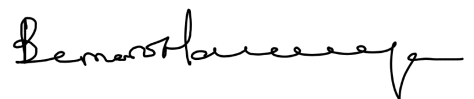


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occasioned irreparable damage if the application was disallowed; and v) that the learned Assistant Registrar erred in law and fact when he held that the balance of convenience was in favor of the respondents and not the appellant;

3. The respondent, Kiwanuka Edison opposed this application and filed an affidavit in reply on 18 December 2023, stating the following *inter alia*: i) that the learned Assistant Registrar is clothed with the jurisdiction under the law to entertain an application for a temporary injunction, which application was heard interparty; ii) that the learned Assistant Registrar did not alter the status quo of the suit property but instead maintained the same since the court recognized that neither the appellant nor the respondent was in possession of the suit premises at the locus in quo visit; and iii) that the learned Assistant Registrar's ruling was properly anchored in the law.
4. At the hearing of the appeal on 28 January 2024, Mr. Sebowwa Francis of M/s. Sebbowa & Co. Advocates represented the appellant, while Mr. Joseph Luzige, Samuel Kakande and Emma Okiror of M/s. Silicon Advocates represented the respondent.
5. The major issue for decision by the court is whether the appellant has proved grounds for setting aside the temporary injunction order granted by the learned Assistant Registrar.
6. Counsel for the appellant submitted that chamber summons for temporary injunction was not signed and sealed by the Registrar of the court. He cited ***Order 5 rule 1(5) of the Civil Procedure Rules*** which provides that every summons shall be signed and sealed by the court. He relied on ***Muhindo and Another v. Kahindo (Miscellaneous Application 20 of 2023) [2023]***



UGHCCD 163 where the court held that failure to sign and seal renders summons incurably defective. Counsel for the appellant further argued that the learned Assistant Registrar did not accord the appellant a right to a fair hearing as required by **Article 28(1) of the Constitution**. He prayed for costs of appeal.

7. In response, counsel for the respondent argued that the learned Assistant Registrar conducted a locus in quo visit to the suit property on the 8 November 2023, and both parties appeared, and were given the right to cross examine the other. That at the locus in quo visit, the court established that none of the parties was in possession of the suit property, and that it was the Uganda police in possession of the keys to the suit property. Counsel further argued that the appellant was accorded a fair hearing because he filed an affidavit in reply to the application for a temporary injunction. He argued that the failure to sign or seal chamber summons is a mistake that cannot be visited on an innocent litigant. He accused the appellant of plotting to change the status quo of the suit property by setting aside the temporary injunction order. He urged the court to preserve the status quo of the suit property pending determination of the main suit.
8. In rejoinder, counsel for the appellant submitted that the status quo is the one that was prevailing before Civil Suit No.1232 of 2023 was filed, and that it was the appellant who was in physical possession of the suit property. That the status quo of the suit property was changed after the filing of the suit, and that it should revert to the state of affairs obtaining before the filing of the suit. He further argued that the failure to sign and seal chamber summons is not a mere procedural technicality, and that the chamber summons is incurably defective.



The decision of the court:

9. I have perused the electronic file for Misc. Application No.3258 of 2023 from which this appeal arises on the Electronic Court Case Management Information System (ECCMIS). The Registrar of the court admitted and signed the chamber summons on 25 October 2023 at 5:03pm, and the respondent filed an affidavit in reply on 3 November 2023.
10. It is a requirement of the law that summons must be signed and sealed by the court, and that failure to do so renders the summons incurably defective. ***See the case of Kinyara Sugar Limited v. Kyomuhendo (Miscellaneous Application No. 61 of 2020) [2021] UGHCCD 179).***
11. ***Order 5 rule 1(5) of the Civil Procedure Rules*** provides that:

“(5) Every such summons shall be signed by the judge or such officer as he or she appoints, and shall be sealed with the seal of the court.”
12. The question for me to consider and determine is whether having regard to the current advancements in information and communication technologies (ICT), signing and sealing of summons can be done electronically. ***The Constitution (Integration of ICT into the Adjudication Processes for Courts of Judicature) (Practice) Directions, 2019*** encourages the use of technology and digital platforms in judicial proceedings. The courts are increasingly embracing technology to support efficiency and effectiveness of judicial proceedings. In the case of ***Visare Uganda Limited v. Katerega & Others (Miscellaneous Application 2855 of 2023) [2024] UGCommC 38 (19 February 2024)***, Justice Stephen Mubiru held that while ECCMIS did not amend the provisions of *The Civil procedure Rules* regarding the service of process, it is the duty of the court to adapt the Rules of the court to the



ECCMIS environment, to facilitate the full functionality of electronic filing and service of court process.

13. **Section 2(1) of the Electronic Transactions Act (2011)** defines an “advanced electronic signature” and “electronic signature” as follows:

““advanced electronic signature” means an electronic signature, which is—

- (a) uniquely linked to the signatory;*
- (b) reliably capable of identifying the signatory;*
- (c) created using secure signature creation device that the signatory can maintain under his sole control; and*
- (d) linked to the data to which it relates in such a manner that any subsequent change of the data or the connections between the data and signature are detectable.*

“electronic signature” means data in electronic form affixed to or logically associated with a data message, which may be used to identify the signatory in relation to the data message and indicates the signatory's approval of the information contained in the data message; and includes an advanced electronic signature as well as secure signature;

14. Under the law where there is a requirement for a document to be signed, that requirement is fulfilled if an electronic signature is used. **Section 6 of the Electronic Transactions Act (2011)** provides as follows:

“6. Use of electronic signature.

Where a law requires a signature or provides for consequences where a document is not signed, the requirement is fulfilled if an electronic signature is used.”



15. In the case of *Aerotek Inc. v. Boyd*, 2021 WL 2172538 (Tx. S. Ct. May 28, 2021), the plaintiffs who were employees of Aerotek completed an online hiring application form that included a mutual arbitration agreement. The plaintiffs sued for wrongful termination. Based on electronically signed arbitration agreement, Aerotek moved to compel arbitration but the plaintiffs opposed the motion arguing that although they had completed an online hiring application, they had never seen or signed a mutual arbitration agreement. The trial Court and the Court of Appeal agreed with the plaintiffs but on appeal, the Supreme Court of Texas decided the matter in favour of Aerotek holding that by completing an online application, the plaintiffs had electronically signed the mutual arbitration agreement.
16. In the case of *Motlounng and Another v. The Sheriff, Pretoria East and Others (Case no 1394/18) [2020] ZASCA 25*, the Supreme Court of Appeal of South Africa dealt with the issue as to whether summons which had been processed, and issued by a Registrar were a nullity for lack of a signature. The court held that despite lacking a signature, the summons was not a nullity because they had been authorized by the Registrar to be issued, and there were records to prove that such authorization had been made.
17. ECCMIS allows for electronic admission and signing of chamber summons by the Registrar of the court. ECCMIS enables court users to verify whether or not the Registrar electronically signed the summons, and whether they are authentic. In the instant case, this court can tell with certainty, that the Registrar electronically admitted and signed the chamber summons on 25 October 2023 at 5:03pm. In my opinion, in courts where ECCMIS has been operationalized, the lack of physical signing and sealing by the court does not render the summons a nullity. It suffices for the Registrar to electronically sign and admit the summons. Accordingly, the failure by the

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court to physically sign and seal the chamber summons did not render the summons incurably defective.

18. The appellant cannot be heard to complain that he was denied the right to a fair hearing because the court record shows that he fully participated in the proceedings leading to the issuing of a temporary injunction order, and also participated in the locus in quo visit conducted by the Registrar. The appellant even filed an affidavit in reply on 3 November 2023.
19. Following a request by counsel for the respondent, the appellant was cross examined in court on the 28 February 2024. He admitted in cross examination that the court conducted a locus in quo visit on the 8 November 2023, that he is no longer in possession of the suit property, and the keys of the suit property are with the Uganda police.
20. In his Ruling, the learned Assistant Registrar held that when he visited the locus in quo, none of the parties was in possession of the suit property, and the roof had been partly removed. He accordingly issued a temporary injunction order preserving the status quo of the suit property until determination of the main suit or further orders of the court.
21. In conclusion, this appeal is dismissed and the costs of the appeal shall abide the outcome of the main suit.


BERNARD NAMANYA

JUDGE

8 April 2024

Delivered by E-mail:

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