

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. NO. 13 OF 2020
(ARISING FROM CIVIL SUIT NO.531 OF 2019)**

KAGUMAHO KAKUYO::: APPLICANT

VERSUS

SHILLA NINSIIMA::: RESPONDENT

BEFORE HON. LADY JUSTICE ESTA NAMBAYO

RULING

This application was brought by Chamber Summons under **Section 38 (1) of the Judicature Act Cap 13 and Order .41 rr.2 of the Civil Procedure Rules SI 71-1**, seeking for orders of this Court that;

- 1.** That a temporary injunction doth issue to restrain the respondent, its servants or agents from any attempts to enforce and or recover a loan advanced by the Respondent to the Applicant in the sum of UGX. 78,340,200/=, together with interest or commencing any recovery process for the same until final determination of civil 531 of 2019.

- 2.** The costs of this application be provided for.

The grounds of the application are contained in the affidavit in support of the application made by the Applicant but briefly they are that;

- i. The Applicant has filed a main suit against the Respondent seeking for declarations that the defendant's claim against the plaintiff for an outstanding loan of UGX 78,340,200 inclusive of interest is non founded,

erroneous and illegal on account that the defendant did not have a money lending license, the defendant illegally levied an interest of 20% per month on the principal sum of UGX 10,000,000/- lent to the Plaintiff contrary to the provisions of the Tier 4 Micro Finance Institutions and Money lenders Act, A declaration that the defendant and its agents have no right to the said sum together with interest, a declaration that the Plaintiff is neither liable nor indebted to the defendant in respect of a loan in the sum of UGX 78,340,200 together with interest, a declaration that the actions of the Uganda Police in enforcing civil disputes between private citizens are illegal and a breach of freedom of contract, an order of permanent injunction restraining the defendant from any attempts to enforce or to recover a loan sum of UGX 78,340,200 together with interest or commencing any recovery process for the same from the plaintiff, General damages and costs of the suit

- ii. That despite the various payments made by the plaintiff to the defendant, the defendant has continued to harass the plaintiff using frivolous criminal charges levied by Jinja Rd Police Station and threats of arrest for purposes of exerting pressure on the plaintiff
- iii. That the Jinja Rd Police station has on several instances attempted to arrest the plaintiff on the basis of the said loan yet the Defendant is not entitled to recover any interest without a valid money lending license
- iv. That if the Temporary Injunction restraining the respondent from any attempts to enforce or recover a loan of 78,340,200 together with interest of 20% is not granted, the applicant's suit will be rendered nugatory
- v. That the suit has a reasonable likelihood of success

- vi. That the applicant will suffer irreparable damage if the orders sought are not granted
- vii. That is just and equitable and in the interest of justice that the applicant be granted the orders sought

The application is supported by the affidavit of the Applicant.

The respondent filed the affidavit in reply opposing the application. There is also an affidavit in rejoinder by the Applicant.

The brief background of this case is that the Applicant obtained a loan facility from the Respondent sometime in 2016. He made some cash payments to the Respondent. Along the way he defaulted on the payments and issued several postdated cheques in favor of the Respondent. The cheques dishonored and the Respondent reported the matter to Jinja Rd Police Station. When the police started following up on the matter the Applicant filed a case in this court and hence this application.

When the matter came up for hearing on the 6th February, 2020, learned Counsel Ronald Oine, appeared for the Respondent while learned Counsel Anthony Mbazira was for the applicant. They made oral submissions.

I have studied the pleadings and submissions made by Counsel for the parties.

Section 38 (1) of the Judicature Act Cap 13 empowers this Court to grant an injunction to restrain any person from doing any act as may be specified by this court. It provides that;

“the High Court shall have powers to grant an injunction to restrain any person from doing any act as may be specified by the High Court.”

In the case of Kiyimba-Kaggwa –v- Hajji Katende AbduNasser civil suit No 2109 of 1984 Justice Benjamin Odoki (as he then was) held that;

“granting a temporary injunction is an exercise of Judicial Discretion and the purpose of granting it is to preserve matters in status quo until the question to be investigated in the suit can finally be disposed off.”

The Judge went on to lay out conditions for granting the temporary injunction as;

1. *The applicant must show a Prima facie case-with a probability of success*
2. *Such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.*
3. *If the court is in doubt, it will decide the application on the balance of convenience.*

Prima facie case:

A Prima facie case is a case in which there is evidence which will suffice to support the allegations made in it and which will stand unless there is evidence to rebut the allegation. (Osborn’s concise law dictionary, 12th edition)

*In the case of American Cynamid –v- Ethicon [1975] 1 ALLER 504 Lord Diplock pointed out that to prove a prima facie case court must be satisfied that the case is not frivolous or vexatious and that **there is a serious question to be tried in the main case (emphasis is mine).***

In Imelda G. Basudde Nalongo v Tereza Mwewulizi and Anor HCMA No 402 of 2003; it was held that What is normally meant by a prima facie case is that

the evidence placed before the court, by way of affidavit or otherwise, in the application for the injunction must show that there exists a genuine triable issue in the main suit pending between the parties. The court must be satisfied that the dispute presented in the main or head suit is not a sham but a genuine dispute and that the applicant has probabilities of succeeding in the main suit.

Counsel Mbazira submitted that the respondent does not have a money lending license to transact the business of money lending and therefore, the interest that was levied by the respondent on servicing the loan by the applicant is illegal. Counsel explained that the sum borrowed was UGX 10,000,000/= but it rose to UGX 42,340,200 and then UGX 78,340,200/= due to the illegal interest rate of 20% per month charged by the Respondent.

Referring to the affidavit in reply, Counsel submitted that the respondent does not state anywhere that she has an agreement with the applicant for the sum of UGX 78,340,200/=: neither does the Respondent state that she has a money lenders license. All that she makes reference to under paragraph 13 of the affidavit in reply is annexure 'B' purporting that there was an agreement for the loan advance.

Counsel contended that the said sum referred to under annexure 'B', is inclusive of the UGX 10,000,000/=: the principal sum that was lent to the applicant but because of the interest accruing, it rose to UGX 78,340,000/= reflected under paragraphs 7(a) and (b) of the affidavit in support. Counsel referred this court to paragraphs 6, 7, and 10 of the affidavit in re-joinder.

Relying on the case of *Giella Vs Casman Brown & Co. Ltd CA No.51 of 1972*.

Counsel submitted that at the time of arguing a case for temporary injunction, a party does not delve more into the merits of the case but only shows that there are triable issues. He explained that the triable issue in this case is the money lending license which was not contested by the respondent in her affidavit in reply.

In reply, Counsel for the respondent opposed the application submitting that it is important for this Court to look at the substance of the application. He pointed out that the order sought to restrain the respondent from any attempts to enforce or recover a loan advanced to the Applicant is very strange. He explained that if this Court was to grant such an order, it would even stop the respondent from filing a Written Statement of Defence and or the Counterclaim.

Counsel submitted that under Contract law, the respondent has a right to enforce her contractual entitlement or right arising out of the contractual dealings with the Applicant and such rights are not injunctable. That what appears to be the purpose of this application, is that the applicant wants to use this Court to stop the Uganda Police from entertaining any charges against the applicant in respect of the false cheques as shown under **paragraph 4 and annexure "A"** of the affidavit in reply.

Counsel further submitted that it is trite that when you issue a false cheque it attracts a penal sanction as it is a criminal offence. The pleadings before this Court, according to Counsel Oine show no evidence to court as to why the applicant issued cheques totaling to UGX 61,340,400/= and when presented for payment, they were dishonored. That the dishonor of these cheques created penal consequences against the applicant and he cannot run away without giving an answer.

As to whether the applicant has established a prima facie case, Counsel conceded to the case of *Giella Vs Casman Brown & Co. Ltd (supra)* as cited by

his colleague in respect to the principles considered by Courts in granting Temporary injunctions. He submitted that no evidence has been adduced by the Applicant to show that the respondent is in the business of money lending. Rather, on the contrary, the Respondent has sworn evidence which was not rebutted that she only extended a friendly loan to the Applicant and there is no law prohibiting a party from extending a friendly loan to another. The law on money lending licenses only applies to persons who are in the business of money lending. Counsel explained that the Counsel for Applicant refused to discuss issues of dishonored cheques which also constitute another cause of action since it is a bill of exchange as seen the case of *Sembule Investments Ltd vs Uganda Baati Ltd MA No.664 of 2009*.

From the evidence presented to court, the Applicant does not deny having borrowed money from the Respondent. What is not clear though, are the terms under which the Applicant borrowed the money. On the one hand, the Respondent says it was a friendly loan while the applicant says that he borrowed the money under a 20% interest per month yet the Respondent has no money lending license. Both parties have not provided documentation to show the circumstances under which the Applicant borrowed from the Respondent. What has been brought before this Court is evidence to show that the Applicant has made payments amounting to UGX 24, 960,000/- Evidence has also been brought to show dishonored cheques amounting to UGX 61,340,400/-but there is no documentation to show the basis of issuance of the cheques.

Basing on the above findings, it is my view that the above raises issues that are triable.

i. **Irreparable Injury:**

The next principle to be determined is whether the applicant will suffer any irreparable injury in case this application is not granted.

Irreparable injury is defined by *Black's Law Dictionary, 9th Edition page 447* to mean;

“Damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement.” It has also been defined as loss that cannot be compensated with money, the case of *City Council of Kampala Vs Donozio Musisi Sekyaya C.A Civil Application No.3 of 200*.

The major purpose of granting a temporary injunction is for preservation of the parties' legal rights pending litigation. It protects and maintains the status quo of the subject matter.

Counsel for the applicant contended that if the application is not granted, the Respondent shall enforce the arrest of the applicant yet he paid the Respondent all the outstanding sum, the one sought is illegal (**Paragraph 8 of the affidavit in rejoinder**).

In reply, Counsel for the Respondent submitted that for such an application to succeed it has to be proved by evidence that the applicant will suffer an irreparable loss in case the application is denied. He explained that there is no evidence to that effect.

Counsel relied on the case of *Housing Finance and Anor Vs Edward Musisi Misc. App No.158 of 2010*, where the Court of Appeal stated that irreversible damage must not only be stated but it must be proved. He submitted that the applicant did not even produce a reference number of the police file or a police bond or any order of arrest. He pointed out to this court that the applicant has come to Court with tainted hands and prayed that the application be dismissed to enable the speedy trial of the main suit.

Paragraph 11 of the affidavit in reply states that;

“I’m informed by my lawyers Tumusiime, Kabega & Co Advocates, whose advice I verily believe to be true that criminal charges brought against the Applicant at Jinja Road Police Station are in relation to false cheques issued by him to me and are not in any way intended to harass the Applicant or to recover any interest in paragraph 3 and 4 respectively”

The above shows that there are pending matters at Jinja Road Police Station in regard to the dishonored cheques. Since there is a suit pending before this Court in regard to matters arising out of the dishonored cheque, it is my view that the Applicant might suffer irreparable injury should this court find in his favour at the end of the trial.

The other issues submitted by both Counsel and are not evaluated here delve into the merits of the case.

Accordingly, I grant this application.

Costs stay in the cause.

ESTA NAMBAYO

JUDGE

27/2/2020