

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
LABOUR DISPUTE MISC. APPL. NO. 068 OF 2019
(Arising from LD. 313 OF 2015)**

DHOBUAZI RICHARD JIMMY & 24 OTHERS.....CLAIMANTS

VERSUS

STANBIC BANK UGANDA LIMITED.....RESPONDENTS

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. MichealMatovu
3. Ms. Harriet Nganzi Mugambwa

RULING

This is an application by chamber Summons seeking this court to issue orders of injunction to prevent recovery of salary loans borrowed by the claimants from the respondent while they were employees of the respondent. The chamber summons also prays this court to grant an order for costs.

Mr. Dhobuazi Richard represented the claimants as an agent while Mr. Timothy Lugayizi from MMAKS Advocates represented the respondent.

The decision whether to grant or not to grant a temporary injunction was declared in the cases of **Robert Kavuma Vs M/s. Hotel International and SCCA 8/1990 and KiyembaKaggwaVs Hajji A. N Katende** to depend on the following factors.

- 1) If not granted there would be damage or loss that may not be compensated by an award of damages.
- 2) There must be an indication that the main suit has a probability of success.

- 3) If in doubt, the court decides on a balance of probability.
- 4) There must be an indication that the aim of the application is to maintain the status quo.

The above may be guidelines but each case will always be dependent on the particular circumstances surrounding such a case.

In the instant case the application is premised on the fact that there is a pending claim, No. 313/2015 in this Court which(inter alia) claims refund of monies deducted from pension and other benefits of the claimants to pay for their outstanding loan obligations.

According to paragraph 12 and 14 of the affidavit in support of the application, the respondent has been harassing the claimants for payment of the loan obligations and has threatened legal action to recover the same.

In an affidavit in reply, the respondent denied harassing the claimants and according to paragraph 6 and 9 many of the claimants have been complying with the terms of payment and any costs likely to be suffered as they continue to comply, would be compensated in damages by the respondent.

This court issued directions on timelines of filing written submissions but by the time we discussed the case, on 28/06/2019 the respondent had not filed submissions. Although the claimants filed on their submissions on 06/2019 instead of 28/05/2019, it was unacceptable for the respondent to file on 5/07/2019 instead of 11/06/2019.

Submissions are meant to help the court reach a correct decision as it balances the positions of both parties on the facts and the law. Once the parties file the submission late, especially after the court Panel discussion, they lose relevance since the panel will have reached a common position without them. Accordingly we reject the submissions of the respondent which we will not refer to since they were filed after we had, as a panel, discussed the case.

In the claimants' submission, should this injunction not be granted, the applicant will continue suffering public embarrassment from harassment and threats of arrest by the respondents.

This court has held in the cases of **Florence MufumbaVs DFCU LDC 138/2014**; **MbiikaVs Centenary Bank LDC 023/2914** and most recently the case of **Okour R.Constant VsStanbic Bank LDC 171/2014 (Consolidated)withLDC 12/2017)** arising from **Misc. Cause 128/2012** of the high Court, Kampala, that where the termination of an employee is found to have been unlawful and the employee had outstanding loan obligations secured purely and only by the salary installment deductions, such outstanding loan would not be payable by the employee.

This court has also ordered refund of pension and terminal benefits which were deducted from the claimants' benefits in attempts to recover the said loans.(see: **Mbiika vs Centenary Bank L.D.C 023/2014 and Okour R. Constant vs Stanbic Bank L.D.C 171/2014)**

According to paragraph 5 of the affidavit of one Dhobuazi Richard in support of this application, the applicants got unsecured staff salary loans from the respondent who was not only the employer but the guarantor of the said loan.

From the reading of both the affidavit in support of the application and the affidavit in reply as well as the submissions of the claimants, it is established that before the claimants lost their jobs they had loans purely secured by their salary deductions and on their termination some of their benefits were used to pay-off the loans but the said benefits were not sufficient, hence an arrangement entered into for them to continued servicing of the loans. It seems to us that the real basis of this application is that the claimants got purely salary loans which they should not be forced to pay before the determination of the main claim. The question whether or not the termination of the claimants was lawful is to be determined in the original claim.

The gist of the application is for this court to restrain the respondent from seeking order of court to arrest the claimants or attach their personal properties for recovery of the loans. No application has been lodged in this court by the respondent in an attempt to recover the said loans. The complaint of the claimants as expressed in the paragraph 4 of the applicant in rejoinder is that whatever little money “**drops on their respective accounts**” is forcefully removed.

In the case of **Richard Wasswa Sengendo Vs Stanbic Bank Misc. Appl. 032/2015** (from LDC 159/2014) this court granted a temporary injunction because the amount of the outstanding loan was undisputed before court. The recovery process of the loan was therefore halted only because the loan itself was in dispute. The circumstances in the instant case are different since the loans are not disputed and the only basis of the injunction is the threats allegedly perpetrated by the respondents to recover the loans.

Although considerations in allowing an application for a temporary injunction may be different from those in allowing stay of execution, the common denominator to both of them is that both have a substantive purpose of **maintaining the status quo**. In the case of **Mohammed Hamid Vs Roko Construction Ltd. Supreme Court application No. 23/2007**, the court disallowed the application for stay of execution because in the absence of an application for execution there was no eminent threat of the execution. This court relied on the same case in Misc. Appl. **045/2018 Bank of Uganda Vs Abigaba Lwanga**.

In the instant case we do not consider telephone calls to the claimants regarding recovery of the loans and threats of legal action to recover the same loans as eminent threats without being substantiated given that they were denied by the respondent in paragraph 7 of the affidavit in reply.

Accordingly we find that threats without being substantiated do not constitute irreparable damage. The application is denied with no order as to cost.

Signed by:

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists:

1. Mr. Ebyau Fidel
2. Mr. Micheal Matovu
3. Ms. Harriet Nganzi Mugambwa

Dated: 12/07/2019