

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)

HCT - 00 - CC - MA - 0221 - 2014

(Arising out of Civil Suit No. 219 of 2014)

AUDLEY LTD
APPLICANT/PLAINTIFF

VERSUS

DOREEN SANDRA RWAMBUYA & ANOR
RESPONDENT/DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This is an application by Audley Limited hereinafter called the Applicant against Doreen Sandra Rwambuya and Caleb Kakuyo the first and second Respondents respectively.

The Applicant seeks a temporary injunction to restrain the Respondents, by themselves, servants, agents and any other claiming under them from reentering, terminating the tenancy agreement or evicting them (Applicant) from LRV 610, Folio 25, Plot No. 7A Yusuf Lule Road, referred to in these proceedings as the "Property", until the determination of the suit 219 of 2014 in which the Applicants are the Plaintiff's and the Respondent the Defendants.

The application is grounded on the following;

- a) That the Respondents have threatened to evict them.
- b) That the Applicant fearing irreparable damage have filed a suit against them
- c) That on a balance of convenience, the Applicants stand to be more inconvenienced.

The brief background to the application steams from a misunderstanding between the Applicants and Respondents whose relationship is that of tenant and landlord.

The Applicant alleges that on June 2005, he entered into an oral contract to take possession of the property improve it, give it an Egyptian look and run it as Casino and Restaurant. He was also to buy out its former tenant one Albertini Didier whom he paid USD 50,000.

In 2006 they entered into a formal tenancy agreement and he started to improve the property which he named "Pyramids". That all was going well when a dispute arose between the two parties and the Respondents threatened termination of the agreement. The Respondents in their part contend that the suit HCCS 219 of 2014 does not disclose any cause of action, is frivolous, vexation and cannot form a basis upon which the Applicants can obtain an injunction. They further allege that the Applicant breached their agreement because while they were only permitted by the Respondents to build a perimeter wall, they engaged in various

other construction by making alterations and additions to the property.

The Respondent demanded that the Applicants leave the premises, thus this application for temporary injunction.

An injunction is based upon laid down principles. The first and overall consideration is the need to prevent the Respondent from committing the alleged violation of the Applicants legal rights. The principal is well enunciated in the case of **American Cyanamid V Ethicon Limited 1975 AC 396.**

In that case their Lordships laid down four things to be considered, namely; whether the matter under trial was serious, whether the wrong if any could not be atoned by damages, thirdly where did the balance of convenience fall, and lastly whether there were any special factors.

These in my view are not however the only considerations because if they were, the elasticity that a Court has through its discretionary powers would be eroded and thus “limit the flexibility of the remedy” **Hubbard V Vosper [1972] 2 HC B84 cited in Civil Procedure & Practice in Uganda p 201.**

The foregoing received approval by **Odoki J** as he then was in **Kiyimba - Kaggwa V Haji A. N. Katende [1985] HC B43** who on the basis of a temporary injunction wrote;

“The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve

matters in status quo until the question to be investigated in the suit is finally disposed off.”

In this case the Applicant alleges that he will suffer irreparable damages.

In reply the Respondent contended that if the matter was in the end to be determined in favour of the Applicant, it would be atoned by way of damages.

In my view irreparable damage is not necessarily that which can never be compensated for. In my view it means substantial or extensive damage, say; severing an emotional attachment to the subject matter in this case the property which would be difficult to assess in monetary terms should the Respondent be found in the wrong.

In this case the Applicant has shown that he has done extensive alteration to the property.

The Respondent in his affidavit in reply also agrees that the Applicant made extensive alterations. These alterations are however not just stone and mortar, they are in fulfillment of a theme, a theme to make the patrons feel they are in “Egypt”. Its that emotional attachment that the Respondent would not be able to atone in monetary terms. Its that which makes it irreparable

injury in event of the Respondent losing the case yet after evicting the Applicant.

The other thing is that unique architecture builds goodwill. The goodwill would be gravely injured if eviction took place and later the Court found that it should never have happened.

Considering all the above, I find that the scale of balance of convenience tilts in favour of the Applicant. A temporary injunction is therefore granted in favour of the Applicant as prayed. This injunction is however to last for 3 months from date of the ruling, a period within which the parties are to ensure that suit is disposed of costs of the application shall abide the outcome of the main suit.

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David K. Wangutusi
JUDGE

Date: 27 - 10 - 2014