THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION No. 0430 OF 2021

(Arising from Civil Suit No. 0211 of 2021)

NAMUTEBI MATILDA ……. APPLICANT

VERSUS

1. SSEMANDA SIMON }
2. REDLINE INVESTMENTS LIMITED } …… RESPONDENTS
3. KCB BANK UGANDA LIMITED }

Before: Hon Justice Stephen Mubiru.

RULING

15a. Background.

The applicant is the widow of the late Mr. Charles Mbaziira who passed away on 8th August, 2020. Prior to his death, the deceased had since 11th November, 1992 been the registered proprietor of land comprised in LRV 2083 Folio 16 Block 273 Plot 1519 land at Kabalagala in Kampala District. The applicant's case is that the deceased had in the past used the said land for the sustenance of his family. During or around the year 2010, the deceased together with his family agreed to lease that land to "Secoso Family Investment Club" for the construction of residential houses for rent. The 1st respondent is the Club Secretary while at the same time the Chief Executive of the 2nd respondent. Upon completion of the houses, the Club engaged a property agent for the collection of monthly rent which the agent routinely deposited on the Club's bank account. To her surprise, the applicant was on 28th February, 2021 served with a default notice by the 3rd respondent, showing that the 2nd respondent owed it shs. 58,089,663/= It is then that the applicant discovered that her deceased husband together with some of the family members, had on or about 8th June, 2018 and 7th September, 2018 without her knowledge and consent, but in collusion with the 1st respondent, permitted the 2nd respondent to use the title deed to the land, as collateral for a loan the 2nd respondent took from the 3rd respondent.

The 2nd respondent had consequently instructed the property agent to deposit the rent collections from the property onto the 2nd respondent's loan account. The 3rd respondent had on 17th March, 2019 caused the registration of a mortgage onto the title deed. The applicant lodged a caveat on the title and now seeks the invalidation of those transactions on ground that they were procured fraudulently in that they were executed without consent of all members of the family and without obtaining the applicant's spousal consent.

In their joint written statement of defence, the 1st and 2nd respondents refute the applicant's claim. They contend instead that the land in dispute belongs to the family of the late Mr. Joseph Ssenyonga. The late Charles Mbaziira had fraudulently caused its registration in his name and it has never been the source of livelihood and sustenance of his family as claimed by the applicant, but rather that of the family of the late Mr. Joseph Ssenyonga who constitute the membership of "Secoso Family Investment Club." It is the family of the said deceased that permitted the two respondents to use the title deed thereto as collateral for the loan to the 2nd respondent.

In its written statement of defence, the 3rd respondent too refutes the applicant's claim. It contends that the transaction of mortgaging the land to it is not tainted with fraud as alleged by the applicant. Following due diligence it undertook before the transaction, it was satisfied that the land offered to it as collateral was not "family land." The family of the late Mr. Charles Mbaziira did not derive sustenance from the land and neither was it his matrimonial home. The property was being used for commercial purposes in ventures undertaken by "Secoso Family Investment Club," which ventures the applicant was fully aware of. The 3rd respondent thus counterclaims against the 1st and 2nd respondents for recovery of shs. 57,241,868/= as the amount outstanding due on the loan advanced to the 2nd respondent, on grounds that the 1st respondent executed a personal guarantee for the repayment of the loan. In their respective defences to this counterclaim, the 1st and 2nd respondents deny liability. The 1st respondent contends he has never been served with a demand hence the claim against him based on his personal guarantee is premature. The 2nd respondent on its part contends it has never defaulted on the loan.

b. The application;

The application is made under section 98 of *The Civil Procedure Act*, Order 50 and Order 52 rules 1 (2) and (3) of *The Civil Procedure Rules*. The applicant seeks an interlocutory injunction restraining the respondents, their agents, workers, servants, assignees and successors in title acting on their behalf from selling, disposing off, alienating, realising as security, evicting or otherwise interfering with land comprised in LRV 2083 Folio 16 Block 273 Plot 1519 at Kabalagala in Kampala District, pending the hearing and disposal of the suit. The grounds are that by a letter issued on 3rd February, 2021 the 3rd respondent has expressed an intention to take steps towards recovery of the loan and it is likely to do so unless restrained by the court, and this is likely to render the suit nugatory.

c. The affidavits in reply;

In his affidavit the 1st respondent avers that the land in dispute is not the property of the late Mr. Charles Mbaziira but rather that of the late Mr. Joseph Ssenyonga. The family has never utilised the land for their livelihood or sustenance. The suit has no likelihood of success. The status quo currently is that the 2nd defendant has heavily invested its resources therein and is in physical possession of the land. The applicant already has a caveat in place on the land which is sufficient to prevent any dealings therein. On its part, the 3rd respondent avers that land has never been utilised by the late Mr. Charles Mbaziira as his matrimonial home nor for the livelihood and sustenance of his family. The land has since the year 2013 been utilised by "Secoso Family Investment Club" in its commercial activities. The applicant is privy to all those dealings of the said club with the land and cannot now claim that it is her family land. To the extent that it is not family land, the applicant has no legal or equitable interest in the land. The suit has no likelihood of success and is only intended to delay recovery of the loan due to the 3rd respondent.

d. Submissions of counsel for the applicant;

Counsel for the applicant, M/s Tumusiime, Irumba and Co. Advocates, submitted that the applicant has satisfied all legal requirements for the grant of a temporary injunction. She has filed a suit that

is likely to succeed considering that it is registered in the name of her late spouse and it is land from which the family derives sustenance. The land was mortgaged without her consent. She is likely to suffer irreparable damage in the event that the order is not granted considering that the 3rd respondent has already issued a default notice. She cannot be adequately compensated in damages in the event that the land is sold off. Lastly, the balance of convenience is in her favour. In any event the 1st applicant's affidavit is defective in so far as he purports to make averments therein on behalf of the 2nd respondent yet there is no proof of such authorisation.

e. Submissions of counsel for the respondents.

Counsel for the respondents submitted that the applicant has not satisfied all legal requirements for the grant of a temporary injunction. The suit that is unlikely to succeed considering that the land mortgaged to the 3rd respondent is not one from which the family derives sustenance, hence it is not family land and did not require her consent. She is not likely to suffer irreparable damage in the event that the order is not granted considering that the land has always bene used for the commercial purpose of "Secoso Family Investment Club" constituted by the family of the late Mr. Joseph Ssenyonga. She can be adequately compensated in damages in the event that the land is sold off since that is one of the reliefs claimed in the suit. The balance of convenience is in favour of the 3rd respondent. It is not denied that the sum claimed in the counterclaim was borrowed by the 2nd respondent and is outstanding. Alternatively, the applicant should be required to deposit 30% of the forced sale value of the mortgaged property as a condition for the grant of order of stay as required by Regulation 13 of *The Mortgage Regulations, 2012*. The application ought to be dismissed with costs.

f. The decision.

It is in the nature of applications for temporary injunctions to be made upon contested facts. The decision whether or not to grant an interlocutory injunction therefore has to be taken at a time when *ex hypothesi* the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the suit. The object of the interlocutory injunction is to protect the applicant against injury by violation of his or her right for which he or she could

not be adequately compensated in damages recoverable in the suit if the uncertainty were resolved in his or her favour at the trial; but the applicant's need for such protection must be weighed against the corresponding need of the respondent to be protected against injury resulting from his or her having been prevented from exercising his or her own legal rights for which he or she could not be adequately compensated in damages if the uncertainty were resolved in the respondent's favour at the trial. The Court must weigh one need against another and determine where "the balance of convenience" lies. However, the applicant raised a preliminary objection relating to the respondents' joint affidavit, which will be addressed first.

i. Whether the 1st respondent's affidavit in reply is defective.

An affidavit is defined as "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath (see *Amtorg Trading Corporation v. United States, 71 F. 2d 524*). It is a written statement where the contents are sworn or affirmed to be true, signed in front of an authorised person. The statement usually is intended to and serves as evidence before a Court for the proper determination of factual disputes.

Affidavits have the common feature of being written in the first person by an identified deponent regarding evidence of which that individual has first-hand knowledge, witnessed themselves or, if they are relying on another source, identifying that source, all of which the deponent swears that the contents are true, in front of a commissioner of oath, a notary public, judicial officer or other authorised person. An affidavit may state only what a deponent would be permitted to state in evidence at a trial, except that if the source of the information is given, an affidavit may contain statements as to the deponent's information and belief, if it is made in respect of an application for an interlocutory order, or by leave of the court (see Order 19 rule 3 (1) of *The Civil Procedure Rules* and *The Co-operative Bank Limited v. Kasiko John [1983] HCB 72*).

What is required in affidavits is the knowledge or belief of the deponent (see for example Order 5 rule 24, Order 10 rule 19 (3) of *The Civil Procedure Rules*). Similarly for suits under summary procedure, the affidavit verifying the claim may be sworn "by the applicant, or by any other person

who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defence to the suit (see Order 36 rule 2 of *The Civil Procedure Rules*). Affidavits should state the facts only, without stooping to add the deponent's descriptive opinion of those facts. Just as with regular testimony in Court, evidence tendered by affidavit will be inadmissible if irrelevant, particularly if scandalous, oppressive, embarrassing or judgmental, or where privileged facts or documents are submitted.

Affidavits are a means of adducing sworn, written evidence and must be used in applications where sworn evidence is required by the court. The validity of the affidavit therefore is subject to the same rule as that which governs oral evidence found in section 117 of *The Evidence Act*, to wit; all persons are competent to swear an affidavit unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. For under age deponents, section 9 (1) of *The Oaths Act* provides that if it appears to the court [or Commissioner for oaths] that the person about to take the oath or make the affirmation ought not; - (a) by reason of immature age; or (b) for any other sufficient cause, to be allowed to take the oath or make the affirmation, the court or officer may, if the court or officer in its or his or her free discretion so thinks fit, allow that person, in lieu of taking the oath or making the affirmation, to give evidence or make a declaration without oath or affirmation.

From the above discourse it then becomes clear that throughout the web of legal provisions relating to affidavits, one golden thread is always to be seen; that what is required in affidavits is the knowledge or belief of the deponent, rather than authorisation by a party to the litigation. Their content is dictated by substantive rules of evidence and their form by the rules of procedure.

I have considered the available decisions positing the principle that a person is not to swear an affidavit in a representative capacity unless he or she is an advocate or holder of power of attorney or duly authorised (see *Kaingana Joy per Kaingana John v. Boubon Dabo [1986] HCB 59*; *Makerere University v. St. Mark Education Institute and others, H.C. Civil Suit No. 378 of 1993*; *Taremwa Kamishani and others v. Attorney General, H. C. Misc. Application No. 38 of 2012*; *Edrisa Mutaasa and others v. IGG, Lyantonde District Administration and another, H.C. Misc.*

Cause No. 06 of 2010; *Kaheru Yasin and another v. Zinorumuri David, H. C. Misc. Application No 82 of 2017* and *Ssenyimba Vincent and two others v. Birikade Peter and another, H. C. Misc. Application No. 378 of 2018*). Those decisions posit the view that where there is no written authority to swear on behalf of the others, the affidavit is defective.

I have not found any basis for that principle in the rules of evidence nor those of procedure. The principle appears to have developed from the analogy of representative suits, which analogy I find to be misplaced. In *Taremwa Kamishani and others v. Attorney General, H. C. Misc. Application No. 38 of 2012*the court expressed the view that "where the party obtains a representative order it is sufficient authority to represent himself/ herself and others in the same interest and he or she can swear an affidavit on his or her own behalf and on behalf of the others represented. Conversely, where a party swears an affidavit on his or her own behalf and on behalf of the others without the others' authority when it is not a representative suit, the affidavit becomes defective for want of authority." In *Ssenyimba Vincent and two others v. Birikade Peter and another, H. C. Misc. Application No. 378 of 2018* the court expressed the view that "the law [is] that save in representative suits where the party who obtains the order to file the suit can swear affidavits binding on others on whose behalf the suit is brought, where an affidavit is sworn on one's behalf and on behalf of others there is need to prove that the others authorised the deponent to swear on their behalf."

The appeal to misconceived analogy can lead to really wrongful and serious harm in the name of the law. Analogical arguments always involve a comparison of two or more selected items. What is important in an analogy is that the two scenarios which are matched are both instances of a more general rule or principle from which the desired conclusion in both instances can be derived. Analogical argument serves the purpose of enabling the court to discern whether the possession of some characteristics known to be shared by the source and the target rationally warrant the inference that the target also possesses the inferred characteristic that the source is known to have. Analogical arguments always involve picking shared characteristics in the source(s) and the target that are judged to be rationally relevant to possession of the inferred characteristic. However, filing a suit is not relevantly similar to adducing evidence in the suit, for which reason the analogy is, respectfully, misconceived.

While filing a suit has aspects of *locus standi*, adducing evidence is all about competence. While representative suits arise from rules of convenience prescribing conditions upon which persons who have the same actual and existing interest in the subject matter of the intended suit, although not named as parties to a suit, may still be bound by the proceedings therein, the rules of evidence on the other hand confer discretion on the court to control repetitive evidence; a judicial safety valve by which a party's attempt to adduce excessive evidence in support of the same proposition can be cut short. An affidavit should not be filed when it adds very little to the probative force of the other evidence in the case. Therefore, when the relevant facts are within the common knowledge of parties having the same interest in the litigation, an affidavit by one of them will suffice. Whereas initiating a suit in another's name clearly requires authorisation since it raises issues of autonomy of the individual, adducing evidence of facts that have a bearing on another's case already before court does not.

The basic pattern of analogical reasoning is always this: on the basis of some shared relevant characteristics, one infers that the "target" item has an additional characteristic that the source item is known to have. For this to be a sound analogy, representative suits must have some shared relevant characteristics with affidavit evidence. Analogical arguments cannot be rationally compelling unless there is some explanation that provides a rational justification for the rule's assertion that possession of the shared characteristics in an item rationally warrants the inference to the conclusion that the item also possesses the inferred characteristic. Not only have I not found shared relevant characteristics between representative suits and affidavit evidence, but also I have failed to find a rational justification for applying a principle of convenience intended for representative suits, to affidavit evidence adduced by parties having the same interest in the litigation and testifying to facts in their common knowledge.

Of course the Rules of procedure, like any set of rules, cannot in their very nature provide for every procedural situation that arises. Where the Rules are deficient, my view is that the court should go so far as it can in granting orders which would help to further the administration of justice, rather than hampering it. For those reasons I am not persuaded to follow the principle that where there is no written authority to swear on behalf of the others, an affidavit is defective; most especially since

the decisions in which it was applied are not binding on me. That objection is accordingly overruled.

ii. Whether the applicant has a *prima facie* case against the respondents.

First, a preliminary assessment must be made of the merits of the suit that has been filed against the respondents, to ensure that there is a "serious question to be tried." One of the criteria to be applied when considering whether or not to grant a temporary injunction is disclosure by the applicant's pleadings, of a "serious triable issue," with a possibility of success, not necessarily one that has a probability of success (see *American Cyanamid v. Ethicon [1975] AC 396; [1975] ALL ER 504; Godfrey Sekitoleko and four others v. Seezi Peter Mutabazi and two others, [2001 –2005] HCB 80* and *Nsubuga and another v. Mutawe [1974] E.A 487*). There is no need to be satisfied that a permanent injunction is probable at trial; the court only needs be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried. A serious question is thus any question that is not frivolous or vexatious. As long as the claim is not frivolous or vexatious, the requirement of a *prima facie* case is met.

The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried, and that there is at least a reasonable chance that the applicant will succeed at trial. The applicant needs to show only a reasonable likelihood of success on the merits. The applicant's burden on this part of the test is relatively low, and in most cases an applicant will be able to show that there is a serious question to be tried. The applicant is required to provide reasonably available evidence to satisfy the court with a sufficient degree of certainty that the applicant is the rights-holder and that his or her rights are being infringed, or that such infringement is imminent. The applicant must show a strong probability that the feared conduct and resulting damage will occur.

Although the merits of the parties' respective cases and their relative strengths are not to be considered at this stage, the court should bear in mind that in a suit of this nature, the applicant must show the following six elements in order to prevail: (i) the applicant was legally married to the late Mr. Charles Mbaziira; (ii) the late Mr. Charles Mbaziira was before his death the registered

proprietor of LRV 2083 Folio 16 Block 273 Plot 1519 at Kabalagala in Kampala District; (iii) that land is "family land" in the sense that it is land "on which is situated the ordinary residence of the family and from which the family derives sustenance," or one "which the family freely and voluntarily agrees shall be *treated as* one on which is situated the ordinary residence of the family and from which the family derives sustenance," or one "which is treated as family land according to the norms, culture, customs, traditions or religion of the family"; (iv) the late Mr. Charles Mbaziira mortgaged that land to the 3rd respondent without the applicant's consent; (v) the respondents participated in that transaction fraudulently; and (vi) the applicant has suffered or is likely to suffer damage or loss as a result.

In their respective written statements of defence, the respondents contest all but the first two elements. The pleadings of both parties raise pertinent issues of law and fact. I am therefore satisfied that the claim is not frivolous or vexatious; there are serious questions of law and fact to be tried. Accordingly, a *prima facie* case has been established. The applicant therefore has discharged her onus of proof in this respect.

iii. Whether the applicant will have an adequate remedy at law or will be irreparably harmed if the injunction does not issue.

Second, the applicant must show that she will suffer irreparable harm if the court refused to grant the injunction and the respondents were allowed to continue in their course of conduct. "Irreparable" in this context refers not to the size of the harm that would be suffered, but its nature. If the harm could not be quantified by payment of money, or if the harm is not readily calculated or estimated, this part of the test will usually be satisfied. In some cases, the availability of damages often precludes such a finding.

The Court may grant a temporary injunction if it is apparent that the respondent is about to embark on a course of action that would infringe an applicant's rights. The court will particularly be inclined to grant the injunction where there appears to be a *prima facie* breach of property rights, or where the potential harm that could flow should a court order not be granted is difficult or impossible to calculate and quantify at a later stage in the suit.

I find that the pleadings show that it is common ground that the property in issue is developed with rental properties from which rental income is drawn for the benefit of the membership of "Secoso Family Investment Club," of which the applicant is one of the beneficiaries (the second respondent though asserts that the clubs is predominantly constituted by members of the family of the late Mr. Mr. Joseph Ssenyonga; a fact awaiting proof at the trial). This version appears to contradict the requirement that it should be proved to be property "on which is situated the ordinary residence of the family" of the applicant, but still that is one of the factual disputes to be settled at the trial. What is not in doubt though is that the kind of sustenance claimed by the applicant as being drawn from the property is purely economic with no aesthetic or sentimental overtones. The transaction that has exposed the property to the danger of being lost too is of a purely commercial nature.

This therefore essentially is a case in which, if the applicant succeeds, the court will be required to make an award of damages to compensate the rights holder for economic injury suffered through the violation of property rights, if proved, and this is not such a daunting task. I therefore do not find this to be case in which the applicant is likely to suffer loss or injury that cannot be quantified by payment of money, or that is not readily calculated or estimated. The applicant therefore has not discharged her onus of proof in this respect.

iv. Balance of convenience (whether the threatened injury to the applicant outweighs the threatened harm the injunction might inflict on the respondents).

Since the court is in doubt considering the outcome of its consideration of the first two factors, the third part of the test involves the court assessing which of the parties would suffer greater harm from the granting or refusal of the injunction pending trial. Unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the applicant has any real prospect of succeeding in his or her claim at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

This part of the test is referred to as the "balance of convenience." Balance of convenience means comparative mischief or inconvenience that may be caused to the either party in the event of refusal

or grant of injunction. It is necessary to assess the harm to the applicant if there is no injunction, and the prejudice or harm to the respondent if an injunction is imposed. The courts examine a variety of factors, including the harm likely to be suffered by both parties from the granting or refusal of the injunction, and the current *status quo* as at the time of the injunction.

The Court has the duty to balance or weigh the scales of justice by ensuring that the suit is not rendered nugatory while at the same time ensuring that a respondent is not impeded from the pursuit of his or her contractual rights. No doubt it would be wrong to grant a temporary injunction order pending disposal of the suit where the suit is frivolous or where such order would inflict greater hardship than it would avoid. Save in the simplest cases, the decision to grant or to refuse an interlocutory injunction will cause to whichever party is unsuccessful on the application, some disadvantages which his or her ultimate success at the trial may show he or she ought to have been spared and the disadvantages may be such that the recovery of damages to which he or she would then be entitled would not be sufficient to compensate him or her fully for all of them.

The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his or her succeeding at the trial is always a significant factor in assessing where the balance of convenience lies. The governing principle is that the court should first consider whether if the applicant were to succeed at the trial in establishing his or her right to a permanent injunction, he or she would be adequately compensated by an award of damages for the loss he or she would have sustained as a result of the respondent's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the respondent would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the applicant's claim appears to be at this stage.

If, on the other hand, damages would not provide an adequate remedy for the applicant in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the respondent were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated by the applicant for the loss he or she would have sustained by being prevented from doing so between the time of the application and the time

of the trial. If damages would be an adequate remedy and the applicant would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

For example, if the *status quo* is that the respondent has been carrying on the activity complained of for a long period of time, and the applicant knew or should have known of the activity, but has not previously objected, the court will be reluctant to make an order preventing the respondent from continuing the conduct. On the other hand, if the respondent has only recently embarked on the conduct and has not expended significant resources, then this may well place the balance of convenience in favour of the applicant.

To the contrary, if the respondent is enjoined temporarily from doing something that he or she has not done before, the only effect of the interlocutory injunction in the event of his or her succeeding at the trial is to postpone the date at which he or she is able to embark upon a course of action which he or she has not previously found it necessary to undertake; whereas to interrupt him or her in the conduct of an established enterprise would cause much greater inconvenience to him or her since he or she would have to start again to establish it in the event of his or her succeeding at the trial.

From the plaint, the relevant considerations are that the property has since the year 2010 been leased, first to "Secoso Family Investment Club" and later on or about 8th June, 2018 and 7th September, 2018 to the 3rd respondent. From the year 2010, the land has been developed by way of construction of residential houses for rent. Upon completion of the houses, monthly rent was initially routinely deposited on the Club's bank account. The implication is that as a member of that club, the applicant was regularly receiving benefit from these collections. It is the applicant's case that she was surprised when on 28th February, 2021 she was served by a default notice by the 3rd respondent, showing that the 2nd respondent owed it shs. 58,089,663/= It is then that the applicant discovered that her deceased husband together with some of the family members, had leased the land and that the rental income was no longer been deposited on the "Secoso Family Investment Club" but rather on the 2nd respondent's loan account with the 3rd respondent.

The *status quo* for the last three and a half years is that the 3rd respondent has been carrying on the activity complained of, receiving repayment of the loan from the rental income. For that duration of time the applicant has not been receiving benefits from "Secoso Family Investment Club" but apparently had never raised a finger. From that fact the court deduces that the applicant either knew or should have known of the activity, but has not previously objected. The court will thus be reluctant to make an order preventing the 3rd respondent from continuing the activity.

The applicant seeks the interlocutory injunction so as to protect her against injury by violation of its right for which I have already found she could be adequately compensated for in damages if the uncertainty were resolved in her favour at the trial. The applicant's need for such protection must be weighed against the corresponding need of the 3rd respondent to be protected against injury resulting from being prevented from exercising their own legal rights for which it may not be adequately compensated in damages if the uncertainty were resolved in its favour at the trial. Having done so, I find that the balance of convenience in favour of the respondents. Moreover, the applicant already has a caveat in place.

In light of all the foregoing, the order, if granted, would inflict greater hardship than it would avoid, hence the balance favours not granting the order of stay. The application is accordingly dismissed. The costs of this application will abide the result of the suit.

Delivered electronically this 13th day of September, 2021 ……Stephen Mubiru……..

Stephen Mubiru
Judge,
13th September, 2021.