



**THE REPUBLIC OF UGANDA
 IN THE HIGH COURT OF UGANDA AT KAMPALA
 (COMMERCIAL COURT DIVISION)
 MISCELLANEOUS APPLICATION NO. 668 OF 2019
 [ARISING FROM CIVIL SUIT NO. 505 OF 2019]**

JAMES KATO NKوبا===== APPLICANT

VERSUS

TRAMINCO (u) Ltd

COLLIN ALEXANDRA COX===== RESPONDENT

BEFORE: HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

This Application seeks to have the orders of Court issued by the learned Registrar in MA 1067 of 2020 reviewed and varied to remove the condition granting the Respondents 30 days within which to furnish security in the form of a bank guarantee and fir immediate attachment of equipment and machinery listed in the Application.

The grounds of the Application are stated in the affidavit in support deponed by Kato James Nkoba, the Applicant but basically are that the Respondent is taking advantage of the 30 day period to cause the

25 disappearance of the equipment thus potentially rendering the order
futile.

The Application seeks to have the terms of the orders varied to have
the equipment immediately attached before expiry of the 30 days, to
avert removal or disappearance of the equipment before lapse of the
30 30 days period.

That the order to furnish a bank guarantee as security was not sought
by the applicants but was issued at the courts own motion.

In reply, the Respondents deponed that the averments by the
applicants were not true. That the Respondents are, amidst fear and
35 threats of death by the applicant, in the process of getting a bank
guarantee as directed by Court.

That the Respondents are currently executing road construction
works along the Pallisa-Kamonkoli road and have therefore not sold
any of the equipment as it is on site working.

40 Counsel for both parties made oral submissions which are captured
on record and which I have carefully considered.

In his submissions, Counsel adopted the averments in the affidavit in
support of the Application. He intimated that the Respondent was
incapable of furnishing a bank guarantee as they are heavily indebted
45 and not credit worthy and that this is also the reason that the

applicant never prayed for a bank guarantee in the first place because he is aware that the Respondent is financially incapacitated.

That the 2nd Respondent who is MD of the 1st Respondent has actually been charged and remanded for issuing false cheques.

50 In the alternative, the Applicants prayed that the courts stop the payment of Shs 950,000,000 /= by Arab Contractors to the Respondents because the applicants may need to have recourse to that money.

He also expressed apprehension that the Respondents may quit
55 jurisdiction since they are wholly foreign owned.

In reply, the Respondents contested the Application. They contended that court had inherent jurisdiction to make such orders as were granted. That the Applicants had no proof of the Respondent's financial incapacity and that under Order 40 r5 the list of vehicles
60 sought to be attached should first be valued to determine their worth.

That the allegations that the Respondents are disposing of the equipment are false.

That the period of 30 days within which to obtain and furnish the bank guarantee was reasonable time granted by court.

65 That the suits against the Respondents regarding their indebtedness to other entities had been settled out of court. That whereas indeed

the Shs 950m is owed by Arab Contractors, if this money and the equipment are attached the Respondent's road works contract will be paralyzed. That the Respondents cannot quit jurisdiction as the 2nd Respondent's passport is held by Buganda road court.

In rejoinder, the Applicants Counsel submitted that the 2nd Respondent is registered as South African but holds a New Zealand passport.

Decision

Having carefully considered the Applications and the evidence on record, and listened to the submissions by counsel for the respective parties, I find no compelling justification to vary the order issued by the learned registrar. The Registrar acted well within his mandate as granted under S 98 CPA.

Additionally, the 30 days ultimatum issued within which the Respondents are required to furnish the security lapse within 8 days from the date hereof.

I am however mindful of the concerns raised by the Applicant regarding the possibility of the risk of negating the Courts orders and in the event I order as follows;

1. That Arab Contractors – Osman Ahmed Osama refrain from paying Shs 950,000,000 (nine hundred and fifty million) owing

to the Respondents by virtue of a sub contract on the Pallisa-Kamonkoli Road Project.

- 90 2. That Arab Contractors hold the said sums of money until further orders of Court
3. The Costs shall be I the cause.

Delivered at Kampala by email to Counsel for the respective parties and signed copies for the parties placed on file this 22nd day of
95 December, 2020.

.....

RICHARD WEJULI WABWIRE

JUDGE

100