THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION 259 OF 2013
(ARISING OUT OF CIVIL SUIT No. 133 OF 2013)

GAPCO UGANDA LIMITED :::::::::::::: APPLICANT

VERSUS

1. KAWEESA BADRU
2. SEMPALA OBADIAH :::::::::::::: RESPONDENTS

RULING BY HON. MR.JUSTICE JOPSEH MURANGIRA

1.0. Introduction

1.1 The applicant through its lawyers Kalenga, Bwanika, Ssawa & Co. Advocates brought this application against the respondents jointly or / and severally under Articles 26,27 and 28 of the Constitution of Uganda, Sections 33 and 38 of the Judicature Act; Cap. 13, Section 98 of the Civil Procedure Act, Cap.71; Order 41 rules 1 and 2, and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules, S.I. 71-1. This application is supported by the affidavit evidence.

1.2 The respondents through M/s Lukwago & Co. Advocates filed an affidavit in reply affirmed by the 1st respondent. That affidavit in reply has 26 paragraphs. The respondents vehemently oppose this application. The applicant filed in Court an affidavit in rejoinder to this application and reply to the respondents' affidavit in reply. That affidavit in rejoinder, too, has 27 paragraphs, which clearly answers the averments of the respondents in their affidavit in reply that was affirmed by the 1st respondent.

2. This application is brought by way of Summons in Chambers under the laws therein mentioned seeking from this Honourable Court orders to the effect that a temporary injunction be issued to restrain the respondents and their agents, servants or any one claiming title under them from evicting the applicant from the suit land and to compel the respondents to observe the status quo that persisted on the suit land as on 24th February 2013.

The applicant also seeks for an order of court allowing it to continue its operations on the suit land under the subsisting lease until the hearing and final disposal of Civil Suit No. 133 of 2013, and the costs of the application.

3. Resolution of this application by Court

I have perused the submissions by both counsel and my quick considered view is that the submissions by both parties go deep in to the roots of the main suit. Yet the crucks of this application is limited to a grant of a temporary injunction pending the hearing the main suit, civil suit no. 133 of 2013.

Counsel for the respondents submitted that the applicant has no cause of action and that as such it is not entitled to the reliefs sought in this application. Counsel for the applicant contended that there are triable issues in the main suit and the applicant is entitled to the grant of this application.

The law on granting of temporary injunctions in Uganda was well settled in the classic case of **E.L.T Kiyimba Kaggwa Versus Haji Abdu Nasser Katende [1985] HCB 43** where **Odoki J** (as he then was) laid down the rules for granting a temporary Injunction; thus:-

1. **The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.**

2. **The conditions for the grant of the interlocutory injunction are;**
   - ***i.*** firstly **that, the applicant must show a prima facie case with a probability of success.**
   - ***ii.*** Secondly, **such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.**
   - ***iii.*** Thirdly **if the Court is in doubt, it would decide an application on the balance of convenience.**

These principles are also cited in the recent decision of the Court of Appeal of Uganda **Nasser Kiingi and Another Versus Attorney General and two others. Constitutional Application No. 29 of 2012**. In that case the Court of Appeal set down what had to be proved for Court to grant a temporary Injunction.

I now proceed to consider the abovementioned principles Courts consider when granting a temporary injunction as herebelow:-

3.1 Ground 1: that there ought to be a Prima Facie Case with a probability of success

With regard to the 1st principle whether there has been established a prima facie case with a probability of success, the Court must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. ***(See American Cynamide versus Ethicon [1975] ALL ER 504).***

The matter before this Court concerns an agreement entered into between a Lessor and the Lessee. The case before me is challenging the Lessor's actions to purport to evict a sitting tenant on unfounded allegations of non-payment of

rent. The facts laid out in these submissions indicate that the Lessee has been in possession of the suit property for close to **53 years** and at all the time paid the due rent in time and also that the Lessee has at all the times been carrying on the business of gas, oil and petroleum distribution. That in paragraphs 7 and 8 of the affirmation in reply by Kaweesa Badru, it is claimed that the Respondents re-entered and sold the suit property on which the applicant acquired a Lease. Further in paragraph 9 of the same affidavit, it is alleged that the applicant failed to pay rent since 2010.

With the benefit of the facts of this case set forth herein and the affirmations of Kaweesa Badru, it is clear that there is a strong case and serious questions to be investigated, tried and determined by this Court and thus the applicant has discharged the burden to prove that it has a prima facie case within the meaning of the authorities cited above.

At this stage, the Law does not require Court to delve into the merits of the main suit. All that is required to be proved is that there is a serious issue to be tried by Court and that, that issue is neither frivolous nor vexatious.

3.2 Ground 2: that the applicant will suffer irreparable injury which cannot be atoned for by award of damages.

In **Kiyimba Kaggwa versus Hajji Abdu Nasser Katende,** *supra,* Court observed that irreparable injury does not mean that there must not be physical possibility of repairing the injury but means that the injury must be a substantial or material one that is one that cannot be adequately compensated for in damages.

Counsel for the applicant submitted that the applicant has occupied the suit land for over 53 years as a sitting tenant and has over 36 year of a subsisting lease and in all this time he has diligently carried on the business of oil, gas and petroleum dealership/distribution. It suffices to note that it is the applicant's long occupation of the suit premises and business that has accorded the suit land reputation, invaluable value and good will. It is on this premise that the Respondents and their assailants have orchestrated all these illegalities and frauds to frustrate and illegally deprive the applicant of its rights to the suit

property and violate its rights to privacy and quite enjoyment of its lease on the suit land, Counsel for the applicant submitted.

Counsel for the applicant submitted further that while a monetary figure can be placed on the financial loss that the applicant shall suffer by the high handed attempts to deprive it of its constitutional rights on the suit land, the applicant's loss of the good will it had cultivated in the suit land and the subsequent dent on its reputation as a result of the illegal activities of the respondents cannot be adequately atoned for by any award of damages. I agree with this submission.

3.3 Ground 3: Granting an injunction on the balance of convenience.

It is trite law that if the Court is in doubt on any of the above two principles, it will decide the application on the balance of convenience. The term balance of convenience literally means that if the risk of doing an injustice is going to make the applicants suffer then probably the balance of convenience is favorable to him/her and the Court would most likely be inclined to grant to him/her the application for a temporary injunction.

In the case of **Victoria Construction works Ltd Versus Uganda National Roads Authority HMA No. 601 of 2010** the High Court while citing the decision in **J. K. Sentongo vs. Shell (U) Ltd [1995] 111 KLR 1; by** Justice Lugayizi observed that if the applicant fails to establish a prima facie case with likelihood of success, irreparable injury and need to preserve the status-quo, then he/she must show that the balance of convenience was in his favour.

I must say that the applicant established in its pleadings and the submissions the said three principles cited hereinabove in this ruling.

This application, therefore, ought to succeed.

4.Conclusion

In the result and for the reasons given hereinabove in this ruling this application has merit. It is accordingly granted in the terms and orders being sought therein with costs in the cause.

Dated at Kampala this 28th day of May, 2013.

sgd
Murangira Joseph
Judge