

Hon. Justice Tsekoko

Lwanga

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT JINJA

H.C.C.S.NO.10/93

MISC. APPLICATION NO.7/93

T.S. MUWANGA:APPLICANT/PLAINTIFF

V E R S U S

EAST AFRICAN STEEL CORPORATION LTD.:RESPONDENT/DEFENDANT

BEFORE: THE HON. JUSTICE MR. C.M. KATO

R U L I N G

This is an application by the applicant T.S. Mwangwa requesting this court to grant temporary injunction restraining the respondent East African Steel Corporation from evicting the applicant from his official residence.

It was lodged by chamber summons dated 7/4/93 under the provisions of Order 37 rules 2,3, and 9 of Civil Procedure Rules.

It is supported by the affidavit of the applicant/plaintiff T.S. Mwangwa dated 7/4/93. There are two main grounds upon which the application is based and those are that the house from which the applicant is threatened with an eviction is the subject of the main suit and the second ground is that if evicted the applicant will suffer irreparable damage or injury.

The respondent's manager swore an affidavit in reply to that of the applicant.

Mr. Lwanga who appeared for the applicant/plaintiff argued at length the above two grounds and maintained that this was an appropriate case in which the injunction ought to be granted.

On his part Mr. Mutyabule who represented the respondent/defendant was of the view that the applicant had not sufficiently proved his case so as to warrant the granting of the application. It was Mr. Mutyabule's contention that the plaint does not show that the house in question is part of the claim in the main suit and that there was nothing to show that if the application is not granted the applicant would suffer irreparable damage. Mr. Mutyabule based his arguments on the cases of: Giella v Cassman Brown and Co. Ltd (1973) EA 358, East African Industries v Trifoods (1972) EA 420 and Kiyimba - Kagwa v Haji Abudu Nasser Katende (1985) HCB 43.

With due respect, I very much agree with Mr. Lwanga when he says in his submission that the rules governing the issuing of an injunction are very clear, here I may perhaps add that authorities on those rules are not lacking among them are the 3 cases cited by Mr. Mutyabule while arguing this application. It should be pointed out that granting of an injunction is an equitable matter and as such the court has wide discretionary powers which off course must be exercised judiciously.

One of the reasons why an injunction is required is to maintain status quo among the litigating parties: Noormahamed Jan Mohamed v Kassamali V.M. (1953) EA 8.

Before the court can proceed to grant or refuse to grant an injunction it must be satisfied that if the injunction is not granted the applicant will suffer irreparable damage which may not be fully compensated by ordinary monetary damages: Noormahamed J V Kassamali V.M. (Supra).

As pointed out earlier, in the present application the applicant offered 2 grounds upon which his application is grounded. In the first ground it was argued on behalf of the applicant that the house from which the applicant is being evicted is the subject of the main suit; but the learned counsel for the respondent argued that the plaint does not reveal that the house is the subject matter of the main suit.

Although the plaintiff in paragraph 6 of his plaint speaks of having been ordered to leave his official residence immediately, the plaintiff does not anywhere in his prayer or in paragraph 3 of the plaint which is the main body of his claim mention anything about the house as being the subject of the suit. Looking at the facts as revealed in the affidavit of the applicant and the plaint, I find that the two documents do not agree because paragraph 2 of the affidavit speaks of the house as being part of the subject of the main suit when the plaint does not say so. I agree with Mr. Mutyabule when he says that the house is not part of the main claim. The way I understand the plaint is that the applicant/ plaintiff is suing the respondent/defendant for wrongful dismissal and for his benefits but he is not claiming for the house. Since the applicant is not claiming for the house in his plaint the question of maintaining status quo among the parties does not arise.

Regarding the second ground of this application, the applicant in paragraph 4 of his affidavit sworn in support of this application says that if this application is not granted he will suffer irreparable damage and his learned counsel argued the matter in court on the same line. Since the amount of money the applicant will have lost by being removed from the house will be known and capable of being ascertained, I cannot agree that by being removed from the house he will suffer any irreparable loss which may not be sufficiently compensated by ordinary damages. The position would have been different if there was no way of ascertaining the applicant's loss in terms of money or if the amount to be lost was so huge that no ordinary person would be in a position to raise it in the event of the applicant winning the suit but that is not the case. The second ground of this application is rejected.

In all these circumstances I find that the applicant has not proved to my satisfaction that it is necessary to grant him an injunction which he is seeking to be granted to him. The position being what it is the application is dismissed with costs to the respondent/defendant.

C.M. KATO

J U D G E

20/4/93.

20-4-93 Both parties absent.
Mutyabule for respondent present.
Lwanga for applicant absent.
Edward Kiige court clerk.

COURT: It is now 8.35 a.m. but the learned counsel for the applicant/plaintiff is not here. This application was adjourned to 8.30 a.m. today in the presence of Mr. Lwanga but he has decided not to be in court. In these circumstances the ruling is to be delivered in his absence.

C.M. KATO

J U D G E

20/4/93.

COURT: Later at 8.45 a.m. Mr. Lwanga appeared before the ruling had been delivered.

LWANGA: My watch has been late by about 5 minutes that is why I am late.

COURT: Counsel is excused for his late coming.
Ruling is delivered in the presence of both counsel.

C.M. KATO

J U D G E

20/4/93.