to whom the main suit has been assigned. Costs of this application shall abide the outcome of the main application.



Hon. Mr. Justice Christopher Madrama

Wednesday, 01 August 2012

Ruling shall be delivered by the registrar on the 2nd of August 2012



Hon. Mr. Justice Christopher Madrama

Wednesday, 01 August 2012