

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

HCT - 00 - CC - MA - 270 - 2014
((Arising out of Civil Suit No. 0259 of 2014))

HOUSING FINANCE BANK LTD ::::::::::::::::::::::::::::::::::::::
PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::::::
DEFENDANT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

In this application, the Applicants Housing Finance Ltd seeks a temporary injunction against the Respondent, Commissioner General, Uganda Revenue Authority.

The orders sought are to restrain the Respondent and her agents from further enforcement of tax collection measures against the Applicant personally in respect of tax liability of Ugx. 1,254,000,000= as taxes owed by Mundua Crispus and Nalwoga Proscovia.

The application is grounded on the following

1. On the 13 October 2011, the Respondent issued a 3rd Party Notice for the sum of Ugx. 504,000,000/= for VAT on account of Mundua Crispus and Nalwoga Proscovia.

2. That the Respondent however, served the Agency Notice on the wrong branch of the Applicant bank and by the time the Applicant was aware, Mundua Crispus and Nalwoga Proscovia had withdrawn the money.
3. That the Respondent can only impose the liability on the Applicant after obtaining a court order.
4. That if the threatened enforcement is effected, the Applicant will suffer irreparable disruptions leading to great loss.
5. That the balance of convenience lies in favour of granting the temporary injunction.

This application was supported by the affidavit of the Applicant's Company Secretary.

She deposed that the Respondent did not bring to the Applicants notice the Agency Notice in time. That instead of serving the head office at Plot 4 Wampewo Avenue Kololo where the tax payer held an account, the Respondent went ahead and served them upon the Kampala Road Branch, and by the time the Agency Notice was brought to the attention of the Applicants, the tax payers had already withdrawn the money.

By way of reply Mr. Stanley Kabyemera a Supervisor in the Debt Collection Unit of the Legal Services and Board Affairs Department of the Respondent deposed that the Applicants affidavit in support of this application was tainted with falsehoods and devoid of facts from which court could not adjudicate the matter on the merits.

That since the Third Party Agency Notice was served on 13 October 2011, the Applicant had sufficient time to with hold the money which was withdrawn on the 16th, 17th and 19th October 2011.

In an application for injunction such as this one the stipulations in **American Cyanamid V Ethicon Limited** [1975] AC 396 are a good guide. First of all court should have regard to the seriousness of the issue to be tried, secondly whether damages will be enough to

compensate the aggrieved, thirdly where does the “balance of convenience” lies and fourthly are their any other special factors. In considering the foregoing the discretion of the court takes the front seat which enables flexibility of meting out an equitable remedy.

Hon. Odoki CJ as he then was while handling the case of **Kiyimba - Kaggwa V Haji A N Katende** [1985] HCB 43 clearly wrote on the subject;

“The condition for the grant of an interlocutory injunction are first that the Applicant must show a prima facie case with a probability of success. Secondly such injunction will not normally be granted unless the Applicant might otherwise suffer irreparable injury which would not adequately be compensated or atoned for by an award of damages, thirdly if the court is in doubt, it will decide an application on the balance of convenience.”

There is ofcourse a difficulty by the court to come up and say the Applicant has a very strong case and his chances of success are high. That would be almost predetermining the matter. What court can however look at is the seriousness of the issue to be determined. If the question to be investigated is serious, **David Mukwya V Administrator General** [1993] 1V KALR 1 and that there are special factors, **American Cyanamid V Ethicon Limited** [1975] AC 396, then an injunction would be appropriate as long as the pleadings do not point at a vexatious application. It is not a must that all the criteria mentioned must be present.

In the instant application the Applicant has raised serious issues on whether service upon a corporate body by tendering process upon a reception and much more at a different branch from where the tax payer operated an account, amounted to effect service.

The Applicant has also raised a serious issue for consideration on the vitality of the dates specified in the Third Party Agency Notice and its effect on the tax payer and the Agent.

Both the foregoing are critical in determining whether Section 54 of the Value Added Tax Act was justified. They also raise doubt.

That being the case, I find that the balance of convenience as favour of the Applicant and the temporary injunction is hereby granted till disposal of the suit or other orders.

Before I leave this matter, it is important to remind one and all that tax collection is key to the running of state and therefore cases such as this where a temporary injunction has been granted should be fast tracked.

In the premises the matter should immediately go through the mediation process. If it remains unsettled after that process, its hearing should be expedited.

The costs shall abide the main suit.

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David K. Wangutusi
JUDGE

Date: 09 - 07 - 2014