

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

**MISCELLANEOUS APPLICATION NO 971 OF 2015**

**ARISING FROM CIVIL SUIT NO 776 OF 2015**

**TUMUSIIME NASSUR}.....APPLICANT/PLAINTIFF**

**VS**

**1. MAGANDAZI ABBEY}**

**2. MR. ROBERT MUTEBI}.....RESPONDENT/DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant filed this application under Order 41 rule 1 and 9 of the Civil Procedure Rules, section 64 (c) and 98 of the Civil Procedure Act as well as section 38 of the Judicature Act for the court to issue a temporary injunction restraining the Respondents/Defendants, their agents or those claiming under them from impounding, attaching and reselling Motor Vehicle Registration Number UAW 949 G, Toyota Land Cruiser VX HDJ 101, Silver in colour and 1998 model, engine number 1HD0 161048 and Chassis Number HDJ 1010008349 (hereinafter referred to as the suit property) and for the costs of the application to be provided for.

The Applicant's case is that on 10 July 2015 he bought the suit vehicle from the first Respondent, who is the agent/broker of the second Respondent. The Applicant paid Uganda shillings 50,000,000/= for the suit vehicle leaving a balance of Uganda shillings 25,000,000/= and took possession of the vehicle from the date of signing the agreement. Secondly the Applicant subsequently paid Uganda shillings 7,500,000/= and 11,000,000/= leaving an outstanding balance of Uganda shillings 6,500,000/=. The first Respondent issued him with a photocopy of the logbook which shows that it is the second Respondent who is the registered owner of the motor vehicle. Sometime later in the year 2015 the second Defendant contacted the Applicant

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requesting for payment of Uganda shillings 45,000,000/= and told him that he would impound the vehicle in case of default. On 10 October 2015, the first Defendant impounded the suit vehicle and the Applicant contacted the first Respondent to this application to explain why the motor vehicle was impounded yet he was completing the purchase price. The first Respondent together with the second Respondent agreed to release the vehicle to the Applicant and the vehicle is currently in the custody of the Applicant. At various times the second Respondent has threatened to impound and sell the suit vehicle. Consequently the Applicant avers that he would suffer irreparable damage and loss unless an interim order is issued against the Respondents/Defendants, their agents or those claiming under him. He avers that there is a likelihood of success of the suit having purchased the vehicle from the agent of the second Respondent and he is willing to pay the balance of Uganda shillings 6,500,000/=.

The application is supported by the affidavit of the Applicant which verifies the facts asserted in the chamber summons. In the affidavit he further deposes that the application is meant to preserve the status quo and that he would suffer irreparable damage and loss unless an interim order is issued against the Defendants/Respondents, their agents or those claiming under them. Lastly that it is in the interest of justice that this court should issue a temporary injunction against the Respondents/Defendants as claimed.

Only the second Respondent filed an affidavit in reply. He deposes therein that he sold his motor vehicle to the first Respondent at an agreed consideration of Uganda shillings 70,000,000/=. Upon execution of the agreement the first Respondent paid Uganda shillings 25,000,000/= leaving an outstanding balance of Uganda shillings 45,000,000/=. The first Respondent promised to pay the balance in two instalments of Uganda shillings 25,000,000/= and 20,000,000/= by 10 August and 10 September 2015 respectively. He attached the agreement as annexure "A". The first Respondent however sold the motor vehicle to the Applicant and they jointly promised to pay him the remaining balance in two equal instalments of 22,500,000/= by 6 November 2015 and 30 December 2015 respectively according to a copy of the agreement marked as annexure "B". In total disregard of the agreement the Applicant and the first Respondent have never paid the debt. He admits calling the Applicant and claiming from him Uganda shillings 45,000,000/=. Furthermore he asserts that he has a lien on the motor vehicle and it would be unfair for the court to stop the impounding of the vehicle when the main suit has no likelihood of success. He further

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contends that the Applicant does not come to the court with clean hands because he is indebted yet he seeks a temporary injunction when he had not fully purchased the motor vehicle.

The second Respondent further deposes that he is the one bound to suffer loss because the first Respondent and the Applicant deliberately refused to pay him his balance of Uganda shillings 45,000,000/= and any injury suffered by the Applicant can be atoned for by an award of damages.

The first Respondent never filed any affidavit in reply though he filed a written statement of defence in the main suit. The facts in the main suit are the same as those deposed to by the Applicant in this application. The difference is that the first Defendant who is the first Respondent admits each and every allegation of fact contained in the Plaint. His contention is that he was duly instructed to sell the motor vehicle to the Applicant by the second Respondent. In his WSD the first respondent admits all the facts presented by the Applicant in this application. He averred that the Plaintiff's claim is genuine and there is overwhelming evidence which will be availed at the hearing.

At the hearing of the application I was satisfied by the affidavit of Wabomba Simbi Bosco, Court Process Server that the Respondents had been served with the hearing date for the hearing of 2<sup>nd</sup> March 2016. The affidavit was filed on court record on 29 February 2016. Both Respondents were served on 22 February 2016.

At the hearing of the application, the Applicant was represented by Annitah Tusiimire. The first Respondent, the second Respondent and their lawyers were absent for the hearing and the application proceeded ex parte under Order 9 rule 20 (1) (a) of the Civil Procedure Rules.

Counsel Tusiimire Annitah addressed the court orally and prayed for the application to be allowed. She submitted among other things that the first Applicant is the equitable owner of the vehicle having paid almost the entire purchase price for it. He is in possession of the vehicle and the second Respondent has persistently threatened to impound the motor vehicle. The Respondents did not appear to defend the suit. Counsel relies on the list of authorities filed in court.

Order 41 rule 2 (1) of the Civil Procedure Rules permits this court to issue a restraint order to prevent breach of contract. Furthermore under section 37 (1) of the Judicature Act Cap 13 the High Court may grant an order of mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to be just or convenient to do so. An injunction is issued as a fundamental basis therefore to support or protect a legal right according to the case of **Margaret, Duchess of Argyll (feme Sole) v Duke of Argyll and others [1965] 1 ALL E.R. 611** between pages 634 – 636. The consideration is whether there is a legal right that is threatened and as a prima facie case or an arguable case established by affidavit.

The precedents on the principles for the grant of a temporary injunction are that the Applicant has to demonstrate by affidavit or otherwise that there is an arguable case fit to be tried or a prima facie with a probability of success for the application to succeed. Secondly an injunction will not be granted if damages would be an adequate remedy. The Applicant should show the likelihood of irreparable injury that cannot be atoned for by an award of damages. If the court is in doubt on the two principles, it decides the case on the balance of convenience (See **Giella v Cassman Brown And Company Ltd [1973] EA 358** decided by the Court of Appeal). Furthermore the purpose of a temporary injunction is to maintain the status quo pending full investigation of the dispute through trial until it is finally resolved (See East African Court of Appeal case of **Noormohamed Janmohamed vs. Kassamali Virji Madhani [1963] 1 EACA 8**).

The Applicants case is that he bought a Toyota Land Cruiser VX HDJ 101 registration number UAW 949 G and paid a total of Uganda shillings 67,500,000 out of Uganda shillings 75,000,000/= and has possession of the vehicle. The second Respondent impounded the vehicle but released it to him on intervention of the first Respondent. The Applicant is apprehensive that the Respondent will impound the vehicle again and even resell it and inconvenience him. The Applicant claims a right as a purchaser of the suit property and seeks to restrain the Respondents from interfering with that right pending resolution of the dispute. In the premises there is an arguable case disclosed by the pleadings. I have also taken into account the fact that in the written statement of defence the first Respondent supports the Applicant's case and claims to be an agent of the second Respondent and received money under a purchase agreement as claimed.

The second issue is whether the Applicant would otherwise suffer irreparable loss that cannot be atoned for by an award of damages. The threats of the second Respondent to impound the vehicle cannot be atoned for in damages as the Applicant fears that any time the vehicle may be impounded. The vehicle has ever been impounded without notice and released back to him. The Applicant cannot enjoy the vehicle in the state of affairs and I am satisfied that he is likely to suffer irreparable injury due to that fear that cannot be atoned for or measured in monetary terms.

In the premises a temporary injunction issues restraining the Respondents/Defendants, their agents or those claiming under them from impounding, attaching and reselling Motor Vehicle Registration Number UAW 949 G, Toyota Land Cruiser VX HDJ 101, Silver in colour and 1998 model, engine number 1HD0 161048 and Chassis Number HDJ 1010008349, pending the hearing and disposal of HCCS 776 of 2015 between the parties. The application succeeds with costs in the cause.

Ruling delivered in open court on the 2<sup>nd</sup> of March 2016

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Tusiimire Annitah Counsel for the Applicant

Applicant is in court

Respondents are absent.

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**2<sup>nd</sup> March 2016**

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