

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

MISC. APPLICATION NO. 214 OF 2015

(Misc. Application No. 1178 of 2014)

(Civil Suit No. 577 of 2014)

SEROMA LIMITED APPLICANT

VERSUS

1. ERIMU COMPANY LTD

2. KCB BANK (U) LTD RESPONDENTS

Hon. Lady Justice Monica K. Mugenyi

RULING

1. This application was brought under Order 41 rule 4 of the Civil Procedure Rules (CPR), as well as sections 29(1) and (2) of the Mortgage Act. It sought the discharge, variation or setting aside of an interim injunctive order issued in respect of **Misc. Application No. 1178 of 2014 Erimu Company Ltd vs. KCB Bank (U) Ltd.** The said order was issued by an Assistant Registrar on 18th November 2014 and subsequently extended on 16th January 2015.
2. A brief background to this application is pertinent. On 28th October 2014 when **Misc. Application No. 1178 of 2014** was due to be heard, learned counsel for the respondent therein raised preliminary points of law that were over-ruled by the Assistant Registrar. Counsel then filed **Misc. Application No. 1337 of 2014 KCB Bank (U) Ltd vs. Erimu Company Ltd**, an appeal against the order of a registrar brought under Order 50 rule 8 of the CPR seeking to set aside the said Ruling and have **Misc. Applications 1177 & 1178 of 2014** dismissed. **Misc. Application No. 1337 of 2014** was received in court on 3rd November 2014. There is no indication that it has since been disposed of.

3. In the meantime, on 18th November 2014 an interim order was granted in **Misc. Application No. 1178 of 2014** maintaining the status quo of the suit property as at that date. Apparently, that order was not precipitated by the hearing of the said application but rather in response to a complaint by Mr. Kakoona that he had not been served with **Misc. Application No. 1337 of 2014**, the appeal against the Assistant Registrar's ruling of 28th October 2014. The order was operative until 22nd December 2014 when **Misc. Application No. 1337 of 2014** was due to be heard. It would appear that on 22nd December 2014 the said application was not heard; rather, on the basis of a letter by counsel for the respondent, an open-ended order was issued on 16th January 2015 extending the order of 18th November 2014. To date **Misc. Application No. 1178 of 2014** has never been determined.
4. It is the applicant's case herein that it is the registered proprietor of the property comprised in Kyadondo Block 254 plot 2333 having bought the same vides a public auction by the 2nd respondent. It would appear that the said property had been the subject of a mortgage between the first and second respondents, and the first respondent defaulted on his obligations thereunder whereupon the property was auctioned. The applicant contends that it purchased the said property well before the filing of **Civil Suit No. 577 of 2014 Erimu Company Ltd vs. KCB Bank (U) Ltd**, in respect of which **Misc. Application No. 1178 of 2014** arises. The applicant did raise the fact that it was not party to the proceedings from which the present interim order arose; the absence of a prayer for a permanent injunction in **Civil Suit No. 577 of 2014**, and the contention that there was no status quo to preserve as reasons for this court to find that there was sufficient cause for the interim order to be set aside, varied or discharged. Learned counsel cited the case of **Robert Kavuma vs. Hotel International Ltd Civil Appeal No. 8 of 1990** (SC) in support of this position. In that case it was held that an application to set aside, vary or discharge an interlocutory injunction could be granted on evidence of sufficient cause including the injunction having been granted *ex parte*.
5. Conversely, the 1st respondent objects to this application on the premise that the applicant's legal interest in the suit property is tainted in illegality and fraud, and the applicant and the 2nd respondent had violated court orders issued in **Misc. Applications 2729 of 2014 and 1178 of 2014** hence its (1st respondent's) filing **Misc. Application No. 3158 of 2014** seeking to have the duo held in contempt of court.
6. It seems to me that the crux of the applicant's case herein is that the interim order issued by the Assistant Registrar was erroneous in so far as it denied the said company, which holds legal title to and is in occupation of the premises in issue, the right to a fair hearing. The applicant seeks to have the interim order discharged, varied or set aside on that premise. On the other hand, quite clearly the order that is in issue presently was of an interim nature; granted to maintain the status quo prevailing in respect of the suit premises as at 18th November 2014 and extended on the premise of a letter on 16th January 2015.

7. Order 50 rule 3 of the CPR mandates registrars to handle interlocutory applications such as **Misc. Application No. 1178 of 2014**. Order 50 rule 8 of the CPR does then provide for appeals from the decisions of registrars in the following terms:

“Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice.”

8. In the instant case, **Misc. Application No. 1337 of 2014** was an appeal from the registrar’s decision to over-rule the preliminary points of law raised at the hearing of **Misc. Application No. 1178 of 2014**. For that reason then, quite obviously **Misc. Application No. 1178 of 2014** could not be determined prior to a determination of **Misc. Application No. 1337 of 2014**.
9. Furthermore, Order 41 rule 1(a) of the CPR mandates courts to grant a temporary injunction to restrain any party to a suit from ‘**wasting, damaging or alienating any property in dispute in a suit.**’ It reads:

“Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree ... the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.” *(my emphasis)*

10. In the instant case, the Assistant Registrar was faced with a situation where she could not proceed with the hearing of the application for interim injunction pending the disposal of an appeal from an order emanating therefrom. The record of proceedings for 18th November 2014 indicates that, in exercise of her discretion, she made an interim order for the preservation of the status quo. Later, she received a letter from counsel for the applicant therein requesting an extension of that interim order ‘**to protect the applicant’s property from being wantonly disposed of by the respondent/ defendant as has been the practice in the recent past.**’ She duly extended the interim order.
11. For the reasons highlighted hereinabove, the registrar could not hear the merits of **Misc. Application No. 1178 of 2014**. She therefore issued an order for the preservation of the then prevailing status quo pending the hearing and determination of **Misc. Application No. 1178 of 2014**. To my mind, this would avert rendering the said application redundant in the event that the property in issue was, for instance, transferred to a third party or otherwise disposed of. This court cannot fault the learned Registrar for so exercising her discretion. Indeed, the

circumstances of this case are that the letter by learned counsel for the applicant cited above raised such issues as would denote the threat of waste, damage or alienation of the suit property. This threat did warrant the exercise by the Assistant Registrar of the discretionary mandate granted to her office by Order 41 rule 1(a) and Order 50 rule 3 of the CPR.

12. The question then would be whether or not the remedies pursued in this application are available to the present applicant that is affected by the said interim order. Order 41 rule 4 of the CPR reads:

“Any order for an injunction may be discharged, or varied, or set aside by the court on application made to the court by any party dissatisfied with the order.”

13. It seems to me that the wording of that rule restricts its application to a *party* to the order in issue, or to the proceedings (application) or substantive suit in respect of which the order arose. The wording therein is to be distinguished from that in Order 50 rule 8 that grants a right of ‘appeal’ against a decision of a registrar to ‘any *person*’. Whereas the remedy in Order 50 rule 8 is available to persons that are aggrieved by a registrar’s decision whether or not they are party to the dispute in respect of which it arises; that is not the case with Order 41 rule 4 of the CPR, which explicitly makes reference to a party. Therefore, the present applicant may appeal the registrar’s order under Order 50 rule 8 of the CPR and not Order 41 rule 4 thereof. It is also open to the said applicant company to seek to be joined as a party to **Civil Suit No. 577 of 2014**, and subsequently, **Misc. Applications No. 1177 and 1178 of 2014**, so as to protect its interests in the suit property.

14. In addition to the question of the *ex parte* proceedings, as well as the preservation of the then prevailing status quo, which have been duly canvassed above; the applicant did also raise the absence of a prayer for a permanent injunction in **Civil Suit No. 577 of 2014** as a basis for this court to find that there were sufficient cause for the interim order to be set aside, varied or discharged. Indeed, as quite rightly argued by learned counsel for the applicant herein, it is trite law that an application for an interlocutory injunction should not be allowed where no prayer for a permanent injunction has been sought in the substantive suit. See **Nyakuranga v. Esso (U) Ltd (1992) I KARL 182** and **UMSC v. Sheik Mulumba (1980) HCB 110**. However, it seems to me that the decisions in **Nyakuranga v. Esso (U) Ltd** (supra) and **UMSC v. Sheik Mulumba** (supra) posit such pre-requisite as one of the considerations in an application for an interlocutory injunction and not an application for the discharge, varying or setting aside of one, such as is the case presently.

15. In the result, I would hereby dismiss this application with costs.

Monica K. Mugenyi
JUDGE

10th April, 2015