

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA - NAKAWA CIRCUIT
MISC. APPLICATION NO. 341/2013

SEMAKULA MARK ALLAN ::: APPLICANT

V E R S U S

EQUITY BANK & 2 ORS ::: RESPONDENTS

RULING

This ex parte Application is brought under rule 4 of Court vacation Rules S. 1 No. 13 - 20; 0.52 rule 1 & 2 Civil Procedure Rules (CPR) S1 71-1, S. 98 of the Civil Procedure Act, Cap 71 as well as S. 33 of the Judicature Act Cap 13 seeking an Order that Miscellaneous Application No. 343 of 2013 be certified as a matter of urgency and be heard during Court Vacation. The Applicants are represented by Counsel Kenneth Mugisa appearing with Counsel Sadat Bbale of Mugisa, Namutale and Co. Advocates.

The grounds of the Application are that Misc. Application No. 343 of 2013 is of urgent nature and should be heard during Court vacation by the Honourable Court otherwise Kisubi High School ran by Kisubi High School Ltd., in which the Applicant is a minor shareholder stands to be disposed of.

The Application is supported by the Affidavit of Regina Naluyima Ssemakula the Next friend of the Applicant, Semakula Mark Allan.

SUBMISSIONS

Counsel Nsubuga submitted that Misc. Application No. 343 of 2013 in respect of an Application for an Interim Order is an urgent matter to be heard in

Court vacation. He pointed out that the Applicant has also filed Civil Suit No. 171 of 2013 and Miscellaneous Application No. 342 of 2013. The latter Application seeks, inter alia, a restraint of the First Respondent, its agents/servants from disposing of or evicting Kisubi High School. Counsel Nsubuga submitted that the Application before Court is premised upon the fact that the First Respondent, through its agents, has advertised the Applicant's school for sale as deponed by Ms. Naluyima Ssemakula in paragraph 4 of her Affidavit. Counsel referred Court to the attached Advert dated 14th June 2013. He also brought to the Court's notice a letter dated 17th June 2013 written by the Expeditious Associates, who are High Court Bailiffs and General Associates. The letter, which is addressed to the Directors of Kisubi High School Ltd. states, that during the auction process, the prospective buyers will need to have unlimited access to the interiors and exteriors of the property. The occupants have also been requested to give vacant possession within 14 days or else they would be forcefully evicted without further warning.

I have also taken note of the Summary of Evidence attached to this Application in which it is stated that the First and Second Respondents conspired to commit a fraud on the Applicant and the third Respondent by executing a loan transaction without a valid company resolution. Additionally, the minor shareholder (the Applicant) did not sign the loan Agreements but someone else did as arranged by the First and Second Respondents.

It is the considered opinion of this Court that this information should have been included in the Affidavit deponed to by Ms. Naluyima Ssemakula. However, pursuant to Article 126 (2) (e) of the Constitution of the Republic of Uganda of 1995 as amended. Courts are enjoined to duly administer substantive justice without undue regard to technicalities.

I am persuaded that the impending Sale of Kisubi High School is an urgent matter which Court should attend to during Court Vacation.

DISCUSSION

Rule 4 of the Judicature (Court vacation) rules S. I. 13 – 20 provides;

“In vacation the Court shall deal with criminal business but shall not sit for the discharge of civil business other than such civil business as shall, in the opinion of the presiding Judge, be of an urgent nature.”

For applications of such nature, the Applicant must show that the matter is urgent (***See Noor Muhammed vs. Jaffery Wanami Civil Revision No. 002/2007 Jinja High Court***) and hearing of the matter must be preceded by a Certificate of Urgency (***See Stewards of Gospel Talents Ltd vs. Nelson Onyango & 7 others HCCA 14/2008 (Civil Division)***). The matter before me is ensuring that a Certificate of Urgency is issued before the Application for an Interim Order is entertained. Thus the Applicant is following the correct procedure as stipulated by the Law.

I am of the opinion that the issue at hand is an urgent one. For the foregoing reasons, Misc. Application No. 343 of 2013 is certified as a matter of urgency.

Signed:.....

Hon. Lady Justice Elizabeth Ibanda Nahamya

J U D G E

18th July 2013