

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 0065 of 2017

(Arising from Civil Suit No. 0048 of 2017)

ERIC KENNETH LOKOLONG ::::::::::::::::::::::::::::::::::: APPLICANT

Versus

**CHINA COMMUNICATION CONSTRUCTION
COMPANY LIMITED (CCCC) } ::::::::::: RESPONDENT**

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for a temporary injunction brought by Chamber Summons under Order 41 (with no rule specified) and section 98 of the Civil Procedure Act. The grounds for the application are briefly that:

- (a) The applicant is the registered proprietor of the suit land.
- (b) The defendant's activities of open air blasting of stones using explosives has caused damage to the applicant's property.
- (c) The plaintiff has instituted a civil matter which is pending determination.
- (d) The main suit has high chances of success.

- (e) It is just and equitable that the injunction be granted because if it is not granted it will render the whole suit nugatory.

The Chamber Summons is supported by the affidavit of Eric Kenneth Lokolong the applicant in which he reveals that the respondent was once sued in 2015 and a consent judgment was executed and endorsed by court but the violation continued. That the applicant has on several occasions approached the respondent seeking compensation for damages caused to his property and to find a lasting solution to the problem but no positive response has been given. That the balance of convenience is in the applicant's favour.

In the affidavit in reply by Li Juncheng, the Project Manager, the respondent depones that they were granted authorisation by the Ministry of Internal Affairs, Wakiso District Local Government and NEMA to carry out stone quarrying activities at Lutembe in Wakiso District for purposes of obtaining materials to be used in construction of the Kampala/Entebbe Express Way. That as a result of the 2015 suit, the applicant was compensated UGX.24,416,950/= for the damage that had been caused to his property. That following the consent of 2005 in Civil Suit No. 978 of 2015, the respondent put in place measures designed to forfend rocks, stones, debris from flying to neighbouring areas within the mandated 500 metres radius. The respondent denies any subsequent damage and says the alleged damage is the same for which the applicant obtained compensation.

Further that the applicant's house being only 100 metres from the stone quarry is illegal. That the balance of convenience is in favour of the respondent since the respondent will incur irreparable loss and setbacks in completing the Kampala-Entebbe Express way on

schedule if the application is granted. Finally that there are no grounds for granting a temporary injunction and that the applicant will not suffer irreparable damage that cannot be compensated in damages.

Both parties were allowed to file written submissions in support of their respective cases.

I have considered the application as a whole, the law applicable and submissions by respective counsel.

In order for court to grant a temporary injunction, it must be satisfied that:

- (i) There is a prima facie case in the main suit which raises triable issues.
- (ii) The applicant will suffer irreparable damage that cannot be compensated by damages if the application is not granted.
- (iii) The balance of convenience favours grant of the application.

Ground I:

I agree with the submissions by learned counsel for the respondent that the affidavit in reply contains information which has not been refuted by the applicant about the location of his house vis-à-vis the quarry and the fact that the respondent has authorisation to carry out stone quarrying in the area of Lutembe in Wakiso District. It is also revealed that many other companies are quarrying in the area which is allegedly gazetted for the same. Should these allegations be true, then the applicant cannot be said to have a prima facie case with high chances of success.

Ground II:

The materials being got from this quarry are being used to construct the Kampala-Entebbe Express way which is a National Project. An injunction will not only affect the tax payers who will have to pay a higher cost for the road once it is completed but will expose the respondent to huge financial losses and unnecessary increase in operational costs. The respondent is executing a project of National importance. Therefore the risk of damage likely to be incurred or suffered by the respondent if this application is granted outweighs that which the applicant might suffer if the application is not granted.

On suffering irreparable injury, the case of *Kiyimba Kaggwa Vs Hajji Abdu Nasser Katende [1985] HCB 43* is instructive. Odoki J (as he then was) observed that irreparable injury does not mean that there must not be physical possibility of repairing the injury but means that the injury must be a substantial or material one which cannot be compensated for in damages.

From the facts of this case and the unrebutted averment by the respondent, the applicant already received compensation for damages occasioned to his property earlier on. This was before the respondent took action. According to paragraphs 6 and 7 of the affidavit in reply, there is no impending risk of damages whatsoever to the property of the applicant because the respondent has in place a protective system that stops any rocks or debris from reaching or hitting the property of the applicant. These averments have not been refuted by the applicant.

Even if there is damage to the applicant's property, he in his plaint has qualified it implying that the same is reparable by way of compensation which the respondent is able to do and has done before.

It is my finding, therefore, that the applicant can be atoned sufficiently by way of damages.

Ground III:

After a careful consideration of this application as a whole, I am satisfied that the balance of convenience is in favour of the respondent who stands to suffer more than the applicant if this application is granted. The works the respondent is executing has contractual deadline. The respondent will incur irreparable loss and setbacks in completing the Kampala-Entebbe Express way on schedule if the application is granted.

It is my finding, therefore, that the applicant has failed to prove any grounds upon which this court can exercise its discretion to grant an order for a temporary injunction. The application stands dismissed with costs in the cause.

Stephen Musota

J U D G E

06.07.2017