

THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

HCCS NO 275 OF 2016

(ARISING FROM CIVIL SUIT NO 240 OF 2016)

AFRITOP LIMITED (FORMERLY AFRICA LINK LTD).....APPLICANT

VERSUS

UGANDA RED CROSS SOCIETY}.....RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

RULING

The Applicants application is for a temporary injunction restraining the Respondent from selling its property comprised in plot M427 Ntinda Industrial Area until the hearing and final determination of the main suit. It is also for the costs of the application to be provided for.

The grounds of the application are that the Applicant filed HCCS 240 of 2016 seeking an order for specific performance of the tenancy agreement dated 20th of March 2014 and a supplementary agreement signed on 12th January 2015 between the Plaintiff/Applicant and the Defendant/Respondent. Secondly the suit is for an order to stop the sale of the suit premises until specific performance of the agreements. Thirdly, the suit is for a declaration that the Defendant is in breach of the tenancy agreement. Lastly, the suit is for general damages for breach of contract and in the alternative for special damages.

Secondly the Applicant avers that the Defendant through its agents is planning to sell the demised premises in total disregard of the tenancy agreement between the Applicant and the Respondent which agreement is still subsisting.

Thirdly the Applicant suit has a high likelihood of success because there are serious questions to be tried and which merit judicial consideration. Fourthly the Applicant avers that it would suffer irreparable damage if the Respondent is not restrained from selling the demised premises. Fifthly the Applicant asserts that the balance of convenience favours it and lastly that it is in the interests of justice that the temporary injunction order is issued.

The application is supported by the affidavit of Milton Agaba who repeats the averments in the chamber summons regarding the filing of the main suit. He deposes that the Applicant would be able to establish a prima facie case at the trial as the plaint clearly shows that the Respondent is in total breach of the tenancy agreement, having failed to put the suit premises in a Tenantable state or at all. Secondly, the Respondent issued a notice of sale of the suit property without regard to the Applicant's subsisting tenancy. Thirdly, if the Respondent is not restrained from selling the suit property, the Applicant will suffer irreparable or substantial loss as the suit property is the best available location for the Applicant's kind of business. Fourthly, the balance of convenience favoured the Applicant because it has already spent a lot of money on the premises in terms of rent, renovations and costs of finding temporary alternative premises and so the Respondent has nothing to lose. No prejudice would be occasioned to the Respondent because if the injunction is issued, it will not lose ownership of the suit property and the provisions of the premises will improve its value. It is just and fair and equitable that a temporary injunction is issued staying the sale of the suit property. The affidavit was deposed to in support of the application for a temporary order of stay of the intended sale of the suit property until the hearing and final disposal of the main suit.

The affidavit in reply of the Respondent opposes the application. Mr Robert Kwesiga, the secretary-general of the Respondent deposed as follows.

On 20th March 2014, the Respondent signed the tenancy agreement with Africa Link Investments Ltd for a period of two years commencing 1st April 2014 for monthly rental of US\$4000 inclusive of VAT payable 12 months in advance from the date of execution and thereafter the rent was to be paid on a quarterly basis. On 3rd April 2014 Africa Link Investments deposited in total of US\$52,000 inclusive of US\$4000 as security deposit refundable upon the end of the contract period. The commencement date of the tenancy signed on 20th March 2014 was 1st April

2014 under clause 1 (a) and not clause 1 (c) referred to in the plaint. The agreement annexure "A" to the plaint is different from the original agreement signed between the Defendant and Africa Link Investments Ltd. It was also agreed under clause 1 (d) that subject to the conditions and covenants contained in the agreement, the agreement would take effect from the date of signing. The warehouse was immediately handed over to the Tenant for occupancy in March 2014. The Tenant immediately started conducting business at the premises.

Subsequently Africa Link investments prepared and presented to the Defendant a financing proposal for the motivation of the suit premises with bills of quantities to rehabilitate the warehouse and improve the drainage system of the compound. Following the proposal, a strategy technical meeting was conducted to review the bills of quantities for a mutual agreement on the scope of works to be done. Thereafter a supplementary agreement was later signed on 1st September 2014 to handle issues regarding renovation of the premises in which it was agreed under clause 1 (b) that the compensation of all works/innovations would be equivalent to the number of months in accumulating the total bills of quantities at a monthly dinners rate of US\$4000 making the number of months waived off the rent equal to Uganda shillings 119,289,389/= equivalent to 11 months and 21 days.

After the supplementary agreement the Tenant started works by making the auditions such as the removal of the inbuilt cabin filing drawers and lockers, removal of sinks, toilet seats, devolution of existent laid down drainage channels and removal of electrical installations. The demolitions or destruction was made on the understanding that the Tenant was going to make renovations as consideration for using the Respondent's premises in lieu of payment of rent.

The Respondent's General Secretary further deposed that no renovation works have ever been undertaken or done since taking over of the premises by the Tenant. Africa Link Investments Ltd has been transacting its business in the suit premises without any complaint and the Respondent has not received any complaint from it to date. In April 2014 the Respondent was requested to speed up the renovation works since the initial activities carried out that caused more damage to the premises and in July 2015 the management of Africa Link Investments Ltd prepared and submitted a progress report to the Defendant outlining several challenges. The Respondent caused a deliberate joint evaluation of the work carried out by the Tenant from September 2014

up to July 2015 and established that it was less than 30% of the total volume of the expected value and there was no clear reason given for the delays. The number of meetings were organised between the Defendant and the Respondent with no fruitful results. Between November 2015 and March 2016 several meetings were organised to ensure good progress in the renovation of the premises based on the complaints but these efforts were frustrated by Africa Link Investments Ltd.

As far as breach of contract is concerned, the Tenant breached the contract to renovate the premises within 11 months and 21 days as agreed in the supplementary agreement and the Respondent did not cancel the contract with the Tenant. After failing to execute its contractual obligations of renovating the premises within the stipulated period, the Defendant did not remit rental fees to the Respondent for the period first of April 2015 and up to May 2016. It was further agreed in clause 6 of the agreement signed on 20th March 2014 that all the Tenants items, petitions, plant and machinery were not to be deemed fixtures in the land and could be removed by the Tenant and the termination of the lease. It was further agreed in clause 2 (b) of the agreement dated 20th of March 2014 that the Tenant to pay all charges for electricity and water bills consumed in the premises during the term of the lease and therefore the Respondent cannot be liable for the money spent on the water and electricity bills consumed by Africa Link Investments Ltd. Both tenancy agreements provide for a notice period of three months in the case of termination of the tenancy and the Respondent had not received any written notice which is in breach of the tenancy agreement by Africa Link Investments Ltd.

The Secretary-General of the Respondent further deposed that there is no subsisting tenancy between the Applicant and the Respondent anymore. The tenancy was for a period of two years commencing from 1st April 2014 and in the absence of renewal of the tenancy, the Tenant can be evicted by the Landlord at any time without notice. Secondly an order of specific performance cannot issue against the Landlord since Africa Link investments Ltd breached the contract when it failed to renovate the premises within 11 months and 21 days as agreed in the supplementary agreement. He further deposes that the Applicant or any other party will not suffer any irreparable damage and substantial loss as claimed because the Applicant claims it is not operating the suit premises according to paragraph 4 (K) of the plaint. On the basis of

information and advice from Messieurs Katende, Ssempebwa and Company Advocates the secretary-general of the Respondent deposes as follows:

In the absence of an agreement, the Tenant cannot acquire any legal interest/right recognisable in law against the Landlord's property. Secondly the balance of convenience is in favour of the Respondent since it has a legal right to the property. Thirdly, in the circumstances of the case it Tenant cannot legally be granted a temporary injunction order as against the Landlord's property. That at the moment there is no legal binding agreement between the Applicant and the Respondent and the Applicant's application is not tenable as against the Respondent.

In rejoinder Mr Milton Agaba deposed an affidavit as follows:

With regard to clause 2 (c) of the tenancy agreement, the tenancy was to commence after completion of all renovations and improvements. He relies on copies of minutes of the meeting held between the Plaintiff's officials and the Defendant's officials that confirms. Secondly, the agreement attached as annexure "A" to the plaint is the right agreement witnessed by representatives of the Applicant and the Respondent on every page. Thirdly while the agreed cost of renovation was Uganda shillings 119,289,389/=, due to the Respondent's delay in approving the appeal of quantities and of signing the supplementary agreement, the prices for the different construction materials had gone up at the time renovations commenced.

Furthermore, the Applicant contends that demolitions were done in preparation for renovations and indeed some renovations were carried out but were put on hold as the Respondent requested to get involved in the process. Furthermore, the Applicant has not been conducting business in the suit premises and the trucks parked outside the premises contain materials for the construction/renovations and were awaiting approval/review of bills of quantities so as to continue with the renovations.

The Applicant's officials were willing to meet with the Respondent's officials to complete the approval of the Bill of quantities by the Respondents officials who were always elusive. From Messieurs Muwema and Company Advocates and on 15 March 2016 the Applicant wrote to the Respondents seeking for a meeting so as to approve the bills of quantities. The director of the Applicant Mr Milton Agaba further deposed that the Applicant is not in breach of the tenancy agreement and should not remit any more money on the rent before completion of the renovation

and commencement of the tenancy. Furthermore the Applicant incurred extra costs for alternative premises and rental receipts and agreements are attached to the plaint. When the Applicant begun renovations it discovered that the water and electricity had been disconnected due to large unpaid bills by previous Tenants and proposed to the Respondent that it could clear the bills on condition that the money was refunded and this was agreed to. Furthermore, the Applicant contends that the tenancy agreement between the parties is still subsisting and was supposed to commence upon completion of renovations. In the premises the Applicant has a prima facie case as disclosed in the plaint and would also suffer irreparable damage if the injunction is not granted as it has invested heavily in the property in terms of rent, renovation and costs as well as time taken. On the other hand the Respondent has nothing to lose.

The court was addressed in written submissions.

At the hearing of the application Counsel Caroline Kintu represented the Applicant while the Respondent was represented by Counsel Fred Kiiza.

Ruling

I have carefully read through the Applicants submissions in the main and in rejoinder as well as the submissions of the Respondent in reply.

The principles applicable in an application for a temporary injunction are not in dispute and I do not need to repeat them in detail. The Applicant relied on **Kiyimba Kaggwa vs. Haji Abdu Nasser Katende {1985} HCB 43** and **American Cyanamid Co. Ltd vs. Ethicon [1975] A.C. 396**. The purpose of an injunction is to maintain the status quo until the question to be investigated in the suit is finally determined. To consider the application the court has to be satisfied that the Applicant's application discloses a prima facie case with a probability of success. This is sometimes phrased as a serious question or questions for trial and that the action is not frivolous or vexatious.

Where serious questions for trial are disclosed the Applicant must show that if an injunction is not granted he or she would otherwise suffer irreparable injury which cannot be adequately compensated by an award of damages.

Where the court is in doubt on the first two principles it will decide the application on the balance of convenience.

On the first ground the Applicant submitted that the Respondent had advertised the suit premises for sale without taking into account the subsisting tenancy agreement between the parties and the fact that the Applicant paid rent in advance for one year for the suit premises but does not utilise them due to the pending approval of bills of quantities for renovations of the premises by the Respondent and which approval has not been finalised to date despite several reminders. Had the renovations been carried out as agreed, the Applicant would have started using the premises. The intended sale is a clear breach of the tenancy contract. Consequently there are serious questions to be tried. She relied on Clause 1 (c) of the agreement which provides that the tenancy would commence after the Landlord had completed all the renovations and improvements on the premises agreed upon with the Tenant and which would not take more than one month from the date of execution of the agreement. The Respondent handed over the premises on the 2nd of May 2013 without undertaking the agreed renovation/repairs and therefore the Applicant's application for a licence was rejected by the Kampala Capital City Authority because the building was in disrepair. Secondly there was a notice of sale contrary to clause 2 (e) of the tenancy agreement in total disregard of the Plaintiff's subsisting tenancy interest.

On the other hand the Respondents Counsel submitted that the commencement date of the tenancy signed on 20th March 2014 under clause 1 (a) was 1st April 2014. The tenancy was for a period of two years from the date of commencement. The warehouse was immediately handed over to the Tenant for occupancy in March 2014. Thirdly, the Applicant commenced conducting business at the premises. Later on the Applicant presented to the Respondent a financing proposal for the renovation of the suit premises and a meeting was held to determine the scope of the works to be done. A supplementary agreement was signed on 1st September 2014 to handle issues relating to renovation of the premises but it was agreed that the renovation would be paid for any kind in other words offset from the rent payable. The Applicant assumed the renovation responsibilities and the agreed costs was Uganda shillings 119,289,389/= covering 11 months and 21 days. The Applicant commenced renovation works by making demolitions of certain fittings referred to in the affidavits evidence. However no renovation works were ever undertaken. Yet the Applicant was transacting business in the premises without any complaint

about the state of the building. The demolitions were made on the understanding that the Applicant would make renovations as consideration for using the premises in lieu of payment of rent for the premises. In the month of April 2015 the Applicant was requested to speed up renovation works because work already done on the premises did more damage to the premises. A joint evaluation was carried out for the work done between September 2014 and July 2015 and it was established that 30% of the total volume of the expected value had been done. The period stipulated in the agreement being the renovation value in lieu of rent had expired and there was no longer any subsisting tenancy agreement between the parties.

With reference to the law and the first principle for the grant of a temporary injunction the Respondent's Counsel contended that there are no serious questions to be tried. Firstly with reference to the affidavit in reply, the suit property is not in a Tenantable state which is an indication that it is unoccupied. The Applicant's contention is that they made the demolitions for renovations and are not conducting business in the suit premises. On the other hand the Respondent's case is that the Applicant started conducting business at the premises without renovating the premises and the tenancy had expired.

In rejoinder the Applicant contends through Counsel that the Respondent has introduced a lot of falsehoods that can be subjected to trial when the main suit comes for hearing and should not be determined at this stage of an application for a temporary injunction. The court should scrutinise the facts of the Applicant against that of the Respondent to realise that the issues raised required to be investigated by the court in the trial before any decision is made on them at this stage.

Counsel reiterated submissions on the principles for the grant of a temporary injunction under Order 41 rule 1 (a) of the Civil Procedure Rules. The Applicant's case is that the Respondent is threatening to sell/transfer the suit premises without taking into account the subsisting tenancy which is an issue pending trial/investigation in the main suit. The intended sale is evidenced by a notice of sale which is attached as annexure (i) to the plaint and annexure "A" to the Applicant's application. It therefore demonstrates that the suit property is in danger of alienation/transfer by the Respondent and the Applicants case falls rightly under Order 41 rules 1 (a) and (b) of the Civil Procedure Rules.

Secondly, the Respondent alleges that the Applicant had occupied the premises for a second year without paying rent which allegation is outrageous and false. The Applicant's contention as contained in the affidavit in rejoinder is that it had possession of the suit premises for purposes of renovations and this is illustrated in the main suit which is yet to be heard. Secondly, the Applicant's contention is that it cannot pay rent for another year for premises it has not occupied and that the tenancy was supposed to commence only upon completion of the renovations by the Respondent. The tenancy was supposed to commence after the Respondent who is the Landlord had completed all renovations according to clause 1 (c) of the tenancy agreement annexure "A" to the plaint.

Resolution of issue 1: Whether the Applicant's application discloses serious questions for trial or whether the suit is frivolous or vexatious?

I agree with the principle for the grant of a temporary injunction that where there is contested affidavit evidence, the final conclusion on the controversy should await the trial of the suit on the merits. This was the holding of Lord Diplock in the case of **American Cyanamid Co. v Ethicon [1975] 1 ALL E.R. 504** when he held:

“My Lords, when an application for an interlocutory injunction to restrain a Defendant from doing acts alleged to be in violation of the Plaintiff's legal right is made on contested facts, the decision whether or not to grant an interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. (and further at page 510) ...It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.”

The final resolution on matters of fact ought to await the trial where evidence is adduced and subjected to cross examination. The principles for a suit disclosing triable issue is the same and analogous to that in an application to defend a summary suit where the defence should show triable matters that may constitute the defence. Similar principles are used to decide whether to

be granted leave to appeal where appeal lies with leave of court. The court determines whether there are serious questions which merit consideration by an appellate court. What is the case where there is an arbitration clause which requires the matter to be referred for arbitration? The issue was considered when dealing with an application for leave to defend a summary suit by Parker L.J. in **Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd (in liquidation)** [1989] 3 All ER 74 at 77 – 78. Lord Parker on the purpose of a summary suit also held that a judgment on refusal of leave to defend should be granted in obvious cases. But if the Defendant's suggested defence requires a lot of arguments it should not be granted. He said:

“If the Defendant's only suggested defence is a point of law and the court can see at once that the point is misconceived the Plaintiff is entitled to judgment. If at first sight the point appears to be arguable but with a relatively short argument can be shown to be plainly unsustainable the Plaintiff is also entitled to judgment. But Ord 14 proceedings should not in my view be allowed to become a means for obtaining, in effect, an immediate trial of an action, which will be the case if the court lends itself to determining on Ord 14 applications points of law which may take hours or even days and the citation of many authorities before the court is in a position to arrive at a final decision. In cases where there is an arbitration clause it is in my judgment the more necessary that full-scale argument should not be permitted. *The parties have agreed on their chosen tribunal and a Defendant is entitled prima facie to have the dispute decided by that tribunal in the first instance, to be free from the intervention of the courts until it has been so decided and thereafter, if it is in his favour, to hold it unless the Plaintiff obtains leave to appeal and successfully appeals.*” (Emphasis added).

The parties in this case have an arbitration clause and arguments on the merits ought to be restricted and the matter referred for arbitration to try those issues if any. It may not matter that such serious questions arise. What matters to determine is whether there is a dispute as contemplated in the clause to submit the dispute to arbitration. The principles to be applied are found under section 5 (1) of the Arbitration and Conciliation Act cap 4 laws of Uganda.

“5. Stay of legal proceedings.

(1) A judge or magistrate before whom proceedings are being brought in a matter which is the subject of an arbitration agreement shall, if a party so applies after the filing of a statement of defence and both parties having been given a hearing, refer the matter back to the arbitration unless he or she finds—

(a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or

(b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

(2) Notwithstanding that an application has been brought under subsection (1) and the matter is pending before the court, arbitral proceedings may be commenced or continued and an arbitral award may be made.”

Section 5 (1) commands the court to only establish the questions set out under section 5 (1) whether (a) the arbitration agreement is null and void, inoperative or incapable of being performed? Or (b) whether there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration. Where the above questions are answered in the negative the court shall refer the dispute to arbitration and not exercise any jurisdiction in the matter. Why should a court which reviews decisions of arbitrators bias them with comments? The parties in their contract or supplementary agreement reserved the right of a party to apply for a temporary injunction in a court of law in case of any dispute within the purview of the agreement. And the question I have been grappling with is whether I cannot consider whether the suit is frivolous or vexatious? Secondly does not the controversy raised require trial by an arbitral tribunal? Is the suit frivolous or vexatious? That is the danger posed in this application. If the court holds that they are frivolous or vexatious, it may determine the dispute to a certain degree and bias the contemplated arbitral tribunal.

That notwithstanding the principles to be applied where there is an arbitration clause should be that of an interim measure of protection pending arbitration under section 6 of the Arbitration and Conciliation Act which section provides as follows:

“6. Interim measures by the court.

(1) A party to an arbitration agreement may apply to the court, before or during arbitral proceedings, for an interim measure of protection, and the court may grant that measure.”

Both Counsels submitted on whether this suit was frivolous or vexatious or whether there are serious questions of law which merit judicial consideration. I was referred to several clauses of the contract. The main contention of the Applicant revolves around a determination as to whether the contract or the tenancy commenced or is to commence after renovations. The Respondent maintains that the contract or tenancy commenced and had expired and therefore there was nothing to try. On the other hand the Applicant contends that the tenancy had not commenced and that it was on the premises for purposes of renovation. A cursory view of the contract may be necessary to see whether that is a matter worth trying. In annexure "A" to the affidavit in support of the application it is proven by affidavit evidence that the parties signed a contract on 20th of March 2014. The Respondent relies on clause 1 (c) and the Applicant relies on the same clause. The clause reads as follows:

"This agreement shall commence after the Landlord has completed all renovations and improvements agreed upon with the Tenant on the demised premises and specified in Schedule 1 here to annexed and which provisions and improvements should not take more than one month from the date of execution of this agreement and have to be acknowledged by the Tenant in writing and hence the commencement of the tenancy."

It was clearly envisaged by the parties that the renovations by the Landlord were to be completed within a period of one month from the date of execution of the agreement. Did the agreement commence after at least a month from the date of execution of the agreement? In annexure "E" attached to the application the Applicant adduced in evidence a letter from the Applicant which was a notice to terminate renovations works contract with another company. Subsequently attached is annexure "F" which is a supplementary agreement between the Applicant and the Respondent dated 1st of September 2014. The supplementary agreement provides that it would vary the terms of the agreement dated 20th of March 2014 which was the main agreement. Secondly, they provided that the premises were in dire need of repair and renovations. It was agreed in clause 1 thereof that the bills of quantities to uplift the premises which had been verified by the Tenant and Landlord total to an amount of Uganda shillings 119,289,389/=. They

calculated that the amount of money would be equivalent to 11 months and 21 days worth of rentals. Finally in clause 1 (d) it is provided that subject to the conditions and covenants contained, the agreement would take effect on the date of signing. The Tenant assumed all the renovation responsibilities including contracting service providers and payment. In clause 3 (a) it is stipulated that the amount would be commenced in terms of offsetting after the total sum of money used by the Tenant on renovations equivalent to 11 months and 21 days immediately after the period of rent already paid is exhausted in reference to clause 1 (c) of the main agreement. Clause 1 (c) of the agreement provides for a period of one month. Thereafter monthly rent was for two years under clause 1 (a) commencing from 1st April 2014 at the rate of US\$4000. The agreement could be terminated with three months notice under clause 4 (d). In clause 4 (e) in the event of termination, the Landlord undertook to refund the amount that was paid in excess of the period of the actual agreement and to compensate and indemnify the Applicant for all losses and inconveniences caused by such termination to be completed at an interest on monies outstanding/unused tenancy.

From the above there may be a triable issue relating to whether the Respondent has a right of termination of any tenancy. In the plaint itself the Applicant pleads and claims for an order of specific performance of the tenancy agreement dated 20th of March 2014. An order of specific performance presupposes that the tenancy had not commenced.

Such an issue ought to be referred for arbitration and cannot be tried without disposing of the suit.

Secondly, the Applicant seeks an alternative prayer for refund of US\$52,000 as well as the total bills of quantities for the Labour, consultation of materials worth Uganda shillings 127,450,104/= and other amounts as well as damages.

This alternative prayer clearly shows that the Applicants remedy may be in damages. Secondly the allegation is that the Respondent intends to sell the demised premises. The Applicant would like this court to stop the sale of the demised premises until specific performance of the tenancy agreement. The Applicants grievance is pleaded in paragraph 4 (j) of the plaint that in disregard of clause 2 (e) of the tenancy agreement and the Plaintiff's subsisting tenancy interest, the Respondent gave notice of sale annexure "I". The notice of sale was put on the property.

A registered proprietor of property has a right of sale or use of the property provided the right of sale is subject to any legitimate interest or encumbrances which will be inherited by the successor in title. The Landlord cannot sell without taking into account the legitimate interests or encumbrances. And I find that it is a breach of the right of the Landlord to enjoy any reversionary interest to be stopped from selling real estate which is subject to a tenancy of less than two years if at all it is true.

While the first issue ought to be referred to arbitration for fear of determining a matter which ought to be determined by the arbitrator's, the issue of whether there is a prima facie case will not be concluded. Instead the question is whether the Applicant is entitled to an interim measure of protection pending arbitration. Under section 5 of the Arbitration and Conciliation Act, the dispute between the parties shall be referred to arbitration under the provisions of the supplementary agreement Annexure "F" attached to the application and particularly clause 8 (b) thereof.

On the issue of whether the Applicant would otherwise suffer irreparable injury that cannot be atoned for by an award of damages, as I have noted above the Applicant claims in the alternative to the claim for specific performance money as compensation. In the premises the Applicant can be compensated by an award of damages. Secondly a Landlord cannot be restrained from exercising his proprietary rights if there is any reversion by sale of the property. Any sale will be subject to any liabilities such as leases or other interests such as grant of a tenancy. The acts of the Landlord would be binding on any successor in title.

In the premises the following orders shall issue:

- (1) The Parties shall try their dispute by arbitration and this suit is accordingly referred back for commencement of arbitral proceedings by the parties in terms of clause 8 of the supplementary agreement annexure "F" to the application dated 1st of September 2014.
- (2) The Applicant's application for a temporary injunction is dismissed with costs.

(3) This suit in the High Court abates and the matter may only come back by way of an application authorised under the Arbitration and Conciliation Act Cap 4 laws of Uganda and in the manner prescribed under the Arbitration Rules.

(4) Any questions of who should pay the costs incurred in this suit other than that of the application is referred to the arbitrator to be appointed by the parties if they so wish the issue to be addressed.

Ruling delivered in open court on 26th of August 2016.

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Caroline Kintu for the Applicant

Milton Agaba MD of Applicant in court

Fred Businge Kiiza Counsel for the Respondent in court

Kyagaba Grace the Works Engineer of Respondent in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

26th August 2016