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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION No. 231 OF 2018-07-04
(Arising from Civil Suit No. 263 of 2018)

10 **SHUMUK PROPERTIES LTD ::: APPLICANT**

Versus

GUARANTY TRUST BANK (U) LTD ::: RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

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RULING

The applicant brought this application under Section 98 of the Civil Procedure Act, Section 33 and 38 of the Judicature Act and Order 41 rules 1, 3 and 9 of the Civil Procedure Rules. The application is for an order of temporary injunction to restrain the respondent from selling, transferring, disposing off and tampering in any manner whatsoever and howsoever with the applicant’s property comprised in Block 192 plot 1454,1455,1460,1461 at Nganda, Kyagwe in Mukono District.

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The grounds upon which the application is relying on are that the respondent has issued a notice of sale of the suit property within few days before the main suit is heard and determined and that the applicant is likely to suffer irreparable harm if the intended sale proceeds before the determination of the main suit.

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The application is supported by the affidavit of Mr. Mukesh Shukla the applicant’s Managing Director. The respondent relied on an affidavit by Stella Ladonna Wattanga in opposition to the application.

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The brief facts of the case are that the applicant mortgaged the said properties to the respondent bank as security for the payment of an over draft facility of UGX 500,000,000/= and a term loan of UGX 968,000,000/=. The applicant has not repaid the over draft neither any monthly instalments of the loan. The respondent then sought to sale the security to recover the outstanding amount. The applicant has thus brought this application to have the sale restrained until this court disposes off the main suit.

The respondent on the other hand opposed the application on grounds that the applicant does not meet the laid down criteria in so far as there are no triable issues disclosed, the irreparable damages that the applicant may suffer are not demonstrated and the balance of convenience is not shown in any way. The applicant further averred that should the court find it fit to stop the sale, the applicant pays 30 percent of the outstanding amount within 7 days as a condition for the stoppage of sale.

The applicant in rejoinder averred that the outstanding balance is unknown and so is the correct indebtedness of the applicant under the loan agreement in issue. That therefore court cannot order the payment of 30 percent when the actual sums due are not known.

10 I have carefully considered the application as well as the respondents reply. I have also considered the parties submissions.

I note that the impugned properties were advertised for sale on the 21st April 2018 but the applicant obtained an interim order from this court stopping the sale on 25th April 2018 till the determination of the application.

15 Regulation 13 (1) provides that the court may stop the sale upon the payment of 30% of the forced sale value of the mortgaged property or outstanding amount. This rule was considered by the Court of Appeal of Uganda in **Ganafa Peter Kisawuzi Vs DFCU Bank Ltd Civil Application No. 0064 Of 2016 Arising From Civil Appeal No. 54 Of 2016**.

The Court of Appeal held that;

20 *“Grant of an order of an injunction is not available to an applicant who is in breach of regulation 13(1) of the Mortgage Regulations 2012”*

In the case of **Mutuba Zaituni Vs Crane Bank Limited and Others, Misc. Appl No 1536 of 2017**, court held that;

25 *“the applicant is caught up by the provisions of Regulations 13 (1) of the Mortgage regulations”.*

The above provision of the law is very clear and it sets a condition of payment of 30 percent of the forced sale value of the mortgaged property or the outstanding amount before courts orders for a stoppage of sale. Further, the court of Appeal pronounced itself on the effects of Regulation 13 and this court is bound by the court of Appeal ruling in **Ganafa Peter Kisawuzi Vs DFCU Bank Ltd Civil Application No. 0064 of 2016**.

In the premise i make the following orders;

1. That a temporary injunction to restrain the respondents, their agents, and any other person acting on their behalf or in their name from selling, transferring, disposing off the applicants property comprised in **Block 192 plot 1454, 1455, 1460, 1561** at **Nganda Kyagwe in Mukono District** is granted until the final determination of the main suit.
2. The applicant shall deposit with the respondent 30% of the outstanding amount or forced sale value (whichever is higher) of applicant's property comprised in Block 192 plot 1454, 1455, 1460, 1561 at Nganda Kyagwe in Mukono within 30 days from the date of this order.
3. Should the applicant fail to deposit the said 30% within the period stipulated the injunction shall lapse and the respondent shall be at liberty to exercise its statutory power of sale under the Mortgage Act 2009.
4. Costs will be in the cause.

I so order

B. Kainamura

Judge

6.07.2018