

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA.

CIVIL APPLICATION NO 256 OF 2015.

(ARISING FROM CIVIL APPLICATION NO. 230 OF 2015 OF 2014)

AISHA KIWANUKA

APPLICANT

VERSUS

1. MICRO FINANCE SUPPORT CENTRE LIMITED}

2. IMAM KIWANUKA}

RESPONDENTS

CORAM: HONORABLE MR. JUSTICE RICHARD BUTEERA SINGLE JUSTICE.

This is an application for an interim order of a temporary injunction brought by Notice of Motion. It is brought under rules 2 (2) and 43 (1) of the Judicature Court of Appeal Rules and Directions. It is seeking for an extension of the temporary order of injunction granted by this honorable Court on the 25 day of June 2014 under Civil Application No. 169 of 2014. It is also seeking for costs of the application to be provided for.

The application is supported by an affidavit sworn by Aisha Kiwanuka the applicant. The affidavit substantially repeats in more detail the contents of the Notice of Motion.

The grounds for the application as per the Notice of Motion are the following:

- (a) The applicant was granted an Order of a Temporary injunction by this Court in Civil Application No.169 of 2014 for the period of 12 months on condition that the appeal is heard and disposed off within the said 12 months.**
- (b) That the appellant then filed the Appeal in the Court of Appeal on the 24th of September 2014, vide Civil Appeal No.159 of 2014.**
- (c) That the 1st respondent thereafter filed a Notice of Cross-Appeal on the 28th of October 2014.**
- (d) That the Appeal/Cross Appeal has however not yet been fixed for hearing by the Court.**
- (e) The Order of a temporary injunction has now lapsed before the hearing of the appeal and application for extension of the order has as well not yet been heard and disposed of.**
- (f) The respondent has advertised the property for sale which will render the application to extend the time of the Oder of a temporary injunction as well the appeal nugatory.**
- (g) That it is just and equitable that the Order of a Temporary injunction granted by this Court on 25th June 2014 be extended for a further period pending the hearing and disposal of the appeal.**

The background to this application is the following:

The second respondent is the husband of the applicant. They both live together with their children on land belonging to the second respondent at Kawatule, Kyengeru, and Mugongo. The second respondent mortgaged the land on which the family lives to the first respondent for a loan that was granted to a third party. The third party defaulted with regard to repayment of the loan. The first respondent commenced steps to dispose of the property to recover the outstanding sum of money owing to it.

The first respondent brought action to the High Court to stop the sale on account that the mortgage was void as it lacked spousal consent. The trial Court did not declare the mortgage void though the Court

found that there was no spousal consent. The applicant was dissatisfied with the High Court decision and filed an appeal that is pending in this court.

She applied for a temporary injunction to restrain the first respondent from disposing of the property before the hearing of the appeal.

On 25 June 2014, this Court granted a temporary injunction to restrain the first respondent from selling the property prior to the determination of the applicant's appeal. The injunction granted by court was not to remain open ended. It was to have effect for only one year. The applicant was to take the necessary steps to have the appeal heard within 12 months otherwise the temporary injunction was to lapse. The temporary injunction has since lapsed.

This application is for an interim order of a temporary of injunction to be granted pending the hearing and disposal of a civil application seeking an extension of the temporary order of injunction granted by this Court on 25th June .2014. Learned counsel, Mr. Gilbert Nuwagaba, for the applicant in support of the application submitted that the Civil Appeal, No. 159 of 2014, was filed on 24th September 2014 and a cross appeal was filed on 28th October 2015 and both have not been fixed for hearing by the court because of the court's busy schedule. According to counsel this Court found and held that there was justification for the court to issue a temporary injunction to restrain the first respondent from selling the disputed property. This was because the Court considered that the sale of the property would render the appeal nugatory.

After the grant of the temporary injunction the appellant filed the appeal and started the process of getting a hearing date but the court has not found time to fix and hear the appeal because of its busy schedule.

In the meantime the respondent has advertised the property for sale. Counsel submitted that this was a proper case for this Court to grant an interim order of injunction pending the disposal of the main application for extension of the order granted by this Court.

Learned counsel, Mr. Mugabi for the respondent opposed the application on the grounds set out in the affidavit sworn on 14 October 2015 by Hope Kasabiti the legal officer of the respondent company. Counsel submitted that the temporary injunction that was granted on 25th June 2014 was on condition that the applicant was to take the necessary steps to dispose of the appeal within 12 months. The applicant did not take any steps to have the appeal disposed of and the temporary injunction lapsed on 25th June 2015. That the application should not be granted as the applicant was the one who failed to take steps to have the appeal disposed of. He also delayed to have this application made immediately after the lapse of the injunction in June.

Counsel submitted that the application was brought in bad faith and it was a ploy to delay the

sale of the suit property by the first respondent to recover the amounts rightly due and owing to the company. Counsel for the respondent submitted that the application should be dismissed with costs to the respondent.

The conditions for grant of an interim order of stay pending the disposal of the substantive application were stated by Justice Okello (Justice of the Supreme Court as then was) in the Supreme Court in **Civil Application No. 19 of 2008 , Hwang Sung Industries Ltd versus Tajdin and 2 others** when he held;

“For an application for an interim order of stay, it suffices to show that a substantive application is pending and that there is a serious threat of execution before the hearing of the pending substantive application. It is not necessary that pre-empt consideration of matters necessary in deciding whether or not to grant the substantive application for stay.”

In the instant application it is established that there is a pending main application for extension of the Court Order granted on 25 June 2014. It is Civil Application No.230 of 2015. There is a real threat to dispose of the disputed property as the same has been advertised for sale by the first respondent. These are facts that are not disputed by any of the parties.

I do find that if the sale was executed that would render the main application for extension of this court’s order of injunction nugatory. I will not engage into the consideration of the matters related to whether or not the extension should be granted as that would Pre-empt the determination of the main application.

In the circumstances of the instant application, I do find that the grant of an interim order of stay of the sale of the disputed property pending the determination of Civil Application No. 230 of 2015 would be in the interest of justice and do hereby grant the interim order as prayed for.

This Court in Civil Application No. 169 of 2014 did not grant an open ended injunction. I would therefore not grant an open ended interim order in the instant application. I grant an interim order of a temporary injunction for a limited period of five months and direct that the Registrar of this Court should make the necessary arrangements and consultations to have the matter fixed for hearing urgently.

An interim order of a temporary injunction is granted pending the hearing and disposal of Civil Application No. 230 of 2015. The order shall have effect for five months from the date of delivery of this ruling. The costs of this application will abide the outcome of the main application.

Dated at Kampala this 23rd October 2015

Hon. Justice Richard Buteera

JUSTICE OF APPEAL