

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
COMMERCIAL COURT DIVISION

Misc. Application No. 444 of 2018

(ARISING FROM Civil Suit No. 439 of 2018)

SCIENCE AND BIOTECHNOLOGY SUPPORT SYSTEMS LTDAPPLICANT

VERSUS

JUSTUS KARAMURA RESPONDENT

BEFORE: THE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

The Applicant filed this Application under order 41r 1 and 2 of the civil procedure rules , section 64 and 98 of the civil procedure act seeking to restrain the Respondent from interfering with the affairs of the company.

The Application was supported by the affidavit deposed by Carolyn Atukunda the Applicants managing director the grounds the Application are spelt out in their but briefly are that;

The Respondent after absconding from his responsibility as director of the company has engaged in activities to disrupt the company's business. The Applicant has filed a suit which is yet to be heard.

The Respondent filed an affidavit in reply in which he denied absconding from the company as director or manager and admitted that he had written the Banks in discharge of his duties as a director seeking to block the company's operations to avert fraudulent operations of the directors sought to defraud company and that has never interfered it operations the company.

The Applicants were represented by Byamugisha Gabriel and Company Advocates the Respondents were represented by Luwum Rutaramu and Co. Advocates. They both filed written submissions.

The submissions Applicants counsel submitted that by his own admission the Respondent in his affidavit in reply admits to interfering with the company's accounts to which it conducts its business, thus making out a prima facie case for the Applicant to be granted a temporary injunction.

Further submitted that the status quo the operation of the bank accounts the various banks should be maintained pending determination of the main suit. He stated that the Application is not allowed in the Respondent's blocked the accounts, this will damage the Applicants name with far-reaching negative business effects which can be atoned for in damages. She cited the case of **Noor Mohamed Jan Mohamed v Kassamali (1953) 20 EACA 8** to support his submission. Counsel submitted that court finds the balance of convenience in favor of the Applicant.

In reply, Respondent counsel cited the law on grant of temporary injunctions set out in order 41 rule 1 and in **E.L.T Kiyimba Kagwa V Haji Abdu Nasser Katende [1985] HCB 43**. She also cited various other authorities contended the Application does not meet the test for grant temporary injunction as stated in these cases should therefore be dismissed.

He argued that the Application was frivolous and vexatious, misconceived an abuse of court process for the reason that the Applicant had not presented shareholders resolution authorizing commencement of the main Application and further that the questions sought be determined in the main Application was illegal because the
50 Applicant can force the Respondent exit or surrender his shareholding in the Applicant company. He argued that the Application did not therefore disclose a prima facie case.

He cited the case of **American Cynamid V Ethicon (1975) All ER 504, Robert Kavuma V Hotel International SCCA 8/1990, David Mukwaya V Admin General**
55 **HCCS 630/1993** and Section 82 of the Companies Act to support his argument.

On status quo, counsel argued that the Applicant had not shown status quo under threat which they sought to protect, since the business was operational and functional and no evidence indicated that the Respondent interfered with the Applicant business. He argued that the Applicant had suffered insubstantial or
60 material injury since the business or accounts were functional and without interference from the Respondent. He urged court to decide the Application the balance of convenience in favor of the Respondent as an injunction would have the effect of ejecting the Respondent from running the affairs the company to its detriment.

65 In rejoinder the Applicant submitted that the main Application had merit and was preceded by a board resolution. He submitted that the bank's accounts were temporary opened but were under the risk and the threat of closure.

The essence of a temporary injunction is to preserve the property over which there is contention in a suit pending disposal of the underlying main suit. Order 41 of the

70 Civil Procedure Rules provides guidance on cases in which court may grant temporary injunction.

The granting of a temporary injunction is an exercise of Judicial Discretion and the purpose of the granting it is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed of. The Applicant must show a
75 Prima facie case-with a probability of success. Such injunction will not normally be granted unless the appellant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Irreparable injury does not mean that there must not be physical possibility of repairing injury, but means that the injury must be a substantial or material one, that is, one that cannot
80 adequately be compensated for in damages. If the court is in doubt, it will decline an Application on the balance of convenience. See **Kiyimba Kaggwa Vs Haji N. Katende [1985] HCB 43.**

I have carefully perused the pleadings, affidavits in support and the submissions by both counsel and have also reviewed the authorities cited by counsel.

85 It is not in dispute that the Respondent has previously communicated with the Applicant Company's banks instructing them to freeze or halt transactions of the company's accounts. The reasons for doing so notwithstanding, his actions and behavior as stated by the Applicant and admitted by him have disruptive effect on the operations of the Applicant Company's lawful business. His actions prima facie
90 violate the Applicants rightful objectives and activities. I find that there is a prima facie case established.

On maintenance of the status quo, the company's business operations and accounts with various banks, as submitted by the Applicant are functional, albeit

with the threat and risk of disruption from the actions and conduct of Respondent,
95 this status quo is acknowledged by both the Applicant and the Respondent

The status quo which should be maintained is therefore to have the business and accounts continue to operate without disruption.

On the ingredient of irreparable damage and injury and on the balance of convenience, I am guided by the long established principle that the object of the
100 interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been
105 prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favor at the trial. The court must weigh one need against another and determine where 'the balance of convenience' lies. I disagree with the Applicant that they would suffer such economic, business or reputational
110 damage that cannot be possibly atoned for in damages.

However on the balance of convenience, the principle is that the Court must consider where the balance of convenience lies. In other words, where the respective inconvenience or loss to each party lies, if the order is granted or not.

The principle requires that the court should determine if the Applicant would suffer
115 if the Application were not to be granted. Where refusal to grant the Application would make the Applicants suffer, then the balance of convenience would be

favorable to the Applicant and the court would most likely be inclined to grant to the Application for a Temporary Injunction.

120 Having considered the affidavits and the submissions in the instant case, I am convinced that the balance of convenience lies with the Applicant. Left unrestrained chances are that the Respondents is more likely than not inclined to disrupt the operations of the Applicant Company's business, as he has already done so before.

125 Order 41 of the CPR provides that where it is proved to court that in a suit the property in dispute is in danger of being wasted, damaged or alienated by any party to a suit, the court may grant a temporary injunction to restrain, stay, and prevent the wasting, damaging and alienation of the property. See **Kiyimba Kaggwa V Haji Katende [1985] HCB 43.**

In the event, the Application succeeds and I order as follows;

130 A temporary injunction doth issue against the Respondent, restraining him from interfering with the business of the Applicant until disposal of Misc. Cause 42 of 2018.

The costs of the Application shall abide the outcome of the main Cause.

Ruling delivered this 15th Day of February 2019

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Richard Wejuli Wabwire

JUDGE