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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]

MISC. APPLICATION No. 1424 OF 2017

(Arising From Civil Suit No. 975 Of 2017)

10 **MITANDA BAKALE MASSO DAVID ::::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

UGANDA REVENUE AUTHORITY ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

RULING

15 This ruling arises from an application by Chamber Summons brought by the applicant for a temporary injunction to be issued against the respondent, its agents, servants, workers or assignees restraining it from removing, disposing transferring and / or dealing with the goods described as URLA BATTERY 7 containers whose particulars are set out in the Chamber Summons.

20 The grounds upon which the application is based are set out in the affidavit in support deponed by the applicant but briefly are that:-

➤ *The applicant filed C. S No. 975 of 2017 seeking for among others a declaration that the respondent was wrongfully holding on the applicants goods.*

25 ➤ *There are 3rd parties claiming to be the lawfully owners of the goods who have filed various applications in court claiming the goods to be owned by them and that the said applications have been withdrawn.*

➤ *There is eminent danger of the goods detained by the respondent of being disposed of or interfered with by the said 3rd parties.*

30 ➤ *The applicant shall suffer irreparable harm, injury, damage and substantial loss if the application is not granted.*

In an affidavit in reply deponed by Diana Mulira Kagonyera of the Legal Services and Board Affairs department of the respondent it is stated that;-

- 5 ➤ *The goods in question were claimed by Shuadeng Group Co. Ltd on the basis that they had been fraudulently obtained from them by Tropea (U) Ltd without being paid for.*
- *Upon investigation by police the DPP authorized release of the goods to Shuadong pending further investigations of fraud by the companies that sold the goods to the applicant.*
- 10 ➤ *URA consequently authorized Ballare Logistics to rerelease the goods to Shuadong.*
- *Consequently URA is no longer in control of the goods.*

In his submission, Counsel for the applicant relied on ***Kiyumba Kaggwa Vs Haji Abdul Nesser Katende [1985] HCB 43*** where court laid down the rules for granting a temporary injunction which are;-

- 15 a. To maintain the *status quo*
- b. There should be a *prima facie* case disclosed with a likelihood of success.
- c. The order is intended to save the applicant from suffering irreparable injury or damage and
- d. Balance of convenience

20 Applying the rules to the case at hand, Counsel submitted that the goods in issue are still warehoused with the respondent's agent called Ballore Logistics, further that the applicant had high chances of success in the main suit since he is the registered owner of the goods, that in as far as the respondent has attempted to- hand over the goods to Shuangdeng for re-export to China the goods have not yet left the Jurisdiction of court and that the goods are
25 still in the hands of the agent of the respondent.

In reply Counsel for the respondent contended that when the respondent communicated to the warehousing firm Ballore Logistics to release the goods to Shuangdeng, the respondent ceased to have control over the goods and that that is the current *status quo*. Further that even if the goods are still in the warehouse of Ballore, they are no longer under customs control.

Further that if any order is issued as prayed by the applicant, it would not maintain the *status quo* but reverse the effect of the letter authorizing release of the goods. Further, that court orders should not be issued in vain and court should not adjudicate a matter that is moot.

In rejoinder Counsel for the applicant argued that court has powers to change the *status quo* in the interest of justice if the court grants a mandatory injunction which according to Counsel goes further that the preservation of the *status quo* as they require a party to take positive steps or undo what has been done in the past and the test applied is;

“which course is likely to involve the least risk of injustice if it turns out to be wrong”

Further that if this application is not granted on grounds that it will change the *status quo* then likewise the cause of action of the plaintiff/applicant shall be defeated.

I have addressed my mind to the peculiarities of this application in particular where the respondent contends and has demonstrated to court that it is no longer in control of the goods while on the other hand the applicant insists that the goods are still within reach of the respondent if it chose to retract its letter authorizing its agent to release the goods. Counsel for the applicant further contends that court has powers to change the *status quo* in the interest of justice as long as the applicant satisfies conditions for a mandatory injunction.

A mandatory injunction is:-

*“an injunction that orders on affirmative act or mandates a specified course of conduct” (see **Blacks Law Dictionary 9th Ed pg 855**).*

To begin with, the applicant in his Chamber Summons applied for the Temporary Injunction against the respondent and not a mandatory injunction. It is trite that one cannot depart from ones pleadings.

Restricting myself to the application, I am inclined to agree with Counsel for the defendant that where the *status quo* has changed, like they have demonstrated to courts satisfaction that it has, then any order issued by the court would not maintain the *status quo* but reverse the *status quo*.

In the circumstances this application is dismissed with costs.

B. Kainamura
Judge

5 **2.05.2018**