



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 85 OF 2023
ARISING FROM LABOUR DISPUTE REFERENCE NO. 120 OF 2022
(All arising from KCCA.CEN/LC/0107/2021)

LANG WANXI.....**APPLICANT**

VERSUS

- 1. CHINA NATIONAL COMPLETE PLANT**.....**RESPONDENTS**
IMPORT & EXPORT CORPORATION LTD
2. COMPLANT ENGINEERING & TRADE (UGANDA) LTD

BEFORE:

The Hon. Mr. Justice Anthony Wabwire Musana

PANELISTS:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

RULING

Introduction

- [1] On the 1st of June 2023, Mr. Gibson Munanura, appearing for the Applicant, sought an interim order to restrain the Respondents from transacting any business on the register of property comprised in Plot 1, Ntinda Close, LRV 1722 Folio 3 Ntinda Close, Kampala City, Kampala District, registered in the name of the 2nd Respondent. He premised the application on Order 50(3A) of the Civil Procedure (Amendment) Rules, 2019 (*from now CPR*), which, in Learned Counsel's view, requires an applicant to demonstrate urgency and imminent threat until the hearing and final disposal of the main application.
- [2] Mr. Ernest Kalibbala, appearing for the Respondent, opposed the application. He contended that the prayer was an attempt to obtain the remedy in the main application. He submitted that the application was filed and sealed by the Registrar of the Court on 23rd May 2023. The Applicant sat on the application for seven days to generate a level of urgency. Counsel suggested that the application did not show urgency or imminent threat.

- [3] In rejoinder, Mr. Munanura submitted that applications of this nature were decided by probable and reasonable cause, not the actual existence of the cause. Counsel contended that the application was based on belief and cited paragraph 9 of the affidavit supporting the main application.

Analysis and Decision of the Court

- [4] Both Counsel submitted on the premise of Order 50 r 3A CPR, which provides as follows:

3A. Application for ex parte interim order.

(1) The court shall, in all cases, before granting relief for an interim order, direct notice of the application to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated.

(2) All applications for interim relief shall be inter-parties except for exceptional circumstances that may include—

- a) where the matter is urgent in nature;*
- b) where there is a real threat or danger; or*
- c) where the application is made in good faith,*
- d) The court shall only consider the hearing of an application for interim relief where there is a pending substantive application with a likelihood of success.*

(3) An application for an ex parte interim application shall be made orally.

(4) Subject to subrule (2), an ex parte interim order shall be granted only in exceptional circumstances and for a period not exceeding three days from the date of issue and upon hearing of the substantive application, the order shall lapse.

(5) The applicant shall, within the three days referred to in subrule (5), present proof of effective service on the opposite party.

(6) Where proof of effective service is not presented within the period stipulated in subrule (6), the order shall lapse."



- [5] Order 50(3A) CPR appears to be the substantive law applicable to *ex parte*- interim injunctive relief applications. It is headed “**Application for interim *ex parte* order.**” In our view, an oral application presupposes the existence of a substantive application for interim relief intended to be heard *inter-parties*. This is the import of Order 50 Rule 3A (4) CPR. For this reason, under Order 50(3A) (2), it is provided that all applications for interim relief shall be *inter-parties* except (a) where the matter is urgent in nature; (b) where there is a real threat or danger; or (c) where the application is made in good faith.
- [6] The High Court of Uganda has held¹ that an *ex parte* interim order may be granted for reasons of extreme urgency and alleged threat before a hearing of the substantive application. The procedural history of the oral application before us is that the Applicant has filed a substantive application (Miscellaneous Application No. 085 of 2023) for attachment before judgment. Directions for filing of arguments have been given, and the 19th of June 2023 has been set for ruling. At the hearing of the main application, Mr. Munanura made an oral application for interim relief while the matter was proceeding *inter-parties*. Both Counsel argued their respective cases against a threshold for an applicant to demonstrate the urgency and imminent threat. Mr. Munanura submitted that nothing barred the Respondent from dealing with the property. He pointed the Court to the Respondent's financial distress and acts of bankruptcy. Mr. Kalibbala countered that the Applicant had not shown urgency. A perusal of the record indicates that the application was filed and sealed by the Registrar of this Court on the 23rd of May 2023. The Registrar of this Court is empowered to hear and determine an oral application for interim relief. The Applicant did not consider it necessary to make the application before the Registrar and served the Respondents on the 30th of May or thereabouts. This does not demonstrate extreme urgency or imminent threat, in our view. We are not satisfied that the applicant has met the threshold for urgency and imminent threat for a grant of interim relief as sought.
- [7] Secondly, under Order 50(3A) (3), interim relief may only be granted where there is a pending substantive application with a likelihood of success. By this rule, the threshold for a grant of interim relief is a pending substantive application with a likelihood of success of the main application. Counsel should have addressed us on this point. Once the application is *inter-parties*, the material before the Court

¹ Per Wamala J. in H.C.M.A No. 241 of 2020 Absa Bank Uganda Ltd & 2 Ors v Electro-Maxx(U) Ltd & Anor.



would have to be detailed to establish the likelihood of success of the main application.

- [8] Authorities of decided cases have also established that the purpose of injunctive relief is to preserve the status quo pending the final determination of the dispute.² In a more recent precedent, the High Court of Uganda has reiterated the purpose of an interlocutory injunction to keep parties in an action in status quo, in which they were before the judgment, or the act complained of.³ Beyond the purpose of preserving the status quo, in a range of decisions, the Courts of Judicature in Uganda have set the threshold for a grant of interim relief to be similar to the same as those for a grant of substantive injunctive relief and include the following:

- (i) The Applicant should demonstrate that the Court has jurisdiction to grant the order,
- (ii) The Applicant should demonstrate that their case discloses triable issues and is not frivolous or vexatious,
- (iii) That the failure to grant the application would render the matter nugatory in a manner that cannot be addressed through an award of damages.⁴
- (iv) The Applicant must demonstrate that there is a status quo to be preserved⁵.

In the *Gashumba v. Amanyanya* case (supra), the Honourable Mr. Justice Musa Ssekaana adds that the applicant has unfettered duty to satisfy the court that it is an equitable remedy which is at the discretion of the court to grant. The award of an injunctive order is discretionary.

- [9] Neither Counsel addressed us on these tests. Their collective submissions were on the premise of urgency and threat, save for Mr. Munanura's brief reference that he wished to maintain the status quo. What is the status quo? A review of the pleadings in the main cause demonstrates that the Applicant has filed Labour Dispute Reference No. 120 of 2022. It was filed on 2nd June 2022, seeking a declaration of constructive dismissal. It was submitted that the Applicant believed that one Respondent intends to dispose of its last known asset while the 2nd Respondent is subject to liquidation proceedings. By the Applicant's admission, the status quo is that the Respondents possess a property he now seeks to injunct. The nexus between the Applicant's claim and the property sought to be attached has not been established. In our view, the Applicant has not shown an appreciable

² Kiyimba Kaggwa v Hajj Abdul Noor Katende [1985] HCB 43

³ H.C.M.A No. 37 Of 2021 Frank Malingumu Gashumba V Deborah Amanyanya

⁴ C.C.M.A No. 18 of 2007 Hon. Jim Muhwezi v A.G & Another.

⁵ H.C.M.A No. 241 of 2020 Absa Bank Uganda Ltd & 2 Ors v Electro-Maxx(U) Ltd & Anor.

and arguable case for injuncting the property in the manner sought. The material before this Court, devoid of detailed affidavits in support, is insufficient to support the application. We are not satisfied that the Applicant has met the threshold.

- [10] Considering the facts in the present application, the law, the authorities, and the submissions, we determine that the present application fails and is accordingly dismissed. There shall be no order as to costs in keeping with our dicta in Joseph Kalule v GIZ⁶.


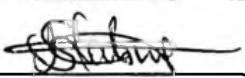
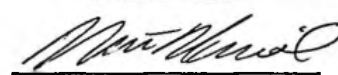
It is so ordered.

Dated at Kampala this 6th day of June 2023.

Anthony Wabwire Musana,
Judge, Industrial Court of Uganda

THE PANELISTS AGREE:

1. Hon. Adrine Namara,
2. Hon. Susan Nabirye &
3. Hon. Michael Matovu.

Ruling delivered in open Court in the presence of:

1. **For the Applicant:** Mr. Stanley Oketcho and in the Applicant's presence.
Court Clerk: Mr. Samuel Mukiza.

⁶ LDR 109 of 2020. This Court has ruled that costs are the exception rather than the rule in employment disputes.