

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**MISCELLANEOUS CIVIL APPLICATION No. 0071 OF 2016**

**(Arising from H.C.C.S. No. 0024 of 2016)**

**ALPHA2 BUSINESS COMPANY LIMITED ..... APPLICANT**

**VERSUS**

**1. DIAMAOND TRUST BANK LIMITED }  
2. TRUST GENERAL AUCTIONEERS & COURT BAILIFFS }..... RESPONDENTS  
3. THE COMMISSIONER LAND REGISTRATION }**

**Before: Hon Justice Stephen Mubiru.**

**RULING**

The Applicant was sued by the respondent seeking recovery of money outstanding under a series of credit facilities, including loans and overdrafts, extended to the applicant by the respondent. The applicant's borrowing was secured by a mortgage over two plots of land comprised in LRV 3214 folio 20 plot 3 Gulam Close Arua Town, LRV HQT 526 folio 22 plot 22 Awudele Crescent, LRV 4194 folio 10 plot 5 Gulam Close Arua Town and LRV 3309 folio 13 plot 10, Ayivu Block 5 at Tanganyika Road, Arua Town.

Before the suit could be heard, the applicant applied for and was granted an interim injunction and on 23<sup>rd</sup> August 2016, by the Assistant Registrar of this court restraining the respondents, their agents, servants or anyone acting on their behalf from selling the applicant's properties comprised in LRV 3214 folio 20 plot 3 Gulam Close Arua Town, LRV HQT 526 folio 22 plot 22 Awudele Crescent, LRV 4194 folio 10 plot 5 Gulam Close Arua Town and LRV 3309 folio 13 plot 10, Ayivu Block 5 at Tanganyika Road, Arua Town, and from evicting tenants occupying these premises until the disposal of the main application for a temporary injunction.

When the application came up for hearing before this court on 28<sup>th</sup> November 2016, counsel for the respondents was not in court and Counsel for the applicants was granted leave to proceed to make his submissions, with an allowance given to counsel for the applicant to file written

submissions before the date fixed for delivery of the ruling. In his submissions, counsel for the respondents, Mr. Stephen Zzimula, prayed that the application be dismissed since it is only designed to buy more time for the applicant, who too had already taken the decision to dispose of the mortgaged property as evidenced by annexure “K” and “Q” to the affidavit in reply. The respondents had since 29<sup>th</sup> September 2015 failed to secure a buyer and they do not deserve any more time. The respondents had further not complied with the requirements of Regulation 13 (1) of *The Mortgage Regulations*, requiring an applicant in an application of this nature to deposit 30% of the forced sale value of the property advertised for sale. He cited *Miao Huaxian v. Crane Bank Limited and another, H. C. Misc. Application No 76 of 2016* in support of his submissions.

In his written submissions, counsel for the respondent, Mr. Henry Odama argued that the application ought to be granted because the respondent had undertaken the process of realization of the mortgaged property prematurely and in a manner that is inconsistent with the procedures required by the law. He submitted that under the terms of the mortgage, the loan is to run up to the year 2020 but the respondent had proceeded to advertise the securities for sale without complying with the procedural requirements as to demands and notices prior to the intended sale. The respondent thus has a prima facie case against the respondent deserving of investigation by the court and pending which the injunction ought to be issued in order to preserve the *status quo*. Instead of disposing off the property comprised in LRV 3214 folio 20 plot 3 Gulam Close Arua Town, which alone is valued at over 3 billion shillings, the respondents had proceeded to advertise all the property for sale, valued at over 8 billion, inclusive of the applicant’s Managing Director’s residence comprised in LRV 3309 folio 13 plot 10, Ayivu Block 5 at Tanganyika Road yet the property at plot 3 Gulam Close would be sufficient to recoup the debt. Unfortunately, counsel supported his submissions with authorities relating to stay of execution rather than the grant of injunctions and the court has not found them to be helpful in the matter now before it.

The purpose of an interlocutory injunction is to maintain the *status quo* until the question to be investigated in the suit is finally determined. The conditions that have to be satisfied before court exercises its discretion to grant an interlocutory injunction have been well laid out in numerous decisions of this court as the following:-

1. The Applicant must show a prima facie case with a probability of success.

2. The likelihood of the applicant suffering irreparable damage which would not be adequately compensated by an award of damages.
3. Where in doubt in respect of the above 2 considerations, then the application will be decided on a balance of convenience.

These principles can be found in such cases as *Geilla v Cassman Brown Co. Ltd [1973] E.A. 358* and *GAPCO Uganda Limited v Kaweesa and another H.C. Misc Application No. 259 of 2013*. What amounts to a prima facie case, was explained in *Godfrey Sekitoleko and 4 others v Seezi Peter Mutabazi and 2 others C.A. Civil Appeal No. 65 of 2011 [2001 – 2005] HCB 80* that what is required is for the court must to be satisfied that the claim is not frivolous or vexatious, and that there are serious questions to be tried.

I have had the benefit of reading the decision in *Miao Huaxian v. Crane Bank Limited and another, H. C. Misc. Application No 935 of 2015* which was cited to me by counsel for the respondent where it was decided that Rule 13 of *The Mortgage Rules 2012*, applies to situations where a sale by mortgagee is adjourned. In such cases, the mortgagor should deposit 30% of the forced sale value of the mortgaged property or the outstanding amount. This provision was interpreted as being applicable to circumstances where an interim or interlocutory injunction is sought. I find myself unable to agree with this interpretation.

I am more inclined to agree with the conclusion reached in *Nakayaga v. FINA Bank and another H. C. Misc Application No 471 of 2014*, where in an application for an interlocutory injunction, the court declined to order 30% deposit on the ground that the requirement under regulation 13 (1) of *The Mortgage Rules 2012* applies where the court “for reasonable cause adjourns the sale to another date,” which presupposes that the right to foreclose of the mortgagee is not in dispute. I have come to a similar conclusion upon reading the rule within the context of the entire Statutory Instrument. The Regulations apply to situations where the application before court is specifically for postponement of a sale by a mortgagee. Therefore I do not consider this to be an additional requirement in applications for interlocutory injunctions involving a mortgage, and I reject the argument to that effect.

The first consideration is whether in the main suit, there are serious questions to be tried. In the main suit, the applicant seeks a declaration that the intended sale of the securities is null and void, a permanent injunction against the sale, general damages, and costs. The grounds for seeking the relief are that respondents never enabled the applicant access to the additional credit facility after consolidation and restructuring the existing loans at the time and never issued the applicant with any demand letters or notices as required by law after default, before proceedings to advertise the securities for sale. In the joint written statement of the first and second defendants, refuted the applicants claim and attached the notice of default and notice of sale served on the applicant before the property was advertised for sale, as required by the law. The applicant and its counsel in response wrote to the first respondent correspondences acknowledging the debt and requesting for time, indicating that they too were looking for buyers for some of the property securing the loan. Copies of the correspondences were attached.

I have considered the averments in the pleadings filed in support of and in opposition to this application as well as the pleadings in the main suit. It appears to me that the real controversy between the parties is not non-compliance with the statutory procedures for realization of the securities after the applicant's default but rather whether the securities should be sold by private treaty by the applicant or public auction by the respondent. The application is in essence only meant to buy the applicant more time to find a buyer for one of the securities in order to save the rest from imminent public auction. To invoke the powers of court for that purpose by way of a claim for an interlocutory injunction would be an abuse of the process of this court. The court cannot lend its authority to the aid of the applicant in achieving that aim. That is a matter to be negotiated with the respondent. I therefore have failed to find any question, on the face of the pleadings, that is to be investigated in the main suit or a prima facie case with a probability of success, which warrants the grant of this application

This court is also required to determine whether the applicant will suffer irreparable damage if the injunction does not issue. Irreparable damage has been defined by *Black's Law Dictionary*, 9<sup>th</sup> Edition Page 447 to mean "damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement." It has also been defined as "loss that cannot be compensated for with money" (see *City Council of Kampala v Donozio Musisi Sekyaya C.A. Civil Application No. 3 of 2000*). The purpose of granting a temporary injunction is for

preservation of the parties, legal rights pending litigation. The court doesn't determine the legal rights to the property but merely preserves it in its current condition until the legal title or ownership can be established or declared. If failure to grant the injunction might compromise the applicants' ability to assert their claimed rights over the securities, for example when intervening adverse claims by third parties are created when the property is sold off, there is a very high likelihood of occasioning a loss that cannot be compensated for with money. However, in the case of *Kakooza Abdullah versus Stanbic Bank Uganda Limited*, H. C. Misc. Application No. 614 of 2012 the court held that the sale of the mortgaged property pledged as security for a loan agreement or mortgage cannot lead to irreparable loss because it is the contractual arrangement or intention of the parties and is expressly provided for in the loan agreement or mortgage. I respectfully agree.

Since the above two conditions have not been met, it is not necessary to consider the last factor which is the balance of convenience.

In the final result, the application for a temporary injunction is dismissed, with costs to the respondents.

Dated at Arua this 8<sup>th</sup> day of December, 2016.

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Stephen Mubiru  
Judge.