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

**MISC. APPLICATION No. 208 OF 2018-06-13**

**PARABOT BREWERIES LTD (IN RECIEVERSHIP) ::::::::::::::: APPLICANT**

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**VERSUS**

**1. STANDARD CHARTERED BANK (U) LTD**

**2. DAVID MPANGA ::::::::::::::: RESPONENT**

**BEFORE: HON. MR. JUSTICE B. KAINAMURA**

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**RULING**

This is an application seeking a temporary injunction to restrain the respondents, their agents, and any other person acting on their behalf or in their name restraining them from selling, alienating, attaching or evicting or dealing or carrying out any transaction over land, plant, and machinery and all developments situate in Kyadondo Block 197 plots 121,122, 677, & 678 at Kitetika and Block 220 plot 1623 land at Kiwatule, until the final determination of the main suit.

The application is supported by the affidavit of Mr. Ochieng David the applicants Managing Director.

25 The 1<sup>st</sup> respondent in reply relied on an affidavit by Richard Sunna a special Assets Manager with the 1<sup>st</sup> respondent. The applicant filed an affidavit in rejoinder through Ochieng David in which he controverted the said replies.

The brief facts of the case is that this court granted a temporary injunction against the respondents from selling the plaintiffs land comprised in Kyadondo Block 197 plot 121,122,677 and 678 land at Kitetika for a period of 6 months. This court also granted a temporary injunction and ordered the applicant to pay 30% of the forced sale value of the properties, comprised in Kyadondo Block 220 plot 1623 land at Kiwatule the temporary injunction was also for six months. The applicant paid up the amounts but the 6 months granted on both properties elapsed and the applicant did not seek an extension, the respondents advertised the sale of the said properties.

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The applicant filed this new application to stop the intended sale until the determination of Civil Suit No. 442 of 2016. The respondent opposed the application contending that upon being graduated the first temporary injunction the applicants neglected to fix the main suit for hearing until the temporary injunction lapsed and that should court be inclined of grant  
5 another temporary injunction it should be in accordance with the Mortgage Regulations 2012 requiring the applicant, to pay the mandatory 30% deposits of the outstanding loan amount on the land at Kitetika as well.

The applicant averred that the regulation does not apply to the application. That there are glaring irregularities on record and the respondents are guilty of several breaches which  
10 fundamentally negate the application of regulation 13(1) and (4).

The breaches the respondents are said to have occasioned are; failure to serve the mandatory  
45 working days default notice upon the applicant contrary to Section 19 (2) & (3) of the mortgage Act; failure of the respondents to serve a proper sale notice upon the affected parties contrary to section 26 of the Mortgage Act and regulation 18 of the Mortgage  
15 regulations and lack of any evidence of the forced sale value of the suit property.

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

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 regulation was  
20 considered by the Court of Appeal 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;

*“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.”*

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

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

It was the applicant’s contention that regulation does not apply to the application because of  
30 the irregularities on record and the respondents are guilty of several breaches which

fundamentally negate the application of regulation 13(1) and (4). Counsel relied on the case of **Parul Ben Barot Vs Victoria Finance Company Ltd M.A 319 of 2017** where court held that;

5           *“In those circumstances can regulation 13 be applied blindly without considering the antecedent of the threatened sale? I think not. For instance court has to be satisfied that there was compliance with the provisions of section 19 of the Mortgage Act 2009 prior to sale and the procedure prescribed for sale. Similarly valuation of the property is a condition precedent to sale..... the respondent by insisting on Regulation 13 of the Mortgage Regulations should satisfy the court that it has*  
10           *compliance with the statutory conditions precedent. Failure to do so mean it cannot insist on the strict enforcement of the statute.”*

Counsel for the respondent on the other hand averred that the above decision is not binding on this court because the court of Appeal pronounced itself on the effects of Regulation 13 and this court is bound by the Court of Appeal ruling.

15   While under regulations 13 court may stop the sale on application by a mortgager, the same provision conditions the stoppage to the deposit of 30% of the forced sale value or the outstanding amount by the applicant. This court is bound by the decision of Court Of Appeal and the applicant cannot jump the condition of depositing 30%.

In the advertisement, it appears that the respondents advertised to sell land situate in  
20   Kyadondo Block 197 plots 121,122, 677, & 678 at Kitetika and Block 220 plot 1623 land at Kiwatuule. In the ruling of M.A 516 of 2018, I ordered the applicant to pay 30% of the forced sale value of the land comprised in Kyadondo block 220 plot 1623 land at Kiwatuule and the respondents paid the said amounts. The sale of both sets properties was scheduled to take place on 29<sup>th</sup> March 2018 but was restrained by the Registrar till hearing of this application.

25   I take cognizance of the fact that there is a pending suit before me and that it is in the interest of justice that it is heard.

Under the circumstances therefore 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 their name restraining them from selling, alienating,  
30           attaching or evicting or dealing or carrying out any transaction over land, plant, and machinery and all developments situate in Kyadondo Block 197 plots 121,122, 677,

& 678 at Kitetika and block 220 plot 1623 land at Kiwatule, until the final determination of the main suit.

2. That the applicant pays 30 percent of the forced sale value of the land situate at Kyadondo Block 197 plots 121,122,677 & 678 or of the outstanding amount whichever is higher with in a period of 60 days.
3. That the respondent shall not advertise or sell the property in the said period and in the event of default, the respondents should ensure that all the provisions of the Mortgage Act and the regulations are fully complied with before the sale.
4. Costs will be in cause.

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**B. Kainamura**  
**Judge**

15 **22.06.2018**