

- 3) That the Applicants had advertised the building for sale but it was damaged by fire before disposing it off in which case it is now not attractive to the market.
- 4) That the estimated costs of repairs is UGX 970,579,853/=
- 5) That once the building is repaired and complete the 1st Applicant will be able to sell and deposit the required sums of UGX 2,000,000,000/=(Uganda shillings Two Billion).

This Application was supported by the affidavit of Azalia Lubega one of the Directors of the 1st Applicant. The key paragraphs to the Application are four, five, six and seven which I reproduce here;

“4. That the Applicant’s had with the permission of the Respondent advertised for sell one of the mortgaged properties Biko Student’s hostel Complex situate at Kataza Zone, Kiswa Parish, Nakawa Municipality, but the same has yielded no fruit due to the damage caused by fire that gutted the Hostel Complex on the 28th day of May 2018 resulting in the destruction of the 5th Floor and the entire roof of the Hostel Complex and the whole hostel is now vacant owing to the said extensive damage.

5. That the estimated cost of repairs to be made is to the tune of Ug. Shs. 970,579,853/= (Uganda shillings nine hundred seventy million, five hundred seventy nine thousand, eight hundred fifty three only) which sum is necessary for purposes of improving the sale value of the building which is now almost worthless.

6. That once the repairs are completed, the 1st Applicant will be able to sell off the Hostel Complex

and deposit the required sums to the tune of Ug. Shs. 2,000,000,000/= (Uganda Shillings Two Billion) with the Respondent pending determination of the main suit.

7. That it is just and equitable that this application be allowed to enable the Applicants obtain the best value out of the Mortgaged property."

In reply to this Application V.K Haridas Chief Manager of the Respondent deposed that the Application was in bad faith with the sole intention of frustrating the Respondent from realizing her security.

That the Application was simply an abuse of court process and against the spirit of the order of injunction. That the Applicants have not established any justification for the extension sought and that the pleas of extension of time had on several occasions been made by the Applicant for example on the 29th July 2017 and 5th October 2017.

The background to this Application emanates from a loan advanced to the Applicants on the 18th of July 2015 of a sum of UGX 3,500,000,000/= attracting an interest of 23.25 % per annum. In this transaction the Applicants secured the facilities and a mortgage deed comprised in LRV 3793 Folio 25 Plot No. 6 land at Kataza Close and LRV 3793 Folio 24 Plot No. 5 land at Kataza Close Kampala.

The 2nd and 3rd Applicants also gave their personal guarantees. The Applicants subsequently defaulted and indeed by their own admission they owe UGX 2,000,000,000/= of which they have defaulted in payment. Because of that default, the Respondent sought to realize the security which prompted the Applicant to file Civil Suit No. 82 of 2018 claiming that the mortgage was illegal, the

interest charged was not within the contract and the Defendant had breached its fiduciary duty to the Plaintiff as a bank.

The Plaintiff therefore sought an order of release of certificate of title free from incumbrance, punitive damages and aggravated damages.

The Applicant also filed Application No. 89 of 2018 and sought a temporary injunction restraining the Respondent from evicting, resurveying, sub-dividing, alienating, valuing, selling and or otherwise dealing in the security aforementioned.

The Applicants also sought the restraining of the Respondent from enforcing their personal guarantees signed by the 2nd and 3rd Applicants.

The Court granted a temporary injunction on condition that the Applicants pay UGX 2,000,000,000/= within two weeks of the Ruling and expedite the hearing of Civil Suit No. 82 of 2018. The Court also ordered that in event of the Applicants failing to pay the UGX 2,000,000,000/= within the time specified the Respondent would proceed and realize the security.

The period given for payment expires today and the Applicants have now filed this Application seeking extension of time within which to pay.

The Applicants claim that the time given was not sufficient to mobilize the UGX. 2,000,000,000/=. They also claim that the property caught fire and the fifth floor was destroyed. And furthermore, that they need to repair the building before they can sell it.

I have gone through the order of temporary injunction granted on the 4th July 2018. From the wording of the order of temporary injunction it is abundantly clear that the court did not grant the injunction so that the Applicants sell.

The Court granted the injunction to stop the sell, give time to the Applicants to look for UGX 2,000,000,000/=(Uganda shillings Two Billion) and come back to the building if it was subsequently established that there was a balance owed by the Applicants to the Respondent.

In other words the order was for the preservation of the property subject to payment of UGX 2,000,000,000/=(Uganda shillings Two Billion). From the Application it is clear that the Applicants are bent to selling the security. This is clearly seen in the grounds of the Application namely; four, five, six and seven where the Applicants clearly stated that the UGX 2,000,000,000/= (Uganda shillings Two Billion) will be got from the sale of the property.

Ground 6 reads;

*“That once the repairs are completed, the 1st Applicant will be able to sell off the Hostel Complex and deposit the required sums to the tune of **Ug. Shs 2,000,000,000/=** (Uganda Shillings Two Billion) with the Respondent pending determination of the main suit.”*

This does not seem to conform with the court’s order of injunction of 4th July 2018. I say so because the court as I earlier said wanted the property to remain in place to take care of the main suit and its determination.

This Application therefore does not only seek an extension of time within which to pay the admitted sum but also seeks time to do what was not envisaged by the court at the time of grant. Since the Application seeks time for sale and since the Applicant it now seems cannot deposit the money without selling the said property, the court order on 4th July 2018 which would allow the Respondent to proceed and realize the security should be left to operate without any interference from this court.

The sum total is that this court finds no merit in this Application and it is hereby dismissed with costs.

Dated at Kampala this 18th day of July 2018.

Hon. Justice David Wangutusi
JUDGE