



**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**

**CIVIL APPEAL NO. HCT-12-LD-CA-0028 OF 2014**

**(ARISING FROM MISCELLANEOUS APPLICATION NO. 0032/2014 &  
MISCELLANEOUS APPLICATION NO. 0030/2014)**

**GUARANTY TRUST BANK (U) LTD ::**  
**APPLICANT**

**VERSUS**

**ANKOLE RIVERLINE HOTEL LTD ::**  
**RESPONDENT**

**BEFORE: HON. JUSTICE BYABAKAMA MUGENYI SIMON**

**JUDGMENT**

This is an appeal from the decision of the Ag. Assistant Registrar of this Court His Worship Byaruhanga Jesse, delivered in Miscellaneous Application No. 0032/2014, where he declined to order the respondent to deposit in court 30% of the forced sale value of the mortgaged property comprised in LRV 2682 Folio 5, Plot 89-91 Kabale Road, Mbarara.

The appeal is brought by Notice of Motion under O.50 r.8 of the Civil Procedure Rules (CPR), sections 79 (1) (b) and 98 of the Civil Procedure Act (CPA), as well as section 33 of the Judicature Act.

The application is supported by the affidavit and that in rejoinder of Stella Byomugisha, the appellant's Head of Credit.

The appellant seeks the following orders:-

1. The learned Registrar's decision of 14th April 2014 declining to order the respondent to deposit in court 30% of the forced sale value of the mortgaged property comprised in Lease hold Register Volume 2682 Folio 5, Plot 89-91 Kabale Road, Mbarara be set aside.
2. The respondent be ordered to deposit in this honourable court a sum of ug. shs. 325,800,000/= being 30% of the forced sale value of the said property.
3. Costs of this appeal be provided for.

The grounds are that:-

1. The appellant was granted various securities amounting to Ug. shs. 900,000,000/= under a loan agreement.
2. As security for the said borrowing the Respondent's Managing Director, Mr. Hygin Twongyeirwe Kururagire executed a Legal mortgage deed in respect of Leasehold Register Volume 2682 Folio 5, Plot 89-91 Kabale Road, Mbarara as the Respondent's surety.
3. The Respondent defaulted on the repayment of the said debt and inspite of the appellant's demands that the respondent and the mortgagor/surety, Hygin Twongyeirwe Kururagire to settle the said debt they neglected or refused to settle the debt.
4. The respondent defaulted on the repayment of the said facilities and as of 28th January, 2014 the outstanding balance was in the sum of Ug. shs 837,840,470/=.
5. In an effort to realize the said security and recover the said debt, the appellant had the said property advertised for sale which was due on 17th April 2014.

6. The respondent filed an application for an interim order in Miscellaneous Application No. 032 of 2014 restraining the appellant, its agents, servants, seeking, inter alia, from disposing of the said mortgaged property.
7. Regulation 13 (b) of the Mortgage Regulations (Statutory Instrument No. 2 of 2012) requires that where an advertised sale is to be stopped or postponed, a deposit of 30% of the forced sale value of the mortgaged property shall be deposited in court as security.
8. On 14th April, 2014, the Learned Registrar granted an Interim Order of injunction which stopped the sale but erroneously failed or neglected to order the respondent to deposit 30% of the forced sale of value of the said property.
9. That it is in the interest of justice that the appeal be allowed.

The affidavit in reply was deposed by Hygin Twongyeirwe Kururagire, the Managing Director of the respondent company. He averred:-

***“3. That the application/appeal is timebarred as it was filed beyond the time prescribed by law and is supported by a fatally defective affidavit.***

***4. That the injunction sought to be set aside was issued under the inherent jurisdiction of the court and was in the interest of justice.***

***5. That as conceded in the application, the applicant is in possession of the respondent’s property worth over a billion shillings and it would occasion an injustice once the respondent is in addition ordered to deposit shs. 325,800,000/= in court.***

***6. That there is absolutely no threat to the securities that the applicant is holding and the issues raised in paragraphs (2) – (5) are premature and shall be determined in the main suit.***

**7. That I swear this affidavit in opposition to this appeal and pray that the same be instantly dismissed with costs.”**

At the hearing the appellant was represented by Mr. Magambo Victor while Mr. Womanya Justus appeared for the respondent.

Although counsel were ordered to file written submissions within the fixed timeframes, only the appellant’s counsel complied.

On the issue of time, counsel for the appellant submitted that under section 79 (1) (b) of the Civil Procedure Act (CPA), any appeal from the order of the Registrar must be filed within seven days from the date of the order of the Registrar appealed against. In the instant matter, the ruling was delivered on 14-4-2014 and the period between 18th April to 21st April 2014 were Easter holidays. This aspect was also averred in paragraph 3 of the affidavit in rejoinder by Stella Byomugisha.

O. 51 r. 2 of the CPR excludes Sundays and other public holidays in the computation of the limited time within which certain acts should be done. Further, under rule 3 of the said Order, where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, and by reason thereof the act or proceeding cannot be done or taken on that day, that act or proceeding shall, so far as regards the time of doing or taking the act or proceeding, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

The instant appeal was filed on 22-4-2014 which, excluding the public holidays, was clearly within time. I therefore find the same is not time-barred.

In the ruling, the trial Chief Magistrate observed that the requirement under Regulation 13 of the Mortgage Regulations requiring the Mortgagor to deposit security of 30% of the forced sale value of the mortgaged property before the sale could be adjourned/stopped was discretionary. He thus proceeded to stop the sale without ordering deposit of security.

Regulation 13 (1) of the Mortgage Regulations, 2002 provides:-

***“The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount.”***

To my understanding, the word “may” refers to the discretion whether or not to adjourn the sale but not the requirement of payment of security deposit in the event of an adjourned sale. Should the court exercise its discretion by adjourning the sale, the mortgagor is required to pay the said security. In ***HAJI EDIRISA KASULE & ANOTHER VERSUS HOUSING FINANCE BANK LTD & 2 OTHERS, MISC. APPL. NO. 667 OF 2013***, Madrama J had this to say:-

***“In the application for an interim order, the first applicant had to furnish security equivalent to or sufficient to cater for at least 30% of the outstanding amount for purposes of stoppage of the sale under the Mortgage Regulations 2012. This did not only indicate the seriousness of the applicant in proving the case against the respondents but also gives an equitable remedy to the respondent bank for purposes of security in case the order is issued stopping the sale pending final disposal of the suit.”***

I entirely agree that appears to be the purpose and spirit of Regulation 12 (1) (supra).

Counsel for the respondent had expressed the view from the Bar that if the applicant bank is joined to the main suit (Civil Suit No. 018/2012) as sought by the respondent herein vide Misc. Appl. No. 030/2014, the instant ruling would be rendered in vain.

Indeed, in the ruling in the said application (030/2014) this court ordered that the bank be joined as a defendant to the main suit. That notwithstanding, the bank is still entitled to the implementation of regulation 13 (1) with regard to security.

The fact that the outstanding amount is contested and the subject of the main suit is not a matter for consideration now. It is not part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claim of either party may ultimately depend, nor to decide difficult questions of law which call for detailed argument.

In the premises, this appeal is allowed and it is ordered that the respondent deposits in this court the sum of Ushs. 325,800,000/= being the forced sale value of the property comprised in Leasehold Register Volume 2682 Folio 5, Plot 89-91 Kabale Road, Mbarara.

The said amount shall be deposited within 30 days of this order.

The costs of this application shall be in the main suit.

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**BYABAKAMA MUGENYI SIMON**

**JUDGE**

**11-1-2016**