

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPLN. NO 167 OF 2018
(ARISING FROM LDR NO. 187/2017)**

MUSIMENTA ROGERS MUGISHA.....CLAIMANT

AND

EQUITY BANK UGANDA LTD.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS

1. Mr. Bwire John Abraham
2. Ms. Julian Nyachwo
3. Mr. Mavunwa Edison Han

RULING

This is an application for a temporary injunction brought under O41r1 and 2 of the CPR and Section **98 of the Civil Procedure Act**. It is supported by affidavit. In return an affidavit in reply opposing the application is on record as well. Both counsel were allowed to file and indeed both filed written submissions.

We have carefully perused the application, the affidavit in support as well as the affidavit in reply. We have also perused carefully the submissions of both counsel.

The gist of the application is that the applicant having filed labour dispute Reference No.187/2017 seeking an order that the respondent pays the loan obligation for unlawfully terminating the claimant, and the respondent having threatened to sell the applicants mortgaged property to recover the loan, court should grant a temporary injunction to stop the sale until the determination of the said labour dispute claim.

According to the applicant the loan was serviced by terminal benefits, salary and a mortgage.

In his submission, and relying on Order 41r(1)(2) of the Civil Procedure Rules (CPR) and the case of **Makerere University Vs Namusisi Farida HCMA No. 638/2013**, counsel for the applicant implored this court to grant the application since the property is the matrimonial home of his family which if sold will render irreparable damage to his family. In his submission the question whether the respondent should pay the loan is pending in the main suit, labour dispute reference No. 187/2017.

In reply to the above submissions, counsel for the respondent relying on **regulation 12(1) of the Mortgage regulations 2012** and various High Court cases as well as **the Court of Appeal Civil Application 0064/2014, Ganafa Peter Kisawuzi Vs DFCU Bank** strongly argued that the applicant ought to have deposited 30% of the value of the loan before causing any postponement of the sale of the mortgaged property. Regulation 13(1) of the mortgage regulation, 2012 provides.

“The court may on the application of the mortgagor, spouse, agent of the mortgagor, or any other interested party and for reasonable cause adjourn a sale by public auction to a specified date and time upon payment of a security deposit of 30% of the forced sale value of mortgaged property or outstanding amount”.

Also relying on this court’s case of **Francis X. Kayumba Vs Equity Bank, Misc. Appn. No. 32/2017**, counsel submitted that the employment relationship between the applicant and the respondent was severable from the mortgage relationship between the parties.

In a rejoinder counsel for the applicant strongly submitted that the Court has an unfettered jurisdiction to grant a temporary injunction irrespective of the mortgage regulations. He argued that the intention of the respondent was not to recover the loan but to humiliate the applicant by throwing him out of the house with his family. He argued that granting the application would not in any way inconvenience the respondent since even when the main claim is decided the mortgaged property will have appreciated in value and the respondent would then realize the mortgage.

It is not in dispute that before termination the applicant was on course repaying the loan using his salary and by salary deductions effected by the respondent as employer. It is not disputed that after termination there was no salary to be used for purposes of repayment of the loan.

This court in the case of **Florence Mufumba Vs DFCU Bank Labour dispute claim 138/2014** held that in the event that an employee is given a salary loan with salary as the only security for the loan, once the employee is declared to have been unfairly or unlawfully terminated, the employee is entitled to be free from the loan repayments for the remainder of the loan.

Where an employee executes a mortgage with his employer, the implication of the mortgage is that the property mortgaged will be sold to recover the loan in the event that the loan is due. We are not convinced that simply because an employee is using his salary to repay the loan, the employer cannot realize the loan repayment through execution of the mortgage deed. On the contrary it is our opinion that the mortgage was additional security for the loan advanced to the claimant. Although we appreciate the submission of the applicant on the general considerations that the court ordinarily takes into account before granting an interim application, and that the power to grant an injunction is an unfettered jurisdiction of the court,

we at the same time accept the contention of the respondent that the employment relationships between the applicant and the respondent can easily be severed from the mortgage relationship between the two parties.

Thus in **Miss. Appl. No. 32/2017 Francis Kayumba vs Equity Bank** this court held

“It is our considered opinion that the loan having been secured under a mortgage deed, it was not a loan recoverable only by way of salary deductions but also by way of realizing the mortgage. Therefore the pending claim for unlawful dismissal can easily be severed from the loan agreement”.

It is not difficult in the instant case to conclude that at the time the applicant was signing the mortgage deed he was aware that in the event that the loan was not repaid by salary deductions or by any other means, the mortgaged property would be sold to recover the same.

We also take cognizance of the mortgage regulations cited by counsel for the respondent. This court is empowered to entertain labour disputes and not to entertain Commercial disputes. We consider litigation related to recovery of loans under mortgage deeds a matter for the Commercial Court which is empowered to determine before granting an injunction whether or not 30% of the value of the property ought to be deposited in court. Thus in **George Okoya & Boneventure Musinguzi Vs Bank of Africa Misc. Appn. 59/2018** this court had this to say:

“In our considered opinion where an employee has entered a mortgage with his/her employer, enforcement of the mortgage deed is purely a commercial transaction unless the mortgage arrangement has protective clauses in favour of the employee and as such whether the employee was unlawfully terminated has no or very little bearing on the recovery process under the mortgage deed.”

Consequently we do not see any injustice occasioned if the application is not granted as we are convinced that should the claimant succeed in labour dispute reference 187/2017, he will be entitled to damages which the respondent as a bank will be able to pay”.

The application therefore fails with no order as to costs.

Signed by:

- 1. Hon. Chief Judge Ruhinda Asaph Ntengye
- 2. Hon. Lady Justice Linda Tumusiime Mugisha

Panelists

- 1. Mr. Bwire John Abraham
- 2. Ms. Julian Nyachwo
- 3. Mr. Mavunwa Edison Han.....

Dated:08/02/2019

