

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE No. 122 OF 2016**

*(Arising out of Civil Suit No. 73 of 2016)*

**JAPAN AUTO WORLD LIMITED ::::::::::::::::::::::::::::::: APPLICANT**

**- Versus -**

**1) HAJJI BATTE MAGALA**  
**2) MEMBERSHIP INVESTMENTS DBA**  
**3) MEMBERSHIP INVESTMENTS**  
**4) GODFREY KISEMBO ::::::::::: RESPONDENTS**

**BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING**

This is an application for a temporary injunction and it is brought by Chamber Summons under S. 33 of the Judicature Act, O. 44 rr 1,2 and 9 of the CPR and all other enabling laws. The orders the applicants seek are stated as hereunder.

1. An order of temporary injunction against the respondents and/or their servants, workmen, assignees and all those working under them from evicting the plaintiff from the suit property known as Plot 1 Katalina Road and Plot 51 Naguru Rd Nakawa – Kampala and from any dealing leasing and/or transferring the said property to themselves and/or third party until the final determination and disposal of the main suit.
2. The costs of the application be provided for.

The application is supported by the affidavit of Muhammad Faizan the Managing Director of the applicant company dated 24<sup>th</sup> March 2016. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents filed affidavits in reply. Then the applicants filed an affidavit in rejoinder.

During the hearing of the application, Mr. Paul Rutisya, Diana Nabuuso and Denis Sembuya appeared for the applicant while Ms Beily Ochita appeared for the 1<sup>st</sup> respondent. Patrick Furah and Eric Mawampa appeared for the 3<sup>rd</sup> respondent.

Parties were directed by court to file respective submissions in support of their cases.

The law on what should be considered and the principles governing grant of temporary injunctions are well settled and were correctly stated by learned counsel.

An injunction is an equitable remedy in the form of a court order whereby a party is required to do or to refrain from doing certain acts. Injunctions are all about fairness.

The High Court has power to grant injunctions to restrain any person from doing any act as may be specified in S. 38(1) of the Judicature Act. Under O. 41 r 2 of the Civil Procedure Rules, Court has power to issue an injunction to restrain an injury and it may be applied for where there is continuing injury at any time after the commencement of the suit but before judgment. Injunctions are intended to maintain the status quo.

In the case under consideration the status quo is not in dispute. It is undisputed that the applicant company is in possession of the suit land and the respondents are seeking to evict them.

For court to grant an temporary injunction, the applicant must show:

1. that the main case has prima facie case with possibility of success.
2. That if the order is not granted the applicant shall suffer irreparable loss/damage/injury which cannot be compensated by an award of damages.
3. If the court is in doubt the applicants must show that the balance of convenience is in their favour. See: **Kiyimba Kaggwa Vs Katende [1985] HCB 43.**

I will consider each of these requirements as listed.

1. **Prima facie case:**

It was the submission of learned counsel for the applicant that a prima facie case does not mean that the case must succeed. That what it means is that there should be a triable issue, that in, an issue which raises a *prima facie* case for adjudication as was held in **Kiyimba Kaggwa** case (supra). That at this stage court should not delve into the merits of the case as was held in **Gapco Uganda Ltd Vs Kaweesa Badu & another Ma 259 of 2013.**

Learned counsel further submitted that the applicant has a *prima facie* case since the action against the respondents is for unlawful interference with the applicant's business, breach of contract and conspiracy to defraud. That these are serious triable issues as demonstrated in paragraphs 4,8 and 9 of the affidavit in support of the application.

In reply, the 3<sup>rd</sup> respondent submitted that the main suit and this application are frivolous and vexatious in as far as the applicant already filed applications for stay of execution and objector proceedings which they lost. That therefore the suit and this application are *res judicata* and as such, there is not prima facie case against the respondents.

In the submissions, the 1<sup>st</sup> respondent dwelt more on the issue of status quo. They submitted that the applicant's tenancy agreement expired together with the interest of the land lord who is now no longer the owner of the suit land effective the day when the foreclosure order was made. Therefore the application should be dismissed with costs.

In rejoinder the applicant submitted that the issue on whether or not the main suit is frivolous and vexatious should be reserved for the main suit. As for this application, learned counsel submitted that it is not *res judicata* because the application is not a suit where the principle can apply. He relied on the case of **Matco Stores Ltd & 2 others Vs Grace Muhwezi & another HCCS 90 and 91 of 2001.**

I have considered the respective submissions regarding the issue of *prima facie* case and whether this matter is *res judicata*. I agree with the submission by learned counsel for the applicants that the principle of res judicata does not apply to this application because it is not addressing the issue in controversy yet.

Regarding ownership of the land and the interests of the applicant, I do not agree with the reasoning by learned counsel for the respondent. It is trite law that whoever acquires a legal interest in land does so subject to the existing equitable interests of other persons on the same land. See: **S. 64 of the Registration of Titles Act.**

The 2<sup>nd</sup> respondent raised an objection to the suit stating that the suit does not disclose a cause of action against them because it is vexatious and frivolous because the respondent does not know the 1<sup>st</sup> respondent and has never dealt with him in any way. This submission being raised when the 2<sup>nd</sup> respondent failed to oppose the grant of this application by not filing an affidavit in opposition suggests that the grant of this temporary injunction would not affect them.

It was pointed out in *American Cyanamid & Co. Vs Ethicon Ltd [1975] 1 All ER 504* per Lord Diplock that to prove a *prima facie* case, court must be satisfied that the case is not frivolous or vexatious. In other words that there is a serious question to be tried in the main cause.

In the instant case therefore I will find that there is a *prima facie* case shown because there are serious questions to be tried. The issues that the main suit is *res judicata* or that it does not disclose a cause of action are matters for the main suit. Right now this court's concern is whether the plaint has some issues that are triable.

The issues for investigation are contained in paragraph 3 of the plaint relating to whether there is a breach of tenancy agreement through fraudulent means or not.

## 2. **Irreparable injury**

On this ground, learned counsel for the applicant submitted that the applicant will suffer irreparable injury or loss in so far as it deals in complex multiparty contracts with its clients, the government of Uganda through URA and others. That if the injunction is not granted the eviction of the applicant's car business and reputation will be damaged and such loss which involves reputation cannot be easily quantified due to the nature of the cut-throat competition in the car industry today.

The applicant further submitted the irreparable loss is also demonstrated in the fact that finding alternative premises for their business is almost impossible since most premises in Kampala are not suitable for this kind of business. That they will lose their good reputation and good will which cannot be adequately atoned in damages.

The 3<sup>rd</sup> respondent submitted that it is him who shall suffer irreparable loss because they have undertaken to take care of the 1<sup>st</sup> respondent's liability after selling of the suit property. That according to the tenancy agreement the landlord was entitled to evict the applicant in the event the landlord lost the property to KCCA or in the litigation which is pending. That the claim of

irreparable loss is speculative and only applicable where there was no contract governing the parties in the event of premature eviction. That premises are available in Kampala and the applicant can find alternatives.

Further, that the eviction shall not in any way affect the complex licenses and agreement that the applicant referred to.

In rejoinder, the applicant submits that they shall lose their reputation and good will which cannot be quantified in damages.

After considering the respective submissions on this ingredient, I am persuaded that to evict the applicant at this point in time before its grievances are investigated will occasion to it irreparable injury given the nature of its business and reputation as well as good will. These are attributes that cannot be atoned for in damages. I will uphold this ground as well.

3. **Balance of Convenience**

4. This is usually considered if court is in doubt on whether there is a prima facie case or the applicant will suffer irreparable injury. I will however consider this aspect although I have found for the applicants on the above two grounds.

If the applicant is not granted this application he will be evicted. If this happens, the main suit shall be rendered nugatory. There are indications that the respondents are already planning to evict the applicants and have served them a notice for eviction. It is also not disputed that the applicant is in full possession of the suit premises conducting business there on of a bonded warehouse. For those reasons, I am inclined to find that the balance of convenience is tilted in favour of granting this application.

In the final result and for the reasons I have outlined in this Ruling, I will find merit in this application. The application is therefore granted. Costs of the application shall be in the cause

**Stephen Musota**

**J U D G E**

**14.11.2016.**