

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
MISCELLANEOUS APPLICATION NO. 0277 OF 2023
(ARISING FROM MISCELLANEOUS APPLICATION NO. 1481 OF 2022)
(ARISING FROM CIVIL SUIT NO. 0887 OF 2022)
COLLINE HOUSE LTD. :..... APPLICANT
VERSUS
KTA ADVOCATES :..... RESPONDENT

Before Hon. Lady Justice Harriet Grace Magala

Ruling

[1] Introduction and Background

This is an application that arises out of Miscellaneous Application No. 1481 of 2022. This was an application for a temporary injunction for orders that the Respondent, their agents or any other person be restrained from interfering with the Applicant's ownership, interest, occupancy, possession, alienating, selling or transferring or in any way dealing with the Applicant's property comprised in LRV 3945 Folio 11 Plot 4B Pilkington Road Kampala (*hereinafter referred to as the "suit property"*) pending the hearing and final determination of the main suit.

The Application for the temporary injunction was granted on condition that the Applicant made a payment of 30% of the forced sale value of the suit property within 60 days from the date (21st December 2022) of delivery of the Ruling.

The Applicant did not comply with the conditions / orders handed down by this Court in its Ruling of MA 1481 of 2022 and filed this present application on the 20th February 2023 seeking the following reliefs/orders:

- (a) That the Applicant be allowed to deposit certificates of title of land comprised in Plot 149 Block 98 situate at Kyaggwe, measuring approximately 4.95 hectares and Plot 4 Block 152 situate at Mubende,

measuring approximately 121.4 as security imposed by this honorable court in Miscellaneous Application No. 1481 of 2022;

- (b) An Order extending the time within which to deposit the 30% security deposit as ordered by this honorable court in Miscellaneous Application No. 1481 of 2022 pending the disposal of this Application; and
- (c) Costs of the Application be provided for.

The Application was supported by affidavits deposed by Augustine Kasozi, the Director of the Applicant and the Affidavit in reply opposing the Application was deposed by Edwin Paul Tabaro, an advocate and partner with the Respondent who is well conversant with the facts of the case.

[2] Appearance and Representation

The Applicant was represented by Mr. Henry Byansi of M/s Kamulegeya & Co. Advocates and the Respondent was represented by Mr. Henry Kipaalu of M/s KTA Advocates.

When learned counsel for both Parties appeared in court for mention of the matter on the 7th March 2023, Court reminded the Applicant that there was a notice of appeal filed to appeal against the decision of this court in Misc. Application No. 1481 of 2022 and the implications of that notice vis-à-vis this present application. The learned counsel for the Applicant informed court that they would not pursue the appeal and would advise their client to withdraw it.

The learned counsel for the Applicant brought it to the attention of court that there was a possibility of the Respondent disposing of the suit property because the sixty (60) days given by court for the Applicant to make the 30% payment of the forced sale value of the suit property as a condition for granting the temporary injunction had long lapsed although this application had been filed a day before the 60 days lapsed.

This court gave an order to maintain the status quo, that is the suit property would not be disposed of or dealt with in any way by the Respondent pending the hearing and final determination of this matter.

The Parties were given schedules within which to file their pleadings and submissions. The Court has relied on the pleadings and written submission to determine this matter.

[3] Issues

- (i) Whether the Applicant should be allowed to deposit title deeds to properties comprised in Plot 149 Block 98 situate at Kyaggwe and Plot 4 Block 152 situate at Mubende in lieu of a cash payment as 30% of the forced sale value of suit property
- (ii) What other remedies are available to the Parties?

[4] Determination

4.1 Issue No.1: Whether the Applicant should be allowed to deposit title deeds to properties comprised in Plot 149 Block 98 situate at Kyaggwe and Plot 4 Block 152 situate at Mubende in lieu of a cash payment as 30% of the forced sale value of suit property

- 4.1.1 This Court in the matter of **Goha International Ltd. & Anor vs Tropical Bank Uganda Limited & Others –Misc. Application No. 0635 of 2022** allowed the Applicants to deposit title deeds in lieu of cash in fulfillment of the requirement set out in Regulation 13(1) of the Mortgage Regulations-SI No. 2 of 2012. The facts surrounding the use and ownership of the suit property in that matter were not the same as this present matter before court. In addition, according to the pleadings of **Goha International Ltd. (supra)**, the Applicants ably demonstrated their willingness to meet their obligations towards the Respondent.
- 4.1.2 This Court is required to consider the facts and circumstances of each case in exercise of its judicial powers. It is for that reason therefore that the background to this application –which is the pleadings and Court’s decision in Misc. Application No. 1481 of 2022 have also been considered in determining this matter as shall be laid out below.
- 4.1.3 The Applicant in her affidavit in support of the application at paragraphs 13, 14 and 16 stated that irreparable injury would be occasioned to her if the Respondent was allowed to proceed with the foreclosure. Paragraph 16 of the said affidavit states that:

“The Applicant will suffer great loss as she will lose her property which she has held since 01/08/1989 and will never recover it as

against the Respondent who can always enforce her rights upon conclusion of the main suit”.

The Applicant cannot be seen to plead irreparable loss at this point. The Applicant consented to M/s Mukono Bookshop Printing and Publishing Company Limited to pledge its property comprised in LRV 3945 Folio 11 Plot 4B Pilkington Road Kampala (*the Suit Property*) as a security for the money borrowed from M/s GroFin SBG Uganda on whose behalf the Respondent acts. The Applicant went a step further and issued a corporate guarantee in respect of the said facility.

The Applicant therefore ought to have known that the moment to M/s Mukono Bookshop Printing and Publishing Company Limited walked through the doors of M/s GroFin SBG Uganda to borrow money and pledged its property as security, there could only be one of many results in the event that there was a default on the loan repayment. **Section 20 of the Mortgage Act, 2009** on Remedies of the mortgagee states that:

“Where the mortgagor is in default and does not comply with the notice served on him or her under section 19, the mortgagee may—

- (a) require the mortgagor to pay all monies owing on the mortgage;
- (b) appoint a receiver of the income of the mortgaged land;
- (c) lease the mortgaged land or where the mortgage is of a lease, sublease the land;
- (d) enter into possession of the mortgaged land; or
- (e) sell the mortgaged land.

The Respondent, acting on behalf of M/s GroFin SBG Uganda opted to proceed under **section 20(e) of the Mortgage Act**. In the circumstances, disposing of the Suit Property would not in my opinion be in my considered opinion amount to irreparable loss since it is one of the expected outcome when one defaults on mortgage repayments. Refer to section 20 (e) of the Mortgage Act ,2009.

- 4.1.4 The Applicant at paragraph 6 of her affidavit in support stated that she was unable to furnish the said 30% payment in cash as she was experiencing economic hardship occasioned by the grueling effects of the Covid-19

pandemic. Whereas court takes judicial notice of the effects the Covid-19 pandemic had on our way of living and doing business, this cannot no longer be used or abused *ad infinitum* as a way of running away from meeting one's obligations.

The Respondent in their affidavit in reply at paragraphs 20 and 21 stated that this application was an abuse of the court process, was brought in bad faith and the Applicant had not made any effort to make payment-however small towards the 30% of the forced sale value of the suit property since the Ruling in Misc. Application No. 1481 of 2022 was delivered. The Respondent further averred that the Applicant had not come to court with clean hands.

As earlier stated, I wish to reiterate that Court cannot determine this matter in isolation of information contained in Misc. Application No. 1481 of 2022. In determining the latter, court established that a default notice under section 19 of the Mortgage Act was served on M/s Mukono Bookshop Printing and Publishing Company Limited on 15th October 2021. Between 15th October 2021 and 20th February 2023 when this application was filed in court, the Applicant as a corporate guarantor had about one year and four months to meet its obligations towards M/s GroFin SBG Uganda.

The effects of the Covid -19 pandemic notwithstanding, the Applicant as a corporate guarantor of M/s Mukono Bookshop Printing and Publishing Company Limited has failed to demonstrate to court that efforts have either been made to make some payments-however little towards the loan repayments or that the Applicant and/or borrower sought to have the loan repayment rescheduled within their means and the Lender declined.

I therefore agree with the contentions of the Respondent that this application is an abuse of the court process and intended to frustrate the Respondent from recovering monies due and payable to M/s GroFin SBG Uganda.

- 4.1.5 The Applicant at paragraph 15 of her affidavit in support of the application stated that:

“The balance of convenience is in favour of the Applicant who stands to lose her property to the Respondent who is purporting to illegally exercise rights of a mortgagee arising from a loan facility agreement which is under challenge in the proceedings before this Honourable court”.

The role of the Respondent in this matter was settled when Misc. Application No. 1481 of 2022 was determined. Court in its Ruling established that the Respondent was neither a manager nor a receiver but an agent of M/s GroFin SBG Uganda acting as external legal counsel. A notice of change of advocates from M/s S & L Advocates to the Respondent (M/s KTA Advocates) was filed in court on the 7th September 2022 and the same was served on M/s Akampumuza & Co. Advocates acting as legal counsel for M/s Mukono Bookshop Printing and Publishing Company Limited on 8th September 2022.

- 4.1.6 I shall conclude the determination of this issue by reminding us what I believe is the rationale of Regulation 13(1) of the Mortgage Regulations. The Regulation is intended to restrict the ability of the mortgagor to use courts to annoyingly delay the realization of money due to the mortgagee. Secondly, it is also intended to reduce the number of frivolous objections to sales by mortgagors and guarantee that the mortgagee will not be unnecessarily prejudiced by a delay in payments that have been inevitably occasioned by litigation.

In light of the above, since the Applicant has properties at their disposal whose value is more than 30% of the forced sale value of the suit property and feels so strongly about keeping this suit property she has owned since 1989, she might as well use the same to obtain money to make the cash payment of 30% of the forced value of Suit Property in satisfaction of the Court Order in Misc. Application No. 1481 of 2022. This Court therefore rejects the Applicant's prayer to submit title deeds in lieu of cash payment of 30% of the forced sale value of the Suit Property.

4.2 Issue No. 2: What other remedies are available to the Parties?

4.2.1 Extension of time

On the 7th day of March 2023 when this matter came up for mention, court gave an order that the *status quo* relating to the suit property would be maintained pending the final determination of this matter. The Applicant therefore has been given **thirty (30) days** from the date of delivery of this Ruling within which to make a cash payment of 30% of the forced sale value of the suit property in satisfaction of this Court's Order issued in Misc. Application No. 1481 of 2022. Failing which, the Respondent as an agent of M/s GroFin SBG Uganda shall be at liberty to dispose of the Suit Property in accordance with the prevailing laws.

4.2.2 Costs

It is a general rule that costs shall follow the event unless the court or judge shall for good reason otherwise order.

Section 27 (1) of the CPA states that:

“subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid”.

Having found in favour of the Respondent, the costs of this Application are hereby awarded to the Respondent.

Delivered electronically this 07 day of JULY 2023 and uploaded on ECCMIS.



Harriet Grace MAGALA

Judge

7th July 2023