

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISC. CAUSE NO. 15 OF 2019

C.C.CHANDRAN ASSOCIATES LIMITED :.....: APPLICANT

VERSUS

KAMPALA CEMENT COMPANY LIMITED :.....: RESPONDENT

RULING

BEFORE: LADY JUSTICE LYDIA MUGAMBE

1. This is the ruling in Misc. cause No. 15 of 2019 brought under section 98 of the Civil Procedure Act and section 33 of the Judicature Act for orders that:
 - i. The Respondent shows cause why the caveats/flagging of the Applicant's motor vehicles registration Nos. UAN 661Z, UAN 874Z, UAN 876Z, UAN 878Z, UAN 520J, UAN 522J, UAP 091K, UAP 093K, UAN 402U, UAN 370U, UAN 386U, UAN 720Y, UAL 480R, UAP 942C, UAZ 565E (herein after the suit vehicles) should not be vacated.
 - ii. The Respondent vacates the caveats/ flagging on the suit vehicles.
 - iii. The Respondent pays general and punitive damages for wrongfully caveating/ flagging the Applicants suit vehicles.
 - iv. Costs of the application be provided.

2. The Applicant is represented by Mr. Selwabala Julius of M/s. Kasumba, Kugonza & Co. Advocates. The Respondent is represented by MacDusman Kabega of M/s. Tumusiime, Kabega & Co. Advocates.

3. The application is supported by the affidavit of Mr. C.C. Chadran - the Applicant's director. Briefly the grounds are that the Applicant is the registered owner of the suit vehicles. Through due diligence, it carried out a search at Uganda Revenue Authority vehicle licensing office and discovered that the suit vehicles were flagged/ caveated by the Respondent's application lodged by its lawyers M/s. Tumusiime, Kabega & Co. Advocates. As a result, there can be no transaction on the suit vehicles yet the Applicant in its normal course of business relies heavily on loans from banks which it can't now get due to the flagging. Its business has been crippled as a result yet it never mortgaged the suit vehicles to the Respondent nor handed over the original log books of the suit vehicle as security for any credit facility.
4. The Respondent opposes the application through the affidavit in reply of Mr. William Karamagi, its administration manager. He averred that in March 2015, the Applicant applied for a credit facility from the Respondent upon which credit purchases would be preferred and the Respondent approved a credit limit of Ug. shs: 4,000,000,000/= (Uganda shillings four billion only.) Around February 2018, the Applicant defaulted on the payments for cement supplied by the Respondent. By 7th May 2018, the default of Ug. shs: 2,955,496,339/= out of Ug. shs: 3, 247,896,339/= was long overdue and the Respondent wrote several demand letters to the Applicant which were not obliged.
5. As a result, the Respondent commenced insolvency proceedings against the Applicant vide company cause No. 3 of 2018 to recover Ug. shs: 3,306,836,339/= with interest. The Respondent had reasonable belief that the suit vehicles may be sold to render the petition nugatory hence applied to caveat the suit vehicles. The fact that the vehicles were caveated does not stop the Applicant from using them for its business but only stops transfers to a third party.
6. In rejoinder, Mr. Chandran affirmed that the Applicant has never provided copies of logbooks to the Respondent. The Applicant is liquid and is still a going concern. Since the date of the delivery of the statutory notice to commence insolvency proceedings up to the time of filing the reply to the petition, the Applicant and Respondent have traded in transactions worth Ug.shs: 761, 270,000/= and the winding up petition has high chances

of being dismissed by the commercial court. The Applicant has assets estimated in the region of Ug.shs: 21,060,000,000/= and it's the Respondent's plan to cripple the Applicant's business by disorganizing its credit facilities.

7. In my analysis, it is not in dispute that the Applicant owes the Respondent money from cement purchases from the Respondent by the Applicant. The Respondent contends that it caveated the suit property after the Applicant failed to pay this money. The Respondent filed for winding up of the Applicant in the commercial court vide company cause 3 of 2018. This suit is still pending determination.
8. The Applicant's argument that it is not insolvent and should not be wound up should be best presented in the suit in the commercial court. Having said that the Applicant presents no form of security for the money it owes the Respondent. While I consider that the issue of the caveats now before me should be a matter determined as part of the winding up action in the commercial court, I am disinclined to lift the Respondent's caveats because the Applicant presents no guarantee for the payment of the Respondent's money that remains due and owing from the Applicant. Accordingly this application is dismissed with costs.

I so order.

Lydia Mugambe.

Judge.

10th June 2020