

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
MISCELLANEOUS APPLICATION NO. 1271 OF 2023
ARISING FROM MISCELLANEOUS APPLICATION NO. 1270 OF 2023
ALL ARISING FROM COUNTER CLAIM NO. 700 OF 2019
1. KARE DISTRIBUTION
2. GEOFFREY KAREGEYA ::::::::::::::::::::::::::::::::::: APPLICANTS
VERSUS
AFRICAN RIVERS FUND ::::::::::::::::::::::::::::::::::: RESPONDENT

Before Hon. Lady Justice Harriet Grace Magala
Ruling

Background

This is an application that was filed under section 33 of the Judicature Act, section 98 of the Civil Procedure Act, Order 52 rules 1,2 and 3 of the Civil Procedure Rules as amended and rule 4 of the Judicature (Court Vacation) Rules. The Applicants seek for orders that a certificate of urgency be issued for the hearing of Miscellaneous Application No. 1270 of 2023 during court vacation or in the alternative court issues direction for the expeditious hearing of Misc. App. No. 1270 of 2023 and costs be provided for.

The Application was supported by an affidavit deposed by the 2nd Applicant whose are grounds briefly :

- a) That the court on 25th October 2022 directed that the counter claim number 700 of 2019 be scheduled for hearing before this court but to date the counter claimant / Respondent has not taken any step to prosecute the said matter;
- b) That on the 4th August 2023 the Respondent/ Counterclaimant advertised the property for sale which is the subject of the loan that the counter claimant /Respondent seeks to recover in the counter claim which would amount to a double recovery; and
- c) That there is an urgent need to hear MA 1270 of 2023 during the court vacation which seeks to stop the sale of the property.

Hearing and Representation

This is an ex- parte application. The Applicants were represented by Bwesigye Enock, an advocate with M/s FACTUM Advocates. He relied on the Affidavit in support of the Application and prayed that court finds it urgent that MA 1270 of 2023 should be heard during court vacation before the 21 days in the advertisement for sale of the property lapse.



Issue

Whether there is an urgency for court to hear MA 1270 of 2023 during court vacation

What other remedies are available to the Parties?

Determination

Issue 1

I have read the affidavit in support of the application, the attachments thereto and find that there is no urgency to hear MA 1270 of 2023 during court vacation for the following reasons:

1. The Suit property was re-advertised for sale by M/s Quickway Auctioneers & Court Bailiffs in the Daily Monitor Newspaper of 4th August 2023. The advert is to the effect that the property shall be sold after 21 working days from the 4th August 2023. This implies that the sale shall occur on the 4th September 2023 after court vacation which comes to an end on the 15th August 2023. The sale is therefore not imminent during the court vacation period.
2. Secondly, the counter claim out of which MA 1270 of 2023 arises is allocated to the Hon. Lady Justice Anna B. Mugenyi who shall be available to resume her duties from her leave with effect from the 16th August 2023.

Issue 2

The Applicants through their legal Counsel are hereby advised to attend the Chambers of trial judge - the Hon. Lady Justice Anna B. Mugenyi to fix MA 1270 of 2023 for hearing as soon as possible.

There shall be no order as to costs.

Dated at Kampala this 9th day of August 2023.

The Ruling has been electronically delivered/uploaded on ECCMIS this 9th day of August 2023.



Harriet Grace MAGALA

Judge