**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 675 OF 2014**

**(Arising from Civil Suit No. 528 of 2014)**

**KAMPALA CITY PARENTS (2004) LTD:::::::::::::::::::::::APPLICANT**

**VERSUS**

**UGANDA DEVELOPMENT BANK LTD:::::::::::::::::::::::REPONDENT**

**BEFORE THE HON. MR. JUSTICE HENRY PETER ADONYO**

**RULING**

1. **Background:**

Kampala City Parents (2004) Ltd., the Applicant in this matter brought this application by way of Chamber Summons under **Order 41 rules 1(a), 2(1), 3 and 9 of the Civil Procedure Rules S1 71-1** and **Section 98 of the Civil Procedure Act** seeking orders for a temporary injunction to issue restraining the Respondent, Uganda Development Bank, it’s agents, transferees and any other person having authority from the Respondents from selling, alienating, transferring or disposing off of the suit property comprised in LRV 4169 Folio 16 Plot 6239 Kyadondo Block 273 and LRV 4268 Folio 2 Plot 6879 Kyadondo Block 273 Kibiri, Wakiso pending the determination and final disposal of CS 528/14 and costs of the Application.

The grounds of the application are set out in the affidavit of Mr Ssenyange Peter, the Applicant’s director. Briefly, they are that the Applicant has filed HCCS No. 528 of 2014 which is pending trial and final determination and that there was a high likelihood and probability of its success; secondly that the Respondent/ Defendant is in the process of selling or disposing off the suit property which would render the main suit nugatory and that further the balance of convenience is in favour of the applicant and that it is just and equitable that the temporary injunction be granted.

The Respondent opposed the application in its Affidavit in Reply deposed by Mr Emmanuel Kwihangana, the Portfolio Monitoring and Recoveries Officer of the Respondent bank. Mr Kwihangana deposed that the Respondent advanced a loan of Ug.Sshs 700,000,000/= to the Applicant who defaulted in making repayments and continued being evasive despite reminders until the Respondent served it with notice of sale on 11th November, 2013 and further that the Respondent’s actions are legal and that if any loss were to be occasioned to the Applicant, the same is a result of failing to perform its obligations under the loan agreement.

For resolution of this matter both parties filed written submissions attaching the relevant authorities for consideration of this court. They are on record and have been duly taken note of and the same have been duly considered.

1. **The Law:**

**Section 38 of the Judicature Act** empowers court to grant an injunction in all cases in which it appears to the court to be just and convenient to do so to restrain any person from doing any act which may render a matter which is before court to be moot.

The general procedural considerations for the grant of temporary injunctions is provided for under **Order 41 rule (1) Civil Procedure Rules** and are to the effect that;

*“Where in any suit it is proved by affidavit or otherwise-*

1. *that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or*
2. *that the Defendant threatens or intends to remove or dispose of his or her property with a view to defraud his or her creditors,*

*the court may, by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”*

The law on granting of temporary injunctions in Uganda was well settled by the 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:-

*“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. The conditions for the grant of the interlocutory injunction are;*

1. *The applicant must show a prima facie case with a probability of success.*
2. *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.*
3. *If the Court is in doubt, it would decide an application on the balance of convenience.*

“Status quo” invariably denotes the existing state of affairs immediately before a given particular point in time. **See:** **Humphrey Nzeyi versus Bank of Uganda & Anor, Constitutional Application No. 02 of 2013.**

1. **Prima facie case with a likelihood of success:**

With regard to the first principle of 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 questions to be tried. **See: American Cynamide versus Ethicon [1975] ALL ER 504).**

The pleadings and the affidavits on record show that the matter before this court concerns a loan agreement entered into between a banker and its customer. My reading of the main suit shows that it seeks to challenge the Respondent’s actions alleged which are said to be contrary to the terms of the loan agreement and the interest charged on the loan amount. My further reading of the facts as stated out in the submissions of the parties indicate that the Applicant avers that it was disbursed Ug. Shs 688,666,667/= instead of Ug. Shs 700,000,000/= and that it was subjected to interest on an amount which it had not received which interest the Respondent kept charging the Applicant despite its non performing status. These are contentious matters and from the facts of this case and the affirmations of Mr. Ssenyange Peter, it is clear to me that the parties herein do not agree as regards to the terms of the loan disbursed to the Applicant and this raises a strong case that there are serious questions to be investigated, tried and determined by the Court. It should also be remembered that at this stage, the law does not require the court to delve into the merits of the main suit. All that is required is for an applicant to prove that there is a serious issue to be tried by court and with the issue being neither frivolous nor vexatious. From the pleadings and averments herein this matters, therefore, it is apparent to me that the applicant has discharged this e burden of establishing a prima facie case within the meaning of the authorities cited above.

1. **The applicant will suffer irreparable injury which cannot be atoned for by award of damages:**

As regards the issue of irreparable injury, it does not mean that there must not be physical without the possibility of repairing such .What it mea ns is that the injury must be a substantial or material one that is one that cannot be adequately atone with or compensated for in damages. **See:  Kiyimba Kaggwa versus Hajji Abdu Nasser Katende (supra).**

In this regards, it is stated through the submission of the Counsel for the Applicant submitted that the Respondent had commenced the process of realizing the security by way of sale of the mortgaged land. Further it has been deposed that the land in question has a school with students who are preparing for examinations and the Respondent’s actions would lead to displacement of the students which injury cannot be compensated by damages. This is a real danger which in my view cannot be taken lightly and hence cannot be compensated especially for the learners whose future may be damaged permanently. In this regards I would tend to agree with the submission of the learned counsel for the Applicant.

1. **Granting an injunction on the balance of convenience:**

It is trite law that where the Court is in doubt as the veracity of any of the above two principles, then it should decide an 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. Therefore where an applicant fails to establish a prima facie case with likelihood of success, or that there likely to result irreparable injury or that there was a need to preserve the status-quo, then he/she must show that the balance of convenience was in his favour.  **See: J. K. Ssentongo versus Shell (U) Ltd [1995] 111 KLR 1.**

In the instant application, I have taken note of the fact the Applicant has established in its pleadings and the submissions the said three principles cited hereinabove and I would find that this application ought to succeed on the basis of those principles alone without again going further to discuss whether the Applicant has to prove the other angle of whether the balance of probabilities is tilted to its side.

1. **Orders:**

Accordingly I am constrained to grant this Application as follows;

1. A temporary injunction doth issue restraining the respondent/ defendant or its agents and any transferees or any other person having authority from the respondent from selling, alienating, transferring or disposing of the suit property comprised in LRV 4169 Folio 16 Plot No. 6239 Kyadondo Block 273 and LRV 4268 Folio 2 Plot No. 6879 Kyadondo Block 273 Land at Kibiri, Wakiso District till the determination and final disposal of HHCS No. 528 of 2014
2. The costs of this Application to abide the disposal of main suit.

I do so order accordingly at the High Court Commercial Division at Kampala, Uganda.

**Henry Peter Adonyo**

**Judge**

**30th October, 2014**